

**IN THE MĀORI APPELLATE COURT OF NEW ZEALAND  
TAIRAWHITI DISTRICT**

**A20160006079  
APPEAL 2016/7**

UNDER Section 58, Te Ture Whenua Māori Act 1993

IN THE MATTER OF an appeal against an order of the Māori Land Court made on 18 October 2016 at 62 Tairāwhiti MB 122-170 in respect of Waipaoa 5A2 Block

BETWEEN BRUCE WINSTON ANDERSON SMITH,  
ROLAND MACDONALD SMITH AND  
DIGGA-BYGUM LIMITED  
Appellants

AND MĀORI TRUSTEE  
Respondent

Court: Judge S Te A Milroy (Presiding)  
Judge S R Clark  
Judge C T Coxhead

Judgment: 13 June 2017

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**RESERVED JUDGMENT OF THE MĀORI APPELLATE COURT**

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Copies to: Dr B Gilling, DX SP20203 Wellington 6143 [bryan.gilling@morrisonkent.com](mailto:bryan.gilling@morrisonkent.com)  
G Shaw PO Box 5038 Wellington 6140 [greg.shaw@tetumupaeroa.co.nz](mailto:greg.shaw@tetumupaeroa.co.nz)

## Introduction

[1] Waipaoa 5A2 Block is Māori Freehold land comprising 790 hectares and is situated inland from Wairoa. The Smith family are the majority shareholders and have farmed the land under a lease since 1951. The lease was due to expire in 2014.

[2] The Māori Trustee put the lease out to tender twice. The Smith family put in bids but were unsuccessful on both occasions. The Smith family subsequently filed applications with the Court seeking:<sup>1</sup>

- (a) A rehearing of an injunction ordered on 24 December 2014 and a permanent injunction restraining the Māori Trustee from granting the lease to the Smith-Isaac partnership;
- (b) An order removing the Māori Trustee as responsible trustee; and
- (c) An order requiring the Māori Trustee to reconsider the lease of Waipaoa 5A2.

[3] In turn the Māori Trustee filed applications seeking a permanent injunction against Bruce Smith and Digga-Bygum Ltd, and an order for recovery of possession of the land.<sup>2</sup>

[4] These applications came before Judge Doogan in 2015 and 2016. On 18 October 2016 Judge Doogan issued a reserved judgment:<sup>3</sup>

- (a) Dismissing the application for a rehearing of the 24 December 2014 injunction and the application for a permanent injunction;
- (b) Dismissing the application to remove the Māori Trustee as responsible trustee; and

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<sup>1</sup> Application A20140012500; A20150003329 and A20150003333.

<sup>2</sup> Application A20150003384.

<sup>3</sup> *Māori Trustee v Smith – Waipaoa 5A2* (2016) 62 Tairawhiti MB 122 (62 TRW 122) at [169], [170] and [172].

- (c) Setting aside the decision of the Māori Trustee to award the lease to the Smith-Isaac partnership.

[5] The injunction application filed by the Māori Trustee was also dismissed, however the application for recovery of possession of land was granted.<sup>4</sup>

[6] The appellants appeal the reserved judgment of Judge Doogan.

### Procedural History

[7] On 25 November 2016 this appeal was set down for hearing at the Maori Land Court at Gisborne on Wednesday 8 February 2017.<sup>5</sup>

[8] On 5 December 2016 Counsel for the appellants sought an adjournment due to other commitments and because Counsel would have limited time to prepare for the appeal. The adjournment was granted on 9 December 2016 and the appeal was set down for hearing on Wednesday 10 May 2017.<sup>6</sup>

[9] On 6 March 2017 leave was granted for Counsel for the appellant to withdraw and the following directions were issued:<sup>7</sup>

- (a) The appellants are to advise the Court if the appeal is to continue;
- (b) If so, the appellants must clearly set out the basis for the continuation of the appeal and the relevant issues in a submission;
- (c) The submission must be filed at the Office of the Chief Registrar, Wellington **no later than 4pm, Friday 31 March 2017**.

[4] If no responses are received by that date, the Court will consider adjourning the appeal. In the meantime the appellants are urged to obtain legal representation as soon as possible to advise them with regard to this matter.

[10] This Court did not receive a response to the above directions.

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<sup>4</sup> Ibid at [173] to [174].

<sup>5</sup> 2016 Chief Judge's MB 957 (2016 CJ 957).

<sup>6</sup> 2016 Māori Appellate Court MB 433 (2016 APPEAL 433).

<sup>7</sup> 2017 Māori Appellate Court MB 40 (2017 APPEAL 40) at [3] and [4].

[11] On 4 April 2017 this appeal was adjourned sine die and the appellants were directed to:<sup>8</sup>

[5] ...provide a submission as to whether they intend to continue with the appeal, and to set out the grounds relied on and a clear statement of the issues.

[6] The submission is to be filed at the Office of the Chief Registrar, DX Box SX 11203 Wellington 6011, **no later than 4pm on Wednesday 31<sup>st</sup> day of May 2017**, and if not so filed, this Court will consider dismissing the appeal for want of prosecution.

[12] Once again this Court did not receive a response to the above direction.

### **Decision**

[13] The appellants have failed to:

- (a) comply with the directions issued on 6 March 2017 and 4 April 2017; and
- (b) properly advance the appeal in a timely manner.

[14] Pursuant to rule 6.28 of the Māori land Court Rules 2011 the appeal is dismissed.

[15] It is our view that costs should lie where they fall.

This judgment will be pronounced in open Court at the next sitting of the Māori Appellate Court.

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S Te A Milroy (Presiding)  
**JUDGE**

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S R Clark  
**JUDGE**

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C T Coxhead  
**JUDGE**

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<sup>8</sup> 2017 Māori Appellate Court MB 57 (2017 APPEAL 57) at [5] and [6].