

**IN THE MĀORI LAND COURT OF NEW ZEALAND  
WAIKATO-MANIAPOTO DISTRICT**

**A20190002594**

UNDER Sections 67 and 240, Te Ture Whenua Māori Act  
1993

IN THE MATTER OF Maurihoro B Block

DIANNA VAIMOSO AND MICHELLE  
HARRISON  
Applicants

Hearing: 24 May 2019, 181 Waikato Maniapoto MB 178 - 180  
24 June 2019, 182 Waikato Maniapoto MB 291  
21 August 2019, 185 Waikato Maniapoto MB 145 - 149  
(Heard at Tauranga)

Judgment: 27 August 2019

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**DECISION OF JUDGE D H STONE**

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## **Introduction and background**

[1] Dianna Vaimoso and Michelle Harrison filed an application per s 240 of Te Ture Whenua Māori Act 1993 (“the Act”) for orders removing Rawiri Bidois and Robert Leef as trustees of the Maurihoro B “List A” and Maurihoro B “List B” Trust (“the Trust”).

[2] Shortly after filing the application, on 19 March 2019 the applicants advised the Court that they no longer wished to pursue the application as Mr Bidois and Mr Leef had both resigned as trustees of the Trust.

[3] On 29 March 2019, a further application regarding this issue was filed by one of the trustees of the Trust, Mr Timothy Aoake. The minutes of the trustee meeting held on 1 March 2019 were filed in support of this application. These minutes record that Mr Bidois and Mr Leef verbally resigned as trustees at this meeting. In addition, an email from Mr Leef to his fellow trustees dated 3 March 2019 was also filed. The email confirmed that Mr Leef had resigned. No written resignation was filed for Mr Bidois. Because this application duplicated the earlier one, it was not accepted by the Registrar. However, the supporting documents were placed on the file for the application by Dianna Vaimoso and Michelle Harrison.

[4] The applicants were directed to notify Mr Bidois and Mr Leef of the application and copy to them the information filed in support. As a result, on 8 April 2019 the Court received correspondence from both Mr Bidois and Mr Leef advising that they did not wish to resign as trustees.

## **Procedural history**

[5] The application was set down as a judicial conference per s 67 of the Act to be heard in Tauranga on 24 May 2019, but was adjourned. It was then set down for 24 June 2019, with the indication that orders may be issued following the judicial conference. Unfortunately, as the application was about to be heard, a power cut occurred within the Tauranga District Court buildings. The application had to be adjourned to a special sitting of the Court in Tauranga on 21 August 2019.

[6] The applicants attended the 21 August 2019 judicial conference. Nigel Leef and Joanna Aoake also attended the hearing as trustees of the Trust, with apologies from Timothy Aoake. Both Mr Bidois and Mr Leef attended the hearing in person, and were represented by counsel, Mr Bryce Lyall. Other interested persons attended the hearing.

[7] On the morning of the judicial conference, Mr Lyall filed submissions for Mr Bidois and Mr Leef. Those submissions did not address the most recent decision of this Court in relation to the resignation of trustees.<sup>1</sup> It was therefore agreed that Mr Lyall should be provided with an opportunity to review that decision and advise and seek further instructions from his clients.

[8] The judicial conference then turned to ascertaining whether there were any factual disputes that needed to be resolved as part of the substantive hearing. In this respect, Mr Leef was encouraged to seek advice regarding his position, with particular reference to his 3 March 2019 email in which he expressly stated that he wished to “inform you all [being the remaining trustees] of my resignation as a Trustee of the Maurihoro B Trust”. As far as Mr Bidois was concerned, he maintained that the minutes of the 1 March 2019 trustee meeting did not accurately record the discussions at that meeting and that he had not verbally resigned. Given this factual dispute, it was clear that a substantive hearing would be required.

[9] Discussions then turned to setting down a timetable to have the matter heard as soon as practicable. A timetable for the filing of evidence and submissions was agreed. It was anticipated that a hearing would be set down for November 2019.

[10] In the meantime, it was noted that the Trust is overdue in holding its Annual General Meeting. It became clear following discussions that it would be untenable to hold such a meeting until the positions of Mr Bidois and Mr Leef were resolved. It was agreed that the Trust should hold its AGM as soon as possible after the determination of the application. The expectation was that the AGM would likely be held early in 2020.

[11] At the end of the judicial conference, the application was adjourned. Mr Lyall was directed to file a memorandum by Friday 23 August 2019 setting out his clients’ position

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<sup>1</sup> *Witana v Tau – Omapere Taraire E* (2019) 191 Taitokerau MB 1 (191 TTK 1).

following his review of *Witana v Tau – Omapere Taraire E*. If, on receiving advice, Mr Bidois and/or Mr Leef continued to maintain that they had not effectively resigned, the agreed timetable was to commence.

### **Confirmation of position following advice**

[12] Mr Lyall helpfully filed a memorandum on 23 August 2019 as directed. In it he confirmed that both Mr Bidois and Mr Leef are concerned that any further litigation in this matter would be detrimental to the beneficiaries of the Trust, who they see as the priority. Mr Lyall has further advised that, without making any concessions as to the merit of the application, Mr Bidois and Mr Leef give notice to the Court that they have decided to resign as trustees of the Trust.

[13] The position of Mr Bidois and Mr Leef is acknowledged. I concur that further litigation will be detrimental. Mr Bidois and Mr Leef have now resigned as trustees of the Trust.

[14] It is important that the Trust now holds the AGM as soon as practicable. As there are now two vacancies in the office of trustee, elections should be held at the AGM in accordance with the terms of the trust order for the Trust. Of course, having resigned, Mr Bidois and Mr Leef are both eligible for re-election as trustees per clause 33(c) of the trust order.

### **Decision**

[15] The application sought the removal of Mr Bidois and Mr Leef per s 240 of the Act. Now that they have resigned, s 37(3) of the Act is invoked to exercise the Court's jurisdiction under s 239 seeking a reduction in the number of trustees of the Trust due to resignation. Rules 4.19(1), 14.9(2)(w) and 12.8(2) of the Māori Land Court Rules 2011 allow me to determine this matter without notice in the Pānui, without notice to any party, and without any appearance by the applicant. I therefore determine this application on that basis.

[16] I grant the following orders:

- (a) Per s 37(3) and 239(1) of Te Ture Whenua Māori Act 1993, reducing the number of trustees of the Trust as a result of the resignation of Rawiri Bidois and Robert Leef.
  
- (b) Per s 37(3) and 239(3) of Te Ture Whenua Māori Act 1993, vesting the land and assets of the Trust in Joanne Aoake, Timothy James Aoake and Nigel Leef as responsible trustees.

Pronounced at 3:00 pm at Wellington on Monday this 27<sup>th</sup> day of August 2019.

D H Stone  
**JUDGE**