

**IN THE MĀORI LAND COURT OF NEW ZEALAND  
WAIKATO MANIAPOTO DISTRICT**

**A20140012420**

UNDER Sections 238 and 240, Te Ture Whenua Māori  
Act 1993 and Regulation 21, Māori  
Reservations Regulations 1994

IN THE MATTER OF POIKE 14 BLOCK - WAIMAPU MARAE

BETWEEN LANCE WAAKA  
Applicant

AND JANICE HARRISON, CARLO HARRISON  
AND HELEN ERENA RIRINUI  
Respondents

Hearing: 1 December 2014 (90 Waikato Maniapoto MB 171-182)  
2 February 2015 (92 Waikato Maniapoto MB 184-195) and  
2 February 2015 (94 Waikato Maniapoto MB 182-250)  
8 May 2015 (97 Waikato Maniapoto MB 228-269)  
9 June 2015 (99 Waikato Maniapoto MB 150-188)  
(Heard at Tauranga)

Appearances: Mr G Elvin, Counsel for the Applicant  
Mr C F Reid, Counsel for the Ngāti Ruahine Charitable Trust  
Janice Harrison, Carlo Harrison and Helen Erena Ririnui in person

Judgment: 21 July 2015

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**RESERVED JUDGMENT OF JUDGE S R CLARK**

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## Introduction

[1] Lance Waaka is a trustee of the Poike 14 Block, otherwise known as the Waimapu Marae.<sup>1</sup> The marae is situated in Tauranga and administered by marae reservation trustees. In addition to Mr Waaka there are four other trustees, Janice Harrison, Carlo Harrison, Helen Erena Ririnui and Rose Walker.<sup>2</sup>

[2] In late August 2014, Mr Waaka became concerned about the spending of Waimapu Marae trust funds. As a result of information sought and received from the marae bankers he requested and was granted a freeze on a marae bank account. In September 2014 Mr Waaka raised the issue with his fellow trustees. In mid-November 2014 he filed an application with the Court pursuant to s 238 of Te Ture Whenua Māori Act 1993 (“the Act”) and reg 21 of the Māori Reservations Regulations 1994.

[3] At the heart of this case are allegations of misappropriation of marae trust monies by Janice and Carlo Harrison. In looking at that issue it is necessary to examine the role all the trustees played, what orders, if any, are necessary and whether I need to make further directions concerning the governance of Waimapu Marae.

## Background

[4] Ngāti Ruahine is a hapū associated with the Waimapu Marae. They are a hapū of the Tauranga based iwi, Ngāti Ranginui. From 1998 to 2006 inclusive, Ngāti Ruahine, along with other Tauranga Moana hapū, prosecuted claims before the Waitangi Tribunal.

[5] The Ngāti Ranginui Treaty claims were negotiated by an entity known as “Te Roopu Whakamana o Ngā Hapū o Ngāti Ranginui”. In June of 2012 that entity entered into a deed of settlement with the Crown, for the settlement of the Ngāti Ranginui historical claims.

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<sup>1</sup> Computer Interest Register – SAPR55A/815.

<sup>2</sup> 97 Waikato Maniapoto MB 228 (97 WMN 228) Helen Ririnui prefers to be called by her second Christian name. Throughout this decision I will refer to her as Erena Ririnui.

[6] Since then the hapū of Ngāti Ranginui have established separate entities to receive the distribution of settlement assets. In 2012 the Ngāti Ruahine Charitable Trust (“NRCT”) was established to receive distributions and assets from Te Roopu Whakamana o Ngā Hapū o Ngāti Ranginui.

[7] The NRCT deed of trust defines a beneficiary to mean “... every individual who affiliates to the Hapū.” Hapū is defined as “... the hapū of Ngāti Ruahine”. In the introduction to the deed of trust the marae of Ngāti Ruahine is described as being “Waimapu pā, located on Waimapu Pa Road, Tauranga”.

[8] In 2012 the NRCT received a distribution from Te Roopu Whakamana o Ngā Hapū o Ngāti Ranginui. During the 2013 and 2014 financial years NRCT in turn made distributions to or on behalf of the Waimapu Marae trustees totalling \$152,869.<sup>3</sup> Those funds were earmarked for marae renovations.

[9] In January and February of 2013, three separate bank accounts were opened on behalf of the Waimapu Marae. During the 2013 and 2014 financial years NRCT deposited somewhere between \$107,500 – \$109,939.44 into the bank accounts.<sup>4</sup> During the 2014 financial year an additional \$45,369 was paid directly by NRCT to third parties, on behalf of the Waimapu Marae trustees.

[10] Judith Wood, an employee of the BNZ provided two affidavits during the course of these proceedings. Attached to Ms Wood’s first affidavit were detailed bank statements for all three accounts.<sup>5</sup> The statements reveal that money was being regularly withdrawn and spent at Sky City Casino in Auckland, Riverside Casino in Hamilton and at various pubs and bars in Tauranga. A large number of ATM cash withdrawals were made from the accounts together with 23 “cash” cheques being presented between 2 April 2013 – 21 August 2014.

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<sup>3</sup> NRCT audited financial statements for the year ending 31 March 2014.

<sup>4</sup> I am unable to be more precise in relation to that figure. The NRCT audited financial statements refer to a figure of \$107,500. In an affidavit provided by the BNZ, an employee Ms Wood deposed in her second affidavit dated 27 February 2014, at para 6 that the sums paid into the Waimapu Marae bank accounts by NRCT was in fact \$109,939.44.

<sup>5</sup> Affidavit of Judith Wood, 22 January 2015.

[11] On 4 March 2013, Ms Wood was sufficiently concerned to record in a bank diary note that in excess of \$5,000 had been spent at the Riverside Casino, Flannaghan's Irish Pub, Renners Bar, Sky City and ATMs. One of the trustees, Erena Ririnui was informed at that time of the bank's concerns.

[12] Lance Waaka became aware of a pattern of irregular spending in late August 2014. He obtained bank statements and instructed his solicitor to write to the BNZ seeking a freeze of marae bank accounts. On 1 September 2014 the BNZ froze one bank account. Following that Mr Waaka raised his concerns with his fellow trustees and with NRCT in September 2014. A series of hui were held in that month to discuss those concerns.

[13] In November 2014 Mr Waaka filed this application in the Māori Land Court.

### **The hearings**

[14] The initial hearing, which took place on 1 December 2014, was in the nature of a directions hearing.<sup>6</sup> Subsequent to that substantive hearings took place on 2 February, 8 May and 9 June 2015.<sup>7</sup>

[15] At the conclusion of the 2 February 2015 hearing, of my own motion I amended these proceedings to include a s 240 removal of trustees application.<sup>8</sup> Following an oral application by counsel for Mr Waaka I also made interim injunction orders pursuant to ss 19 and 238 of the Act, the effect of which was to freeze the marae trust bank accounts and limit the permissible actions of the three respondents.<sup>9</sup>

[16] During the hearings I have heard evidence from the following groups of people:

- a) All of the marae trustees;
- b) Judith Wood from the BNZ;

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<sup>6</sup> 90 Waikato Maniapoto MB 171 (90 WMN 171).

<sup>7</sup> 92 Waikato Maniapoto MB 184 (92 WMN 184); 94 Waikato Maniapoto MB 182 (94 WMN 182); 97 Waikato Maniapoto MB 228 (97 WMN 228); 99 Waikato Maniapoto MB 150 (99 WMN 150).

<sup>8</sup> 92 Waikato Maniapoto MB 190 (92 WMN 190).

<sup>9</sup> 92 Waikato Maniapoto MB 190-191 (92 WMN 190-191).

- c) Linda Thompson and Irene Ruka, trustees of the NRCT; and
- d) Joanne Martin who provided accounting evidence.

[17] The last substantive hearing occurred on 9 June 2015. On that date a timetable was put in place for the filing of legal submissions. The last submission was filed on 24 June 2015.

### **The bank accounts**

#### ***BNZ 02-1210-0050908-000***

[18] The trading name for this account was the “Waimapu Marae Committee”.<sup>10</sup> A total of \$30,000 was paid into this account by NRCT. Between 2 April 2013 – 21 August 2014, 21 cash cheques were presented at the Greerton branch of the BNZ. In total \$49,721.79 was paid to Janice Harrison. The signatories on each of those cash cheques were Janice Harrison and Erena Ririnui.<sup>11</sup>

#### ***BNZ 02-1210-005098-001***

[19] The trading name for this account was the “Waimapu Marae Committee”. A total of \$62,000 was paid into this account by NRCT. Between 22 January – 4 February 2013, \$10,140 was withdrawn by EFT-POS transactions at casinos in Hamilton and Auckland and at a variety of bars in Tauranga.

[20] Carlo Harrison had the sole operating authority for this account. Janice and Carlo Harrison have admitted both in and out of Court that they were responsible for those sums of money being withdrawn and spent at those establishments.<sup>12</sup>

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<sup>10</sup> It is common ground in these proceedings that all three bank accounts were opened on behalf of the Waimapu Marae trustees.

<sup>11</sup> Second affidavit of Judith Wood, 27 February 2015, exhibit “A”.

<sup>12</sup> The out of Court admissions were made by Janice Harrison in a written statement dated 23 January 2014 provided to the Court by Carlo Harrison as recorded in minutes of a hui held between NRCT and the Waimapu Marae trustees on 3 September 2014; by Janice Harrison as recorded in the minutes of a Waimapu Marae Trust hui held on 10 September 2014; and by Janice Harrison as recorded in minutes of a Waimapu Marae trustees’ hui held on 21 September 2014. The in Court admissions by Carlo Harrison are recorded at 94 Waikato Maniapoto MB 227, 228 and 229 and by Janice Harrison at 94 Waikato Maniapoto MB 231, 232, 233, 235 and 238.

***BNZ 02-1210-0051265-000***

[21] The trading name for this account was the “Waimapu Marae Maintenance Account”. A total of \$17,939.44 was deposited into this account by NRCT. Carlo Harrison had the sole operating authority on the account.

[22] In March and May of 2013 two cash cheques were presented for payment at the Greerton branch of the BNZ in Tauranga. The signatory on both cash cheques was Carlo Harrison, he received funds totalling \$3,500.<sup>13</sup>

[23] Between 2 April 2013 through to and including 19 May 2014 the sum of \$10,520 was withdrawn by EFT-POS transactions at the Riverside Casino in Hamilton and at various bars in Tauranga. Carlo and Janice Harrison have admitted both in and out of Court that they were responsible for those withdrawals.<sup>14</sup>

**Applicable legal principles**

[24] In *Hamilton – Tuahu 3X (Erepeti Marae)*<sup>15</sup> the Māori Appellate Court held that an inquiry pursuant to reg 21 of the Māori Reservation Regulations 1994 contemplates a two stage process. First, the Court determines whether or not to conduct or order an inquiry. Second, if the Court decides to undertake an inquiry it may do so in the manner it thinks fit. Following that inquiry the Court may then invoke its various powers under ss 237-245 of the Act as it thinks fit.

[25] On 2 February 2015 I referred to that two stage process and held that in the circumstances of this case the Court should conduct an ongoing inquiry into the marae, and that I may, amongst other things, enforce the obligations of the trustees and also remove the trustees.<sup>16</sup>

[26] On the question of removal of trustees, pursuant to s 240 of the Act, I refer to the recent Court of Appeal decision of *Rameka v Hall*<sup>17</sup>. In that case the Court of Appeal

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<sup>13</sup> Second affidavit of Judith Wood, 27 February 2015, exhibit “B”.

<sup>14</sup> Above n 12.

<sup>15</sup> *Hamilton – Tuahu 3X (Erepeti Marae)* 34 Gisborne Appellate MB 230 (34 APGS 230) at [8].

<sup>16</sup> 94 Waikato Maniapoto MB 245 (94 WMN 245).

<sup>17</sup> *Rameka v Hall* [2013] NZCA 203.

confirmed the relevant legal test. First, there must be an assessment of the trustees' performance taking into account an assessment of the standard duties and the special nature of Māori land trusts and the provisions of the Act. A prerequisite for removal of a trustee is not a simple failure or neglect of duties, but a failure to perform them satisfactorily.<sup>18</sup> Second, once there are findings of unsatisfactory conduct in relation to a trustee, the Māori Land Court must then exercise a discretion whether or not to remove that trustee. In some cases a defence may be available to a trustee pursuant to s 73 of the Trustee Act 1956.<sup>19</sup>

[27] In this case it is common ground that orders for equitable compensation can be made by the Court. The only matter in dispute is to whom that sum is payable. The Māori Land Court has jurisdiction under s 237 of the Act to grant equitable remedies, including accounting for profit or equitable compensation order.<sup>20</sup>

### **Carlo and Janice Harrison**

[28] Carlo and Janice Harrison are husband and wife. At hui outside of Court and during the Court hearings, both of them have admitted that they were responsible for the misappropriation of trust monies, specifically those monies spent at casinos, pubs and bars in Tauranga.<sup>21</sup>

[29] At times Janice Harrison has attempted to claim the sole responsibility for those withdrawals, at other times Carlo Harrison has. There is no doubt in my mind, that they were collectively responsible for the misappropriation of \$20,660 from BNZ accounts 02-1210-0050908-001 and 02-1210-0051265-000.

[30] Misappropriation of marae monies is concerning, involving as it does, the theft of money rightfully belonging to one's kin group and community. What compounds the abuse of trust vested in Carlo and Janice Harrison is that some of the misappropriated money had as its origin the settlement of Treaty claims. Ngāti Ruahine, along with other

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<sup>18</sup> *Rameka v Hall* above n 17 at [30].

<sup>19</sup> Above n 17 at [96].

<sup>20</sup> *Mikaere-Toto v Te Reti B & C Residue Trust – Te Reti B and Te Reti C Blocks* [2014] Māori Appellate Court MB 249 (2014 APPEAL 249) at [35] and *Adlam v Trustees of the Otonga Whānau Trust – Lot 39A Sec 2A Parish of Matatā* [2015] Māori Appellate Court MB 59 (2015 APPEAL 59).

<sup>21</sup> Above n 12.

Tauranga Moana hapū, had long standing Treaty grievances dating back to war and confiscation which occurred in Tauranga in the nineteenth century. Those claims were hard fought. They were prosecuted before the Waitangi Tribunal over a long period of time between 1997 through to and including 2006. Thereafter protracted negotiations took place. It must be galling to right-thinking Ngāti Ruahine beneficiaries that so soon after receiving Treaty settlement money earmarked for marae renovations, that two persons misappropriated some of it. Neither Carlo nor Janice Harrison provided any excuse or reason for their actions.

[31] Further, this was not an isolated one-off event. In total there were at least 44 instances of misappropriation. From the 02-1210-0050908-001 account there were 17 separate instances of misappropriation via EFT-POS transaction during the period 22 January – 15 February 2013. From the 02-1210-0051265-000 account there were 27 instances of misappropriation via EFT-POS transaction between 2 April 2013 – 19 May 2014.

[32] Carlo and Janice Harrison have on occasion promised to their fellow trustees and the NRCT that money would be repaid. There is no evidence before me that any steps have been taken for the repayment of the misappropriated money.

[33] Based on those events alone I find that there are sufficient grounds to remove Janice and Carlo Harrison as trustees from the Waimapu Marae, pursuant to s 240 of the Act. Their conduct was appalling, they have offered no excuse for their offending and s 73 of the Trustee Act 1956 is not available as a defence to them in that they failed to act reasonably let alone honestly. I also propose to make orders against them in the nature of equitable compensation, which I will discuss later in this decision.

[34] I also note that there are a series of withdrawals of cash by ATM transactions and the presentation of cash cheques which cause concern. When I examined the bank statements I noted that large sums of cash were sometimes withdrawn on the same day as the aforementioned EFT-POS transactions. For example, from the 02-1210-0050908-001 account on 22 January 2013, \$2,000 was withdrawn by EFT-POS transaction at Riverside Casino in Hamilton. On the same day \$800 was withdrawn by ATM transaction at the BNZ in Hamilton, which is situated alongside the Riverside Casino. From the same bank



account on 4 February 2013 the bank statements record four EFT-POS transactions at a variety of bars in Tauranga. On the same day \$400 was withdrawn by ATM at the BNZ in Greerton.

[35] A similar pattern can be seen in the 02-1210-0051265-000 account. On 2 April 2013, \$1,000 was withdrawn at the Riverside Casino in Hamilton. That same day a sum of \$800 cash was withdrawn from an ATM in Hamilton. On 19 April 2014 the sum of \$800 was withdrawn by EFT-POS transaction at Renners Bar Limited in Tauranga. The same day four separate withdrawals of cash are made at various BNZ ATMs in Tauranga totalling \$800. These are simply examples of a similar pattern of withdrawals.

[36] There may be an innocent explanation for those withdrawals but none has been proffered to the Court by either Janice or Carlo Harrison. The withdrawal of large sums of cash via ATM machines, on the same day that EFT-POS transactions were being made at casinos and bars, make me suspicious that the cash was also being spent at casinos and bars.

[37] In addition 21 cheques were presented and cashed by Janice Harrison together with a further two by Carlo Harrison. Accounting evidence was produced to the Court by Joanne Martin in which she provided a line by line breakdown of cash withdrawals. She received some receipts and explanations for cash withdrawals. Her evidence was that \$27,278.29 of unexplained cash withdrawals was made inclusive of the EFT-POS withdrawals from the casinos, pubs and bars.

[38] Janice Harrison in particular attempted to explain away some of the cash cheques as being used to pay trades people who were working on renovations at the marae and to pay for services engaged by the marae trustees. It remains to be seen if her explanations to the Court and to the accountant, Joanne Martin were truthful.

[39] The bank statements also record monies being spent at places which, on the face of it, it is difficult to conceive that money was being properly spent for marae trust purposes. For example from the 02-1210-0050908-001 account, EFT-POS transactions were made at service stations and KFC during January and February 2013. From the 02-1210-0051265-

000 account, EFT-POS transactions were made at garages, service stations, department stores, Pizza Hut and cafés.

[40] A proper forensic inquiry is required to investigate the operation of all three bank accounts in order to ascertain the true level of misappropriation of marae trust funds. Other than the 44 EFT-POS withdrawals at casinos, pubs and bars which Janice and Carlo Harrison have admitted to, there are a number of other withdrawals and use of marae trust funds which warrant further investigation. That requires a forensic exercise best carried out by the New Zealand Police. That is a course of action which remains open to the applicant.

### **Erena Ririnui**

[41] On 4 March 2013, Erena Ririnui was contacted by Judith Wood from the BNZ and advised of the bank's concerns about spending at Riverside Casino, Flannaghan's Irish Pub, Renners Bar, Sky City and various ATMs from one of the Waimapu Marae bank accounts. Initially, Erena Ririnui asked that the account be stopped until a meeting could be held.<sup>22</sup>

[42] The following day she and Janice Harrison called into the Greerton branch of the BNZ. They arranged for one bank account to be closed. Other than that, there was no evidence before me which indicates that Erena Ririnui took any steps to inquire into or investigate the misappropriation of marae trust funds. In evidence Erena Ririnui talked about being contacted by a Bank Manager and closing the account. She said:<sup>23</sup>

I did speak to the bank manager and said that I would go home and talk to the trustees concerned and to bring this matter to the rest of our trustees. However I left that matter with my aunt and uncle and decided that they would come and present the matter to the rest of the trustees in their own time. That is a huge oversight on my part hence why I stood down as a trustee from Waimapu Marae committee on Sunday because to me it wasn't due diligence that, on my part.

[43] The aunt and uncle Erena Ririnui referred to were obviously Carlo and Janice Harrison. At that stage Erena Ririnui had been made aware of suspicious activity occurring in marae trust bank accounts. She should have been aware or at least suspicious

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<sup>22</sup> Diary note in affidavit of Judith Wood, 22 January 2015, exhibit "L" and 94 Waikato Maniapoto MB 208 (94 WMN 208).

<sup>23</sup> 94 Waikato Maniapoto MB 208 (94 WMN 208).

that the misappropriation of those funds was carried out by either Carlo or Janice Harrison, after all Carlo Harrison had the sole operating authority for two accounts.

[44] Having failed to carry out any inquiries at all with the Harrisons, Erena Ririnui then failed to alert her remaining trustees. Inexplicably she then proceeded to co-sign 21 cheques, many in blank albeit from a different bank account.<sup>24</sup> These cheques were presented at Tauranga branches of the BNZ, with \$49,721.79 being paid to Janice Harrison.

[45] Erena Ririnui's response when presented with cheques to sign was less than satisfactory. Her evidence was that Janice Harrison would explain that the cheques were necessary to pay for expenses at the marae or payment of contractors. On no occasion did Erena Ririnui take steps to verify those payments. She would simply sign cheques, many in blank, as she implicitly trusted Janice Harrison. As she said:<sup>25</sup>

And the other part, being an elder of the marae, I put my trust in my aunty.

[46] On no occasion did she ever insist upon further checking before signing the cheques. She also failed to insist that the cash cheques were ever subsequently ratified by the trustees.<sup>26</sup>

[47] Ms Ririnui also failed to appreciate that her various roles conflicted. Not only was she a trustee of NRCT she was also a trustee of the Waimapu Marae Reservation Trust. She was also a beneficiary of both NRCT and the Waimapu Marae. She was a co-signatory on one of the marae bank accounts. Ms Ririnui failed to verify or seek a proper explanation by Janice Harrison in relation to the 21 cheques she signed. Simply put, Ms Ririnui failed to bring an independent mind to this exercise on behalf of the marae trust, rather she would defer to the explanations offered by Janice Harrison.

[48] Erena Ririnui's conduct fell well below that which is considered satisfactory. I consider it entirely appropriate that I make an order removing her pursuant to s 240 of the Act. I do not consider that s 73 of the Trustee Act 1956 provides a defence. Ms Ririnui did not act dishonestly nor has she been the recipient of any marae funds, however her conduct as a trustee was far from reasonable in the circumstances of this case.

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<sup>24</sup> 97 Waikato Maniapoto MB 255 (97 WMN 255).

<sup>25</sup> 97 Waikato Maniapoto MB 255 (97 WMN 255).

<sup>26</sup> 97 Waikato Maniapoto MB 254-256 (97 WMN 254-256).

**Rose Walker**

[49] At the conclusion of the hearing on 8 May 2015, counsel for NRCT submitted that it would be appropriate for Lance Waaka and Rose Walker to be present for questioning on their performance as trustees. NRCT had concerns at the performance of the trustees as a group in particular their management of funds advanced by NRCT and whether or not they had been expended for the purposes for which they had been advanced.<sup>27</sup>

[50] Rose Walker gave evidence at the final hearing of this matter on 9 June 2015. Mrs Walker's late husband was a trustee of the Waimapu Marae and the marae kaumātua. Subsequent to that hearing Mrs Walker has provided a letter of resignation to the Court.

[51] Mrs Walker provided answers as to her conduct as a trustee to both counsel and the Court. It is clear that Mrs Walker was a passive trustee, who took little or no interest in the running of the marae trust. She tended to defer all matters to other trustees.<sup>28</sup>

[52] She also operated a separate bank account for the marae. She gave evidence that from time to time she would provide a cheque or monies to Janice Harrison. She was unsure of the exact amount. At no stage did she inform other trustees that that request had been made. At no stage did she seek any verification of the request from Janice Harrison.

[53] Mrs Walker's conduct was unsatisfactory and fell below that required of an active trustee. Mrs Walker should consider herself fortunate that I propose to act on her resignation rather than remove her as a trustee pursuant to s 240. I do so because there are some key differences between her conduct and that of Erena Ririnui which persuade me that an order for removal is not necessary.

[54] First, Mrs Walker did not have the same conflicts that Erena Ririnui did. Second, Erena Ririnui, in spite of a warning about irregular spending from one of the Waimapu Marae accounts, proceeded to sign numerous blank cheques. Whilst Mrs Walker's conduct is far from blemish free, I find it to be less objectionable than that of Carlo Harrison, Janice Harrison and Erena Ririnui. In addition if I was to remove Mrs Walker as a trustee at this stage, that would leave only one trustee, Lance Waaka. Section 338(7) of the Act requires

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<sup>27</sup> 97 Waikato Maniapoto MB 265-266 (97 WMN 265-266).

<sup>28</sup> 99 Waikato Maniapoto MB 177-182 (99 WMN 177-182).

that where a Māori reservation is vested in trustees it should be vested either in a body corporate or two or more persons.

**Lance Waaka**

[55] Mr Waaka was unable to be present at Court on 8 May 2015 owing to a serious illness. He did present himself and provide a written statement when the matter was next heard on 9 June 2015. Mr Waaka was questioned extensively by counsel for NRCT on a variety of topics including:

- a) Who was responsible for the giving of notice of meetings to fellow trustees?
- b) Who was responsible for the preparation of financial statements?
- c) The obligation to have an annual general meeting;
- d) His response on learning of the misappropriation of trust funds;
- e) His attendance at and resolutions arising from a variety of hui held in September 2014;
- f) Whether Mr Carlo Harrison resigned at an AGM held in 2014;
- g) His knowledge of the marae charter and whether the resolution of this conflict should have been undertaken in accordance with a dispute resolution clause; and
- h) The operation of the Ngāti Ruahine Incorporated Society and whether or not the Incorporated Society was in fact acting as the de facto marae committee.

[56] Following that Mr Waaka was then asked questions by Janice Harrison concerning the marae charter. Carlo Harrison also asked Mr Waaka questions concerning the Incorporated Society and trustee communication.

[57] In answer to questions from the Bench, Mr Waaka confirmed that he did not have any active role in the marae renovation project, had no involvement in the payment of accounts to persons working on the marae project, and, that none of the withdrawals from any of the bank statements were ever minuted for approval at trustee meetings, either prospectively or retrospectively. Mr Waaka confirmed that he was unaware that cash cheques were being withdrawn from the bank accounts.<sup>29</sup>

[58] Counsel for NRCT submitted that Mr Waaka be removed as a trustee.<sup>30</sup> The submission was made that the Waimapu Marae trustees had failed to function as an effective governance body and had failed to manage any grants from NRCT so that misappropriation of funds occurred. Counsel for NRCT also submitted that there was a significant level of dysfunction wherein it appeared that Mr Waaka was alienated from Carlo Harrison, Janice Harrison and Erena Ririnui and unwilling or unable to engage in conflict resolution procedures outlined in the marae charter.

[59] I have considered Mr Waaka's actions and role, not only in the conduct of the marae accounts, but also generally. I have reached the conclusion that there are no grounds that point to Mr Waaka performing his role unsatisfactorily. I have reached that conclusion for the following reasons:

- a) Mr Waaka, although a signatory on one of the bank accounts, exercised no control over them;
- b) He was not a party to the misappropriation of trust monies, Carlo Harrison and Janice Harrison were solely responsible for that;
- c) He was not aware of the ATM withdrawals nor the extensive use of cash cheques by Janice Harrison and Carlo Harrison;
- d) Mr Waaka was not passive. When he became aware of problems with the marae trust funds he went to the bank, obtained bank statements and then gave a copy to two other responsible trustees, Rose Walker and the late Gordon Ranui;

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<sup>29</sup> 99 Waikato Maniapoto MB 176-177 (99 WMN 176-177).

<sup>30</sup> Submissions of counsel for NRCT dated 17 June 2015.

- e) In addition Mr Waaka took action. He sought and obtained a freeze of the 02-1210-0050908-000 account on 1 September 2014. He also made a complaint of misuse of marae trust monies against Carlo Harrison. That prompted a hui on 3 September 2014. Subsequent to a series of hui held in September 2014, Mr Waaka then took action by filing these proceedings in the Māori Land Court.

[60] None of those actions can be criticised, they were entirely appropriate steps to take for a trustee.

**Was Mr Waaka bound to follow a dispute resolution process in the marae charter?**

[61] Mr Waaka has been criticised for a failure to follow a dispute resolution process set out in the marae charter.<sup>31</sup>

[62] The dispute resolution clause in the marae charter reads as follows:

**Resolution of Conflict**

If a conflict cannot be resolved during the course of any meeting, the matter in question shall be referred to a selected panel for that particular purpose. Failing that and with the agreement of the parties concerned, the matter will be referred to an independent arbitrator/mediator approved by all parties.

[63] On or about 29 August 2014 Mr Waaka instructed his solicitors to write to the BNZ at Greerton, Tauranga seeking a freeze on one of the marae bank accounts.

[64] Following that a hui was called at Waimapu Marae on 3 September 2014. Carlo Harrison, Janice Harrison and Erena Ririnui attended. Lance Waaka was unable to attend. Linda Thompson and Irene Ruka attended on behalf of NRCT. The minutes of that meeting record a concern on the part of those present that Mr Waaka had not directed his complaint first to the marae trustees.

[65] Carlo Harrison and Erena Ririnui also provided a report to the Court dated 22 January 2015. Attached to that report is a letter from the late Gordon Ranui dated 4 September 2014. Mr Ranui was the kaumātua for Waimapu Marae and a marae trustee.

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<sup>31</sup> The marae charter purports to have been approved and adopted at a hui held on 21 April 2013.

His letter records that he was upset at the way in which the matter had been handled by Mr Waaka and that “this matter should be handled within the committee and the trust itself.” The final paragraph of his letter reads as follows:

I am aware of the recommended resolution put forward, I have a copy of the minutes of the Hui that was held 3rd September 2014 at the marae. I am in full support and in favour of the resolution put forward. This needs to remain in-house, there is no need to take it outside the marae.

[66] Mr Waaka was cross-examined by counsel for NRCT on the dispute resolution clause contained in the marae charter.<sup>32</sup> In their written submission dated 17 June 2015, counsel for NRCT submitted that Mr Waaka was “unwilling or unable to engage in the conflict resolution procedures provided for in the Marae Charter.”

[67] Alternative dispute resolution clauses often appear in documents when parties have contractually bound themselves to such a process. What Mr Waaka uncovered in late August/September 2014 was a pattern of criminal offending by Janice and Carlo Harrison.

[68] I consider it contrary to public policy to attempt to resolve a criminal or quasi-criminal matter by arbitration, mediation or some other form of alternative dispute resolution. In those circumstances, what is needed is a remedy which only a Court could provide, such as an injunction or orders for trustee removal and equitable compensation.

[69] The authorities show that a stay of proceedings may be granted where there is an agreement to refer a dispute to alternative dispute resolution and the commencement of proceedings is seen to amount to an abuse of process.<sup>33</sup>

[70] In this case no party has sought a stay of proceedings. Even if there had been such an application, it is unlikely I would have granted it for the public policy reason stated earlier. I also note that whilst criticisms have been levelled against Mr Waaka for failing to follow the alternative dispute resolution clause, none of the respondents formally sought to invoke that process themselves.

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<sup>32</sup> 99 Waikato Maniapoto MB 168-169 (99 WMN 168-169).

<sup>33</sup> For examples see *Waterco (NZ) Ltd v Simpson* [2012] NZHC 2361 and *Waters v Perry Foundation* [2013] NZHC 576.



[71] The authorities also demonstrate that the presence of an alternative dispute resolution agreement does not prevent parties applying to the Court for injunctive relief.<sup>34</sup> In this case I granted injunctions on 2 February 2015. One injunction directed that the BNZ freeze all three Waimapu Marae bank accounts. The second injunction directed that the only activity Janice Harrison, Erena Rinui and Carlo Harrison could carry out was to finalise a set of financial accounts being prepared on behalf of the Waimapu Marae trust.

[72] Furthermore to be legally enforceable an alternative dispute resolution clause must be sufficiently certain. If its terms are not clear and certain they may be found to be void.<sup>35</sup> In this case the dispute resolution clause is very broadly drafted. It does not define what constitutes “conflict”. The clause does not specify how someone invokes the conflict resolution process or what the relevant timeframes are. The use of the term “any meeting” suggests that the clause could relate to beneficiary meetings, trustee meetings or any other types of meetings. Further, the reference to a “selected panel” does not identify who would sit on such a panel, who would be responsible for selecting the panel, what process the panel would undertake and what effect their decision would have. Failing the selection of a panel, the dispute resolution clause indicates that with the parties’ agreement, the matter will be referred to an independent arbitrator/mediator approved by all the parties. It is clear that the last part of the clause is voluntary in nature.

[73] Even if I was to find that the dispute resolution clause was binding upon Mr Waaka, which I do not, it is not sufficiently certain to be legally enforceable.

[74] I note that reg 7(g) of the Māori Reservations Regulations 1994 provides that a marae charter can include a provision for the resolution of disputes between *beneficiaries and trustees*. That clause does not make any reference to disputes which occur between trustees. By contrast reg 8(c) provides that trustees of a marae reservation may apply to the Court for any directions in relation to the administration of the reservation, and the powers and obligations of the trustees. Furthermore, marae beneficiaries are not precluded from filing an application with the Court pursuant to reg 21 seeking an inquiry into the administration of a marae reservation.

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<sup>34</sup> See for example *Green Acres Franchise Group Ltd v Rube* [2014] NZHC 402 and *South Pacific Industrial Ltd v United Telecoms Ltd* [2012] NZHC 688.

<sup>35</sup> Boulle, Goldblatt, Green, *Mediation: Principles, Process, Practice* (2nd ed, LexisNexis Wellington, 2008) at 263. See *Braid Motors Ltd v Scott* (2001) PRNZ 508 (HC).

[75] Overall there are strong arguments against the dispute resolution clause being binding and enforceable:

- a) Criminal offending was uncovered, it would be against public policy for such matters to fall within the scope of any alternative dispute resolution process. Those matters can and should only be appropriately dealt with by a Court;
- b) None of the respondents sought a stay of proceedings;
- c) The presence of an alternative dispute resolution clause is no barrier to a Court granting injunctive relief;
- d) The alternative dispute resolution clause in the marae charter is not sufficiently certain to be enforceable;
- e) The Māori Reservations Regulations 1994 contain specific provisions which provide that conflicts between trustees and disputes which arise regarding the administration of the reservation can be referred to the Court for directions and orders, as occurred in this case.

### **Equitable compensation payments – s 237 of the Act**

[76] Counsel for Mr Waaka submitted that orders should be made that Carlo and Janice Harrison make equitable compensation payments to the Waimapu Marae trustees for those funds which have been stolen.

[77] Counsel for NRCT submitted that any orders for equitable compensation should be made to them rather than the Waimapu Marae trustees. They submitted that the marae trustees were in a position “akin to that of a constructive trustee” who holds funds on trust for NRCT until the purpose of the grant has been fulfilled. They say that in this case, involving misappropriation of monies, there is a strong case for an order in the nature of restitution to be made to NRCT.

[78] In reply submissions counsel for Mr Waaka rejected that contention. He says that the deliberate misappropriation of funds by Carlo and Janice Harrison was exacerbated by NRCT failing to impose proper controls and conditions on the grants and a failure to insist upon proper reporting.

[79] I have reached the conclusion that it is appropriate to make equitable compensation orders against Janice and Carlo Harrison. I have decided that the most appropriate entity to whom those payments should be made are the marae reservation trustees of the Waimapu Marae.

[80] The NRCT trust deed reflects the fact that the beneficiaries of that charitable trust are members of the Ngāti Ruahine hapū. The only marae referred to in that trust deed is the Waimapu Marae. It was entirely appropriate that distributions from NRCT were made to the Waimapu Marae for the purpose of marae renovations.

[81] It took some time to clarify precisely what had been paid from NRCT to the Waimapu Marae trustees. Eventually it became clear that NRCT provided grants totalling between \$107,500 to \$109,939.44 in the 2013 and 2014 financial years.<sup>36</sup>

[82] The monies deposited into the Waimapu Marae bank accounts by NRCT were not loans. They were grants to a beneficiary marae intended to be used for marae renovation purposes. What is very clear is that NRCT imposed little or no controls or conditions over the use of those grants. One might have expected for example that NRCT insisted on reports from the Waimapu Marae trustees as to how, to whom and when those funds were being used. There was no evidence put before me that any of those types of controls were sought or put in place.

[83] The situation was exacerbated by the close familial relationships between the NRCT trustees and Janice and Carlo Harrison and Erena Ririnui. Irene Ruka, a trustee of NRCT is the eldest daughter of Carlo and Janice Harrison and a first cousin to Erena Ririnui. Linda Thompson, a trustee of NRCT is Carlo Harrison's sister. Erena Ririnui, a

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<sup>36</sup> Although note the evidence of Judith Wood in her affidavit dated 27 February 2015 who refers to a figure of \$109,939.44.

trustee of NRCT and the Waimapu Marae, is also a niece of Carlo Harrison and Linda Thompson.

[84] Those close familial relations perhaps explain the surprising stance adopted by NRCT at a hui called on 3 September 2014. The minutes of that hui, at which the NRCT trustees attended, record that they were satisfied that a resolution had been reached and that no further action was required. It is ironic that NRCT now insist that equitable compensation payments be made to them when at an earlier date those same trustees were prepared to forgive their relations for the misappropriation of monies that had occurred.

[85] In summary NRCT decided to make grants available to its beneficiary – the Waimapu Marae. That decision was entirely appropriate. However NRCT failed to impose conditions on those grants. They failed to put in place any monitoring of those grants. When criminal offending came to light, one of the NRCT trustees (Erena Ririnui) failed to investigate the matter. When a complaint was made by Lance Waaka, NRCT were prepared to forgive the offending committed by their relations, rather than insist upon a more robust inquiry into the offending that had occurred. Rather than congratulating Mr Waaka for bringing offending to their attention, he was criticised by fellow trustees and NRCT trustees for not keeping the matter “in-house”. For those reason it is entirely inappropriate that any equitable compensation payments be made in favour of NRCT.

[86] It is however appropriate to make orders in the nature of equitable compensation against Carlo and Janice Harrison to repay those funds to the Waimapu Marae trustees. It was from them that the funds were misappropriated. Carlo and Janice Harrison should be ordered to restore those funds back to the Waimapu Marae trustees.

[87] In addition I note that funds were misappropriated from two separate BNZ accounts they being BNZ 02-1210-005098-001 and BNZ 02-1210-0051265-000. At least in respect of the 000 account not all funds received into that account were sourced from NRCT. There are a number of deposits from sources other than NRCT, thus a mixing of funds has occurred. It would be inappropriate in those circumstances to make an order of equitable compensation solely to NRCT.

## Orders

[88] I make the following orders:

- a) pursuant to s 240 of the Act that Janice Jane Harrison, Helen Erena Ririnui and Carlo Tunakairoro Harrison are removed as trustees of the Poike 14 Māori Reservation Trust;
- b) pursuant to s 237 of the Act that Janice Harrison and Carlo Harrison pay the sum of \$20,670 to the Waimapu Marae trustees;
- c) pursuant to s 237 of the Act that possession of Waimapu Marae trust property, namely a mower and trailer currently in the possession of Janice and Carlo Harrison be given to Lance Waaka. This order is to issue immediately pursuant to rule 7.5(2)(b) of the Māori Land Court Rules 2011.

[89] The s 238 and s 19 injunction orders I made on 2 February 2015 at 92 Waikato Maniapoto MB 191 can now be discharged.

[90] I am concerned that Janice Harrison, Carlo Harrison and Erena Ririnui still have operating authority over the marae bank accounts. It is not appropriate that they remain as signatories on the marae bank accounts when they have been removed as trustees. I propose to issue a permanent injunction directing the BNZ to remove them from having any signing or account authority in relation to the marae bank accounts. In doing so I rely upon s 237 of the Act which makes it clear that I can exercise all the powers of the High Court in relation to trusts, including the power to issue an injunction.<sup>37</sup>

[91] Pursuant s 37(3) of the Act I invoke s 237 of the Act and issue a permanent injunction requiring the Bank of New Zealand to:

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<sup>37</sup> For a discussion on the Māori Land Court's jurisdiction to exercise the powers of the High Court see *Mikaere-Toto v Te Reti B & C Residue Trust – Te Reti B and Te Reti C Blocks* [2014] Māori Appellate Court MB 249 (2014 APPEAL 249) at [35] and *Adlam v Trustees of the Otonga Whānau Trust – Lot 39A Sec 2A Parish of Matatā* [2015] Māori Appellate Court MB 59 (2015 APPEAL 59) and *Slade – Parengarenga 3G* [2014] 87 Taitokerau MB 46 (87 TTK 46).

- a) Remove Janice Harrison and Erena Ririnui as the bank signatories and having any account authority in relation to BNZ account number 02-1210-0050908-000 being an account opened in the name of the Waimapu Marae Committee;
- b) Remove Carlo Harrison as the bank signatory and having any account authority in relation to BNZ account number 02-1210-0050908-001 being an account opened in the name of the Waimapu Marae Committee; and
- c) Remove Carlo Harrison as the bank signatory and having any account authority in relation to BNZ account number 02-1210-0051265-000 being an account opened in the name of the Waimapu Marae Maintenance Account. The injunction order is to issue immediately pursuant to rule 7.5(2)(b) of the Māori Land Court Rules 2011.

[92] I understand Lance Waaka continues to have an operating authority in relation to BNZ account number 02-1210-0050908-000. Steps need to be taken immediately by Mr Waaka and the BNZ to enable him to have operating authority in relation to BNZ account number 02-1210-0051265-000, being the only other Waimapu Marae BNZ account which I understand remains open.<sup>38</sup>

[93] I direct the Registrar to arrange for service of the new injunction order upon the BNZ, at their Greerton branch in Tauranga, upon all counsel and Janice Harrison, Carlo Harrison, Erena Ririnui and Rose Walker at their last known addresses provided to the Māori Land Court.

#### **Further directions – s 237 of the Act**

[94] Given the removal orders I have made there needs to be a process put in place leading towards the election of new trustees. What follows are a series of directions pursuant to s 237 of the Act.

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<sup>38</sup> Affidavit of Judith Wood, 21 January 2015.

[95] To that end I direct the Registrar of the Māori Land Court to liaise with Mr Waaka to enable an AGM to be held no later than 2 November 2015. I direct that the AGM is chaired by the Registrar of the Māori Land Court. Minutes are also to be taken by the staff of the Māori Land Court. I would expect that the following items will be listed on the agenda for that date:

- a) The outcome of Mr Waaka's Court application;
- b) Financial reports. To that extent the Registrar should liaise with Ms Joanne Martin of Admin and Accounting Solutions Limited to see if a financial report can be made available for that AGM; and
- c) Trustee election. There are six vacancies. They are based on the three s 240 removals that I have made in this case and the proposed resignation of Rose Walker. I also made orders reducing the number of trustees on 8 May 2015 as two trustees are deceased, they being Te Reohau Warena and Te Ataiti Waaka.<sup>39</sup>

[96] I have looked at the process for nominating and selecting marae trustees outlined in the marae charter. The marae charter provides that every three years the marae trustees will give 14 days notice of a general meeting of beneficiaries to be advertised in the Bay of Plenty Times. The notice period is incorrect and ultra vires the Māori Reservations Regulations 1994. Regulation 19 requires that 21 days prior notice of the meeting be given in a newspaper circulating in the district and any other such additional notice as directed by the Court at any time.

[97] I make the following further directions concerning the nomination of trustees:

- a) Notice of the AGM is to be given on two separate occasions. Advertisement must appear in the Bay of Plenty Times, the first at least 28 days prior to the AGM. The second advertisement is to appear at least 21 days prior to the AGM. The marae trustees are responsible for the cost of the advertisements;

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<sup>39</sup> 97 Waikato Maniapoto MB 269 (97 WMN 269).

- b) Nominations can be received from the floor. All nominees will be expected to make themselves available for questioning by any beneficiaries who attend the AGM;
- c) A list is to be compiled recording the votes for each of those persons who are nominated;
- d) I direct that all persons nominated must fill out a trustee consent form which is available from the Māori Land Court;
- e) Thereafter I direct the Registrar to bring an application pursuant to ss 239 and 338(7) of the Act for the appointment of new trustees. That matter is to be heard in the December sitting of the Court in Tauranga. At that time I will also formally deal with Rose Walker's resignation.

[98] Finally it should be recorded that there is no guarantee that the six highest polling candidates will be automatically elected as trustees. Given the considerable level of dysfunction that has existed at this marae and the high levels of partiality demonstrated in this case, the Court will undoubtedly be concerned to ensure that those persons appointed have the best interests of the marae at heart and are able to progress the marae without falling into unnecessary division.

Pronounced in open Court at 3.45 pm in Hamilton on the 21st day of July 2015.

S R Clark  
**JUDGE**