

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

A20130002403

A20130001410

UNDER	Sections 19(1)(a) and 238, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Awarua o Hinemanu Trust
BETWEEN	NGAHAPEPARATUAE LOMAX First Applicant
AND	WILSON APATU AND ASHLEY APATU First Respondents
AND	FLORENCE MARIA KARAITIANA Second Applicant
AND	JAMES MATENGA, LISA TUHI, RANUI TOATO, ROBERT HENRY SYDNEY SMITH AND WINIPERE EVA MAUGER TRUSTEES Second Respondents

Hearing: 3 April 2013
(Heard at Hastings)

Appearances: Wero Karena, for Mr Ngahape Lomax
Mr Hunt for Ashley Apatu
Florence Maria Karaitiana, in person

Judgment: 12 April 2013

RESERVED JUDGMENT OF JUDGE L R HARVEY

Introduction

Application for Injunction

[1] Ngahape Lomax has filed an application for injunction against Wilson Apatu. He claims that Mr Apatu is unlawfully occupying a dwelling known as the Hinemanu Hut on the Awarua o Hinemanu Trust's land ("the Trust"). Mr Lomax says while Mr Apatu had been authorised to occupy the dwelling for a short period of time, this has now been unlawfully extended through the actions of his father, Ashley Apatu. Mr Lomax further claims that,

because of past circumstances, Mr Apatu is not an appropriate person to be living on the land. In addition, Mr Lomax says that Mr Apatu's presence is likely to or has interfered with the legitimate activities on the land of Wero Karena, who has an informal license to occupy and use the land.

[2] Ashley Apatu denies the claims. He says that his son Wilson Apatu was given permission to reside in the dwelling on Trust land by at least one of the trustees, Mrs Mauger, along with several owners in the land. Mr Apatu says that his son's right to occupy stems from both the authority of his aunt, Mrs Mauger, other owners and also because Wilson Apatu is a descendant of a current owner. Moreover, Mr Apatu claims that his son performs important services for the Trust including monitoring commercial activities carried out, it is said, without authority by Mr Karena. Mr Apatu also says that his son is knowledgeable in forestry matters and also assists the Department of Conservation ("DOC") from time to time dealing with stoat trapping, control and eradication.

[3] In addition, Mr Apatu says that Mr Karena has been using the Trust land without authority and contrary to the terms of a license entered into by three of the trustees and Hawkes Bay Helicopters Limited ("HBH"). Mr Apatu's contention is that it is HBH who has the right to the land and not Mr Karena. According to Mr Apatu, HBH are content for Wilson Apatu to remain on the land.

[4] For his part, Mr Karena denies the claims made by Mr Apatu. He says that he is the legitimate occupier of the land following a process of tendering undertaken by the trustees where he was successful and has been issued with a draft license for consideration. Mr Karena also says that he provided amendments to the proposed license to the trustees but has not heard anything since. Mr Karena denies that he has used the land free of charge and instead says that he made a payment of \$5,000 to Mr Lomax by way of deposit but that deposit was returned to him by Mr Lomax because of the latter's concern over the security of Trust funds.

[5] Mr Karena states that Awarua o Hinemanu is effectively landlocked and the only way to obtain access is either from DOC or by trespassing through Te Koau, a block of land adjacent to Awarua o Hinemanu where Mr Karena has been given a lease. Mr Karena claims that the only way Wilson Apatu can have access to Trust lands is by trespassing on Te Koau. For completeness, Mr Karena says that while he initially supported Wilson Apatu's occupation of the Hinemanu Hut on a short term basis, and was even prepared to make available a suitable site on Te Koau for Wilson Apatu, a subsequent breakdown in relations

between Ashley Apatu, his son and Mr Karena led to a withdrawal of that offer of assistance. Mr Karena emphasised that Wilson Apatu's continuing occupation of the Hinemanu Hut was causing commercial loss to his hunting operation on Te Koau and through his activities over Awarua o Hinemanu.

Application for enforcement of obligations of Trust

[6] Florence Karaitiana has filed an application to enforce the obligations of Trust. She says that the trustees have failed to hold general meetings of owners contrary to the terms of the trust order. In addition, Ms Karaitiana claims that the trustees have failed to account for Trust funds. She refers to bank statements that have been obtained dated May 2010, which disclose multiple withdrawals from the Trust's accounts. Ms Karaitiana also says that the Trust appears to be dysfunctional and accordingly urgent intervention is required to secure the Trust's assets.

[7] At the hearing four out of six of the current responsible trustees were present. Mr Lomax stated that he was recently advised by the chairperson of the Trust, Mr Mātenga, that despite receiving over \$200,000 in funds as part of Ngā Whenua Rāhui, Mr Mātenga advised that the Trust was "broke". Mr Lomax said that he had no involvement in the accounts for the Trust and had no knowledge of any transactions which may or may not have resulted in loss to the Trust. The inference is that these funds have been misappropriated. Mr Toatoa said that he had resigned soon after his appointment because of his concerns over financial accountability amongst his fellow trustees. Mr Toatoa acknowledged however, that his resignation had not been filed with the Court and accordingly he remains a responsible trustee.

[8] Lisa Tuhi confirmed that she had been the Trust secretary for a period but emphasised that she had no knowledge of the transactions on the Trust bank statement dating back to May 2010. In her recollection, the annual accounts to 31 March 2010 were the most recent record of the Trust's financial position. Ms Tuhi confirmed that there had been few meetings of owners and that her recent involvement with the Trust was minimal. Mrs Mauger confirmed that she had been the Trust treasurer for several years but due to illness she had not been closely involved with the management of the Trust. Mr Hunt on behalf of Mrs Mauger had recently filed a complaint with the Police regarding the lack of accountability of Trust funds.

Issues

- [9] The issues for determination are:
- (a) Should an application for injunction against Wilson Apatu be granted?
 - (b) Are any of the purported licences or agreements to occupy Trust land valid?
 - (c) Should any of the current trustees be replaced or removed?
 - (d) Should replacement or additional trustees be appointed?

Background

[10] Awarua o Hinemanu Trust is a block of Māori Freehold land 2,561.8122 hectares in area. The owners were determined by a Freehold Order on 8 June 1992.¹ The land is administered by an ahu whenua trust which was established on 14 May 1991.² The original trustee was the Māori Trustee.³ The current trustees are James Mātenga, Lisa Tuhi, Ngahapeparatuae Lomax, Ranui Toatoa, Robert Smith and Winipere Mauger.⁴

[11] According to the most recent accounts on the Court file, dated 31 March 2010, the Trust received gross income of \$7,270 from which expenses of \$33,592 were deducted. The Trust apparently did not pay any tax. This left net proceeds of \$192,857.00. The statement of their financial position discloses that the Trust had assets of \$194,464.00, less liabilities of \$1,607.00 and net equity of \$192,857.00. It would appear that the Trust's principal asset, its land, has not been included in these calculations.

[12] It is said that on 23 May 2006, following a period of discussion and negotiations, the Trust entered into a Ngā Whenua Rāhui Kawenata and received \$230,500.00.

[13] An undated license between three of the trustees, Messrs Mātenga and Lomax, and Ms Tuhi and HBH was signed in November 2011. The terms of that license are as follows:

¹ 133 Napier MB 17-22
² 130 Napier MB 130
³ 130 Napier MB 130
⁴ 182 Napier MB 240-242

Term	Meaning
Client	The customers and invitees of the Licensee who have chartered the Licensee to fly by helicopter to the land
Commencement Date	1 December 2011
Default Rate	14% per annum
Expiry Date	30 November 2016
Land	The Awarua-O-Hinemanu Block being the Māori general land described in Plan ML 2657 lodged with the Takitimu Māori Land Court in the Hawkes Bay Land District
Licence Fee	\$75.00 per Client per day (inclusive of GST) subject to review in accordance with clause 5.
Licence Fee Payment Date	7 days prior to the commencement of each recreational trip
Licence Fee Review Dates	1 December 2012 and 1 December 2014
Permitted use	The use and enjoyment of the Land for recreational purposes (including the hunting of deer)

[14] As foreshadowed, Mrs Mauger, the Trust treasurer provided bank statements dated 7 May 2010 to 26 October 2012. Those bank statements disclose numerous withdrawals and transfers of Trust funds with a reference “M Arthur” and an address for the bank statements as 11 Inlet View, Onepoto, Porirua. It was said that this address belonged to Mihi Arthur, the partner of Mr Matenga.

[15] According to the evidence of the trustees, the Trust has not held a general meeting of beneficial owners for at least six years. In addition, annual accounts for the 2011, 2012 and 2013 financial years have not been filed.

The case for Ngahapeparatuae Lomax

[16] Mr Lomax claimed that Ashley Apatu had approached him several years ago with a request that his son Wilson Apatu be permitted to occupy the Hinemanu Hut. Mr Lomax further says that he and the trustees had some sympathy for Mr Apatu because his son had been involved in a fatal firearms incident and was acquitted of serious criminal charges due to health related issues. However, Mr Lomax says that the right of occupation was only ever intended to be of a limited duration.

[17] Subsequently, Mr Lomax claimed that he was provided with information which suggested Wilson Apatu's continuing occupation of the Hinemanu Hut was causing serious concern to both Mr Karena and other users of the land due to Mr Apatu's conduct. The short point was that Mr Lomax claimed Wilson Apatu was no longer authorised to remain at Hinemanu Hut and was required to vacate the dwelling but had refused and/or failed to do so. Mr Lomax says that the Trust was suffering a loss of income as a consequence of Mr Apatu's continued unauthorised occupation of Hinemanu Hut and accordingly the Court should now issue an injunction to have Mr Apatu removed.

[18] For completeness, Mr Lomax also pointed to the fact that he had attempted to involve the Police to have Mr Apatu trespassed from the land. However, that action had failed because the Police, he says, had required that any trespass notice be signed by all trustees.

The case for Wero Karena

[19] Mr Karena, speaking in his own right, endorsed the evidence of Mr Lomax. He also claimed that Mr Apatu's continued occupation was causing loss not only to his use of Awarua o Hinemanu lands but also the neighbouring Te Koau block over which he had a lease.

[20] In addition, as foreshadowed, Mr Karena contended that as Awarua o Hinemanu was effectively landlocked, the only way Wilson Apatu could gain access to the Hinemanu Hut was by trespassing on Te Koau. Alternatively, there was vehicular and foot access through DOC land but this had a significant forestry gate to prevent access without authorisation. Mr Karena pointed out however, that the gate he had erected had been torn down.

[21] Regarding the right to occupy Awarua o Hinemanu lands, Mr Karena stated that when the land was put up for public tender he responded and was interviewed by the trustees at a meeting held at Wairākei near Taupō. Mr Karena says that a short-listing occurred and he was interviewed a second time, following which he was advised by the Trust that his tender was successful. Mr Karena then says a draft license document was sent to him by the Trust's then solicitors which he amended and returned. Mr Karena's evidence was he received no further reply from either the trustees or the solicitors and assumed that the trustees were content for him to commence his use of the land.

The case for Wilson Apatu

[22] Mr Hunt, along with Ashley Apatu, made submissions and gave evidence in support of Wilson Apatu's continued occupation of Hinemanu Hut. Mr Apatu said that his son had been given permission to occupy the land by one trustee, Mrs Mauger, as well as many owners of the land. A document was produced which included several names of owners as well as the signature of Mrs Mauger to give authority to Wilson Apatu to occupy Hinemanu Hut.

[23] Mr Apatu also claimed that, while Wilson Apatu had faced several health related challenges, including the fatal firearms incident referred to previously, his whānau had been supported by many of the owners in attempting to find a practical solution to the circumstances facing Wilson Apatu. This involved living in an isolated wilderness location where, it was said, the skills and expertise of Wilson Apatu could be utilised for the benefit of the owners. Mr Apatu underscored that his son was knowledgeable about forestry matters and was assisting the Trust in attempting to contain a fungal outbreak that was threatening to destroy many of the trees on the land. Mr Apatu also pointed out that his son would assist DOC from time to time in the control and eradication of stoats and other pests.

[24] Equally importantly, Mr Apatu said that his son was also fulfilling a kaitiaki and monitoring role to keep a record of access over Trust land by various users including hunters brought in by HBH. Mr Apatu emphasised that in his view, Wilson Apatu was performing a valuable service on behalf of the Trust while at the same time being able to readjust to present circumstances and put the unfortunate past incident behind him.

The case for Florence Karaitiana

[25] Ms Karaitiana says that the trustees have failed to hold general meetings of owners for many years. She also says that the trustees have failed to provide accounts, reports and details of activities on Trust land. Ms Karaitiana says that owners have become concerned at the lack of accountability of the trustees and their failure to provide information to the owners when requested.

[26] Ms Karaitiana further claims that, on receipt of information filed by Mrs Mauger, many of the owners are now deeply concerned as to the activities of the trustees. In particular, she says that the owners have serious concerns regarding the financial

accountability of the trustees and the multiple withdrawals that have been made on the Trust's account and Mr Lomax's evidence that the chairperson Mr Matenga advised them that the Trust was now "broke".

[27] Following an adjournment and a discussion amongst those owners present, Ms Karaitiana confirmed that those owners remain concerned and requested that the Court immediately intervene and appoint additional or replacement trustees to promptly deal with the issues of occupation and use of the Trust land which were now before the Court. Ms Karaitiana noted that she had been nominated as replacement trustee along with Mr Toatoa and Jamie Karetu.

Discussion

Should an application for injunction against Wilson Apatu be granted?

The Law

[28] Section 19 of Te Ture Whenua Māori Act 1993 states:

19 Jurisdiction in respect of injunctions

(1) The Court, on application made by any person interested or by the Registrar of the Court, or of its own motion, may at any time issue an order by way of injunction—

(a) Against any person in respect of any actual or threatened trespass or other injury to any Maori freehold land [, Maori reservation, or wāhi tapu]; or

(b) Prohibiting any person, where proceedings are pending before the Court or the Chief Judge, from dealing with or doing any injury to any property that is the subject-matter of the proceedings or that may be affected by any order that may be made in the proceedings; or

(c) Prohibiting any owner or any other person or persons without lawful authority from cutting or removing, or authorising the cutting or removal, or otherwise making any disposition, of any timber trees, timber, or other wood, or any flax, tree ferns, sand, topsoil, metal, minerals, or other substances whether usually quarried or mined or not, on or from any Maori freehold land; or

(d) Prohibiting the distribution, by any trustee or agent, of rent, purchase money, royalties, or other proceeds of the alienation of land, or of any compensation payable in respect of other revenue derived from the land, affected by any order to which an application under section 45 of this Act or an appeal under Part 2 of this Act relates.

(2) Notwithstanding anything in the Crown Proceedings Act 1950, any injunction made by the Court under this section may be expressed to be binding on the Maori Trustee.

(3) Any injunction made by the Court under this section may be expressed to be of interim effect only.

(4) Every injunction made by the Court under this section that is not expressed to be of interim effect only shall be of final effect.

[29] It is trite law that applications for injunction require an assessment of whether or not there is a serious question to be tried and whether or not damages would be an appropriate remedy. Whether the balance of convenience favours the plaintiff must also be determined, however, before such an assessment can be made the plaintiff must satisfy the Court that the claim is neither frivolous nor vexatious and that there is a serious question to be tried, with a further consideration being the overall justice of the case.⁵ The general approach to determining whether there is a serious question to be tried was that set out in *Henry Roach (Petroleum) Pty Ltd*.⁶

In order to determine whether there is a serious issue to be tried it is necessary to consider what is the applicable law and whether there are arguable differences concerning it, what the facts are said to be on the opposing sides, and where the issues lie, and whether there is a tenable combination of resolutions of the issues of law and fact on which the plaintiffs could succeed.

[30] New Zealand courts have also adopted this reasoning, emphasising that an assessment of whether or not a serious question to be tried in fact existed could not be brushed over lightly.⁷ In *Roseneath Holdings Ltd v Grieve*, the Court of Appeal summarised the essential purpose of an interim injunction:⁸

The object of an interim injunction is to protect the plaintiff from harm occasioned by any breach of rights, that is the subject of current litigation, for which the plaintiff might not be adequately compensated by an award of damages by the Court, if successful at the trial. Against that object it is necessary to weigh the consequences to defendants of preventing them from acting in ways which the trial may determine are in accordance with their rights. The well established two stage approach to addressing applications for interim injunctions involves first, ascertaining whether there is a serious question to be tried and secondly, considering the balance of convenience if the relief sought is granted.

⁵ *Klissers Farmhouse Bakeries Ltd v Harvey Bakeries Ltd* [1985] 2 NZLR 129

⁶ [1976] VR 309 at 311.

⁷ *F Hammond Land Holdings Ltd v Elders Pasture Ltd* and *Shivas v BTR Nylex Holding NZ Ltd*.

⁸ [2004] 2 NZLR 168 at 176

[31] Before any determination of whether or not the application for injunction can succeed, it is necessary to examine whether or not any of the current occupiers or users of the Trust land have a valid and enforceable legal right to be in occupation.

Are any of the purported licences or agreements to occupy Trust land valid?

[32] Clause xiii of the trust order, which deals with the powers of the trustees to grant leases or licences of Trust property, states:

To lease the whole or any part or parts of the said lands from year to year and for any term of years at such rent and upon such covenants and conditions as the Trustees shall think reasonable and to any person, corporate body and/or Her Majesty the Queen and to accept surrenders of and vary the leases thereof.

[33] Mr Apatu claims that one of the trustees and several owners have given written permission for Wilson Apatu to occupy Hinemanu Hut. Mr Karena says that a draft license was provided to him by the Trust's then solicitor which he amended and returned. Since then he says he has received no formal reply from either the Trust's solicitor or the trustees themselves. Mr Hunt submits that HBH have a licence dated November 2011 which has been signed by three of the six trustees and gives a right of use of the land for five years to the licensee.

[34] There is no evidence currently before the Court of any minutes of a trustees' meeting authorising the entry by the Trust into any lease, license or right to occupy to any party. The document prepared in favour in Wilson Apatu for a right to occupy Hinemanu Hut was signed by one trustee. In the absence of the signatures of four of the trustees or appropriate minutes or a resolutions signed by a majority of trustees, it is difficult to see how the purported right to occupy is valid.

[35] Mr Karena acknowledges that he has no formal written license signed by a majority of trustees or a trustees' agent or their representative supported by minutes of a properly convened trustees meeting or a separate resolution to that effect. In the absence of such resolutions or the signatures of at least four of the trustees on any license agreement, once again it is difficult to see how such an agreement can be valid.

[36] Mr Hunt made a submission that Vaughan Nairn, the representative of HBH, at a recent meeting acknowledged that the purported license between that company and the Trust was invalid. Regardless of that acknowledgement, in the absence of at least four trustee's

signatures on the license or appropriate resolutions, I cannot see how this purported license is valid either.

[37] For completeness I note that no submissions were made by any party at this juncture of any claim of ostensible authority.

[38] In my assessment, none of the so called leases, licences or other agreements are valid. Accordingly, I do not see how there is any right to occupy or use the Trust land by any party until such time as a properly convened meeting of trustees gives authority for the entry into of any lease, license or other agreement.

Should any of the current trustees be replaced or removed?

[39] Throughout the hearing the word “dysfunction” or “dysfunctional” was used to describe the Trust by both owners and current trustees. The undisputed facts, at this point in time, are that the Trust has not held a general meeting of owners for in excess of five years. The trustees, also contrary to the trust order, have not filed the 2011 or 2012 annual accounts with the Registrar. The evidence of Mr Lomax is that he was told by the Trust’s chairperson that the Trust is “broke”. The bank statements filed by Mrs Mauger disclose numerous withdrawals and transfers of Trust funds exceeding \$50,000 over a two year period. Four of the six trustees who were present at the hearing had no knowledge of the Trust’s accounts and the recent series of transactions and withdrawals, which, it was said, were markedly different from the Trust’s usual practices. For completeness I note Mr Hunt, at Mrs Mauger’s request it is said, filed a complaint with the Police regarding the use of the Trust account.

[40] Ms Tuhi gave evidence that the Trust’s usual practice was to review accounts, authorise those accounts for approval and then have them paid through the Trust’s accountant with the sign off of either Mr Mātenga or Mrs Mauger. Ms Tuhi also confirmed that she had no knowledge of the Trust’s present financial status. Mr Toatoa expressed dismay but was unsurprised that the Trust found itself in its present position. He said that he had resigned soon after being appointed and admits that he was concerned about the activities of some of his fellow trustees and financial accountability. Mr Toatoa acknowledged his resignation had not been filed nor processed by the Court and accordingly he remained a responsible trustee. Mr Toatoa also emphasised that he wished to remain involved with the Trust and now do all he could to resolve the many immediate challenges currently facing the Trust.

[41] The owners and the trustees have described the Trust as dysfunctional. In the absence of compelling evidence to the contrary, I agree. That the Trust has failed to conclude formal leases and licences with users of Trust land to secure the Trust's ongoing income is of concern. That the majority of trustees who attended the hearing profess no knowledge as to the whereabouts of in excess of \$200,000 of Trust funds can only be deeply alarming for the owners. Four trustees were notified of the hearing and two of the trustees failed to attend or provide any explanation as to their absence. I indicated to the trustees present that they were all joint and severally liable and given that a Police complaint had now been made, they may also be exposed to criminal prosecution.

[42] In summary, the evidence currently before the Court paints a grim picture for the trustees. It is alleged that over \$200,000 belonging to the Trust, being its principal asset outside of the corpus lands, has been dissipated. Four of the current trustees confirm that they have given no authority for the use of those funds. In addition, there is currently no valid lease, license or other agreement to secure the Trust's income at one of the most commercially important and valuable periods in the Trust's financial year. In short, the Trust is at risk of considerable future loss as well as serious question marks over the location of in excess of \$200,000 in cash. For these two reasons I am satisfied that urgent intervention is necessary and in the best interests of the beneficial owners. I am also satisfied that there is sufficient evidence before the Court to warrant the removal of all trustees. In the circumstances I cannot see how any other step is appropriate.

[43] While it is well settled that the Court should not take the serious step of removing trustees until they have been notified and given the opportunity to make submissions, urgent action is required. In addition, it is also trite law that the Court should not appoint trustees unless s 222 of the Act has been satisfied. This provision requires an appointee to have the necessary ability, expertise and knowledge for the role as well as being broadly acceptable to the beneficiaries. The only exception to these general principles, as foreshadowed, is where immediate intervention is needed to secure the assets of the Trust which may be at risk of loss, dissipation or inappropriate and unlawful activity.

[44] In fairness, the current responsible trustees have the right to dispute the evidence and to make further submissions in their defence. They are also entitled to apply to the Court for relief under s 73 of the Trustee Act 1956. They have until the next sitting of the Court at Hastings to take such advice and attend Court to make any further submissions. The trustees are also entitled to petition the Court for their reinstatement in due course.

[45] The two trustees who failed to appear will be issued with a summons to attend Court by the Registrar as soon as possible. Mihi Arthur should also be issued with a summons. I strongly urge all trustees and Ms Arthur to take legal advice urgently.

Should replacement or additional trustees be appointed?

[46] There are presently six responsible trustees. Two have failed to attend Court to answer serious allegations over trustee accountability and for the issue of injunctions. Four trustees attended Court and one of them, Mr Toatoa, expressed surprise that he was still a responsible trustee given that he had resigned soon after his appointment. That evidence was not contradicted by the other trustees. One of the trustees, Mrs Mauger, is subject to an enduring power of attorney and it is said has suffered various health challenges including the after and ongoing effects of being involved in a serious car accident some time ago. Another trustee, Ms Tuhi expressed concern at recent events and also intimated a desire to do all she could to assist the Trust in recovering from and resolving its present challenges. As secretary, Ms Tuhi also acknowledged that during absences from Trust meetings minutes were taken by either Mrs Mauger or Mihi Arthur, a partner of Mr Mātenga. Mr Lomax, as foreshadowed, stated that he did not know what had been going on with the Trust's accounts in recent months and was concerned with the apparent loss of Trust funds.

[47] Of the current trustees, in my assessment only Mr Toatoa demonstrated the necessary ability, expertise and knowledge to efficiently dispose of the serious challenges facing the Trust. His work experience may also assist the Trust. Mr Apatu raised an allegation of conflict of interest against Mr Toatoa claiming that the latter had already shown his hand in favour of Mr Karena. Mr Apatu also indicated that he would be available for appointment as a trustee. Given that one of the central issues facing the Trust was whether or not his son Wilson Apatu had a legitimate right to occupy Hinemanu Hut, I raised with Mr Apatu the issue of conflict of interest for himself.

[48] In any event the issues facing the Trust are serious. As foreshadowed, I consider urgent intervention is necessary to protect the interest of the owners. I do not accept that any of the current trustees, with the exception of Mr Toatoa, are able to attend promptly and efficiently to securing the Trust's assets and ensuring that the appropriate agreements are in place as soon as possible. While it might be suggested that Mr Toatoa is just as culpable as his colleagues, it will be remembered that he formally resigned and not unsurprisingly, expected the Trust chairperson and secretary to process his application for resignation through the Court in a timely manner. They failed to do so and did not, also unsurprisingly,

notify him of future trustee meetings. Why would they when Mr Toatoa had resigned? So while technically he remained a trustee, for all intents and purposes he had resigned and his fellow trustees conducted themselves as if he had resigned by not inviting him to subsequent meetings.

[49] I appoint Clinton Hemana and Florence Karaitiana as responsible trustee by way of replacement on an interim basis only until the next sitting of the Court at Hastings or further order of the Court. The trustees are directed to meet with Mr Karena and Mr Nairn and any other third party they consider appropriate, to conclude on an urgent basis an appropriate lease or license of the Trust's land. In addition, the trustees are directed to include in their deliberations the request by Wilson Apatu to continue to occupy Hinemanu Hut, taking into account the rights and interests of any head lessee or licensee.

[50] If any of the current purported users and occupiers of the Trust's land, including Messrs Karena, Nairn and Apatu are unsuccessful in their applications then I expect the responsible trustees to devise a transition process appropriate to the circumstances taking into account all relevant considerations and past history.

[51] The evidence before the Court, as mentioned, discloses that the Trust is without means. There is little point in requiring trustees to effect legal agreements with third party users without legal advice. I appoint per ss 40, 69, 70 and 98 of the Act, Cara Bennett, solicitor of Hastings, as counsel to represent the trustees in their negotiations with any third parties as to the future use of the Trust's land. Ms Bennett should forthwith provide an appropriate estimate for approval.

[52] Once the agreements for use of the Trust's land have been finalised then it would be appropriate for the trustees to convene, with the Registrar's assistance, a general meeting of owners. The purpose of such meeting will be to disclose to the owners the claims of loss of Trust funds, the use of Trust lands and consideration of variations to the trust order.

[53] While there may be little point at this juncture of issuing an injunction over the Trust's account, in the circumstances and out of an abundance of caution I consider that at the very least the Court should issue appropriate orders until such time as genuine clarity around the access to and use of trust funds can be obtained.

Decision

[54] Florence Karaitiana and Clinton Hemana are appointed interim responsible trustees by way of replacement for all existing responsible trustees, with the exception of Ranui Toatoa, for six months or until further order of the Court, per s239 of Te Ture Whenua Māori Act 1993. Mr Hemana's appointment is also made per ss40, 69, 70 and 98 of Te Ture Whenua Māori Act 1993.

[55] With their consent, Lisa Tuhi, Ngahapeparatuae Lomax and Winipere Mauer are appointed advisory trustees until further order of the Court per s239 of Te Ture Whenua Māori Act 1993.

[56] For the avoidance of doubt all current trustees, with the exception of Mr Toatoa, are removed per s240 of Te Ture Whenua Māori Act 1993.

[57] The responsible trustees are directed to conclude agreements with third party lessees or licensees of Trust land as soon as possible and are to provide an update to the Court in person at the next sitting to be held in Hastings on 1 May 2013.

[58] The responsible trustees are also directed to conclude appropriate transition arrangements with any current users or occupiers of Trust land that may be unsuccessful in their applications for continuing use and occupation.

[59] Cara Bennett, solicitor of Hastings, is appointed as counsel to represent the responsible trustees in their negotiations with any third parties as to the future use of the Trust's land and is to provide a report to the Registrar per ss 40, 69, 70 and 98 of Te Ture Whenua Māori Act 1993. Counsel should forthwith provide an appropriate estimate for approval.

[60] The Court issues an injunction per s 19 of Te Ture Whenua Māori Act 1993 over all bank accounts in the name of the Awarua o Hinemanu Trust. The responsible trustees with the assistance of their counsel are directed to obtain copies of all bank statements for the Trust for the last two years as soon as possible.

[61] The Registrar will attend to a summons of James Mātenga, Mihi Arthur and Robert Smith. All trustees both responsible and advisory are directed to attend the Court to provide a report on the activities of the Trust and to answer questions on any such report. In

particular, the trustees are to provide a report on the use of Trust funds in the 2010-2012 financial years.

[62] All trustees are entitled to provide any further evidence and submissions including any applications under the Trustee Act 1956 at the next sitting of the Court in Hastings. They may also wish to apply for a rehearing.

[63] The applications for injunction and enforcement of obligations of trust are adjourned to the next sitting of the Court at Hastings on 1 May 2013.

[64] Costs are reserved.

These orders are for immediate release pursuant to rule 7.5(2)(b) of the Māori Land Court Rules 2011.

Pronounced in open Court in _____ at _____ am/pm
on _____ the _____ day of April 2013

L R Harvey
JUDGE