

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

A20170006896

UNDER Section 58 Te Ture Whenua Māori Act 1993

IN THE MATTER OF Whakarewarewa Lot 29 Māori Reservation
(Wāhiao Meeting House) – against an order
appointing trustees made at 175 Waiāriki MB
81- 97 dated 3 November 2017

BETWEEN RANGINGANGANA NOKE WADE
Appellant

AND ANARU RANGIHEUEA
BONITA MOREHU
FRANK MAIKA
HENRIETTA WANO
HERBIE WHARERAU
KAREN WALMSLEY
KERE RATEMA
PATRICK CLARKE
WHATU MIHINUI
Respondents

Hearing: 10 May 2018, 2018 Māori Appellate Court MB 265-282
(Heard at Rotorua)

Court: W W Isaac, Chief Judge (Presiding)
Judge S Te A Milroy
Judge M J Doogan

Appearances: P Cornegé for the Appellant
M Simpkins for the Respondents

Judgment: 10 May 2018

JUDGMENT OF THE COURT

Copies to:

P Cornegé, Thackery Chambers, 26 Thackery Street, Hamilton 3244
M Simpkins, Lance Lawson Barristers and Solicitors, PO Box 2279, Rotorua

Introduction

[1] This is an oral decision of the quorum. We reserve the right to correct any matters of detail in the written judgment, but the substance will not change.

[2] This is an appeal from orders appointing trustees. Orders under sections 239(1), 239(3) and 338(7) of Te Ture Whenua Māori Act 1993, were made by Judge Coxhead on 3rd of November 2017 appointing trustees to the Wāhiao Marae Whakarewarewa Reservation Lot 29 Trust.

[3] At the commencement of our hearing, we invited counsel to address us on what we saw as a key threshold issue. That issue is whether the proceeding in the Lower Court on the 3rd of November 2017 and the resulting orders, should be set aside on the grounds that there had been a breach of the principles of natural justice. We are obliged to counsel for their focused submissions on this issue.

[4] Both counsel adopted the following statement of principle from the judgment of His Honour, Justice Keith in the Ngāti Apa case.

“We begin with the proposition that parties, those appearing before the Māori Appellate Court and those affected by the proceedings were entitled to a fair hearing. That entitlement includes the right to have adequate notice of the proceeding and a reasonable opportunity to present their own cases through evidence and submissions, and to challenge the cases put up against them.”¹

[5] The application to appoint and remove trustees arises in the context of overlapping and related applications filed by the appellant, Ms Wade. It was common ground that Ms Wade is an interested party to the application to appoint trustees and as such, was entitled to notice of the 3 November 2017 hearing. The application to appoint trustees was received by the Court on the 1st of September 2017. The applicants requested a special hearing on either the 6th or the 8th of October stating, “*Our incoming trustees would like to progress the appointment as soon as possible, so the trust can be fully operational to ensure the marae can appropriately meet its cultural obligations.*”

¹ Ngati Apa ki Te Waipounamu Trust v Attorney General [2004] NZLR 462, at 18

[6] The application was set down for hearing in the ordinary list of the Court at Rotorua on the 3rd of November 2017. On 16 October 2017, notice of the hearing was sent by the Court to the applicant Karen Walmsley and the trustees to be appointed. Notice was not sent to Ms Wade.

[7] On the 29th of March 2017, Ms Wade had filed an application seeking orders, first, sanctioning the then trustees for failing to act in the best interest of Wāhiao. Secondly, requiring the then trustees to call a hui to discuss and approve a marae charter. And thirdly, appointing five interim trustees to replace five who had passed away so that there was to be a proper balance between trustees whose principal allegiance to Wāhiao and those whose principal allegiance to Tūhourangi was achieved during the process of finalising the marae charter.

[8] The hui at which the trustees were elected and the marae charter was adopted, took place on the 30th of July 2017. Ms Wade contests both the process and the outcome of that hui. They go to the heart or the core of the issues raised in her 29 March 2017 application to the Court. That March application was itself set down for hearing on the 3rd of November 2017 as a special hearing.

[9] We are informed that notice of that hearing was sent to Ms Wade by the Court on the 17th of October 2017, but she did not receive it until the 2nd of November 2017, the day before the hearing. Notice of the special hearing was not sent to Ms Walmsley and the incoming trustees.

[10] On receipt of notice, Ms Wade made inquiries as to what was to be dealt with by the Court on the 3rd of November, and contacted her counsel, Mr Cornegé. Those inquiries revealed that the application to appoint trustees was also to be heard on the 3rd of November 2017.

[11] This led Mr Cornegé to file a memorandum on the 2nd of November, which included the following at Paragraph 1.1, “*Counsel understands that this matter is for mention tomorrow 3rd of November 2017 at 10.00 am. Counsel was not given notice of this date by the Court and is unable to attend. Counsel has received a copy of the report prepared by the trustees of Whakarewarewa Reservation Lots 29. Counsel understands that the*

purpose of tomorrow's mention is to confirm the draft charter for Wāhiao Marae and to approve the appointment of additional trustees. Counsel has seen no application for this purpose from the trustees. While the Court may wish to make timetabling directions tomorrow so that these matters can be properly considered, no substantive orders should be made."

[12] Mr Cornegé, goes on to say, *"That this memorandum is filed to raise some questions regarding the draft charter, both its content and the process by which it was approved, and the subsequent election of new trustees."*

[13] There is also a reference at paragraphs 2.1 and 2.2 to a tangi taking place on the 3rd of November as a result of which it is suggested that it would be preferable the matter be called in the afternoon.

[14] When the matter came before His Honour Judge Coxhead on the 3rd of November, at the commencement of the hearing, the following exchange took place between His Honour, Judge Coxhead and the appellant Ms Wade:²

The Court: Can I just ask Rangi Wade, sorry what's your lawyers name?"

Rangingangana Wade: Cornegé.

The Court: Mr Cornegé, he filed a memorandum. He didn't actually ask for an adjournment, but he said, "That it maybe it be called in the afternoon because there is a tangi happening at the moment."

R Wade: That's right.

The Court: But he didn't ask for it to be adjourned. He just said – are we okay to go ahead now?

R Wade: Yes, we are Your Honour.

The Court: Okay. He mentioned there was a funeral service happening today was it at 10.00. Do you want to come forward Rangi because it is your application? There's two applications before the Court.

Have I got it right? He didn't ask for an adjournment, did he?

R Wade: No.

² 175 Waiariki MB 81-97 at 83

[15] In submissions before us, Mr Cornegé submits that that process adopted by the Court was unfair, first because Ms Wade was not aware that the application to appoint trustees had been made or that the hearing was scheduled to take place until the 2nd of November 2017.

[16] Mr Cornegé submits at the very least, notice should have been served in a timely way on Ms Wade. The failure to give timely notice in Mr Cornegé's submission also meant that Ms Wade was not able to file a notice of intention to appear in accordance with rule 5.8 of the Māori Land Court Rules 2011.

[17] Mr Cornegé also submits that it was unfair for the Court to proceed in light of the advice in his memorandum to the Court of 2nd of November. He had just received notice of the hearing and was unable to attend, and had not received notice of the applications or the applications themselves. In particular he made the submission that no substantive orders should be made on that day although timetabling orders ought to be made.

[18] At paragraph 3.7, of his written submissions, Mr Cornegé says, *"In those circumstances, Ms Wade submits that it was unfair for the Court to proceed as it did. Instead, the Court should have made timetabling directions for the filing of notices of intention to appear, evidence and submissions. The Court should not have dealt with the applications summarily."*

[19] Mr Cornegé submits that given these failures of process, the orders appointing the new trustees should be set aside and the matter referred back to the Māori Land Court for hearing before a different Judge.

[20] Mr Simpkins, on behalf of the newly appointed trustees, accepts that Ms Wade is an interested party, and in what he describes as an ideal world, should have received notice of the 3rd November 2017 hearing.

[21] In essence, he submits that Ms Wade did have reasonable notice of the hearing because her related application was set down as a special that day and she would or should have known that the appointment of trustees would also be coming back before the Court.

[22] We conclude that there has been a material breach of the principles of natural justice in this instance. There are two aspects: First, Ms Wade was entitled to reasonable notice of the hearing to appoint trustees, and it is common ground that she did not receive it.

[23] Secondly, Ms Wade was represented by counsel. While Mr Cornegé did not expressly seek an adjournment by his 2nd of November 2017 memorandum, he did expressly ask that timetabling orders be made and that no substantive orders be made, given the contested issues about which his client wished to be heard.

[24] In the circumstances, that request seems to us entirely reasonable. It appears that the learned Judge may have misunderstood or not turned his mind to that part of Mr Cornegé's memorandum, as he appears to have proceeded on the assumption that Ms Wade was appearing in the absence of counsel to represent herself.

Decision

[25] We therefore allow the appeal, and there will be an order pursuant to section 56(1)(e) setting aside the orders made at 175 Waiariki Minute Book 81 to 97 and directing the whole of the application is to be referred back to the Lower Court for rehearing before a different Judge.

Pronounced at 12:12pm in Rotorua on this 10th day of May 2018.

W W Isaac
CHIEF JUDGE

S Te A Milroy
JUDGE

M J Doogan
JUDGE