

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

**279 Aotea MB 101
(279 AOT 101)
A20120002122**

UNDER Section 43 (1), Te Ture Whenua Maori Act
1993

IN THE MATTER OF PHILIP TAUEKI
Applicant

Judgment: 8 February 2012

DECISION OF CHIEF JUDGE WW ISAAC

Background

[1] This application, filed by Philip Taueki pursuant to section 43(1) of Te Ture Whenua Māori Act 1993, seeks a stay of proceedings in relation to my orders made on 25 August 2011 at 270 Aotea MB 214-241. These orders were made in relation to an application filed by Vivienne Taueki for the removal of Jonathan Procter as a trustee from the Horowhenua 11 (Lake) Māori Reservation Trust pursuant to section 240 of Te Ture Whenua Māori Act 1993.

[2] The orders I made on 25 August 2011 were as follows:

- a) The application to remove Mr Procter as a trustee was dismissed;
- b) The Registrar was directed pursuant to section 40 of Te Ture Whenua Māori Act 1993, in order to assist the Court with the proceedings affecting this application, to engage an independent chairperson to facilitate a meeting of owners for the purpose of:
 1. holding an election to appoint an additional responsible trustee to the Horowhenua 11 (Lake) Māori Reservation Trust; and
 2. ratification of the terms of trust for Horowhenua 11 (Lake) Māori Reservation Trust by the beneficiaries.
- c) Section 40(1)(e) to engage a service provider, namely Wanganui Newspapers Limited, to place advertisements in the Horowhenua Kapiti Chronicle, Wanganui Chronicle, Wairarapa Times Age and the Dominion Post for the advertising of the meeting of owners; and
- d) Section 98 for the payment of costs associated with advertising the proposed meeting of owners in the Horowhenua Kapiti Chronicle, Wanganui Chronicle, Wairarapa Times Age and the Dominion Post.

[3] Mr Taueki has since appealed these orders to the Māori Appellate Court, with his appeal set down for hearing on 16 February 2012.

[4] The meeting of owners that the Registrar was ordered to convene and advertise was held on 24 September 2011, and an application was subsequently made to the Court to appoint an additional trustee to the Horowhenua 11 (Lake) Māori Reservation Trust. This application was heard before Judge Harvey on 16 January 2012 (278 Aotea MB 24) and a decision appointing Brendan Tukapua as an additional trustee was made on 31 January 2012 at 278 Aotea MB 172-187.

[5] On 17 January 2012 Mr Taueki filed his initial application seeking a stay of proceedings in relation to my 25 August 2011 orders. This application was returned to the applicant due to its failure to comply with the Māori Land Court Rules 2011. A new application was filed, in compliance with the Rules, on 27 January 2012.

Applicant's Submissions

[6] Mr Taueki submits, in his 27 January 2012 application, that a stay of proceedings should be granted pursuant to section 43(1) of Te Ture Whenua Māori Act 1993 as his appeal from my orders, along with an additional appeal by Vivienne Taueki, has been set down for hearing in February 2012.

[7] In his 17 January 2012 application he made the additional submission that “[t]he grounds for appeal are comprehensive and of sufficient seriousness to warrant a stay of proceedings until these appeals have been heard. There is little point appointing an additional responsible trustee if that person’s appointment could be revoked by the Māori Appellate Court on 16 February 2012, less than a month away.”

Discussion

Jurisdiction

[8] Mr Taueki makes his application for a stay of proceedings under section 43(1) of Te Ture Whenua Māori Act 1993. This section gives the Court the power to

issue a stay of proceedings where it has ordered that an application be reheard pursuant to section 43.

[9] Mr Taueki has not applied for a rehearing of his application. A stay of proceedings therefore cannot be granted pursuant to section 43(1) of the Act.

[10] The Māori Land Court also has the power to grant a stay of proceedings pursuant to section 59(4) of the Act where leave is given to appeal from a provisional determination of the Court. However section 58, under which Mr Taueki appeals my final orders, does not contain any explicit power for the Court to grant a stay of execution. With the exception of incorrectly relying on section 43, Mr Taueki has not directed me to any other statutory authority under which the Māori Land Court may issue such a stay in relation to an appeal against final orders to the Māori Appellate Court. Notwithstanding I am required to consider whether the Māori Land Court has the jurisdiction to grant a stay as requested.

[11] It has been recognised in the High Court has the power under its inherent jurisdiction to grant a stay of execution, in addition to its statutory authority to grant such a stay prescribed by the High Court Rules (*Pinson v Pinson* (1991) 5 PRNZ 177). Exercise of this power under the High Court's inherent jurisdiction, rather than under the procedures set out in the High Court Rules, must only apply in special circumstances, “[f]or example if there was some question of an abuse of the process of the Court or where the efficacy of an appeal would be forever destroyed were [the High Court] not to rapidly intervene” (*Sutherland v Sutherland* [1995] NZFLR 935).

[12] The Māori Land Court does not possess any inherent jurisdiction, other than where it has been accorded the same powers and authorities of the High Court in respect of trusts under section 237 of Te Ture Whenua Māori Act 1993. While the original application to the Court was for the removal of a trustee under the Court's trust powers, the power to issue a stay of execution cannot properly be interpreted as a part of the “powers and authorities of the High Court in respect of trusts”, and the Māori Land Court accordingly does not have the authority to issue a stay in reliance on the High Court's inherent jurisdiction.

[13] The only remaining ground on which the Court might issue a stay of proceedings, without there being explicit statutory authority to do so, is in accordance with the principle set out by the Court of Appeal in *McMenamin v Attorney-General* [1985] 2 NZLR 274. That Court stated that “[a]n inferior Court has the right to do what is necessary to enable it to exercise the functions, powers and duties conferred on it by statute. This is implied as a matter of statutory construction. Such Court also has the duty to see that its process is used fairly. It is bound to prevent an abuse of that process.”

[14] I agree with this principle and consider that the Māori Land Court does have the power to issue a stay of execution in respect of a final order that has been appealed to the Māori Appellate Court, but only in very limited circumstances. In my view, Parliament would not have legislated to allow the right of an appeal from a final order of the Court without the intention that that appeal have effect where the appellant is successful. Therefore, in the situation where an appellants right of appeal under section 58 would be rendered nugatory if a stay of execution were not granted, the Māori Land Court must have the authority to issue a stay. This is comparable to the High Court’s assessment of its inherent power to grant a stay where the efficacy of an appeal would be destroyed were this Court not to intervene.

[15] In summary, I find that the Māori Land Court has the jurisdiction to issue a stay.

Mr Taueki’s application

[16] Notwithstanding that the Māori Land Court has jurisdiction, I consider in this case that Mr Taueki’s application does not meet the threshold for the granting of a stay of proceedings. Indeed, I cannot see that there would be any utility in issuing such a stay in relation to my orders of 25 August 2011. Nor do I believe this is what Mr Taueki in fact seeks by his application.

[17] My orders, as stated above, were that the application for the removal of a trustee be dismissed, and that a meeting of owners was to be convened to consider

the appointment of an additional trustee to the Horowhenua 11 (Lake) Māori Reservation Trust.

[18] As the meeting of owners had already been convened four months before Mr Taueki filed his application for a stay of proceedings, any stay of this portion of my order would be purposeless.

[19] There would also be no utility in staying my order dismissing the application for the removal of a trustee. While this application may be revived, should the Māori Appellate Court determine that it should be returned to the lower Court, in the interim a stay of proceedings would not alter Mr Taueki's position or answer his submission that a new trustee should not be appointed to the Horowhenua 11 (Lake) Māori Reservation Trust prior to his appeal being heard.

[20] In fact, Mr Taueki's submissions lead me to the conclusion that what he in fact seeks is a stay of execution for the orders made by Judge Harvey on 31 January 2012 at 278 Aotea MB 172-187 appointing Brendan Tukapua as an additional trustee to the Horowhenua 11 (Lake) Māori Reservation Trust. This application came about as a result of the meeting of owners ordered on 25 August 2011, but it is not within my power to stay any orders made by Judge Harvey on this application.

Decision

[21] For the above reasons, this application for a stay of proceedings is dismissed.

[22] A copy of this decision is to go to all parties.

Dated at Wellington this 8th day of February 2012.

W W Isaac
CHIEF JUDGE