

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

**A20140012970
APPEAL 2015/3
A20150003844
APPEAL 2015/13**

UNDER Section 58, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Te Tii (Waitangi) B3 Trust and Lot 16 Deposited
Plan 61631 and Lot 18 Deposited Plan 61631

BETWEEN MEREAWAROA DAVIES AND RICHARD
BOYD TAKIMOANA
Appellants

AND TRUSTEES OF TE TII (WAITANGI) B3 AHU
WHENUA TRUST
Respondent

Court: Deputy Chief Judge C L Fox (Presiding)
Judge S Te A Milroy
Judge C T Coxhead

Judgment: 01 April 2016

RESERVED JUDGMENT OF THE MĀORI APPELLATE COURT AS TO COSTS

Introduction

[1] On 19 October 2015 we allowed, in part, the appeal by Mereawaroa Davies and Richard Boyd Takimoana in respect of Te Tii (Waitangi) B3 Trust.¹ At the time we indicated that given the appeal was partly successful we did not intend to make any orders as to costs. However, we did invite the parties to file a focussed memorandum as to costs within 14 days of receiving the judgment if they had a different view.

¹ *Davies v Trustees of Te Tii (Waitangi) B3 Ahu Whenua Trust* [2015] Maori Appellate Court MB 611 (2015 APPEAL 611).

[2] Mr Hetaraka, for the appellants, filed a memorandum of costs on 16 November 2015 seeking costs in the sum of \$150,000.² No further correspondence has been received from the trustees however we do note that the trustees were granted special aid in relation to these proceedings on 25 September 2015 for the sum of \$6,322.01 (incl GST) being legal costs incurred.³

[3] The issue is whether a costs award should be made in favour of the appellants. For the reasons set out below we remain of the view that costs should lie where they fall. However given the large sum of costs sought by Mr Hetaraka we feel it necessary to briefly consider the sum sought.

Mr Hetaraka's submissions

[4] Mr Hetaraka seeks the following costs:

Legal sourcing [100+ hours]

Legal document preparation [100+ hours]

Legal representation [6+ hours]

Travel expenses [Waitangi to Whangarei 8x]

Previous solicitor expenses [\$60,000]

Ongoing Court expenses [\$20,000]

Ongoing emotional harm/wrong by way of inducement amounting to continual trauma

Ongoing mental harm/wrong by way of inducement amounting to continual trauma

[5] Mr Hetaraka argues that the appellants were induced by the respondents to initiate the lower court proceedings. He says the appellants have incurred in excess of \$60,000 for solicitor fees (excluding travel expenses and emotional/mental damages stemming from the financial loss) for those proceedings. He adds that given the Māori Appellate Court has referred the matter back to the lower court further expenses are likely to be incurred.

² Mr Hetarakas memorandum was in time given that the decision was not distributed until 4 November 2015.

³ 2015 Māori Appellate Court MB 510-511 (2015 APPEAL 510-511).

[6] Mr Hetaraka submits that the actions of Bill Tane, the Chairman of the Trust, in seeking the eviction of the appellants has come at a cost to the appellants in terms of financial harm, emotional and mental well being.

The Law

[7] Section 79(1) of the Act provides:

79 Orders as to costs

- (1) In any proceedings, the court may make such order as it thinks just as to the payment of the costs of those proceedings, or of any proceedings or matters incidental or preliminary to them, by or to any person who is or was a party to those proceedings or to whom leave has been granted by the court to be heard.

[8] We adopt the established principles of costs as set out in *Samuels v Matauri X Incorporation – Matauri X Incorporation*.⁴

Discussion

[9] Mr Hetaraka's costs fall into four categories – legal costs, court costs, travel expenses and damages.

Legal costs

[10] Mr Hetaraka seeks legal costs amounting to 206 hours of work. He argues that the appellants were induced by the respondents to initiate the lower court proceedings.

[11] The appellants were not represented by a lawyer before the Māori Appellate Court. The established principle is that a lay person is not paid for their time.⁵ The legal sourcing, document preparation or representation sought by the appellant is not properly claimable. Furthermore we note that none of the documentation or the representation assisted the appellants in any way.

⁴ *Samuels v Matauri X Incorporation – Matauri X Incorporation* (2009) 7 Taitokerau Appellate MB 216 (7 APWH 216).

⁵ *Hapeta - Whakapoungakau 7B2, 7C, 7F & 7G* (2003) 10 Waiariki Appellate MB 91 (10 AP 91); *Riddiford v Te Whaiti* (2001) 13 Takitimu Appellate MB 184 (13 ACTK 184); and *Ngamoki-Cameron - The Proprietors of Mangaroa & Other Blocks Inc* (2015).

[12] In addition we note the Judge Clark's comments in *Trustees of Oparau No 1 Block v Auld* that:⁶

[45] ...In relation to costs decisions the Court should expect to receive sufficient information which it can clearly draw a conclusion that the costs sought, whether legal or otherwise clearly relate to the proceedings before the Court.

[13] Mr Hetaraka has failed to provide invoices for the hours of work incurred. We are therefore unable to assess whether the costs sought clearly relate to the proceedings.

[14] In any event we find that these costs are not properly the subject of a costs award.

Court costs

[15] Mr Hetaraka seeks costs of \$60,000 for solicitor's fees incurred by the appellants in the lower court proceedings and \$20,000 for ongoing court costs. He adds that given the Māori Appellate Court has referred the matter back to the lower court further expenses are likely to be incurred.

[16] Again, we point out that no particulars have been provided for these costs which would enable us to assess the relevance of those costs to these proceedings.

[17] Furthermore any issue of costs in the lower court hearing is a matter appropriate for the lower court to determine. We also understand that our decision is to be appealed to the Court of Appeal. When and if the lower court rehears the matter, and if the appellants are successful, they will have an opportunity to apply for costs to the lower court then.

Emotional and/or mental harm

[18] Mr Hetaraka seeks unspecified costs for emotional or mental harm/wrong on the basis that the actions of Bill Tane, the Chairman of the Trust, in seeking the eviction of the appellants has come at a cost to the appellants in terms of financial harm, emotional and mental well being.

[19] There is no legal basis for costs for emotional or mental harm/wrong. Such claims are properly categorised as a claim in damages, not costs. To that extent no application has

⁶ *Trustees of Oparau No 1 Block v Auld* (2015) 95 Waikato Maniapoto MB 167 (95 WMN 167).

been filed which would support a claim in damages. It is not for this Court to determine this issue.

Travel Costs

[20] Mr Hetaraka seeks costs for travel incurred in travelling to and from Waitangi approximately eight times. Again no specified sum is sought and no invoices have been provided. In the absence of any detailed evidence we are unable to make any assessment of the reasonableness of the travel costs.

[21] Given that the appellants were only partially successful on the appeal we do not propose to consider travel costs.

Decision

[22] Having regard to all the circumstances we find that costs should lie where they fall.

[23] The Deputy Registrar is to reimburse the security for costs of \$1500 to the appellants.

This judgment will be pronounced at the next sitting of the Māori Appellate Court.

C L Fox (Presiding)
DEPUTY CHIEF JUDGE

S Te A Milroy
JUDGE

C T Coxhead
JUDGE