

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

A20190005016

UNDER Section 59, Te Ture Whenua Māori Act 1993
IN THE MATTER OF Succession to Te Whe Ariki Hutana nee Karaitiana
BETWEEN HUIA WILLIAMSON
Applicant
AND REGINALD HUTANA
Respondent

Hearing: 15 May 2018, 50 Te Waipounamu MB 198-228
14 August 2018, 51 Te Waipounamu MB 135-167
11 December 2018, 53 Te Waipounamu MB 79-91
14 February 2019, 53 Te Waipounamu MB 97-110
(Heard at Christchurch)

Appearances: J Pou for Applicant
J Ormsby for Respondent

Judgment: 15 July 2019

JUDGMENT OF JUDGE S F REEVES

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[1] On 23 May 2019, Mrs Huia Williamson as administrator of the Te Whe Ariki Hutana estate filed an appeal against my preliminary decision made on 14 February 2019.¹

[2] The appeal was filed pursuant to s 58 of Te Ture Whenua Māori Act 1993 (“the Act”), which concerns appeals from a final order of the Māori Land Court. However, my decision made on 14 February 2019 was a preliminary decision.

[3] On 26 June 2019, the Chief Judge amended the appeal pursuant to s 37(3) of the Act to an application pursuant to s 59, which concerns appeals from a provisional determination.² The Chief Judge further directed that, in terms of s 59 of the Act, the application be referred to me to determine whether leave should be granted to appeal the preliminary decision.

[4] On 2 July 2019, I directed the parties to file submissions on whether leave should be granted to appeal the preliminary decision.³

Background

[5] Te Whe Hutana died on 9 July 2005. Probate was granted on 7 December 2005 in favour of two of her daughters; Huia Williamson (the administrator of her estate under her will) and Josette Malcolm (now deceased). Mrs Williamson is now the sole administrator.

[6] A succession application was filed by Mr Waka Hutana, a grandson of the deceased, on 16 January 2018 seeking orders pursuant to ss 113 and 117 of the Act vesting his grandmother’s interests in her successors as provided for in the will.

[7] The proceedings were subsequently amended to include applications pursuant to ss 237 and 238 concerning administration of the estate.⁴ Those matters remain ongoing.

[8] At the hearing on 11 December 2018, the parties consented to orders being made for succession in terms of the will. I subsequently issued the preliminary determination

¹ 53 Te Waipounamu MB 97-110 (53 TWP 97-110).

² 2019 Chief Judge’s MB 606 (2019 CJ 606).

³ 57 Te Waipounamu MB 53 (57 TWP 53).

⁴ 51 Te Waipounamu MB 135-167 (51 TWP 135-167).

concerning the interpretation of the will, with succession orders made in terms of the findings.

[9] There are a number of extant applications and matters before this Court concerning the estate:

- a) Reserved costs in respect of the preliminary decision;⁵
- b) The appeal of the preliminary decision filed by Mrs Williamson;⁶
- c) An application for rehearing in respect of the preliminary decision filed by Mr Waka Hutana;⁷
- d) Applications pursuant to ss 237 and 238 of the Act;⁸ and
- e) An interim injunction pursuant to s 19(1)(b) of the Act has been ordered restraining the estate's accounts and the administrator from making any distributions from the estate.⁹

[10] The issue in this case is whether the interests of justice and of the parties would best be served by completing the proceedings before any appeal of the preliminary decision proceeds.

Submissions

[11] Mr Ormsby filed submissions dated 8 July 2019 on behalf of Mr Reginald Hutana, a son of the deceased and beneficiary under will. The submissions do not directly address s 59 but instead address the substantive issues on appeal as well as leave to appeal out of time, which is opposed. Several of the submissions concerning the overall justice of granting leave to appeal out of time are of some relevance, including the prospective merits of the appeal,

⁵ Above n 1 at [49].

⁶ A20190005016.

⁷ A20190003007.

⁸ A20180001255.

⁹ 57 Te Waipounamu MB 27-38 (57 TWP 27-38).

the parties' conduct, the extent of prejudice caused by delay, and whether the appeal raises any issues of public importance.

[12] Mr Pou has previously appeared for Mrs Williamson. Prior to the hearing on 11 June 2019 he sought to withdraw as counsel as he had been unable to obtain instructions from his client. In advance of the hearing, Judge Stone directed that if Mr Pou sought to withdraw as counsel, Mrs Williamson should attend the hearing. She did not attend, and Mr Pou was granted leave to withdraw as counsel in the lower Court proceedings.

[13] Mr Pou remains on the record for the appeal and has not to this point been granted leave to withdraw by the Chief Judge. For this reason, he made brief submissions by email 8 July 2019 in response to those filed on behalf of Mr Reginald Hutana. Mr Pou submits that the submissions filed for Mr Reginald Hutana fail to address the key issue which is whether the interests of justice and the parties would best be served by completing the proceedings before any appeal is made to the Māori Appellate Court. He says further that it appears tacitly accepted that the matter ought to go to appeal, and there is no actual opposition to leave being granted.

Law

[14] Section 59 of the Act provides that a party may appeal any provisional or preliminary determination of the Māori Land Court to the Māori Appellate Court by leave of the Lower Court. Section 59(3) provides:

59 Appeals from provisional determinations

- (1) By leave of the Maori Land Court, but not otherwise, an appeal shall lie to the Maori Appellate Court from any provisional or preliminary determination of the Maori Land Court made in the course of any proceedings.
- (2) Any such appeal may be brought by or on behalf of any person who is materially affected by the determination appealed from, or who would be bound by an order made in pursuance of it.
- (3) The Maori Land Court may decline leave where it is satisfied that the interests of justice and of the parties would best be served by completing the proceedings before any appeal is made to the Maori Appellate Court.

[15] The Court has considered the grant of leave to appeal a preliminary or provisional determination on a few occasions, and the decision necessarily turns on the facts of each case in determining the interests of justice and the parties. For instance, in *Butler v Matchitt – Matangareka 3B Ahu Whenua Trust*, I declined leave to appeal a preliminary determination where the final hearing had been completed and it was in the interests of justice and the parties that a final decision on all remaining substantive issues should be delivered before any appeal was heard.¹⁰ In *Williams – Harataunga West 2B2B2B2 Block*, Judge Coxhead granted leave to appeal a preliminary decision making provisional orders for the appointment of trustees in circumstances where the grounds for appeal would likely be the same grounds as for an appeal of final orders, and declining leave would result in unreasonable delay.¹¹

Discussion

[16] Section 59(3) gives the Court discretion to decline leave to appeal where the interests of justice would be best served by allowing the proceedings to be completed before any appeal is made to the Māori Appellate Court.

[17] In determining this issue, I have considered the effect of both granting leave to appeal and of declining it. Weighing against granting leave to appeal is the number of extant applications in the proceedings concerning the estate.

[18] These proceedings fall into two groups of applications; those concerning interpretation of the will, including the preliminary decision and reserved costs, as well as the rehearing application. The other concerning the administration of the estate and including the ss 237 and 238 applications, as well as the interim injunction restraining distributions.

[19] In my view, the application for rehearing of the preliminary decision should be determined before the appeal proceeds. The issue of reserved costs could be determined as part of the appeal.

[20] Further hearings are necessary to determine the ss 237 and 238 applications and the interim injunction. But, the substantive issues in those applications do not rely on the

¹⁰ 163 Waiariki MB 10-16 (163 WAR 10-16).

¹¹ 74 Waikato Maniapoto MB 6-11 (74 WMN 6-11).

interpretation of the will and they can be progressed even whilst an appeal of the preliminary decision is heard and determined.

[21] Weighing all matters, I consider that the interests of justice are best served by declining leave to appeal the preliminary decision until such time as the application for rehearing has been dealt with. This is set down for hearing in early August 2019, and an appeal of the preliminary decision should be able to be set down for the November appeals week.

Decision

[22] The application for leave to appeal is declined until the application for rehearing of the preliminary decision is determined.

Pronounced at 1.30pm in Wellington on Monday this 15th day of July 2019.

S F Reeves
JUDGE