

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

**A20150006429  
A20160004558**

UNDER Sections 19 and 240, Te Ture Whenua Māori Act  
1993

IN THE MATTER OF Motatau 2 Section 65A - Remove Wynyard  
Kawiti as a trustee of the Watene Raua ko Ema  
Kawiti Whānau Trust

Motatau 2 Section 65A - Injunction

BETWEEN WATENE RAUA KO EMA KAWITI  
WHĀNAU TRUST  
Applicant

AND WYNYARD KAWITI  
Respondent

Hearing: 10 October 2016  
(Heard at Whangarei)

Appearances: Kath Taurau (Counsel for the applicant), Cameron Hockly (Counsel  
for the respondent), Wynyard Kawiti, Ken Brown, Terry Kawiti,  
Rachel Kawiti, Rongomau Kawiti, Ross Kawiti, Evelyn Kawiti, Niki  
Jessop

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**ORAL JUDGMENT OF JUDGE M P ARMSTRONG**

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## **Introduction**

[1] There are two applications before me. The first is an application seeking the removal of the respondent, Wynyard Kawiti, as a trustee on the Watene raua ko Ema Kawiti Whānau Trust (“the trust”). The second is an application seeking a permanent injunction restraining or preventing the respondent from entering or residing upon Motatau 2 Section 65A (“the block”).

[2] Those applications have been part heard. Ms Taurau, on behalf of the applicant, seeks an adjournment in order to prepare and file evidence in reply to the evidence which has been presented today by the respondent. Ms Taurau also seeks an interim injunction preventing the respondent from entering or residing upon the block until those substantive applications have been determined.

[3] Mr Hockly, on behalf of the respondent, has advised that there is no objection to the request for an adjournment. However, the application for an interim injunction is opposed. As such, I must consider whether the interim injunction should be granted.

[4] As with all oral decisions, I reserve the right to amend this decision but any such amendments shall only be as to form, not as to substance, and shall not change the outcome of the decision that I am about to make.

## **Background**

[5] This block is vested in the trustees of the trust. The trustees are Ema Kawiti, Terence Kawiti (the applicant), Wynyard Kawiti (the respondent), Rongomau Kawiti and Ross Kawiti.

[6] The applicant argues (inter alia) that in January 2014, the respondent moved onto the block. The applicant contends that the respondent advised him that he was going to do so, but he did not first obtain authorisation from the other trustees. The respondent accepts this but raises other matters in his defence, including that he did so to assist his mother, and to look after the farm.

[7] The respondent is no longer residing on the block. Due to other circumstances, he is currently residing in alternative accommodation until January 2017. The applicant is concerned that if the substantive applications are not determined before then, the respondent may attempt to re-enter and occupy the block once again.

[8] As such, an interim injunction is sought to prevent that from occurring until the substantive applications have been determined.

### **The Law**

[9] The Court has the power to grant both interim and permanent injunctions per s 19 of Te Ture Whenua Māori Act 1993 (“the Act”). The principles concerning the grant of an interim injunction are settled. The applicant must show that:

- (a) There is a serious question to be tried;
- (b) The balance of convenience is in favour of an interim injunction; and
- (c) That the interests of justice support the grant of an interim injunction.

### **Is there a serious question to be tried?**

[10] In determining whether there is a serious question to be tried it is necessary to consider the allegations before the Court, the applicable law and whether there is a tenable combination of resolution of the issues of law and fact on which the applicant could succeed

[11] In *Eriwata v Trustees of Waitara SD Sections 6 & 91 Lands Trust*<sup>1</sup> the Māori Appellate Court held that where land is vested in an Ahu Whenua Trust, it is for the trustees to manage the land. They decide who can enter, and who can reside upon the land.

[12] The same applies in the present case. This block is vested in the trustees of the trust. While there are a number of matters in dispute in this case, there is clear evidence

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<sup>1</sup> *Eriwata v Trustees of Waitara SD Sections 6 & 91 Lands Trust - Waitara SD Sections 6 & 91 Lands Trust* (2005) 15 Aotea Appellate Court MB 192 (15 WGAP 192).

that the majority of the trustees support the grant of an injunction. There is also evidence to demonstrate that the trustees are acting within their terms of trust and that they are acting for the benefit of the beneficiaries as a whole.

[13] In response to questions from the Court, Mr Hockly responsibly accepted that there is an arguable case in favour of the trustees.

[14] As such, I am satisfied that there is a serious question to be tried.

**Where does the balance of convenience lie?**

[15] The balance of convenience requires balancing the injustice that will be caused to the applicant if an interim injunction is refused, and the applicant's case ultimately succeeds, against the injustice to the respondent that will result if the injunction is granted, but then discharged in the substantive judgment.

[16] The trustees are seeking an interim injunction to preserve the status quo. Ms Taurau raised that the respondent is currently residing in another location until January 2017, however, the applicant is concerned that if the substantive applications have not been determined by that time, the respondent may attempt to re-occupy the block. Ms Taurau argues that an interim injunction is required to prevent that from occurring until the substantive applications have been resolved.

[17] Mr Hockly argues that there is no need for an interim injunction as the respondent is required to reside in another location until at least January 2017. Mr Hockly contends that an interim injunction will prejudice his client as it will act as a mark against his client's name.

[18] I consider that the balance of convenience lies in favour of the trustees.

[19] Given the evidence I have heard from the respondent today setting out his views on ownership and rights associated with the block, I consider that there is a risk that he may attempt to re-enter the block if the substantive applications have not been determined by January 2017. The grant of an interim injunction will preserve the status quo pending the determination of the substantive applications.

[20] I do not accept that the respondent will suffer prejudice if an interim injunction is granted. While I have taken into account Mr Hockly's submission that the injunction will act as a mark against his client's name, Mr Hockly has not pointed to any actual prejudice or injustice that his client will suffer if an interim injunction is granted and then discharged in the substantive judgment.

**Do the interests of justice support the grant of an injunction?**

[21] Having considered these matters, I must stand back and consider where the overall justice lies in this case. The jurisdiction to grant an interlocutory injunction is governed by equitable principles. Accordingly, the prior conduct and dealings of the parties may be relevant to the exercise of the Court's discretion. An applicant should come to the Court with clean hands and delay, acquiescence or other inequitable conduct may go against the grant of an injunction.

[22] I do not consider that the conduct of the applicant or the other trustees disqualify them from seeking equitable relief in this case. The application for an interim injunction was made orally at the conclusion of the hearing today. In some cases, delay may go against the grant of an injunction. That does not apply in this case.

[23] The applicant filed and served evidence in advance of the hearing. That includes an affidavit, exhibits, and a letter setting out the allegations against the respondent. The respondent filed various receipts and invoices shortly before the hearing, but did not file a brief or statement of evidence. Rather, his evidence was presented orally today. Having heard that evidence, the applicant now seeks an adjournment to prepare evidence in reply. Mr Hockly does not object to the request for an adjournment recognising that the applicant requires sufficient time to consider and respond to the evidence the respondent has presented.

[24] It is within this context that the application seeking an interim injunction is made, to preserve the status quo pending determination of the substantive applications. Had the respondent filed and served a statement of evidence in advance, the hearing could have proceeded today without requiring an adjournment. In these circumstances, there is good

reason why the application seeking an interim injunction was made orally following the presentation of the respondent's evidence.

[25] Mr Hockly has not raised any other grounds in opposition to the application seeking an interim injunction and I am not aware of any other factors which would dissuade me from granting the relief sought.

**Decision**

[26] Pursuant to ss 37(3) and 19(1)(b) of the Act, I grant an interim injunction preventing Wynyard Kawiti, his agents, employees, contractors or invitees from entering or residing upon the Motatau 2 Section 65A block until further order of the Court.

[27] The substantive applications are adjourned. I direct Ms Taurau to file any further evidence in reply within three weeks of today's date.

[28] The substantive applications are to be set down for further hearing on a date to be determined by the Registrar. I direct the Registrar to liaise with counsel as to a suitable hearing date.

Pronounced at Whangarei this 10<sup>th</sup> day of October 2016.

M P Armstrong  
**JUDGE**