

In the Maori Land Court
of New Zealand
Waikato Maniapoto District

File: **A20010006949**

IN THE MATTER of an application by
Waatarā Black under
Section 240 of Te Ture
Whenua Māori Act 1993 for
removal of the trustees of
Awhitu Parish Lot 112

DECISION:

I heard this application on 7 August 2002. At that hearing I stood in for Judge Spencer and anticipated that I would merely take minutes for him and he would make a decision. He has now referred the file back to the Hamilton Court and suggested that Judge Milroy, who has succeeded me, should deal with the matter. Judge Milroy then referred the matter to me. There are difficulties in that the Act provides that an application cannot be handled by a Judge other than one who has previously presided without the consent of the parties.

In his minute at 95 WH 123-124, Judge Spencer expresses certain views. He indicates that he would have dismissed the application but for the issues involving the Crown block and suggests that the Court might get further involved in respect of those issues.

With the greatest of respect to Judge Spencer's views, I disagree. The application concerns only Parish of Awhitu Lot 112. Waatarā Black has challenged the trustees in respect of their administration of that block. While the Crown block is adjacent and administered by some of those trustees and was in fact occupied by Ellen McLeod, the administration of that block is not a matter before the Court. The administration of that block



is a matter for Ngati Te Ata and I do not believe that the Court should be involved in that administration unless there is a proper application before the Court or there is a request whether informal or otherwise for it to assist or become involved.

One statement in the minutes needs to be corrected. Judge Spencer refers to Ms Black as a trustee and finds a conflict of interest. Ms Black is not a trustee and there is no conflict of interest relevant to this case.

The evidence shows that the trustees entered into an informal lease arrangement with Ellen McLeod and her husband for both Lot 112 and the Crown block. Under that arrangement no payment was made to the Trust and rates were paid to the local authority. There was also a suggestion by Waatara Black that some payments were made to the Crown. My observation is that the trustees relied on this arrangement and over that period of time did little else relative to their administration of the block or its management according to the terms of the Trust Order.

Helen McLeod and her husband separated and Waatara Black then assumed possession of Lot 112. Proposals were made by Waatara Black for her to take over a lease but these were never sanctioned by the trustees who wished to come to other arrangements which would produce income from the block. It appears quite clear that the proceedings before this Court arise out of the dispute between the trustees and Ms Black and their refusal to award her tenure of the block. I find it significant that there was no complaint while the informal arrangement with the McLeods was operating to their satisfaction.

It can be said that the trustees have been lax as regards some parts of their administration. The present proceedings have been a timely reminder that



trustees are required to account to the owners for their administration, to hold regular general meetings and to maintain the Trust organisation in the terms of the Trust Order. Mrs Minhinnick told the Court that it was proposed to appoint new trustees to replace those who are deceased and this would have been done at the last meeting held had not arguments arisen.

The parties who have come before the Court are well known and respected for their work for their people. It is a pity that they could not agree as to means to resolve this matter. It would appear that much of Ms Black's opposition arises from the fact that the trustees would not agree to her proposal to occupy the block. The trustees are the appointed managers of the block and the decision as to how the block is to be administered and occupied in the best interests of the owners rests with them.

Ms Black seeks removal of the trustees under Section 240/93. It is my view that while there has been some faults in the administration of the Trust, it is not sufficient to warrant removal of the trustees. The Court also believes that there is insufficient reason for the Court to interfere in the administration and management of this block by the present trustees.

For this reason the Court proposes to dismiss the application.

The Court agrees with speakers at the hearing that the Trust has to look forward and endeavour to arrange its affairs in the best interests of all the owners. It should call a general meeting to elect trustees for the existing vacancies.

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Ms Black talked of amendments to the Trust Order. I do not think it is the place for a general meeting to look in general terms at a review of the Trust Order. Some preparation for a review is needed so that owners do not get tied down in argument over legal and technical matters.

An owner can, by special resolution, propose amendments to the Trust Order. This means that owners have notice of the proposal and time to consider it.

Another way of dealing with clauses of concern, is to raise them at a general meeting and seek a review by the trustees and for them to report back to a later meeting. In this way matters of a legal nature can be investigated and handled properly.

The application is dismissed.

Dated at Hamilton this 16th day of December 2002


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JUDGE G D CARTER