

I TE KOOTI PĪRA MĀORI O AOTEAROA
I TE ROHE O TE TAITOKERAU
*In the Māori Appellate Court of New Zealand
Taitokerau District*

AP-20230000021505
A20230009123
A20220011759
A20220004045

WĀHANGA <i>Under</i>	Sections 58 and 231 Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Pukahakaha East 5B4 and Others
I WAENGA I A <i>Between</i>	HONE HEREMAIA TE AHUAHU TANA Kaitono pīra <i>Appellant</i>
ME <i>And</i>	NETA BERNADETTE GILBERT, HANA HARRIET MAXWELL, TAIPARI BARRY PHILLIP MUNRO, JOANNE LEAHA WALTERS, GRAHAM KEREAMA MAHANGA, ISABELLA MARY MEHANA AND VALERIE SHEILAH TIMBERS AS TRUSTEES OF PUKAHAKAHA EAST 5B TRUST Kaiurupare pīra <i>Respondents</i>

Nohoanga: 11 October 2022, 254 Taitokerau MB 174-192
Hearing 9 August 2023, Māori Appellate Court MB 156-173
(Heard at Whangārei)

Kooti: Chief Judge Fox (Presiding)
Court Judge Stone
Judge Wara

Kanohi kitea: C Beaumont for Appellant
Appearances S Henderson and P Wilson for Respondents

Whakataunga: 27 October 2023
Judgment date

TE WHAKATAUNGA Ā TE KOOTI
Reserved Judgment of the Court

[1] Mr Tana sought a review of the Pukahakaha East 5B Trust (the Trust) by the Māori Land Court. The parties filed a great deal of evidence with the Court. The Court did not hear the application. Instead, it dismissed the application without a hearing and awarded costs against Mr Tana.¹ He appeals.

[2] Two key issues arise. Because the appeal was filed almost five months out of time, we must decide whether to grant leave to appeal out of time. We must also decide whether the Māori Land Court decision is correct.

Me whakaae mātou ki te pīra tōmuri?

Should we grant leave to appeal out of time?

[3] Timeliness has been an issue for Mr Tana’s lawyer, Mr Beaumont, through both the Māori Land Court process and the present appeal. An appeal must be filed within two months.² The appeal of the substantive decision should have been filed by 8 December 2022, however, filing was delayed by approximately five months. Therefore, we must determine whether to grant leave to appeal out of time.

[4] When considering whether to grant leave, we must take into account the interests of justice. Ultimately, we must weigh the right to natural justice against prejudice to the respondents that arise from the delay. The relevant factors include the length of the delay and the reasons for it, the parties’ conduct, the extent of prejudice caused by the delay, the prospective merits of the appeal, and whether the appeal raises any issues of public importance.³

[5] Mr Tana provided various reasons why there was a delay in filing the appeal. He pointed to the effects of extreme weather events and health issues, yet no evidence was filed to support those grounds. He also argued that it was prudent for him to wait until the Trust held its proposed Annual General Meeting, which was deferred until 25 February 2023. We understand the reasons for waiting for the Annual General Meeting, but the appeal was still filed out of time even if the filing timeframe started on 25 February 2023.

¹ For the dismissal, see 254 Taitokerau MB 174-192 (254 TTK 174-192). For the costs award, see 255 Taitokerau MB 229-240.

² Rule 8.8(d)(i) of the Māori Land Court Rules 2011.

³ *Greenaway – Paenoa Te Akau* [2017] Māori Appellate Court MB 44 (2017 APPEAL 44), citing *Matchitt v Matchitt – Te Kaha 65* [2015] Māori Appellate Court MB 433 (2015 APPEAL 433).

[6] Other than the delay in filing the appeal, there has been no disentitling conduct on Mr Tana’s part. Nor has there been any significant prejudice to the Trust arising from the delay.

[7] We can also have regard to the merits of the appeal. For reasons that follow, we consider that the appeal has merit. We consider that the Māori Land Court failed to uphold Mr Tana’s right to natural justice. It would be contrary to the interests of justice to prevent Mr Tana from exercising that fundamental right simply because he did not file his appeal on time. This is a persuasive factor in granting leave to appeal out of time.

[8] We therefore grant leave for Mr Tana to file his appeal out of time.

E tika ana te whakataunga a Te Kooti Whenua Māori?

Is the Māori Land Court decision correct?

[9] The right to natural justice is a pillar of our justice system and is enshrined by s 27 of the Bill of Rights Act 1990.

[10] Natural justice means that every person who appears before the Māori Land Court is entitled to a fair hearing and decisions must be made using fair processes. Natural justice includes the doctrine of *audi alteram partem*, meaning “listen to the other side.” It is the principle that no person should be judged without an opportunity to be heard and respond to the evidence against them.

[11] The Māori Land Court dismissed Mr Tana’s application for a review of trust without a hearing. Accordingly, Mr Tana did not have an opportunity to be heard and respond to the Trust’s submissions. Counsel for the respondent, Mr Henderson, sought to convince us that a physical hearing was not required – the mere consideration by the Court of the evidence in the course of reaching a conclusion is sufficient. We do not agree. Ultimately, the right to natural justice clearly requires more.

[12] We need only point to two examples of how the failure to hold a hearing has caused prejudice to Mr Tana. First, the Māori Land Court did not hear any evidence at first instance, yet reached factual conclusions on matters that were contested. For example, the Māori Land Court assessed the evidence and determined that there were no seriously justifiable

allegations that required intervention by the Court.⁴ Such a determination involved the Court making determinations on contested evidence without hearing it.

[13] Second, the Māori Land Court also determined that the trustees of the Pukahakaha 5B Trust were acting appropriately, determining the primary issue raised in the application. For example, the Court decided that there was no substantial flaw in the process followed by the trustees to purchase certain lands. This process was directly challenged in the review application and in the evidence. Again, the Court effectively determined these contested matters without hearing from the parties.

[14] Accordingly, the approach of the Māori Land Court was a breach of natural justice and resulted in prejudice.

Whakataunga

Decision

[15] Consequentially, we direct a rehearing by the Māori Land Court and revoke the orders as to costs.

[16] On a final point, while Mr Tana has the right to natural justice, he should now appreciate the risks associated with litigation. The application before the Māori Land Court was poorly pleaded, and the evidence did not directly support the assertions being made. Care should be taken by both Mr Tana and his lawyer as to the future advancement of his case.

I whakapuaki i te 1.00pm i Te Whanganui-a-Tara, rua tekau mā whitu o ngā rā o Ōketopa i te tau 2023.

Pronounced at 1:00pm in Wellington on this 27th day of October 2023.

C L Fox (Presiding)
CHIEF JUDGE

D H Stone
JUDGE

T M Wara
JUDGE

⁴ 254 Taitokerau MB 174-192 (254 TTK 174-192 at [71]).