

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

A20140005827

A20140006442

UNDER Sections 19 and 18(1)(a), Te Ture Whenua
Māori Act 1993

IN THE MATTER OF applications in respect of the Māori
freehold land known as Kapenga H

BETWEEN CHRISTOPHER GRANT, HELEN
JONES, JOHN WHAREPAPA AND ERIK
NUKU as responsible trustees of Kapenga
H block
Applicants

AND RONALD JAMES FREDERICK
LIDGARD and LINDA GAIL LIDGARD
the directors of LIDGARD FARMS
LIMITED
Respondents

Hearings: 11 July 2014
(Heard at Rotorua)

Appearances: Mr G Dennett, for the applicants
Mr J Koning, for the respondents

Judgment: 7 August 2014

DECISION AS TO COSTS

[1] The proceedings related to the position of landlord and tenant at the end of a lease of dairying land. The applicant Kapenga H trustees, seek an award of costs on the basis that costs follow the event and cite the normal and usual authorities which set out the principles involved. They do not need repeating in this decision.

[2] Although these trustees identify themselves as the successful parties, that is only true in part.

[3] There were four real issues to be dealt with during the course of the hearing.

First, the question of whether an interim injunction should issue;

Secondly, whether the cowshed plant was a fixture upon the land, or whether the tenant was required to leave it on the land in terms of the lease.

It could fairly be said that the applicant was successful on these matters and that issue two occupied the majority of hearing time, though not necessarily the majority of preparation for trial.

Thirdly, the question of the valuation of a dwelling on the property and what should happen to that dwelling. It became clear during the hearing that the applicant could not succeed because of jurisdictional issues and the application was in any event misfounded in terms of the contractual relationship between the parties.

Fourthly, there was an application for breaches of the lease. Suffice to say that even as the hearing commenced the respondents did not know the nature of the case that they were facing and the matter was resolved.

Fifthly, a claim for rental due to the 31st of May 2014. This matter was in part a mistake by the landlords agent and in any event rent was paid.

[4] The amount claimed for legal expenses for the applicant is not unreasonable. I regard the matter in a broad way as having been something in the nature of a draw. I have

in mind that a particular witness brief was not provided to the respondents until the day of trial and that the alleged breaches in cause 4 above were identified far too late for the respondent to have the opportunity to prepare. Taking a broad view however I put those matters to one side and I believe justice is best served in the particular circumstances of this case if costs lie where they fall.

[5] I decline to order costs.

Pronounced in open Court in Rotorua on this 7th day of August 2014

P J Savage
JUDGE