

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

A20180007423

UNDER Section 239, Te Ture Whenua Māori Act 1993
IN THE MATTER OF Ruatangata 1E1C1 Block (Te Muunu Haimona Trust)
BERYL MILLER
Applicant
CHARLES SIMON and YVETTE SIMON
Respondents

Hearing: 18 December 2018
(Heard at Whanganui)

Appearances: Beryl Miller, Taama Huwyler, Charles Simon and Yvette Simon in person

Judgment: 19 December 2018

ORAL JUDGMENT OF JUDGE L R HARVEY

Introduction

[1] The trustees of Te Muunu Haimona Trust seek the appointment of Taama Daniel Huwyler as a replacement trustee for the late Haimona Te Iki Frank Rzoska and the reappointment of the existing trustees, Beryl Ann Miller, Chantel Kharyn Marise Whale, Josephine Katene Peretini and Robert Heremia Watene.¹

[2] However, two owners, Charles Simon and Yvette (Haimona) Simon, object to the proposed appointments. They claim that Mr Huwyler had not been nominated or elected. They also raised concerns over the operation of the trust, including issues over a dwelling on trust land that they claim belonged to their grandfather, as well as assertions of financial impropriety and a lack of accountability.

Issues

[3] The issue for determination is whether Mr Huwyler has been elected and whether the current trustees were re-elected at the meeting of owners.

¹ 313 Aotea MB 247-250 (313 AOT 247-250)

[4] Concerns over the operation of the trust and the dwelling do not fall within the scope of the present proceedings. I understand Ms Simon intends to pursue an application for partition which can be considered in due course.

Submissions for the applicants

[5] Ms Miller confirmed that a general meeting of owners, properly notified, had been convened on 27 January 2018. She also stated that the meeting had been notified in the *Wanganui Chronicle* with the election of trustees on the agenda. At that meeting she says Mr Huwyler was nominated and successfully elected. The draft minutes of the hui also recorded that Ms Miller, Mr Watene, Ms Peretini and Chantel Whale were also nominated.

[6] Ms Miller was supported in her submissions by owners who attended the general meeting including Posie Tetana and Greg Ratana. These owners were adamant that an election had taken place, noting that Ms Simon herself had endorsed the nomination of Ms Miller.

Submissions for the respondents

[7] Mr Simon and his sister Ms Simon assert that there had been no election of Mr Huwyler. They also deny that the current trustees, and Mr Watene and Ms Peretini in particular, had been re-elected.

[8] The respondents also claimed that the trustees had failed to properly consult with owners, had not advertised the general meetings wide enough to ensure broad attendance and had not been accountable to the owners.

The Law

[9] Section 239 of Te Ture Whenua Māori Act 1993 provides:

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.

[10] Clause 9 of the trust order requires that trustees retire following the expiry of a three-year term of office but are eligible for re-election.²

[11] The leading authority on the appointment of trustees is the Court of Appeal judgment *Clarke v Karaitiana*.³ I adopt the reasoning of that decision.

Discussion

[12] On balance, I accept the evidence of those owners who confirm that an election occurred. While there may have been some confusion over the process during the meeting, I acknowledge the evidence given at the hearing from both the owners who attended and the chairperson of the meeting.

[13] The respondents dispute the election but on the face of the available evidence, and in the absence of a recording of the meeting that corroborates their version of events, I accept, as foreshadowed, the evidence of most owners who attended the hearing and spoke of their experience of the hui. Indeed, Ms Simon confirmed that she had herself supported the nomination of Ms Miller.

[14] As to the issue of notice, I accept the point made by the Simons that this needs to be more effective. While it is correct to note that there are whānau representatives, to use a label, domiciled in Whanganui, that does not mean that the notice of general meetings to owners spread across the motu has been effective. And while Ms Miller states that she is “not on Facebook” given the popularity and cost effectiveness of this medium, I suggest that the trustees explore the practicalities of creating their own Facebook page to improve communication with their owners.

[15] One last point. The hui was held on 27 January 2018, almost 11 months ago. This seems a very long delay in having such a mundane application filed and processed, without a sensible explanation. In future, the trustee should ensure that applications for reappointment are dealt with expeditiously. Otherwise, they might excite the suspicions of the owners and the Court that they are extending their term of office unilaterally and in contravention of their trust order. Accordingly, I appoint the trustees with effect from 29 January 2018. To avoid doubt their current term of office will therefore expire on 28 January 2021.

² 177 Aotea MB 273-277 (177 AOT 273-277)

³ [2011] NZCA 154

Decision

[16] Taama Huwyler is appointed a responsible trustee to the Te Muunu Haimona Trust.

[17] The existing trustees are reappointed for a further three-year term.

[18] No issue as to costs arises.

Pronounced in open Court at 4.45pm in Whanganui on Wednesday 19 December 2018

L R Harvey
JUDGE