IN THE MĀORI LAND COURT OF NEW ZEALAND
WAIĀRIKI DISTRICT

A20040003227

UNDER	Section 45, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Otara o Muturangi (burial ground)
BETWEEN	TE RŪNANGA O NGĀTI AWA, a Māori trust board established pursuant to Te Rūnanga o Ngāti Awa Act 1988 Applicant
AND	MAANU PAUL and DAVE POTTER First Respondents
AND	TE MANA O NGĀTI RANGITIHI TRUST Second Respondent

Hearing: 6 November 2008, 123 Whakatane MB 50-55 (Heard at Whakatane)
19 September 2013, 2013 Chief Judge's MB 819-887
(Heard at Rotorua)

Appearances: Spencer Webster for the Applicant
Maanu Paul and Dave Potter for themselves
Curtis Bidois for the Second Respondent

Judgment: 02 December 2014

RESERVED JUDGMENT OF CHIEF JUDGE W W ISAAC

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Introduction

[1] This application was filed by Te Rūnanga o Ngāti Awa (the applicant), a Māori trust board established pursuant to Te Rūnanga o Ngāti Awa Act 1988 for and on behalf of Ngāi Te Rangihouhiri, Ngāti Hikakino, Taiwhākaea and Te Tarawera. The application seeks amendment or cancellation, pursuant to s 45 of Te Ture Whenua Māori Act 1993 (TTWMA), of an order made on 18 April 1963 vesting land known as Otara o Muturangi in trustees to hold the land in trust as a burial ground for the common use and benefit of Ngāti Rangitihi.

[2] Maanu Paul, Dave Potter and Te Mana o Ngāti Rangithi Trust (the respondents) oppose the application.

Background

[3] Otara o Muturangi (also referred to as Otara o Mutu Rangi and Otara-o-mutu-rangi) is an urupā situated near the mouth of the Tarawera River at Matatā comprising 0.8119 ha.

[4] From the early 1950s, various discussions took place between the Arawa No. 2 Tribal Committee, the Ngāti Rangitihi Tribal Committee, the Department of Māori Affairs, the Department of Lands and Survey, the Ministry of Works and the Māori Land Court regarding erosion of the land and efforts to protect it from further damage.

[5] In August 1961 the Māori Land Court wrote to the Department of Lands and Survey enquiring about the title to the land. The Department was not able to find a registered title and concluded that as it was part of the Bay of Plenty confiscation area it would be Crown Land unless a Crown grant had issued. On 9 November 1961 the Department confirmed that it was indeed Crown land, and a Māori burial ground, and could be dealt with under s 437 of the Māori Affairs Act 1953, which provides that any Crown land set aside or reserved for the use or benefit of Maoris can be vested in Maori owners on the application of the Minister of Lands.

[6] The Deputy Registrar of the Māori Land Court then asked the Department to file an application under s 437 of the Māori Affairs Act 1953. The Deputy Registrar advised the

Department that he would ask the Tribal Committee at Matatā to nominate representatives in whom the land could be vested prior to being declared a Māori Reservation.

[7] On 14 November 1961 the Deputy Registrar wrote to the District Welfare Officer advising of the proposed application and requesting the Welfare Officer to obtain names of representative owners who could go on the title initially prior to the land being declared a Māori Reservation and having trustees appointed.

[8] On 4 January 1962 the Deputy Registrar wrote to the Secretary of the Ngāti Rangitihi Tribal Committee directly, requesting the names of the proposed representative owners. On 17 February 1962 the Secretary wrote back with a list of names.

[9] On 4 February 1962 a meeting was held with people from Ngāti Rangitihi and Tuwharetoa to discuss the land. The minutes note that "an Application had been lodged and the Lands and Survey Department were quite agreeable to making it a Reserve". The minutes further note that the Chairman of the Tribal Committee "advised that Trustees had already been selected and [were] awaiting confirmation".

[10] On 23 February 1962 the Minister of Lands for the Department of Lands and Survey lodged an application pursuant to s 437 of the Māori Affairs Act 1953.

[11] At the first hearing of the application on 29 May 1962, the Court deferred making any orders "until we get information from interested Maoris".[1]

[12] The application was called again on 15 February 1963.[2] Mr Roberts for the Department of Lands and Survey suggested that the Registrar communicate with the Tribal Committee of the area to advance the matter. The Court decided that Mrs Howell, a Welfare Officer for the Department of Māori Affairs, would work with the Tribal Committee to elect trustees and then Mr Roberts would bring back the application.

[13] On 4 April 1963 the Department of Māori Affairs confirmed the names of five persons for the land to vest in; Arapeta Te Riri, Bernard Perenara, Harry Semmens, Peter Hunia and Wetini Moko.

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1 36 Whakatane MB 196-197 (36 WHK 196-197).
2 36 Whakatane MB 399-400 (36 WHK 399-400).

[14] On 18 April 1963 the Court made an order pursuant to s 437(4) of the Māori Affairs Act 1953 vesting Otara o Muturangi in those persons as trustees of an estate in fee simple to hold the land in trust as a burial ground for the common use and benefit of Ngāti Rangitihi (the 1963 order).[3]

Procedural Background

[15] Te Rūnanga o Ngāti Awa filed this application on 5 May 2004.

[16] A preliminary report was prepared by the Registrar and on 26 June 2007 I directed the matter be set down for inquiry and report pursuant to s 46(1) of TTWMA before the resident judge.

[17] On 6 November 2008, the matter was heard in Rotorua before Judge Savage.[4] The application was adjourned for six weeks to allow the briefs of evidence filed on behalf of the applicant to be served on the respondents and the matter set down for a two day fixture.

[18] In a memorandum dated 8 May 2009, counsel for the applicant sought an adjournment to allow parties to complete discussions regarding a possible resolution. The application was adjourned once again.

[19] On 27 March 2012, I directed that the applicant file submissions by 31 May 2012, and the respondents file submissions in response no later than 30 June 2012.

[20] On 9 July 2012, Te Mana o Ngāti Rangitihi Trust (Ngāti Rangitihi) filed an application pursuant to r 6.14 of the Māori Land Court Rules 2011 seeking to be joined as a respondent to the application.

[21] On 8 October 2012, Ngāti Rangitihi was joined as a party and their application for an extension of time to file replies was accepted.[5] I directed that the applicant serve notice on counsel for Ngāti Rangitihi, and I granted extensions for filing submissions.

[22] A teleconference was held on 7 June 2013 to discuss the progress of the application.

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3 37 Whakatane MB 77 (37 WHK 77).
4 123 Whakatane MB 50 (123 WHK 50).
5 [2012] Chief Judge's MB 429 (2012 CJ 429).

The parties agreed for the matter to go to hearing and the matter was set down to be heard.

[23] A hearing was held on 19 September 2013 at Rotorua.[6]

The Applicant's Case

[24] The applicant submitted that the order made by the Court in 1963 was erroneous in fact and in law in that it incorrectly vested the land for the benefit of Ngāti Rangitihi by virtue of:

(a) A mistake or omission by the Court in making the order without due process and enquiry under s 437 of the Māori Affairs Act 1953; and

(b) An error in the presentation of the facts to the Court in that the Court was advised that the urupā ought to be vested in Ngāti Rangitihi exclusively.

[25] The applicant submitted that as a result of these errors, Ngāti Awa, and in particular the hapū of Ngāi Te Rangihouhiri II, Ngāti Hikakino and Te Tarawera, have and continue to be adversely affected by the order. The applicant seeks legal recognition of their interest in the urupā, but acknowledges that Ngāti Rangitihi also have an interest.

Mistake or omission

[26] The applicant submitted that the Court erred by not giving sufficient notice of the application to interested parties. It was submitted that the Registrar of the Court communicated only with the Ngāti Rangitihi Tribal Committee and that there was no Ngāti Awa involvement. The applicant submitted that there is no evidence on file of who was given notice of the application, and this failure to give notice was a breach of the rules of natural justice.

[27] The applicant contended that the Court was bound to follow a two-step process under s 437 of the Māori Affairs Act 1953 whereby it should first determine the beneficiaries pursuant to s 437(1), and then make an order vesting the land in trustees for

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6 [2013] Chief Judge's MB 819 (2013 CJ 819).

the benefit of the beneficiaries in terms of s 437(4). The applicant submitted that the way the Court handled the Minister of Lands' application was fundamentally flawed and inadequate; the Court failed to properly discharge its function under s 437 and omitted to undertake any inquiry into or assessment of those beneficially entitled to Otara o Muturangi.

[28] The applicant submitted that the process in s 437(4) was not a completely separate and alternative process to s 437(1), but rather provides an option to the Court once it has properly determined those persons who are beneficially entitled, which it was required to do upon application by the Minister of Lands.

[29] The applicant relied on the case of *Berryman v Te Arikinui Te Atairangikahu*,[7] and submitted that the Court should have conducted a full enquiry after giving adequate notice, before determining the persons beneficially entitled in terms of s 437 of the Māori Affairs Act 1953. The applicant submitted that there were numerous flaws in the process adopted by the Court, including that:

(a) it indicated an intention to hear from "interested Maoris" but did not issue directions to notify or seek out the views of any interested parties, defaulting at the second fixture to the "tribal committee";

(b) by directing the Department of Lands and Survey to liaise with Mrs Howell and the tribal committee, the Court effectively delegated its decision-making role to a third party and rubber-stamped the order based on their advice;

(c) it made no finding as to entitlement to the land as required under s 437(1), rather making an order only under s 437(4); and

(d) it did not undertake a proper and adequate inquiry into the persons beneficially entitled.

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[7] *Berryman v Te Arikinui Te Atairangikahu – Hopuhopu Military Camp and Te Rapa Airforce Base* (1993) 18 Waikato Maniapoto Appellate MB 173 (18 APWM 173).

[30] The applicant submitted that a proper inquiry would have revealed the Ngāti Awa ownership of surrounding blocks. The applicant also submitted that no thought was given to who was buried in the urupā or to its history and significance.

Error in the presentation of facts

[31] The applicant submitted that barely any evidence was presented to the Court before the 1963 order was made. It was submitted that the only apparent evidence was the fact that Phil Howell, the husband of the Welfare Officer charged with liaising with the tribal committee to elect trustees, advised the Court that his grandparents were buried in the urupā, and the letter advising the Court of the names of the proposed trustees.

[32] The applicant submitted that the "weight, depth and breadth of evidence provided by the applicant eclipses the evidence before the Court in 1963", including the following key points:

(a) Ngāti Awa have customary interests in Otara o Muturangi, and in particular have important ancestors buried there;

(b) There is a substantial record of Ngāti Awa occupation around Otara o Muturangi;

(c) Otara o Muturangi and surrounding pā were held by Ngāti Awa until Crown confiscation in 1866;

(d) In 1892 the land was surveyed and was intended to be set aside for Ngāti Awa but remained Crown land not granted;

(e) The pā of Omarupotiki was likewise set aside and was actually returned to Ngāti Awa;

(f) This position remained until the order of 1963; and

(g) More recently the Crown has recognised the predominant interest of Ngāti Awa by vesting nearby lands in the applicant for the benefit of Ngāti Awa.

[33] The applicant submitted that the recent case of *Skerritt-White*,[8] where the Court found that there was a mistake in the presentation of the facts to the Court by virtue of the fact that the beneficiaries were not aware of the application, is analogous to this case.

Interests of justice

[34] The applicant submitted that there is no prejudice to Ngāti Rangitihi if the application is granted because the block is not occupied, does not produce an income, will never be alienated and burials no longer occur there. The applicant acknowledges that Ngāti Rangitihi also has an interest in the urupā, and submitted that if the Court were to amend the 1963 order to include Ngāti Awa in the beneficiary class, Ngāti Rangitihi would not suffer any loss of mana or standing as kaitiaki. They submitted that Ngāti Awa are prejudiced in that they are unable to legally exercise kaitiakitanga over their dead who lie in the urupā, and the prejudice caused to Ngāti Awa if the order is not cancelled or amended outweighs any potential prejudice to Ngāti Rangitihi.

Delay

[35] The applicant stated that delay is not relevant or significant in this case because of the status of the land. The applicant relied on the case of *Tau v Ngā Whānau o Morven and Glenavy* to support the proposition that there is no time limit for s 45 applications, and that the doctrine of laches does not apply.[9] It was submitted that Ngāti Rangitihi have not acted to their detriment in reliance on the order, and that there are no other factors which would prevent the Court making an order under s 45.

The Respondents' Case

[36] The respondents rejected the grounds advanced by the applicant, submitting that there was no failure by the Court to give notice to Ngāti Awa, that the Court exercised its discretion in terms of s 437(4) correctly, and that there was no error in the presentation of facts to the Court.

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8 *Skerrett-White – Allotments 302-315 Town of Richmond and Richmond Township Allotments 18-20* [2013] Chief Judge's MB 473 (2013 CJ 473) at [253]-[255].

9 *Tau v Ngā Whānau o Morven and Glenavy – Waihao 903 Section IX Block* [2010] Māori Appellate Court MB 167 (2010 APPEAL 167).

No error of law

[37] The respondents submitted that the applicant supplied no evidence to support the contention that the Court failed to notify Ngāti Awa of the application. Without any contradictory evidence, the respondents submitted that the Court must be guided by the principle of *omnia praesumuntur rite esse acta* (everything is presumed to have been done lawfully unless there is evidence to the contrary). The Court should infer that because the trustees appointed were of both Ngāti Rangitihi and Ngāti Awa descent, and those that affiliated to Ngāti Awa did not raise any issue as to lack of notice, and because there is no evidence to the contrary, that Ngāti Awa had knowledge of the application. The respondents submitted that for this reason the case of *Skerrett-White* should be distinguished.

[38] In any event, it was submitted, it is not clear that Ngāti Awa were entitled to notice. It is the beneficial owners of the underlying land who are to be consulted regarding the creation of a Māori Reservation, and in this case the owner prior to the order was the Crown.

[39] The respondents submitted that the *Berryman* case relied on by the applicant should be distinguished from the present case. Firstly, they submitted that in *Berryman* the Crown had attempted to nominate the vestee, which it was not entitled to do. That is not the case in this application.

[40] Secondly, and in the submission of the respondents more importantly, *Berryman* was concerned with s 437(1) of the Māori Affairs Act 1953 whereas the present case relates to an order made under s 437(4). The distinction is important because of the wording of s 437(4), which states:

> (4) Notwithstanding anything in the foregoing provisions of this section, the Court may, if it thinks fit, vest any land in a trustee or in trustees to be held in trust, in accordance with the terms of the order, for the benefit of any Maoris or any group or class of Maoris specified in the order.

[41] The respondents submitted that on a plain and ordinary reading of this subsection, the application of anything in ss 437(1) to 437(3) is excluded. Further, they submitted that

the use of the words "if it thinks fit" means that an order under this subsection is entirely at the Court's discretion.

[42] The respondents submitted that the two different subsections indicate a parliamentary intent to provide for two alternative processes. Under s 437(4) the Court could, if it thought fit, vest land in a trust or trustees for persons specified in the order, without necessarily determining the persons beneficially entitled and their relative interests.

[43] It was submitted by the respondents that the allegation that the Court should have made an enquiry into or assessment of the persons beneficially entitled is misdirected, as s 437(4) imposes no such obligation upon the Court.

No error of fact

[44] The respondents submitted that there was no error of fact. Ngāti Rangitihi have an association with Otara o Muturangi and other surrounding lands dating back to at least 1865, and still held legal title to lands in the area when the order was made in 1963.

[45] The respondents further submitted that the applicant had conceded that their right to the urupā was extinguished in 1866. The Court was therefore entitled to find that Ngāti Rangitihi was the correct beneficiary class, reflecting the political reality of the time.

[46] The respondents submitted that the applicant's evidence of Ngāti Awa occupation of lands in and around Otara o Muturangi is directed at matters allegedly occurring prior to 1866 and the relevance of this evidence to the issues before the Court in 1963 is not clear and so it should be disregarded.

[47] It was submitted that the evidence of witnesses for the applicant demonstrates that the interests of Ngāti Awa in Otara o Muturangi were extinguished in 1866. There was no obligation on the Court in 1963 to ascertain the extent of these interests in making an order under s 437(4), and this evidence is therefore not relevant.

No adverse effect

[48] It was submitted by the respondents that the applicant has not been denied any access, nor has the applicant shown an adverse effect on the ability of Ngāti Awa to visit and care for those who are buried at Otara o Muturangi. There is therefore no adverse effect upon them.

[49] The respondents submitted that the applicant is in fact relying on prejudice from historical loss of land and interests through Crown actions rather than prejudice arising from the order complained of, and a remedy for such prejudice is not available in this Court.

Judge's discretion

[50] The respondents submitted that the circumstances where appellate tribunals can interfere with judicial discretion are very narrow, emphasising that an appellate court cannot reverse a decision merely because it would have exercised its discretion differently. It was submitted that the applicant failed to provide sufficient evidence to satisfy the Court that the original judge did not exercise his discretion correctly.

Interests of justice

[51] The respondents submitted that it is in the interests of justice not to cancel or amend the 1963 order. They submitted that the interests of justice are in their favour because of the applicant's delay in making this application; because the vesting of Otara o Muturangi in Ngāti Rangitihi solely is consistent with the approach taken with other reservations in the Eastern Bay of Plenty; and because the balance of interests favours a continuation of the status quo.

[52] In opening submissions, the respondents submitted that the doctrine of laches should apply to the delay in bringing the application, but later conceded that the doctrine does not apply. It was submitted that the delay is however still relevant to any determination under s 45. The Chief Judge, it was submitted, does not have the benefit of hearing from the original trustees as to any arrangements that may have preceded the 1963 order, and although there is no direct evidence of any such arrangements, the fact that

senior members of Ngāti Awa were appointed as trustees and did not object to the application suggests that there was a consensus between Ngāti Rangitihi and Ngāti Awa.

[53] The respondents also submitted that because Ngāti Awa has completed its Treaty settlement with the Crown and Ngāti Rangitihi has not, there is an "inequality of arms" in terms of the historical evidence that is available.

[54] The respondents submitted that the application should not be treated as a rehearing of the original application, and in the interests of certainty and finality of decisions the status quo should remain. It was submitted that there is precedent in the Eastern Bay of Plenty area whereby Reservations have been vested in iwi holding mana whenua in the immediate area despite competing interests claimed by other iwi.

The Law

[55] In the case of *Ruka – Taheke 23A* I summarised the law and principles relevant to s 45 applications as follows:[10]

> [8] The Chief Judge's jurisdiction to amend or cancel an order of the Māori Land Court is set out in s 44(1) of Te Ture Whenua Māori Act 1993:
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> 44 Chief Judge may correct mistakes and omissions
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> (1) On any application made under section 45 of this Act, the Chief Judge may, if satisfied that an order made by the Court or a Registrar (including an order made by a Registrar before the commencement of this Act), or a certificate of confirmation issued by a Registrar under section 160 of this Act, was erroneous in fact or in law because of any mistake or omission on the part of the Court or the Registrar or in the presentation of the facts of the case to the Court or the Registrar, cancel or amend the order or certificate of confirmation or make such other order or issue such certificate of confirmation as, in the

[10] *Ruka – Taheke 23A* [2012] Chief Judge's MB 416 (2012 CJ 416) at 422.

> opinion of the Chief Judge, is necessary in the interests of justice to remedy the mistake or omission.

[9] In *Ashwell-Rawini or Lavinia Ashwell (nee Russell)*[11] I summarised important principles to consider when dealing with 45 applications as follows:

- When considering section 45 applications, the Chief Judge needs to review the evidence given at the original hearing and weigh it against the evidence produced by the Applicant (and any evidence in opposition); Section 45 applications are not to be treated as a rehearing of the original application;
- The principle of *Omnia Praesumuntur Rite Esse Acta* (everything is presumed to have been done lawfully unless there is evidence to the contrary) applies to s 45 applications. Therefore, in the absence of a patent defect in the order there is a presumption that the order made was correct;
- Evidence given at the time of the order was made, by persons more closely related to the subject matter in both time and knowledge, is deemed to have been correct;
- The burden of proof is on the applicant to rebut the two presumptions above; and
- As a matter of public interest, it is necessary for the Chief Judge to uphold the principles of certainty and finality of decisions. These principles are reflected in s 77 of the Act, which states that Court orders cannot be declared invalid, quashed or annulled more than 10 years after the date of the order. Parties affected by orders made under the Act must be able to rely on them. For this reason, the Chief Judge's special powers are used only in exceptional circumstances.

[10] Section 45 of Te Ture Whenua Maori Act 93 is a unique section amongst the Courts of New Zealand. As a titles Court, the principle of indefeasibility was extremely important and consequently orders should not be easy to overturn. The exceptions contained in s 45 explicitly refer to situations where the Court has not made a correct decision because of a flaw in the evidence presented, or in the interpretation of the law, and it is necessary in the interests of justice to correct this. For this reason s 45 applications must be

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[11] *Ashwell-Rawini or Lavinia Ashwell (nee Russell)* [2009] Chief Judge's MB 209 (2009 CJ 209).

accompanied by proof of the flaw, identified through the production of evidence.

[11] In *Tau v Nga Whanau O Morven & Glenavy Waihao 903 Section IX Block*, the Maori Appellate Court determined that applications to the Chief Judge, the onus is on the Applicant to prove the case on the balance of probabilities.

[12] Simply put, if the applicant can prove on the balance of probabilities that an order of the Court was wrong because of an error of the Court or in the presentation of facts to the Court and it is in the interests of justice to correct the error, then s 45 as applicable.

[13] If the applicant merely wishes to disagree with the lower Court and/or Maori Appellate Court decision, then the s 45 process is not the correct one to follow for the applicant. The section 45 process is not just another opportunity to appeal or be reheard. (*Bennett – Te Puna Parish Lot 154G, 2011 Chief Judge's* MB 68).

Discussion

Notice

[56] A search of the record shows no evidence of notice being given to interested parties.

[57] The respondents accepted that there is no record of notice, but submited that no one other than the Crown was entitled to notice. I do not agree. Natural justice dictates that all those connected to this urupā – including Ngāti Awa, Ngāti Rangitihi and Ngāti Tuwharetoa – were entitled to have notice of the application.

[58] I am not persuaded by the respondents' submission that *Skerrett-White* should be distinguished. That case is very much akin to this one. The interested parties were not advised of the application and could not object to the beneficiary class proposed. Although the order in *Skerrett-White* was made under the 1993 Act, the requirements for notice to be given to those interested remain the same.

Error in the presentation of facts

[59] The Court transcripts and the Court file reveal that very little evidence was presented to the Court at the time. As a result it is not clear how exactly the Court arrived at the decision that the urupā should be for the benefit of Ngāti Rangitihi. The respondents contended that the decision reflects the political reality at the time, while the applicant submitted that the lack of evidence supports the position that Ngāti Awa should have been named as beneficiaries.

[60] Due to the limited evidence on this matter, and applying the principle of *omnia praesumuntur rite esse acta* it is difficult to determine whether there has been a clear error in the presentation of the facts as to who was beneficially entitled in this case.

Error in law: Section 437 of the Māori Affairs Act 1953

[61] The minutes of the first hearing on 29 May 1962 record only Mr Roberts being present. The Court stated that it would "defer making orders until we get information from interested Maoris".

[62] There is no evidence that any attempts were made to contact interested parties before the next hearing on 15 February 1963. In fact there is evidence to the contrary. At that hearing, Mr Roberts is recorded as stating the following:[12]

> I appeared previously but as far as I know nothing further has been done. Might I suggest that the Registrar move the matter on by communication with the Tribal Committee in the area.

[63] I am not persuaded by the respondents' submission that the Court was not required to determine the beneficiaries before making the order under s 437(4). To consider ss 437(1) and 437(4) as wholly alternative processes could, in the case of 437(4) result in the Court vesting land in trustees for the benefit of a group without making any inquiry into who the group should be. That cannot have been intended by Parliament. I cannot

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12 36 Whakatane MB 399 (36 WHK 399).

conceive of any reason why a Court should vest land in trustees without first properly determining on whose behalf it should be held.

[64] As a result, I find that the 1963 order was made without sufficient inquiry into those beneficially entitled to the land, as was required under s 437(1) of the Māori Affairs Act 1953.

Interests of justice

[65] In *Mokena* I considered the principles relevant to the interests of justice. I set those principles out as follows:[13]

> [41] In determining what is in the interests of justice I am guided by *R v L*[14] where the Court of Appeal considered the term "the interests of justice" in relation to s 18 of the Evidence Amendment Act 1980. The Court of Appeal stated that:
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> > "The interests of justice" which is expressly referred to in s 18 and must underlie the inherent jurisdiction of the Court at common law, is concerned with the administration of justice in the Round. The discretion must be exercised to strike a just balance between the interests of all the parties involved including the interests of the general public, the hidden parties to the proceedings.
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> [42] Also Smellie J in *Singh v Simpson*[15] stated:
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> > The phrase in the interests of justice… must strive to strike a fair balance between the competing interests of the applicant and the complainant.
>
> [43] As well as these cases from the general Courts I have also considered my earlier findings on the "interests of justice" in *Estate of George Amos*[16] and *Trustees of Tauwhao-Te Ngare Trust v Shaw – Tauwhao-Te Ngare Block*[17]. Both cases concerned the exercise of the Chief Judge's jurisdiction in terms of s 45 Te Ture Whenua Māori Act 1993.

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13 *Mokena v Riwai Morgan Whānau Trust – Estate of Tamati Mokena* [2014] Chief Judge's MB 314 (2014 CJ 314) at [41]-[46].
14 [1994] 2 NZLR 534.
15 [1988] 3 CRNZ 459.
16 [2002] Chief Judge's MB 54 (2002 CJ 54).
17 [2013] Chief Judges MB 567 (2013 CJ 567).

[44] In the *Estate of George Amos* I stated:[18]

> The interests of justice being a paramount consideration and whilst errors may exist in a Court order or in the facts presented, the Chief Judge must decide if the cancellation will bring justice to the situation or create an injustice.

[45] In the *Tauwhao-Te Ngare* case I determined that:[19]

> Although these errors exist, the evidence and submissions presented to the Court demonstrate that both parties will suffer adverse affects if the order is cancelled or remains unchanged. I accept this position and the issue for me is, having regard to these factors, whether the interests of justice are best served by amending or cancelling the order or dismissing the application…
>
> … Whilst I agree with these factors, it must be stressed that this order has been in place since 1976 and although there were errors made in the order it seems clear that all those present at the time wanted the order to be made…
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> Therefore in my view it is also not insignificant that it has taken 35 years to bring this application and that there was no rehearing or appeal of the original roadway order…

[46] Accordingly, when determining what is in the interests of justice I must balance the rights of the parties and the adversity suffered by each. I must also consider policy issues and the intent and effect of the legislation on the parties, and on the general public.

[66] It is clear from *Tau v Ngā Whānau o Morven and Glenavy* that while there is no time limit for s 45 applications, delay is a relevant factor.[20] This application was made in 2004, some 40 years after the original order. The applicant has not provided any reason for the significant delay.

[67] However, nor have the respondents submitted any evidence that they have altered their position in reliance on the order. They did submit that this Court does not have the benefit of hearing from the original trustees about any agreement made prior to the order.

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18 At 59.
19 At 591-593.
20 At [176-[177].

And while I must weigh that against the overall interests of justice in this case, it is difficult for me to see how the respondents have been materially disadvantaged by the delay in filing the application.

[68] Further, there is no detriment to the respondents if the application is granted. Their connection to the urupā will remain, while in addition, the applicant's connection to the urupā will be legally recognised. In short, the interests of justice weigh in favour of granting the application.

Decision

[69] Having regard to the above findings, I make the following orders and directions:

(a) That pursuant to s 44 of Te Ture Whenua Māori Act 1993 the order made on 18 April 1963 vesting Otara o Muturangi in trustees for the common use and benefit of Ngāti Rangitihi be cancelled.

(b) The effect of that order is that the land, which prior to the 1963 order was Crown land reserved for Māori, will revert to that status.

(c) A properly advertised meeting of interested parties is to be called by the Registrar to consider the appropriate beneficiaries of the urupā and the appointment of trustees.

(d) Upon completion of the meeting, the Registrar is to invite the Minister of Māori Development to make application pursuant to s 339 of Te Ture Whenua Māori Act 1993 for a recommendation to the Chief Executive of Te Puni Kōkiri to set aside the land as a Māori Reservation upon those terms.

[70] The foregoing order is to issue forthwith pursuant to rule 7.5(2)(b) of the Māori Land Court Rules 2011.

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

Dated at Wellington this 2nd day of December 2014

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W W Isaac
CHIEF JUDGE