

**IN THE MĀORI LAND COURT OF NEW ZEALAND  
TE WAIPOUNAMU DISTRICT**

**A20180001299**

UNDER Section 239 of Te Ture Whenua Māori Act 1993  
IN THE MATTER OF Manukau Lands Trust  
BY MAUI SOLOMON on behalf of the Trustees of  
the Manukau Lands Trust  
Applicant

Hearing: 15 May 2018, 49 Te Waipounamu MB 88-94  
(Heard at Christchurch)

Appearances: Maui Solomon  
Eric Solomon  
Paul Solomon  
Billy Solomon  
Charles Solomon  
Irene Solomon  
Sue Anderson  
(All in person)

Judgment: 25 July 2018

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**JUDGMENT OF JUDGE S F REEVES**

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## Introduction

[1] On 19 January 2017, an application was made by Maui Solomon, on behalf of the trustees of the Manukau Lands Trust, to appoint Paul Te Teira Solomon as replacement trustee for Eric Solomon.

[2] The Manukau Lands Trust, an ahu whenua trust, administers Awapatiki 2A No 2B, Awapatiki 2A2A and 2A2C, Awapatiki No 2A No 1, Te Awapatiki No 2B No 2 & 3, Te Awapatiki 2A2E2, and Te Awapatiki No 2B Nos 1 & 4. The blocks are farmed by the trust, and located on the south-east coast of Rēkohu (Chatham Island).

[3] The current trustees are Maui Solomon, appointed in 1991, and Debbie Prater, Eric Solomon, and Raymond Solomon who were appointed by the Court in 2012.<sup>1</sup>

## Background

[4] The beneficial owners are descended from four siblings who each held a quarter share in the blocks except for Te Awapatiki No 2B Nos 1 & 4: Charles Te Teira Horomona (Solomon), Eric Rangitapua Horomona (Solomon), Ngamare Barris nee Horomona, and Thomas Tutanekai Horomona (Solomon).

[5] The trustees say that the tikanga for the trust has been that the hunau or descendants of each of the original owners would appoint a trustee to represent their hunau. Eric Solomon's hunau sold their quarter share to Maui Solomon in 2012, and he now represents his own share. Debbie Prater represents the descendants of Ngamare Barris, and Raymond Solomon represents the descendants of Thomas Tutanekai Horomona.

[6] Paul Solomon has been nominated by the descendants of Charles Te Teira Horomona to represent their hunau. The other hunau were not notified of the hui held to nominate a replacement for Eric Solomon, but all current trustees have signed the application. There is no opposition to this application.

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<sup>1</sup> 73 South Island MB 133-144 (73 SI MB 133-144) and 11 Te Waipounamu MB 219-224 (11 TWP MB 219-224).

[7] The trust order sets out a process for appointment of trustees, which provides for a general meeting of all the beneficiaries of the trust to nominate new trustees, with not less than 14 days written notice to beneficiaries.

[8] The issue is whether Paul Solomon should be appointed by the Court in these circumstances.

### **The Law**

[9] The Court has power to add, reduce, or replace trustees per s 239 of Te Ture Whenua Māori Act 1993. Section 222(2) of the Act sets out the relevant factors when appointing trustees.

[10] I adopt the principles which were set out by the Court of Appeal in *Clarke v Karaitiana*:<sup>2</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.

[11] The following questions arise:

- (a) Is the proposed trustee broadly acceptable to the beneficiaries?

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<sup>2</sup> *Clarke v Karaitiana* [2011] NZCA 154 at [51]-[52].

- (b) Is the proposed trustee suitable having regard to his ability, experience and knowledge?

### **Discussion**

[12] In the absence of any challenge, I accept that Paul Solomon is a suitable person for appointment as a trustee. The remaining issue is whether he is broadly acceptable to the beneficiaries.

*Is Paul Solomon broadly acceptable to the beneficiaries?*

[13] The trustees rely on a process whereby the beneficiaries of the Charles Te Teira Horomona (Solomon) Whānau Trust met and agreed to nominate Paul Solomon to replace Eric Solomon as trustee to represent their interests on the trust. Maui Solomon gave the following evidence at the hearing:<sup>3</sup>

... the process was that there was a trustee meeting and it was agreed that Paul would take the place of Eric. And so, each of the trustees Debbie, Raymond and myself and Eric signed a consent form to appoint Paul and Eric consented to retire as trustee. There was a meeting held of the beneficiaries of Charles Te Teira Horomona in ... August last year and that was duly notified and the family unanimously agreed that Paul would be the trustee to represent that quarter family interest ... I appreciate Your Honour that one of the issues might be that there wasn't a notice given to all the beneficiaries but it was considered that because the process over the last 10 years has been to have a trustee for each of the respective quarter shares and that the other trustees of the quarter shareholdings had consented it wasn't necessary to call a wider meeting of beneficiaries.

[14] The trustees filed a copy of a message on the Charles Te Teira Horomona Whānau Facebook page, dated 1 August 2017 giving notice of a hui to discuss several issues including the appointment of Paul Solomon. Also filed was a copy of the minutes of the meeting held on 21 August 2017 of the beneficiaries of the Charles Te Teira Horomona (Solomon) Whānau Trust, where the meeting unanimously endorsed Paul Solomon's nomination as replacement trustee.

*The trust order*

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<sup>3</sup> 49 Te Waipounamu MB 88-94 (49 TWP MB 88-94) at 91.

[15] While only one hunau was involved in nominating Paul Solomon as the replacement trustee, the trust order sets out a process that involves all the beneficiaries of the trust.

[16] The trust order is the original order declared in 1991 pursuant to s 438 of the Māori Affairs Act 1958, when the blocks were first vested in trustees.<sup>4</sup>

[17] Clause 8 of the trust order requires trustees to call a general meeting of the beneficiaries at least once every three years. Beneficiaries are required to be given 14 days' notice per clause 10 and clause 9 states that the business of a meeting includes nomination of persons to fill vacancies in the membership of the trustees. Clause 1(b) defines "beneficiaries" as the constituent beneficiaries of the lands vested in the trust.

*The 2012 trustee appointments*

[18] In his evidence on behalf of the trustees, Maui Solomon spoke of the tikanga whereby each hunau nominates a trustee to represent their interests in the trust. He referred to the 2012 trustee appointments by way of example. The implication is that if the previous process was accepted by the Court, then there is no reason why it should be an issue for this appointment.

[19] In 2012 the trustees applied to appoint three additional trustees for the trust. A general meeting of the trust's beneficiaries was held on 1 May 2010 where Debbie Prater, Maui Solomon, and Eric Solomon, as representatives of three hunau were appointed, with the nomination for the T. T Solomon estate yet to be determined.<sup>5</sup>

[20] The key difference, is that in 2010 the nominees for the hunau were endorsed by a general meeting of beneficiaries. In this regard, the 2010 process complied with the provisions of the trust order, whereas the current process does not.

[21] Procedural defects do not necessarily invalidate the outcome of an appointment process. But if I cannot rely on the outcome of a meeting as sufficient evidence of

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<sup>4</sup> 73 South Island MB 133-144 (73 SI MB 133-144).

<sup>5</sup> 11 Te Waipounamu MB 219-224 (11 TWP MB 219-224).

beneficiaries' support, then I am unable to safely assess whether the proposed trustee is broadly acceptable to the beneficiaries.

[22] With reference to the trust order, I find that “beneficiaries” refers to the constituent beneficiaries of the trust, and not just to the members of the hunau who are nominating the trustee.

[23] The appointment process only involved the members of the Charles Te Teira Horomona (Solomon) hunau, and other beneficiaries had no notice or any opportunity to attend a general meeting, as provided for in the trust order. Endorsement of the nomination by the trustees on behalf of the other hunau was not sufficient for these purposes.

*Should I exercise my power to appoint a trustee?*

[24] While I accept that Paul Solomon's nomination as replacement trustee has been unanimously endorsed by his hunau, as well as the trustees, in these circumstances, I am unable to conclude that the nomination is broadly acceptable to the beneficiaries of the trust.

[25] To comply with the current trust order, it is necessary for the nomination of the Charles Te Teira Horomona hunau to be endorsed by a properly notified general meeting of the beneficiaries.

[26] As it presently stands, the trust order requires all beneficiaries to have notice of, and the opportunity to nominate new trustees at a general meeting. It is a primary duty of trustees to carry out the terms of the trust.<sup>6</sup> If the trustees and beneficiaries of the trust wish to follow this tikanga for appointing trustees, then the proper way to proceed is by updating the trust order through a variation of trust process. It is also important that all parties have certainty regarding process to be followed.

[27] Before finally determining this application, the beneficiaries must have the opportunity to endorse Paul Solomon's appointment. I also suggest the trustees undertake

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<sup>6</sup> s 223 Te Ture Whenua Māori Act 1993.

a review of the current trust order, particularly the process for the nomination, election, retirement, resignation and replacement of trustees to ensure it reflects how they want to deal with these matters in the future. Such review would need to include appropriate consultation with the beneficiaries of the trust.

[28] The trustees should combine these processes, so that the application for appointment of trustee and an application for variation of trust can be dealt with by the Court together. I also note that this trust has not been reviewed since its formation, and it would be timely for the trustees to bring on a review of trust application at the same time.

### **Decision**

[29] The application to appoint Paul Solomon as replacement trustee for Eric Solomon is adjourned.

[30] The trustees are directed to put the nomination of Paul Te Teira Solomon as a replacement trustee to a properly convened general meeting of beneficiaries of the trust within 12 months of the date of this decision.

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

Pronounced at 2.00 pm in Wellington on this 25<sup>th</sup> day of July 2018.

S F Reeves  
**JUDGE**