

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

A20150006622

UNDER Section 231, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Opape No 1A No 1B

BETWEEN DEBBIE MARISSA HOHI EGGO, KA KATHY
REWITA AND DONALD REWITA
Applicants

AND AKIMA TUPENE, DONNA KELLY, GEORGE
REWITA (JNR), LEO REWITA, MINA
POKINO, POLLY STIRLING, WIKI REWITA
AND TITHUIA REWITA AS TRUSTEES OF
OPAPE 1A1B TRUST
Respondents

Hearings: 147 Waiariki MB 183-189 dated 6 September 2016
162 Waiariki MB 193-202 dated 2 May 2017
(Heard at Opotiki)

Judgment: 11 September 2017

JUDGMENT OF JUDGE C T COXHEAD

Introduction

[1] Donald Rewita, Debbie Eggo and Ka Kathy Rewita (“the applicants”) seek a review of the Opape 1A1B trust pursuant to s 231 of Te Ture Whenua Māori Act 1993. The applicants’ are concerned about the lack of information provided to the beneficiaries and the arrangements between the trustees and the Chairperson of the trust, Leo Rewita, to occupy the block.

[2] Titihuia Rewita, George Rewita and Mina Pokino (three of the seven trustees) support the application and are in favour of all trustees (including themselves) being removed from the trust.

[3] Akima Tupene, Donna Kelly, Polly Stirling and Leo Rewita (four of the trustees) oppose the application.

[4] The application was last heard on 2 May 2017 where the matter was adjourned pending a reserved decision.¹

Background

[5] Opape 1A1B block was created by partition order on 1 June 1927.² On or about 1969 the block was sold to G Rewita and by operation of the law at the time became General land.³

[6] On 2 June 1995 the status of the block was changed back to Māori freehold land, and a whenua topu trust was constituted over the block.⁴ The original trustees were Polly Stirling, Titihuia Rewita, Donna Kelly and Akima Tupene.⁵

¹ 162 Waiariki MB 193-202 (162 WAR 193-202).

² 26 Opotiki MB 181 (26 OPO 181).

³ 43 Opotiki MB 309-310 (43 OPO 309-310).

⁴ 70 Opotiki MB 79-81 (70 OPO 79-81). I issued a direction to for Mr Ian Peterson to be engaged to clarify for the Court the matters regarding the whenua topu vesting. Mr Peterson filed a memorandum with the Court on 24 August 2016.

⁵ 70 Opotiki MB 79-81 (70 OPO 79-81).

[7] The current trustees are Akima Tupene, Donna Kelly, Polly Stirling, Titihuia Rewita, Leo Rewita, Mina Pokino, Wiki Rewita and George Rewita (Jnr).⁶

The Law

[8] Section 231 of the Act provides:

231 Review of trusts

(1) The trustees or a beneficiary of a trust (other than a kai tiaki trust) constituted under this Part may apply to the court to review the terms, operation, or other aspect of the trust.

(2) There can be no more than 1 review of a trust within a period of 24 consecutive months.

(3) The court may, on any review,—

(a) confirm the trust order for the trust without variation; or

(b) exercise its powers under section 244; or

(c) terminate the trust if the court is satisfied that there is a sufficient degree of support for termination among the beneficiaries.

[9] The Court's powers of review are extensive.⁷ It is generally unnecessary for a review of day-to-day operational matters. However a more forensic approach is warranted, where the Court may apprehend risk to the trust.⁸

[10] In undertaking a review the Court may invoke s 238 to enforce the obligations of trust.⁹ Section 238 of the Act provides:

238 Enforcement of obligations of trust

(1) The court may at any time require any trustee of a trust to file in the court a written report, and to appear before the court for questioning on the report, or on any matter relating to the administration of the trust or the performance of his or her duties as a trustee.

⁶ 10 Waiariki MB 279-284 (10 WAR 279-284) It is noted that Wiki Rewita is deceased and Akima Tupene is currently in prison.

⁷ *Proprietors of Mangakino Township v Māori Land Court* CA65/99, 16 June 1999

⁸ *Tupe Snr v Everton – Manunui No 1 4th Residue Ahu Whenua Trust* (2015) 334 Aotea MB 227 (334 AOT 227) at 233

⁹ *Proprietors of Mangakino Township v Māori Land Court* CA65/99, 16 June 1999

(2) The court may at any time, in respect of any trustee of a trust to which this section applies, enforce the obligations of his or her trust (whether by way of injunction or otherwise).

[11] I adopt the reasoning set out by the Court of Appeal in *Rameka v Hall* as follows:¹⁰

[28] The general responsibilities of responsible trustees are set out in s 223 of the Act. That section refers to the following:

- (a) Carrying out the terms of the trust:
- (b) The proper administration and management of the business of the trust:
- (c) The preservation of the assets of the trust:
- (d) The collection and distribution of the income of the trust.

[29] As we have noted, these statutory duties are not exhaustive and general trustee law principles are also relevant. Further, the trust order applicable to the trust may add other responsibilities. The relevant obligations of trustees have been described by the Maori Appellate Court in these terms:

- a) A duty to acquaint themselves with the terms of trust;
- b) A duty to adhere rigidly to the terms of trust;
- c) A duty to transfer property only to beneficiaries or to the objects of a power of appointment or to persons authorised under a trust instrument or the general law to receive property such as a custodian trustee;
- d) A duty to act fairly by all beneficiaries;
- e) A duty of trustees to invest the trust funds in accordance with the trust instrument or as the law provides;
- f) A duty to keep and render accounts and provide information;
- g) A duty of diligence and prudence as an ordinary prudent person of business would exercise and conduct in that business if it were his or her own;
- h) A duty not to delegate his or her powers not even to co-trustees;
- i) A duty not to make a profit for themselves out of the trust property or out of the office of trust: Garrow and Kelly Law of Trusts and Trustees (sixth edition, pp 523–582 inclusive).

Issue

[12] The issue for determination is whether the trustees have breached their duties and if so whether the breach is sufficient to warrant their removal.

¹⁰ *Rameka v Hall* [2013] NZCA 203

[13] The applicants allege that the trustees have:

- (a) failed to render accounts and provide information;
- (b) made payments out of trust funds without authority;
- (c) failed to carry out the terms of the trust;
- (d) failed to act diligently and prudently; and
- (e) failed to properly administer and manage the business of the trust;

[14] I now turn to consider each of the allegations.

Failure to render accounts and provide information

[15] The applicants' submit that the trustees, in breach of their duty to render accounts and provide information, have neglected or otherwise failed to keep proper accounts and to render those accounts and provide information at the applicant's request.

[16] The applicants state that on 26 June 2013 Donald Rewita requested copies of the trusts accounts for the 2010-2013 financial years. Following that, on 29 June 2013 the applicants requested copies of the occupation agreement between the trustees and the Chairperson. According to Donald Rewita, on 5 July 2013, the trust secretary challenged him to file an application to the Court. The financial statements were not provided until filed with the Court on 3 June 2016 and the occupation agreement has not been produced.

[17] The applicants say that due to the failure of the trustees to render accounts and provide information the applicant and all other beneficial owners have been prevented over a period of years from ensuring that the assets of the trust are properly administered.

[18] The trustees maintain that they have at all times acted within the guidelines of the Act and the trust order. Tania Kenrick-Te Moni (Secretary) advised in a letter to the Court, received on 21 March 2016, that beneficiaries have been sent meeting minutes, and

correspondence and minutes have been forwarded to Court staff. The trustees do not see any reasons for a review.

[19] In addition Tania says there has been no refusal to provide the financial reports. At every meeting the Treasurer presents the book and answers any questions. When beneficiaries request anything Tania says she does what she can to answer questions or forwards the matter to the treasurer.

[20] Tania states that she forwarded Kathy's request to the Treasurer and advised Kathy to make arrangements to contact the Treasurer.

[21] In regards to Donald's requests Tania states that after speaking with trustees it was decided that one of the trustees, Mina Pokino, attend a meeting with Donald to represent the trustees and answer any questions. She says that request was denied. Tania also points out that Donald was not an owner at the time and after discussing it with Court staff no information was provided to Donald. In addition, Donald was invited to attend the next trustee meeting but he did not do so.

Discussion

[22] The minutes of the AGM held on 2 August 2014 record a request for trust documents from Donald Rewita. The minute records that:

after many letters back and forth it was decided (by trustees) to send no documents to Don (as he was not an owner at the time) however, he was invited to attend the trustees next meeting.

[23] There are also copies of email correspondence, on file, between Donald and Tania dated June-July 2013. The email correspondence shows that Mr Rewita made repeated requests, during that time, for information. It also shows that Tania advised Donald that Mina would meet with him to answer his queries. On the 24 June 2013 Tania advised Donald that as he was not an owner the information would not be provided. Tania also advised that the matter should be brought to a trustee meeting or an application made to the Court.

[24] I note that Donald Rewita received beneficial interests in the block on 4 December 2013 by way of vesting order from his father Peter Rewita.¹¹ Prior to that date Donald Rewita was not an owner in the block.

[25] In *Apatu v Trustees of Owhaoko C Trust - Owhaoko C* the Māori Appellate Court set out the principles for disclosure of information to beneficiaries as follows:¹²

[25] The learned authors of *Garrow and Kelly* set out the principles from various decisions about the disclosure of information to beneficiaries. Those principles are as follows:

(a) Subject to the discretionary jurisdiction of the Court, “beneficiaries” are entitled to receive information which will enable them to ensure the accountability of the trustees. They are entitled to have the trust property properly managed and have the trustees account for their management.

(b) The beneficiaries so entitled include beneficiaries of a fixed trust (including those with a future or contingent interest), beneficiaries of a discretionary trust, potential beneficiaries, income and capital beneficiaries and the administrators of the estate of a discretionary beneficiary. Depending upon the intention of the settlor and wording of the trust instrument, these rights do not normally extend to the object of a power of appointment, a “potential beneficiary along with the rest of the world”, a random charity (which may or may not be added as a beneficiary) and possibly exclude one of a very large class of remote discretionary beneficiaries.

(c) Trust documents that would normally be disclosed include financial statements, trust deeds (and variations of them), deeds appointing previous and present trustees, gift statements, accounts relating to the distribution of the trust, details of trust assets and liabilities, information provided to inform trustees in the exercise of discretions (but not advice directed to the trustees’ reasons for the exercise of discretions).

(d) Documents that will often be excluded are memoranda or letters of wishes, trustees’ reasons for the exercise of a discretion, “counsel’s brief” in respect of hostile litigation, communications between trustees and specific beneficiaries and “confidential” information.

(e) The Court (and trustees) can refuse to release information if the release is not in the interests of the beneficiaries as a whole and will prejudice the ability of the trustees to discharge their obligations under the trust.

(f) The entitlement to information is so fundamental that there cannot be a trust if there is no duty to account. Therefore a clause in a trust deed ousting (as opposed to limiting) the trustees’ duty to account is not effective.

¹¹ 74 Taitokerau MB 19-22 (74 TTK 19-22).

¹² *Apatu v Trustees of Owhaoko C Trust - Owhaoko C* [2010] Maori Appellate Court MB 34 (2010 APPEAL 34).

(g) Well-intentioned trustees should respond generously to beneficiaries' reasonable requests for information whether they are bound to do so or not. Trustees should provide a full rather than a reluctant response to requests for information by beneficiaries.

(h) A beneficiary is entitled to inspect trust accounts and documents but if the beneficiary requires copies then he or she should pay the necessary expense for this. If the beneficiary demands information as to rights which require assistance, for example, from a solicitor, the trustee is not bound to incur the costs of this unless the beneficiary is willing to pay the reasonable costs of complying.

(i) Where serious issues of confidentiality or privacy arise, the withholding of documents may be justified.

(j) In exceptional cases the Courts have jurisdiction to exercise their supervisory power in favour of an applicant who has yet to be determined to be a beneficiary.” (pp 545-546)

[26] In *Horne v Anaru – Pukehina M Sec 2A* Judge Harvey, in considering whether owners are entitled to copies of annual accounts noted that as a starting point beneficial owners of Māori land that is administered by a trust are entitled to received a copy of such accounts:¹³

[33] As a starting point, beneficial owners of Māori land that is administered by a trust are entitled to receive a copy of the annual accounts. All they should have to do is provide their contact details which may include postal or email or both, and the trust secretary or accountants should then forward those accounts to any owners for whom it holds postal or email addresses, within two months of the audited accounts being finalised. This is especially relevant where a trust is not having general meetings on an annual basis.

...

[34] I find nothing controversial in the principle that owners are entitled to receive a copy of the audited annual accounts on request whether or not a general meeting is held in any given year or not. The provision of such fundamental information to owners should not have to be an ordeal. I also consider that they should not have to write in on an annual basis and request the accounts where the trust secretary or accountants hold their current postal or email address. If, as the trustees say, there is nothing controversial in the accounts and that they are relaxed about providing the owners with such information, there should be no difficulty in the trustees adopting the practice as described of providing the annual accounts to owners for whom it holds current addresses. The counterpoint to that is for the trustees to be able to do so the owners themselves have an obligation to ensure that the trust secretary or accountants have their current address.

[35] To avoid doubt, where there has been a gap between general meetings, it will be incumbent upon trustees to ensure all previous years' annual accounts that have not been presented are included on the agenda. As it is often challenging for owners

¹³ *Horne v Anaru – Pukehina M Sec 2A* (2015) 123 Waiariki MB 40 (123 WAR 40).

to read, understand and assess the current annual report at a general meeting, let alone several years' worth, as foreshadowed, the trustees should take steps to ensure accounts are made available to owners each year.

[27] Although Donald Rewita did not become an owner until December 2013 the matter was still live as evident from the minutes of the August 2014 AGM. Mr Rewita was entitled to that information as soon as he became an owner. As is clear from the cases outlined above beneficial owners of Māori land are entitled to receive a copy of the annual accounts. They are also entitled to information which will enable them to ensure the accountability of the trustees. The occupation agreement was clearly relevant information that could and should have been provided to Mr Rewita once he became an owner.

[28] In any event that information has now been provided to the Court as well as the applicants. However it should not take initiating Court proceedings to compel the provision of such information. The beneficiaries are entitled to the provision of such information and as outlined above it should not be an ordeal.

Making payments out of trust funds without authority

[29] The applicants allege that the terms of the trust order do not authorise or empower the trustees to pay trust funds in the form of "koha". The applicants further state that in 2012 the trustees paid the sum of \$500 from the trust funds as koha. Further, the trustees then sought, at the AGM held in August 2012, to create a policy authorising themselves to pay koha out of trust monies on a case by case basis.

[30] The applicants submit that as a consequence of that payment the beneficial owners have suffered a financial loss of \$500 plus interest.

[31] The financial statements for the period March 2011 to March 2016 were provided to the Court on 1 June 2016. That information notes that the trust has had a net surplus for each year. It also notes that all expenditure is trust related and includes normal expenses. However the accountant did highlight two items of interest the first being the koha paid in 2012 were however highlighted in the 2012 accounts.

[32] The minutes for the AGM held on 4 August 2012 record payment of a "\$500 koha (Wiki)" and payment of "\$500 to reimburse Polly". There was discussion around the issue

of koha. A request had been put to the trustees to give a koha for Wiki's tangi. At the time all trustees agreed to koha \$500. Titihuia was concerned that although agreeing to the koha at the time she felt that trust monies should go to the upgrade of Opape. A vote was taken and by majority it was decided that at the time of a funeral trustees are to look at the situation and address whether to give a koha and what amount. There is also a statement in the minutes that the decision regarding koha does not need to go to a meeting however official correspondent would need to be filed.

Discussion

[33] While the payment of the koha does not seem extraordinary the trustees nonetheless must act within their trust order. The trust order, as the applicants point out, does not provide for such payments. The trustees will need to implement a policy around this which will require discussion at a properly convened AGM. If changes are to be made to the trust order an application to the Court is required. Such an application must be accompanied by evidence of the agreement from the beneficial owners to such changes or at least discussion of the changes. It is not for the trustees alone to exercise such discretion. Although I find the payment to be in breach of the trust order it is not of itself sufficient to warrant removal.

Failure to carry out the terms of the trust

[34] The applicants submit that on or about 26 March 2010 the trustees resolved to engage a caretaker for the trust land. Sometime between 26 March 2010 and 28 August 2010 a majority of trustees outside of a trustee meeting appointed Leo Rewita, Chairperson of the trust, as the caretaker and granted him a licence to occupy part of the block and buildings on the block in terms more favourable than that obtainable on the open market.

[35] The applicants point out that rent for the Leo Rewita's occupation was set at \$80 per week despite the fact that the land occupied has sea frontage and accommodation for the occupier's family of twelve.

[36] The applicants state that per cl 3(b)xiii of the trust order the trustees are empowered to grant a lease of the block at a reduced rent or on terms more favourable than those

obtainable on the open market provided that such proposal has first been approved by the resolution of a meeting of beneficiaries called by the trustees.

[37] The trustees report sets out that the property is currently being looked after by Leo Rewita and his whānau. They advise that he has an agreement to rent the shed in exchange for caretaking the grounds. The report states that it has always been a main focus for the majority of the owners and trustees to have a caretaker at Opape due to past experiences with vandalism, theft and maintenance. The agreement also provides for the rates to be paid. The trustees state that Leo Rewita has the support of the majority of the owners and he has maintained and improved the buildings and the grounds since he moved in. They further state that many beneficial owners have stayed on the block and had a good time and that Leo and his whānau have also planted a vegetable garden on the property.

Discussion

[38] The occupancy of the block is not a new issue. The matter has previously been before the Court.

[39] Clause 3xii of the trust order provides:

To make other special provisions for beneficiaries

At their discretion to alienate by way of lease or licence to any beneficiary at a reduced rent or otherwise upon terms more favourable to the lessee than those obtainable on the open market for so long as that person or his executor or administrator remains in possession of the land PROVIDED THAT such proposal has first been approved by the resolution of a meeting of beneficiaries called by the trustees.

[40] According to the documentation on file, on or about 10 June 2010 Akima Tupene advised Leo Rewita that he was vacating the property. To ensure that a caretaker remained on Opape, a majority of trustees invited Mr Rewita to accept the position of caretaker. There is, on file, a copy of a document signed by Akima, Polly, Wiki and Mina (four of the trustees) giving approval for Leo Rewita to fulfil the caretaker position. It is noted on the document that Leo Rewita forfeited his vote due to a conflict of interest. That document is dated 20 June 2010.

[41] A copy of the caretaker agreement is also on file. The agreement is between the trustees and Leo Rewita. The agreement provides for Leo Rewita to have access to all facilities on the property and the shed/kitchen and back surrounding grounds are to be his private quarters in exchange for payment of \$80.00 per week commencing on 28 August 2010 continuing until terminated and to have a review period every year. Mr Rewita is also required to contact the trustees before any repairs or renovations are considered for reimbursement. The agreement is signed by Tania Te Moni and Leo Rewita as occupiers and Polly Stirling as representative of the trust.

[42] The minutes of the meeting of owners held on 26 March 2010 records the decision to continue having a caretaker on the property. At a further meeting held on 28 August 2010 the occupation agreement was read out. Titihuia voiced her concerns about the agreement and another vote was taken. The outcome was 4 of the trustees in favour of Leo occupying the property. It was also agreed by 6 of the trustees that the rent be \$80 per week.

[43] The hui held on 26 March 2010 was a properly convened hui facilitated by the court. Judge Fox was satisfied that the hui was run correctly and the decisions made were properly determined.¹⁴

[44] The matter was again raised at the meeting held on 6 August 2011. At that meeting it was decided that the annual review of the occupation agreement be removed but caretaker be required to produce annual report. It was also discussed at the 2012 hui.

[45] The process the trustees have undertaken has been considered and is in line with the trust deed. I find no breach of the trust deed.

Failure to act diligently and prudently

[46] The applicants submit that on 6 August 2011 the trustees, in breach of their duty of prudence, passed a resolution to remove the annual review from the caretaker's agreement, leaving the trust with no ability to review the agreement.

¹⁴ 10 Waiariki MB 279-284 (10 WAR 279).

[47] In addition on 2 August 2014 the trustees resolved that the cost of maintenance on the trusts dwellings, occupied by the caretaker, would be reimbursed on production of receipts. The applicants argue that that resolution did not provide for the trustees to approve the proposed maintenance work in advance of expenditure.

[48] The applicants submit that in further breach of their duty of prudence the trustees entered into the occupation agreement with the Chairman without first taking proper advice. The occupation agreement is a residential tenancy within the meaning of the Residential Tenancies Act 1986. As such the trust now has a duty to ensure that the dwelling occupied by the Chairman complies with all requirements of the building code and health regulations. The trustees entered into the agreement with full knowledge that the dwellings did not comply with s 123 of the Building Act 2004 from the Opotiki District Council.

[49] The applicants state that as a consequence of the agreement the trustees have placed the assets of the trust at risk of Tenancy Tribunal orders requiring them to bring the dwelling up to a compliant standard.

Discussion

[50] As set out earlier the occupation agreement is open ended. It was originally set to be reviewed on a yearly basis however has subsequently been amended to provide that the occupiers are to provide a report to the trustees at each AGM which the trustees resolved to hold every two years. The trustees have not provided any copies of such reports.

[51] There is the added issue of the conditions of the buildings. The state of the buildings was brought to the attention of the Opotiki District Council, in 2010. The Council undertook an inspection of the property on 24 August 2010. Following that the Council advised that it had two concerns. One being the effluent treatment system and the other insulation. The Council advised that the trustees should apply for a change of use for the garage and obtain building consent for that change of use.

[52] It appears no further action was taken until May 2016 when the Council received another complaint. The trustees subsequently met with Council on 26 May 2016.

According to the trustees that meeting was a starting point to what they need to do regarding the process of building consents and compliance. The Council have given the trust a list of potential licensed builders and the trustees say they are endeavouring to make contact with a builder.

[53] Trustees have a duty to preserve the assets of the trust. It should be without doubt that the buildings are compliant especially given that there is an occupation agreement in place. In any event the trustees are taking steps to rectify the situation with the Council.

Failure to properly administer and manage the business of the trust

[54] The applicants submit that the trustees have failed or otherwise neglected to file income tax returns for the years ended 31 March 2011 to 31 March 2016 and as a consequence the trust has incurred a tax liability of \$4,089.82 plus late payment penalties and interest.

[55] In addition the applicants argue that the trustees have failed to carry out any rent review to increase the rental paid by the Chairman under the agreement.

[56] Further, the trustees have failed to advance the objects of the trust which include providing for the use, management and alienation of the land to the best advantage of the beneficiaries or the better habitation or use by the beneficiaries. The trustees have failed to make provision for beneficiaries other than the Chairman to use and enjoy the land and in August 2014 created a set of procedures regarding use of the land which included a policy requiring whānau to organise their own facilities and declaring the existing dwellings out of bounds to beneficiaries.

[57] The applicants submit that the trustees in 2009-2010 allowed money to be paid from the trusts bank accounts without resolution of the trustees approving that expenditure and have not required accounting from the trust treasurer for that expenditure until 2016. In addition the trustees have permitted the caretaker to offset his maintenance expenditure against monies owed by him to the trust in rental all without resolution of trustees approving such an arrangement and without the approval of the beneficiaries.

[58] The financial statements for the years ending March 2011 to March 2016 were provided to the Court. It is noted that the trust has had a net surplus for each year. It also states that all expenditure is trust related and includes normal expenses.

[59] In regards to the March 2009 to March 2010 accounts the applicants have filed documentation which lists items “purchased by rent resulting in rent credit”. The financial accounts were accepted at the 26 March 2010 hui. There is a statement in the minutes that “Akima had done up the property out of his own pocket, and that the question for rental be left for the whānau visions”. There is a further notation that Akima is in credit with his rent, paid up to 14 May 2010.

Have the trustees breached their duties sufficient to warrant their removal?

[60] Section 240 of the Act provides:

240 Removal of trustee

The court may at any time, in respect of any trustee of a trust to which this Part applies, make an order for the removal of the trustee, if it is satisfied—

- (a) that the trustee has failed to carry out the duties of a trustee satisfactorily; or
- (b) because of lack of competence or prolonged absence, the trustee is or will be incapable of carrying out those duties satisfactorily.

[61] It is well established that the prerequisite for removal of a trustee is not a simple failure or neglect of duties, but a failure to perform their duties satisfactorily. An assessment of the trustee’s performance is essential to consider the impact of a trustee’s actions on the beneficiaries and any apprehension of risk to the trust assets.¹⁵

Discussion

[62] The applicant seeks the removal of the current trustees per s 240 of the Act for failure to carry out their duties satisfactorily.

¹⁵ *Rameka v Hall* [2013] NZCA 203 at [27] - [33]. See also *Bramley v Hiruharama Ponui Incorporation* (2006) 11 Waiariki Appellate MB 144 (11 AP 144); *Ellis v Faulkner - Poripori Farm A Block* (1996) 57 Tauranga MB 7 (57 T 7) at 15.

[63] The applicants contend that the trustees have failed to advance the effective use, management and development of the land on behalf of the owners. The current trustees have placed the assets of the trust at risk and their continuation in office will not facilitate and promote the use, development and control of the land as a taonga tuku iho by beneficial owners, their whānau and their descendants as contemplated by the Act.

[64] The trustees submit that they have, at all times, acted within the guidelines of the Trustees Act 1956 and the Trust order and have sought assistance from the Court where they have had any doubts. The trustees say that they are not a large business corporation; the trust has one income which comes from the current caretaker who is one of the owners. The income was never intended to be a high profitable income but simply pay for rates and maintenance of the property. The trustees add that the majority owners never intended this property to be used for high profitable income but for whānau to holiday and visit.

[65] The trustee report notes that the trustees have had seven meetings (including AGM) and that it was determined that given the size of the trust and its income that meetings be held every two years. They acknowledge that the matter regarding the caretaker has been an ongoing issue for the trustees but they say Leo Rewita has ensured that he has managed his conflict of interest. The report refers to the concerns raised by Titihuia over the years and say a lot of those concerns have been addressed including the lack of proper facilities for accommodation, the caretaker arrangement, visiting the block and keeping the owners updated.

[66] Titihuia and George Rewita provided a response to the Court dated 20 December 2016. They argue that they are being deliberately excluded from trust business. They say they are not given notice of meetings, have been verbally attacked and abused at trustee meetings, have filed complaints with the Chairperson that have not been followed up, they have not received minutes of hui nor were they consulted on the trustee report filed with the Court on 6 September 2016. They say the report contains inaccuracies and is misleading. They say the other trustees are purporting to act by majority when that is not the case.

Discussion

[67] I find that the applicants had genuine concerns about the operations of the trust. These concerns could have been dealt with at the outset by meeting with the applicants and providing the necessary information.

[68] The trustees need to ensure that they are preparing the financial statements every year and reporting to the owners. I do not consider changing the AGM to every second year is valid.

[69] The trust order clearly states and AGM is to be held each year. If the trustees wish to amend this they will need to follow the procedures to have the trust order varied including holding a meeting of owners.

[70] There have also been allegations of verbal threats and the applicants being verbally abused prior to one of the Court hearings. That behaviour is not acceptable.

[71] It is clear that there are issues with the administration of the block. Matters are obviously intensified given the block is a quarter of an acre there are 26 owners and there is a person occupying the land. The running of the Trust has not been perfect. That being said the Trust has for the years ending March 2011 to March 2016 noted a net surplus for each year and all expenditure is trust related and includes normal expenses. When considering all the matters in totality, while there are failings, I am not satisfied that the trustees' actions have been of a sufficient level to warrant their removal.

[72] I am concerned that there is a clear split in the trustees. There are currently eight trustees recorded on the Māori Land Court records. It is noted that Wiki Rewita is deceased and Akima Tupene is currently in prison. That leaves six active trustees. Three trustees - Titihuia Rewita, George Rewita and Mina Pokino supported this application and are in favour of all trustees (including themselves) being removed from the trust. Three trustees - Donna Kelly, Polly Stirling and Leo Rewita opposed the application. Based on the three three split the trust could become dysfunctional.

[73] The Trustees need to call an AGM. At the AGM the financial accounts should be presented, the occupier agreement should be discussed and the policy around visiting the block should also be discussed.

[74] Given the issues raised around the administration of the trust and the split in the trustees I consider that all the trustees should stand down at the next AGM at which point they can offer themselves up for re election.

[75] The Court can assist the trustees in organising and facilitating the Hui. If the trustees require assistance they should notify the Court.

Decision

[76] The review is completed and the application is dismissed.

Pronounced at 11.10am in Rotorua on the 11th day of September 2017.

C T Coxhead
JUDGE