

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

**A20180004854
A20180004434**

UNDER Sections 19, 43, 67, 237 and 238, Te Ture
Whenua Māori Act 1993

IN THE MATTER OF Horowhenua 11 Part Reservation Trust and
Horowhenua 11 (Lake)

BETWEEN CHARLES RUDD AND PHILIP TAUKEI
Applicants

Hearing: 388 Aotea MB 128-135 dated 19 July 2018
388 Aotea MB 136-144 dated 19 July 2018

Appearances: L Thornton for Charles Rudd
L Watson for Phillip Taukei

Date: 6 September 2018

JUDGMENT (No.2) OF JUDGE L R HARVEY

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Introduction

[1] The background to these proceedings is set out in my earlier decision of 22 June 2018 and need not encumber this judgment.¹

[2] In summary, Mr Taueki seeks an injunction and the removal of the trustees. He says that they have acted in breach of their duties and the law. Mr Rudd also seeks their removal because of what he claims are breaches of the trust order to such an extent, that such a remedy is both warranted and necessary.

[3] Mr Watson seeks timetabling directions that include discovery. He says, I infer, what has been submitted by the trustees to date while helpful is still insufficient for the purposes of the present proceedings. Ms Thornton concurs.

[4] The trustees have rejected the allegations and deny the claims of breach of trust. They ask that they simply be allowed to fulfil their duties as trustees, given their mandate from the owners. The trustees have also submitted that the repeated proceedings commenced by Mr Taueki and persons associated with him should be either dismissed or rejected for filing. This is on the basis they say that the continual litigation brought by Mr Taueki serves no purpose other than to distract the trustees from their duties and to engulf the trust in protracted and costly proceedings.

[5] The issues for consideration include:

- (a) Should the directions sought be issued?
- (b) Should the injunction be issued?
- (c) Should the Court refuse to accept applications against the trust?

[6] Claims have also been made about alleged breaches of the criminal law, threats of violence and intimidation and whether the Court should take any steps regarding such conduct. Those issues are also considered in this decision.

¹ *Taueki - Horowhenua 11 (Lake)* (2018) 386 Aotea MB 142 (386 AOT 142)

Discussion

Should the directions sought be issued?

[7] The timetable filed by Mr Watson and Ms Thornton is confirmed, subject to any submissions from counsel for the trust, and subject to any slippage due to the date of this decision. On that point, if the trust is unable to afford counsel, then one will be appointed. The trustees should advise the case manager within seven days as to whether counsel has been instructed.

[8] Once there has been compliance with the timetabling directions then the substantive hearing can be fixtured. Prior to that it will be necessary for the case manager to arrange a telephone conference of counsel to monitor progress.

Should the injunction be issued?

[9] At the end of the last hearing, I visited Lake Horowhenua in the company of the Court staff. This had been foreshadowed at the end of the hearing where all parties or their representatives were present. The earthworks that have been completed were viewed, including what appeared to be the removal of significant stands of flax. The works appear reasonably extensive and could not sensibly be described as minor.

[10] I am also aware of media reports in the public domain of the tree planting that occurred on 4 August 2018.² I do not consider that the act of planting trees is one that falls outside of the trustees' powers. What I do understand is that the creation of a public walkway, to use a label, is one of the issues that concerns some of the beneficiaries. Regarding tree planting, it would obviously be of concern where such activities modified or damaged urupā and wāhi tapu and other archaeological sites.

[11] While that aspect of recent events is significant, as foreshadowed, equally relevant is the extent to which the beneficiaries were consulted before the earthworks commenced. Mr Sword has filed documentation that sets out some of the steps that had been taken to inform and consult with the beneficiaries. It is also relevant to the questions that counsel Mr Watson has posed, along with Miss Thornton, in their latest memorandum. To avoid doubt, per s 238

² *New Zealand Herald* 'Planting at Sediment Trap good for Lake Horowhenua' 18 July 2018

of Te Ture Whenua Māori Act 1993 the trustees are directed to provide responses to those questions as set out in counsels' memorandum within one month from the date of this decision.

[12] Regarding the injunction, Mr Sword, the trust chairman, says that all works complained of have ceased. Mr Watson submitted that this was incorrect and that further steps had been taken by contractors since the assurance had been provided by Mr Sword. The case manager has been in touch with Mr Sword who confirms that all work has ceased. Mr Sword also filed a memorandum dated 7 July 2018, *inter alia*, repeating that point. In my previous judgment and at the subsequent hearing the trustees were directed to provide an undertaking that work had ceased. I take Mr Sword's emails and memoranda as written confirmation that works have ceased. In the circumstances, the application for injunction is adjourned until the substantive hearing. It should go without saying that if evidence is provided that contradicts Mr Sword's assurances then it is likely that the injunction will be issued.

Should the Court refuse to accept applications against the trust?

[13] Following the last hearing, various emails were received by the case manager from persons who are party to the proceedings regarding allegations of breach of the criminal law. There was also one suggestion that because the Court receives and accepts applications from parties, this is the direct cause of such circumstances. The Māori Land Court is a civil court. It has no jurisdiction to issue punishments for any breach of the criminal law. What it can do is issue fines and terms of imprisonment for contempt of Court including interfering with the Court or its staff and for committing a contempt in the face of the Court while in session or on official business. The proper authorities for allegations of breach of the criminal law are the Police and the criminal courts. If any person considers that they have been subject to a breach of the criminal law, then they should take the appropriate steps and file a complaint. I understand from the case manager that such steps have been taken. That process will now continue to a conclusion in due course.

[14] In terms of future procedure, and to avoid doubt, where counsel are acting then they should make submissions and their clients' input involves providing evidence in writing or orally from the witness stand on oath or by affirmation. At the last hearing, evidence was given from the public gallery including photographs offered up during submissions. All parties are therefore on notice that the proper formalities must be observed.

[15] Regarding the issue of appropriate procedure in civil cases, I underscored changes that had been made to the law to give this Court broader powers regarding proceedings that are without merit. Section 98C of the Act provides:

- 98C Judge may make order restricting commencement or continuation of proceeding**
- (1) A Judge may make an order restricting a person from commencing or continuing proceedings in the court.**
 - (2) The order may have—**
 - (a) a limited effect (a limited order); or**
 - (b) an extended effect (an extended order).**
 - (3) A limited order restrains a party from commencing or continuing proceedings on a particular matter in the court.**
 - (4) An extended order restrains a party from commencing or continuing proceedings on a particular or related matter in the court.**
 - (5) Nothing in this section limits the court's inherent power to control its own proceedings.**

[16] The grounds for making such an order are set out in section 98D.

98D Grounds for making section 98C order

- (1) A Judge may make a limited order under section 98C if, in proceedings about the same matter in the court, the Judge considers that at least 2 or more of the proceedings are or were totally without merit.**
- (2) A Judge may make an extended order under section 98C if, in at least 2 proceedings about any matter considered by the court, the Judge considers that the proceedings are or were totally without merit.**
- (3) In determining whether the proceedings are or were totally without merit, the Judge may take into account the nature of any other interlocutory application or appeal involving the party to be restrained, but is not limited to those considerations.**
- (4) The proceedings concerned must be proceedings commenced or continued by the party to be restrained, whether against the same person or different persons.**
- (5) For the purpose of this section and sections 98E and 98F, an appeal in a proceeding must be treated as part of that proceeding and not as a distinct proceeding.**

(Emphasis added)

[17] These new provisions were inserted into the Act in 2016. These changes are part of a policy of increasing the jurisdiction of the courts to regulate their own proceeding and to effectively deal with proceedings that are totally without merit.

[18] This policy position is also reflected in the strengthening of the existing contempt provisions and the draft legislation currently before Parliament, the Administration of Justice (Reform of Contempt of Court) Bill. This concerns the publication of incorrect or inflammatory material on the internet as it concerns the judiciary and the discharge of their functions. In short, the ability of the Court to manage its proceeding has been enhanced by these changes and will be strengthened further once that Bill has passed into law.

[19] One last point. Recently, Court staff have received abusive correspondence from persons connected with these proceedings. I know that they have also been subjected to similarly abusive behaviour in person and by telephone and not only from one individual, as

might be wrongly assumed. If there is any repeat of this behaviour, directed at the Court staff, the judges or any other person connected with the proceedings, the sender will be immediately have their emails blocked and the offending materials will be sent to the appropriate authorities. The Māori Land Court, its judiciary and management, will not tolerate abuse of its staff in writing or in person under any circumstances. Anyone who behaves in that fashion can expect to feel the full effect of the law. That might include prosecution for contempt, incarceration until the rising of the Court and the issuing of trespass notices from all Court hearing venues.

[20] Any party affected by the orders set out here should obtain legal advice.

Decision

[21] The timetable orders sought by counsel, Mr Watson and Ms Thornton, are granted.

[22] The Trustees are:

- (a) to advise the case manager as to whether counsel has been instructed within seven days. If the Trustees cannot afford counsel, then one will be appointed; and
- (b) to provide responses to the questions set out in the joint memorandum of counsel dated 15 August 2018 within one month of this decision.

[23] The proceedings are adjourned to a date to be set following compliance with the timetable orders now issued.

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

Pronounced in Hastings at 11.00 am on Thursday this 6th day of September 2018



L R Harvey
JUDGE