

**IN THE MĀORI LAND COURT OF NEW ZEALAND  
AOTEA DISTRICT**

**A20190001131**

UNDER Section 67, Te Ture Whenua Māori Act 1993

IN THE MATTER OF John Henry McGregor and Pirihiara Maraenui  
Tapine Whānau Trust

WAYNE MCGREGOR  
Applicant

VANCE MCGREGOR & KAREN SIMPSON  
Respondents

Hearing: 17 July 2019, 402 Aotea MB 274-280  
23 May 2019, 401 Aotea MB 200-204  
(Heard at Levin)

Appearances: Wayne McGregor in person

Judgment: 17 July 2019

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**JUDGMENT OF JUDGE L R HARVEY**

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**Introduction**

[1] Wayne McGregor seeks the removal of two of his fellow trustees, his brother Vance McGregor and the latter's partner Karen Simpson. Wayne McGregor says these two trustees have failed to fulfil their duties, have not been accountable and have failed to properly engage with the trust and its beneficiaries over a long period of time. Therefore, he argues, they should be removed from their roles. Mr McGregor also asserts that the respondents changed the name of the trust without the support of the beneficiaries and had other trustees removed without notice.

[2] Vance McGregor and Karen Simpson have been unable to attend Court due to the former's serious illness. They have provided written submissions and deny the allegations. They also say that it is the applicant, Wayne McGregor, who has failed to be accountable for funds that are rightly the property of the trust.

[3] The issue for determination is whether the respondents should be replaced or removed from office as responsible trustees.

## Background

[4] The Pirihiara Maraenui McGregor Whanau Trust was established on 19 January 1994 and the original trustees were Kereopa McGregor, Laine Mitchell, Vance McGregor, Karaitiana Sims, Toni Walls, Ngaone Blackburn and Lisa Blackburn.<sup>1</sup> According to the records of the Court, the trust was constituted over the interests of Pirihiara McGregor who died on 10 July 1987 aged 85.<sup>2</sup> The deceased's son, Kereopa McGregor confirmed that his mother died without a will and left three children, himself and his siblings Ngaone McGregor who died in 1940 without issue and Hinekura McGregor who died in 1950 leaving Karaitiana Sims, Ngahone Blackburn and Robert Heremaia.

[5] Then on 10 September 2007, Vance McGregor filed an application for succession to the interests of his father Kereopa McGregor who died on 29 November 1996 leaving a will dated 2 April 1996. By that will, Kereopa McGregor directed that all his maori land interest were to be vested in the Pirihiara Maraenui McGregor Whanau Trust.<sup>3</sup> At that same hearing, Vance McGregor gave evidence on oath that at a whānau hui held on 7 May 2007, those present agreed to change the name of the trust to John Henry McGregor & Pirihiara Maraenui Tapine Whanau Trust. He also claimed that the meeting supported the replacement of all existing trustees, excluding himself, with Brent McGregor and Leah Heremaia.

[6] On 11 August 2017, Vance McGregor applied to have Brent McGregor and Leah Heremaia removed per s240 (b) of the Act, effectively due to prolonged absence and according to Vance McGregor, the failure of the trustees to respond to communications.<sup>4</sup> He provided a statement asserting that it was agreed at a whānau hui that Karen Simpson should be appointed to replace Brent McGregor and Leah Heremaia. He also claimed that Wayne McGregor and Tracey Harris were present when the statement was prepared.

[7] The current trust order was issued on 23 November 2007. It contains the standard Aotea district clauses including the requirement for the preparation and filing of audited accounts for the trust annually. The trustees are also required to convene general meetings of trust beneficiaries at least every five years and are to apply for a review of trust within ten years of the establishment of the trust. A review of the file for this trust discloses that audited accounts have not been filed with the registrar.

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<sup>1</sup> 36 Aotea MB 238 (36 AOT 238)

<sup>2</sup> 32 Aotea MB 248-249

<sup>3</sup> 196 Aotea MB 187-189 (196 AOT 187-189)

<sup>4</sup> 374 Aotea MB 179-182 (374 AOT 179-182)

## The Law

[8] Section 239 and 240 of the Act are relevant:

### 239 Addition, reduction, and replacement of trustees

(1) The court may at any time, on application, in respect of any trust to which this Part applies, add to or reduce the number of trustees or replace 1 or more of the trustees.

(2) The court may amend the court's records for a trust if a trustee dies and the court receives a death certificate for the deceased trustee.

(3) In exercising the powers in subsections (1) and (2), the court may order the vesting of land or other assets of the trust in any person or persons (with the consent of that person or those persons) upon the terms of the trust, whether or not that person was previously a trustee.

### 240 Removal of trustee

The Court may at any time, in respect of any trustee of a trust to which this [Part] applies, make an order for the removal of the trustee, if it is satisfied-

- (a) That the trustee has failed to carry out the duties of a trustee satisfactorily; or
- (b) Because of lack of competence or prolonged absence, the trustee is or will be incapable of carrying out those duties satisfactorily.

[9] The leading authorities on the appointment and removal of trustees are the Court of Appeal judgments *Clarke v Karaitiana* and *Rameka v Hall*.<sup>5</sup>

[10] In *Clarke* on the issue of appointing trustees the Court held:<sup>6</sup>

[51] The touchstone is s 222(2) itself. In appointing a trustee, the Court is obliged to have regard to the ability, experience and knowledge of the individual concerned. In considering those issues, the Court will no doubt have regard to such matters as the nature and scale of the assets of the trust concerned and the issues the trust is facing. The importance of the views of the beneficial owners of the trust is underlined by s 222(2)(b) which forbids the Court from appointing a trustee unless the Court is satisfied that the appointment of that person will be broadly acceptable to the beneficiaries.

[52] It may be putting the matter too highly to say that the Court should only depart from the views of the owners in rare circumstances. The Court is not bound to appoint the leading candidates resulting from an election by the beneficial owners. A candidate who has strong support from the owners might be regarded by the Court as unsuitable through lack of ability, experience and knowledge or for other reasons. For example, the existence of conflicts of interest might be relevant or the need to obtain a suitable spread of skills amongst the trustees. Nevertheless, the Court would ordinarily give substantial weight to the views of the owners as demonstrated by the outcome of the election. If the Court is minded not to appoint the leading candidates as elected by the owners, it must still be satisfied the requirements of s 222(b) are met. For that purpose, the Court would need to have appropriate evidence before it. The outcome of an election at a meeting of owners is a useful means of obtaining such evidence.

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<sup>5</sup> *Clarke v Karaitiana* [2011] NZCA 154 and *Rameka v Hall* [2013] NZCA 203

<sup>6</sup> *Ibid*

[11] Then in *Rameka* the Court confirmed the legal principles for removal:<sup>7</sup>

[27] There is no real dispute about the applicable principles. As Judge Harvey observed, “[i]t is trite law that the paramount duty of trustees is to obey their terms of trust”.

[28] The general responsibilities of responsible trustees are set out in s 223 of the Act. That section refers to the following:

- (a) Carrying out the terms of the trust:
- (b) The proper administration and management of the business of the trust:
- (c) The preservation of the assets of the trust:
- (d) The collection and distribution of the income of the trust.

[29] As we have noted, these statutory duties are not exhaustive and general trustee law principles are also relevant. Further, the trust order applicable to the trust may add other responsibilities.

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[12] I adopt the reasoning set out in those decisions.

### **Submissions for the applicant**

[13] Wayne McGregor claims that the respondents have failed to be accountable for trust funds. As foreshadowed, he also asserted that the respondents had changed the name of the trust without the support of the beneficiaries and had also removed trustees without any proper notice to the affected individuals. In addition, Mr McGregor strenuously objected to the name change for the whānau trust and set out his reasons in his testimony for me earlier today.

[14] Mr McGregor also queried how it had been possible for Vance McGregor to take such steps, with relative ease, he stated, when he had been required to provide substantial evidence supporting his claims and his right to bring the proceedings. Mr McGregor also stressed that his contact details and email address had remained the same and he was surprised that no information had been forthcoming to him from either the respondents or the Court.

[15] Further, Mr McGregor was supported by his niece, Karlena Preston, who made submissions in support. It was contended that the respondents’ positions were no longer tenable and that at a whānau hui convened the day before, four names emerged as

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<sup>7</sup> Ibid

replacement trustees, namely Karaitiana McGregor, Lisa Blackburn, Toni Wall and Leah Heremaia.

### **Submissions for the respondents**

[16] Karen Simpson submitted that she had been a passive trustee and had not really been involved in any significant trustee decision making. Rather, she felt her role was to support Vance McGregor as responsible trustee.

[17] Vance McGregor and Ms Simpson also asserted that Wayne McGregor had failed to be accountable with trust funds and provided documents to support their allegations. They alleged that Wayne McGregor had been threatening and abusive toward the trustees on more than one occasion.

[18] As foreshadowed, due to serious illness, Vance McGregor was not able to attend Court or any related meetings for at least six months due to his illness.

### **Discussion**

[19] Vance McGregor is afflicted by serious illness. In such circumstances, I cannot see how it is tenable for him to remain in office as a trustee. Similarly, Karen Simpson claims that her role was simply as a “passive” trustee. As I mentioned during the hearing, there is no such thing as a passive trustee. Either an individual is a responsible, or an advisory trustee and with corporate trustees, may be appointed a custodian trustee. For the avoidance of doubt however there is no such thing as a passive trustee. Indeed, this paradoxical description is the antithesis of trusteeship.

[20] That there have been allegations and counter-allegations of a lack of accountability is acknowledged. Even so, in my assessment, Vance McGregor is not capable of fulfilling the role due to his illness and Ms Simpson has evidently failed to understand the fundamental responsibilities of a trustee. Added to that has been the failure to adhere strictly to the terms of the trust order in terms of filing on an annual basis audited accounts for the trust.

[21] Then there is the claim that Vance McGregor had trustees removed and replaced based on assertions that are not supported by evidence. Put another way, it has been claimed that trustees were removed without notice and without cause based on wrong information

provided to the Court by Vance McGregor at the relevant times. Indeed, some of the individuals affected by the earlier removal orders denied their consent to removal or their knowledge that such steps had been taken. It is for all these reasons that the current trustees should be replaced.

[22] That said, I acknowledge the stigma associated with “removal” contrasted with “replacement” as per ss 240 and 239 of the Act respectively. I therefore give Vance McGregor and Karen Simpson two weeks from the date of this decision to provide a letter of resignation. Failing that, they will be removed.

[23] In the meantime, I also agree that the trust needs to be refreshed and that additional trustees should be appointed. I am satisfied that there has been sufficient opportunity for the trust beneficiaries to discuss the nominees and to express their support or opposition.

### **Decision**

[24] The case manager will invite Vance McGregor and Karen Simpson to provide letters of resignation within two 10 working days from the date of this decision. If no responses are received or there is refusal to resign, then orders will be drawn for their immediate removal.

[25] Karaitiana McGregor, Lisa Blackburn, Toni Wall and Leah Heremaia are appointed responsible trustees with immediate effect per rule 7.5 of the Māori Land Court Rules 2011.

[26] The trustees shall file a report on their activities with the Court within 12 months including draft accounts for the preceding financial year.

[27] Leave is reserved for any party to seek further directions at any time.

[28] There is no order as to costs.

[29] Any party affected by this judgment may apply for a rehearing within 28 days.

Pronounced at 1.15pm in Levin on Wednesday this 17<sup>th</sup> day of July 2019

L R Harvey  
**JUDGE**