I TE KOOTI PĪRA MĀORI O AOTEAROA
I TE ROHE O TE WAIARIKI
In the Māori Appellate Court of New Zealand
Waiariki District

A20190009860

WĀHANGA *Under*	Section 58, Te Ture Whenua Māori Act 1993
MŌ TE TAKE *In the matter of*	An appeal against a judgment made at 221 Waiariki MB 200-208 dated 17 October 2019
I WAENGA I A *Between*	PAKI NIKORA, TE KAUNIHERA KAUMATUA O TŪHOE Ngā kaitono *Applicants*
And	TŪHOE – TE URU TAUMATUA Ngā kaiurupare *First Respondents*
ME *And*	TE KOMITI O RUNA Ngā kaiurupare *Second Respondents*

Nohoanga: *Hearing*	18 February 2020, 2020 Māori Appellate Court MB 66-90 (Heard at Rotorua)
Kooti: *Court*	Deputy Chief Judge Fox (Presiding) Judge Michael Doogan Judge Miharo Armstrong
Kanohi kitea: *Appearances*	P Harman for the appellants
Whakataunga: *Judgment date*	23 June 2020

TE WHAKATAUNGA Ā TE KOOTI
Judgment of the Court

Copies to:
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Hei tīmatanga kōrero – Introduction

[1] Paki Nikora is a beneficiary of the Tūhoe Trust, also referred to as the Tūhoe-Te Uru Taumatua ("TUT"). He applied for an interim injunction and orders requiring the trustees to comply with the terms of trust.

[2] The interim injunction was refused on the grounds the Court did not have jurisdiction to grant it. Mr Nikora appeals that decision. The other parts of his application remain before the lower Court for determination. This decision determines whether the appeal should be upheld.

Takenga Mai: Ngā Kaitono me te Tautohe – Background: The Parties and the Dispute

[3] Mr Nikora is a kaumātua of Tūhoe. He is Chair of the Tauarau Marae Reservation Trust and is a board member of Te Kaunihera Kaumātua o Tūhoe.

[4] The Trust in question was established by deed of trust dated 13 December 2013. Recitals in the deed include;

> G: Tūhoe wishes to create the Tūhoe Trust to act as their iwi authority and post-settlement governance entity (that is transparent, accountable and representative of the iwi) and for the trustees to hold property upon the Trust and with the duties, powers and discretions set out in this deed.

[5] The purpose of the Trust is to receive, hold, manage and administer the Trust fund in trust for the present and future Tūhoe iwi members (cl 3.1).

[6] On 11 October 2018, Mr Nikora's solicitor wrote to the trustees of TUT giving notice of concerns about the nomination and selection process for the Ruātoki trustee vacancy. A number of complaints were made concerning non-compliance with the Trust deed. The letter concluded with:

> The last thing our client wants is to litigate this issue, but a failure to reconvene the hapū selection meeting will leave him with little option.

[7] The trustee nomination under challenge was that of Mr Tamati Kruger the then and current Chair of TUT. On 12 October 2018, Mr Kruger responded to Mr Nikora's solicitor stating that:

> The hapū selection process is determined by the hapū and we, the trustees of the board are satisfied with the response and action of the Ruātoki Tribal Authority.

[8] On 1 December 2018, a notice of dispute in accordance with the Trust deed was sent to the trustees on behalf of Te Kohinga and Te Kaunihera Kaumātua ō Tūhoe. The matters in dispute were the trustee appointment process for the Ruātoki vacancy and the lack of clarity around hapū delegate roles, responsibilities and who had delegated authority over marae/hapū trustees. Issue was also taken with the letter of 12 October 2018 from TUT signed by Tamati Kruger which was said to demonstrate his conflict of interest and lack of impartiality around the process.

[9] TUT did not respond and nor did they respond to a subsequent letter from solicitors representing Te Kaunihera o Tūhoe Trust dated 12 April 2019.[1]

[10] The solicitors for Te Kaunihera had detailed a number of alleged breaches of the trust deed including the requirements concerning the dispute resolution process. Referral to a disputes committee was proposed.

[11] In the absence of a response, Mr Nikora filed two applications with the Court. The first was received on 15 August 2019 ("the first application") and sought orders to enforce the obligations of the Trust per ss 238 and 240 of Te Ture Whenua Māori Act 1993 ("the Act"). In particular, Mr Nikora sought an order requiring TUT to comply with its election process and to declare the appointment of Mr Kruger as a trustee invalid. This application was later amended ("the amended application") to include an application seeking an injunction per s 19 of the Act "to injunct the current appointment process". The amended application reiterated the earlier order sought per ss 238 and 240 of the Act to enforce the obligations of trust requiring the trustees to comply with the election process.

[12] A second application was filed by Mr Nikora on 6 September 2019, ("the second application") which contains very similar pleadings to the amended application. The second application also sought an injunction per s 19 of the Act "to injunct the current Trustee appointment process", and further orders per ss 238 and 240 of the Act enforcing the obligations of trust requiring TUT to comply with the election process.

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[1] Letter from Koning Webster Lawyers to Tūhoe Trust dated 12 April 2019.

[13] The first application appears to relate to the 2018 election process and the second to the 2019 election process. Both in the lower Court, and before us, counsel for the appellant, Mr Harman, clarified that Mr Nikora is seeking an interim injunction pending the determination of the ss 238 and 240 applications.

[14] Despite notice, TUT did not appear or take any steps in the Court below. The Court did receive an email from the Chief Executive Officer (Kirsti Luke) stating that they were unavailable for a teleconference scheduled for 16 September 2019. Ms Luke went on to say:[2]

> Te Komiti o Runa is a voluntary un-incorporated committee and do not consider themselves subject to Courts. TUT is a private common law trust and is surprised to hear of the Māori Land Court's interest in it. Neither Te Komiti or Runa or Te Uru Taumatua consider that we belong as a part of the consideration or application below.

[15] Similarly, TUT took no steps with respect to the appeal and did not appear before us.

Te Whakatau a te Kooti Whenua Māori - The Lower Court Decision

[16] By decision dated 17 October 2019, His Honour Judge Coxhead declined to grant the injunctions sought in both applications. Judge Coxhead found that the injunctive relief sought did not come within s 19(1)(b) of the Act, as the trustee election process did not concern 'dealing with or doing any injury to any property that is the subject matter of the proceedings'.

[17] Judge Coxhead also considered Mr Nikora's argument that if he could not grant an injunction per s 19 of the Act, he could do so per s 237 of the Act. On that point, Judge Coxhead found that:

(a) There was no application before the Court per s 237 of the Act; and

(b) Given the specific jurisdiction to grant an injunction per s 19 of the Act, any attempt to obtain an injunction per s 237 (which invokes the powers and authorities of the High Court) seeks to circumvent the express provisions of the Act.

[2] Email received from Kristi Luke dated 16 September 2019.

[18] Judge Coxhead also observed that the question of whether the Court has jurisdiction to determine the ss 238 and 240 applications, in relation to TUT, is still open.

Te Ture – The law

[19] Whether to grant an injunction involves an exercise of discretion. When considering an appeal against an exercise of discretion, it is not the role of the appellate court to consider the case afresh and arrive at its own decision. Rather, an appellate court may only intervene if satisfied that:[3]

(a) The lower court acted on an error of law or a wrong principle;

(b) The lower court failed to take into account a relevant consideration;

(c) The lower court took into account an irrelevant consideration; or

(d) The lower court was plainly wrong.

[20] We adopt this approach.

Te Nako o te Tono ki te Kooti Pīra - The Issue on Appeal

[21] The appeal challenges whether the Court was correct to dismiss the injunction applications. The following issues arise:

(a) Was the Court correct to find that the injunction sought was not available per s 19(1)(b) of the Act; and

(b) Was the Court correct to find that injunctive relief was not available in the alternative per s 237 of the Act.

[3] *Kacem v Bashir* [2010] NZSC 112 at [32]. See also *Matthews v Matthews – Estate of Graham Ngahina Matthews* [2015] Māori Appellate Court MB 512 (2015 APPEAL 512) at [56] and *Hohepa v Piripi – Waima C30A and Waima Topu Blocks* [2019] Māori Appellate Court MB 629 (2019 APPEAL 629) at [18]. This can be contrasted with the approach of an appellate court on a general appeal.

[22] Mr Nikora also appeals Judge Coxhead's comment that he "will need to be persuaded" that he has jurisdiction to grant orders per ss 238 and 240 of the Act (concerning the substantive applications) in relation to TUT, a settlement trust.

[23] We consider these issues in turn.

Kei te tika te whakawā a te Kooti Whenua Māori e pā ana ki te whakataunga, arā, kāore he hua pērā kei raro i te s 19(1)(b)? - Was the Court correct to find that the injunction sought was not available per s 19(1)(b)?

[24] Section 19(1)(b) of the Act empowers the court to grant an interim injunction:

> 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 [Emphasis added]

[25] Judge Coxhead found that an interim injunction per s 19(1)(b) was not available here as the subject matter of the injunction, and the substantive proceeding, did not relate to property.

[26] Mr Harman argued in the Court below, and before us, that the injunction was necessary in order to prevent the incoming trustees from dealing with trust property. He raised examples such as mortgaging trust land or improper dealing with trust property. There was no evidence to support that such steps had taken place or were about to take place. When we questioned Mr Harman about this he was only able to refer to what are hypothetical scenarios. As we made clear to Mr Harman, the courts do not grant relief for purely hypothetical circumstances.

[27] The subject matter of the substantive proceedings, namely the applications per ss 238 and 240 of the Act, concern the trustee election process. We accept that the term "property" in s 19(1)(b) of the Act refers to more than just land,[4] however, it cannot be interpreted to refer to a trustee election process. To do so places an unreasonable strain on the term property within the meaning of s 19(1)(b).

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[4] *Bayne v Ngati Wai Ki Aotea Trust Board – Ngati Rehua Ngati Wai ki Aotea Trust Board* (2015) 115 Taitokerau MB 41 (115 TTK 41).

[28] We agree with Judge Coxhead that the Court cannot grant an interim injunction per s 19(1)(b) to restrain the trustee election process in these proceedings.

Kei te tika hoki te whakawā a te Kooti Whenua Māori e pā ana ki te whakataunga, arā, kāore he hua kē kei raro i te s 237? - Was the Court correct to conclude that injunctive relief was not available in the alternative per s 237 of the Act?

[29] When considering this issue, the following questions arise:

(a) Did Mr Nikora make an application per s 237 of the Act seeking injunctive relief?

(b) Does the Court have jurisdiction to grant an injunction per s 237 of the Act where the land is General land?

(c) If so, were there grounds here to grant an injunction per s 237 of the Act?

Did Mr Nikora make an application per s 237 of the Act seeking injunctive relief?

[30] Judge Coxhead found that Mr Nikora did not file an application seeking an injunction per s 237 of the Act. Mr Harman argues s 237 of the Act was included in the intituling to the applications.

[31] The intituling to the amended application refers to ss 19, 237, 238 and 240 of the Act. The pleadings in the amended application state that Mr Nikora seeks an order:

> Pursuant to Section 19: to injunct the current appointment process due to several breaches of the Tuhoe Trust Deed as stipulated in Schedule 3 of that Deed.

[32] The amended application then seeks additional orders per ss 238 and 240 of the Act to enforce the trustee election process.

[33] The second application is similar. The intituling also refers to ss 19, 237, 238 and 240 of the Act. The pleadings state:

> Pursuant to Te Ture Whenua Maori Act – Section 19 to injunct the current Trustee appointment process due to several breaches of Schedule 3 of the Tuhoe Trust Deed.

[34] The second application also seeks additional orders per ss 238 and 240 of the Act to enforce the trustee election process.

[35] While both applications refer to s 237 in the intituling, neither application refers to this section in the pleadings. The pleadings are clear that injunctive relief is only sought per s 19 of the Act. Sections 238 and 240 are pleaded but only in relation to the application to enforce the trustee election process.

[36] The obligation is on the applicant to set out the nature of the orders sought so as to clearly inform the Court, and any affected parties, as to the basis of the proceeding. In the context of these applications, which seek multiple orders relying on various legislative provisions, a cursory reference to s 237 in the intituling is not sufficient. The pleading itself is clear that only s 19 of the Act was relied on seeking injunctive relief. No relief was sought at all per s 237 in the pleadings.

[37] As such, Judge Coxhead was right to find that there was no application before him per s 237 of the Act.

[38] We note that, in some circumstances, the Court may take a more flexible approach. This may include the Court amending the proceeding to correct such defects or errors,[5] or the Court exercising jurisdiction of its own motion.[6] There was no application seeking that the Court exercise these powers. While Judge Coxhead could have done so of his own motion (subject to issues of notice), whether to do so is at the absolute discretion of the Judge. There is no obligation to do so. It is not the role of the Judge to fix or correct defective applications filed in the Court. This is particularly so in a case such as this where the applicant was represented by counsel, the respondent was not present, and the proceeding was being run akin to civil litigation in the mainstream courts. There is no basis to overturn Judge Coxhead's decision for failing to take steps to correct defects in the application.

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[5] Section 71, Te Ture Whenua Māori Act 1993.
[6] Section 37(3), Te Ture Whenua Māori Act 1993.

Does the Court have jurisdiction to grant an injunction per s 237 of the Act where the land is General land?

[39] Judge Coxhead found that injunctive relief was not available per s 237 of the Act as this would, in effect, circumvent the more specific provisions of s 19 of the Act. Judge Coxhead relied on the decisions in *Haira v Haira – Kapenga A7*,[7] and *Kidwell v Karaitiana – Waipuka 3A3A block*.[8]

[40] Sections 236 and 237 of the Act state:

> **236 Application of sections 237 to 245**
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> (1) Subject to subsection (2), sections 237 to 245 shall apply to the following trusts:
>
> (a) every trust constituted under this Part:
>
> (b) every other trust constituted in respect of any Māori land:
>
> (c) every other trust constituted in respect of any General land owned by Māori.
>
> (2) Nothing in sections 237 to 245 applies to any trust created by section 250(4).
>
> **237 Jurisdiction of court generally**
>
> (1) Subject to the express provisions of this Part, in respect of any trust to which this Part applies, the Māori Land Court shall have and may exercise all the same powers and authorities as the High Court has (whether by statute or by any rule of law or by virtue of its inherent jurisdiction) in respect of trusts generally.
>
> (2) Nothing in subsection (1) shall limit or affect the jurisdiction of the High Court.

[41] In *Haira,* Judge Harvey considered whether the Court had jurisdiction to grant orders per s 237 of the Act in relation to General land administered by an ahu whenua trust. He found that:[9]

> As can be seen the Court's jurisdiction to make the types of orders sought by the applicant is *prima facie* restricted to Māori freehold land. Given that this block is General land held under administration of an ahu whenua trust it would appear that those provisions do not apply here. Moreover, in view of the fact that the Court's specific jurisdiction per s 18, 19 and 20 of the Act refers to Māori freehold land I cannot, regrettably, see how the Court has the necessary jurisdiction to make the orders as sought per s 237 alone solely because the land is administered by an ahu whenua trust.

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[7] *Haira v Haira – Kapenga A7* (2016) 149 Waiariki MB 259 (149 WAR 259).
[8] *Kidwell v Karaitiana – Waipuka 3A3A* (2019) 78 Takitimu MB 7 (78 TKT 7).
[9] *Haira v Haira – Kapenga A7* (2016) 149 Waiariki MB 259 (149 WAR 259) at [54].

[42] In *Kidwell,* Judge Harvey considered whether he could grant an injunction per s 237 of the Act in relation to General land. He found:[10]

> As these authorities make clear, where the Act makes specific provision for the types of orders sought by the application and limits the Court's jurisdiction to Māori land, s 237 of the Act on its own cannot confer the necessary jurisdiction. To do so would be to circumvent the provisions of the Act.

[43] This can be contrasted with the finding in *Slade – Parengarenga 3G,* where Judge Ambler found:[11]

> The Court has a broad jurisdiction to issue interim injunctions to preserve the subject matter of proceedings before the Court pursuant to s 19(1)(b) of Te Ture Whenua Māori Act 1993 ("the Act"):
>
> […]
>
> The Court has further and broader injunctive powers in relation to trusts under ss 237 and 238 of the Act:
>
> […]
>
> Therefore, the Court has a broad jurisdiction to issue injunctions and there is no express limitation on the scope of such injunctions under ss 237 and 238. In my view, that jurisdiction includes Mareva injunctions. Were there any doubt in this regard I rely on s 237 which makes it clear that I can exercise all of the powers of the High Court in relation to trusts, which by extension must include the High Court's powers to grant Mareva injunctions – both the Court's inherent powers arising from s 16 of Judicature Act 1908 and the express powers contained in r 32 of the High Court Rules.

[44] These decisions do not necessarily conflict. In *Slade,* Judge Ambler was dealing with a trust that held Māori freehold land. He did not consider whether s 237 of the Act was available to grant injunctive relief where the land is General land. Judge Harvey appears to accept this approach. He referred to *Slade* with approval in *Haira*. Judge Harvey found that difficulties arise where the land is General land as injunctive relief per s 237 conflicts with the Court's power to grant injunctive relief per s 19(1)(a) of the Act which is restricted to Māori freehold land.[12]

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[10] *Kidwell v Karaitiana – Waipuka 3A3A* (2019) 78 Takitimu MB 7 (78 TKT 7) at [23].
[11] *Slade – Parengarenga 3G* (2014) 87 Taitokerau MB 46 (87 TTK 46).
[12] *Kidwell v Karaitiana – Waipuka 3A3A* (2019) 78 Takitimu MB 7 (78 TKT 7) at [17].

[45] To address this issue, we first consider the kaupapa of the Act as set out in the Preamble, ss 2 and 17. We then turn to the scope and purpose of s 237 of the Act, and how this relates to the express jurisdiction and powers set out in ss 18 and 19 of the Act.

[46] Section 2 of the Act provides that Parliament intends that the provisions in the Act are interpreted in manner that best furthers the principles set out in the Preamble. These principles include:

(a) The retention of land in the hands of its owners, their whanau and their hapu; and

(b) Facilitating the occupation, development and utilisation of that land for the benefit of its owners, their whanau and their hapu.

[47] These principles are echoed in s 2(2) of the Act, and in s 17(1) of the Act which sets out the primary objectives of the Court. Of interest is that s 17(1) expressly refers to both Māori land, and General land owned by Māori. Section 17(2) of the Act sets out a number of further objectives including:

(a) To determine or facilitate the settlement of disputes and other matters among the owners of any land;

(b) To protect minority interests in any land against an oppressive majority, and to protect majority interests in the land against an unreasonable minority;

(c) To ensure fairness in dealings with land in multiple ownership; and

(d) To promote practical solutions to problems arising in the use or management of any land.

[48] These principles and objectives are relevant when considering the jurisdiction and powers of the Court under the Act.

[49] The scope of s 237 of the Act was considered by this Court in *Mikaere-Toto v Te Reti B and C Residue Trust – Te Reti B and Te Reti C Block*.[13] This decision addressed a number of issues relevant here. Firstly, in *Mikaere,* the appellant argued that:

(a) Section 18 of the Act is the primary source of the Court's jurisdiction;

(b) Parliament did not confer broad equitable jurisdiction on the Court in respect of trusts under s 18;

(c) If Parliament intended to give the Court such jurisdiction it would have done so by way of express provision in s 18 or elsewhere under Part 1 of the Act; and

(d) The Court's jurisdiction under ss 237 and 238 must be interpreted in light of this statutory framework.

[50] This Court rejected that argument and found that s 18 is an additional source of jurisdiction not a primary source of jurisdiction. It also referred to the extensive jurisdiction granted to the Court elsewhere in the Act, which are independent of s 18.[14] The Court then went on to consider the scope of s 237 of the Act:[15]

> [26] […] Despite these submissions we consider that s 237 is framed in the widest possible terms. It expressly states that:
>
> > …the Māori Land Court shall have and may exercise all the same powers and authorities as the High Court has (whether by statute or by any rule of law or by virtue of its inherent jurisdiction) in respect of trusts generally.
>
> [27] The extensive powers conferred on the Māori Land Court with respect to trusts have been confirmed by the Court of Appeal in *The Proprietors of Mangakino Township v Māori Land Court* per Blanchard J:
>
> > [24] There is an armoury of powers given to the Court in relation to trusts under Part XII so that it can carry out its guardianship role and there is good reason to read ss 231 and 351, which apply to the particular situation of a general review, in a manner consistent with those powers.

[13] *Mikaere – Toto v Te Reti B and C Residue Trust – Te Reti B and Te Reti C* [2014] Māori Appellate Court MB 249 (2014 APPEAL 249).
[14] Including Parts 4, 12, 13, 14 and 17 of the Act.
[15] *Mikaere – Toto v Te Reti B and C Residue Trust – Te Reti B and Te Reti C* [2014] Māori Appellate Court MB 249 (2014 APPEAL 249) at [26] to [30].

[28] Blanchard J went on to add that:

> [27] … The reason for that lies in the fact that trusts are a development of judge made law and courts of equity have for centuries undertaken the function of supervising them. The Māori Land Court is expressly given in s 237 in respect of any trust to which Part XII applies "all the same powers and authorities as the High Court has (whether by statute or by any rule of law or by virtue of its inherent jurisdiction) in respect of trusts generally." In other words - it is to have the most extensive supervisory powers.

[29] In *Clarke v Karaitiana*, Randerson J also made numerous references to the extensive powers of the Māori Land Court with respect to trusts.

[30] We therefore find little attraction in the limited approach suggested by Mr Koning. We also hold that s 237 of the Act confers on the Māori Land Court all of the powers and authorities of the High Court with respect to trusts. That is after all what the provision says.

[…]

[51] Accordingly, s 237 of the Act confers on the Court all the powers and authorities of the High Court with respect to trusts. This forms part of the Court's armoury to ensure it has the most extensive supervisory powers in relation to trusts. Section 236(1)(c) of the Act provides that the powers in s 237 extend to a trust constituted in respect of General land owned by Māori. The kaupapa of the Act, as set out in ss 2, 17 and the Preamble, promotes the effective use, management, and development of the land. Section 17(1)(b) of the Act states that this includes General land owned by Māori. In the context of land held by a trust, the grant of injunctive relief is a necessary power to promote the effective use, management and development of the land.

[52] When s 237 of the Act is considered in light of this scope and purpose, and in a manner that best furthers the principles set out in the kaupapa of the Act, we consider that the Court must have the jurisdiction to grant injunctive relief per s 237 of the Act, where the trust concerned is constituted in respect of General land owned by Māori.

[53] The application of s 237 of the Act was also considered by this Court in *Tito – Mangakahia 2B2 - No 2A1A,* where it held:[16]

> [31] Therefore, we consider that where there is an express provision in Part 12 of the Act, to use another authority through section 237 for the same task would be an obvious

[16] *Tito – Mangakahia 2B2 - No 2A1A* (2011) Māori Appellate Court MB 86 (2011 APPEAL 86) at [31].

> inconsistency. The Court should use the express statutory provisions as provided in Part 12 for the administration of Māori land trusts unless a case falls under one of the exceptions we outline below. In this case, it is the express provision of section 222 which prevails over section 237.

[54] *Tito* remains good authority. It is not the case that the principles outlined there apply generally when considering s 237 of the Act. *Tito* involved the appointment of a trustee. Section 222(2)(b) of the Act, which falls under Part 12, provides that the Court cannot appoint a trustee unless satisfied that the proposed trustee is broadly acceptable to the beneficiaries. In *Tito,* the proposed trustee was not broadly acceptable to the beneficiaries, in fact, his appointment was unanimously opposed at a meeting of owners. To address this, the lower Court appointed the trustee per s 236 and 237 of the Act and s 51 of the Trustee Act 1956, which did not require the trustee to be broadly acceptable. This Court found that appointing the trustee by that route was inconsistent with the express provisions of s 222(2)(b) of the Act.

[55] The approach in *Tito* was undoubtedly correct, but it is important to note that s 237 states that it is subject to the express provisions of Part 12 of the Act. Section 222 is an express provision in Part 12, and so appointing a trustee per s 237 is subject to the express provisions provided for in Part 12. This can be contrasted with the current case where the relevant jurisdiction under s 19 of the Act is contained in Part 1. The jurisdiction under s 237 of the Act is not subject to Part 1 or s 19 of the Act.

[56] This approach is further supported by the decision in *Zaoui v Attorney-General*.[17] There the Supreme Court had to consider whether the High Court's inherent jurisdiction to grant bail was precluded by Part 4A of the Immigration Act 1987, which sets out special procedures in immigration cases involving security concerns. The Supreme Court held that the High Court retained its inherent jurisdiction to grant bail unless that is clearly excluded by legislation. The Court further held that clear statutory wording is required to oust such jurisdiction.

[57] While that case involved a person's liberty, and so additional considerations apply, it confirms the general approach that a statute must be clear to oust powers and authorities derived from an inherent jurisdiction. The same must apply here where the Māori Land

[17] *Zaoui v Attorney-General* [2005] 1 NZLR 577.

Court has all the same powers and authorities of the High Court. Those powers and authorities derive not only from the High Court's inherent jurisdiction to grant injunctive relief, but also from its statutory jurisdiction.[18] Section 237 is qualified as subject to Part 12 of the Act, but not Part 1 or s 19.

[58] For these reasons, we find that the Court has jurisdiction to grant injunctive relief per s 237 of the Act in relation to a trust constituted in respect of General land owned by Māori. We also find that Judge Coxhead erred when considering the scope of s 237 of the Act.

Were there grounds here to grant injunctive relief per s 237 of the Act?

[59] The law concerning the grant of an interim injunction is settled. The applicant must show that:[19]

(a) There is a serious question to be tried;

(b) The balance of convenience favours the grant of an injunction; and

(c) The interests of justice support the grant of an injunction.

[60] The greatest hurdle facing Mr Nikora is that there was no evidence filed in the lower Court demonstrating that he would suffer prejudice, or an injustice, if an interim injunction is not granted. Without such evidence, Mr Nikora cannot demonstrate that the balance of convenience or the interests of justice support the grant of an injunction. When we questioned Mr Harman on this, he accepted that there was no evidence of prejudice. Once again, he raised hypothetical circumstances where prejudice could possibly arise.

[61] The obligation is on the applicant (in this case the appellant) to show that an injunction should be granted. Speculation from the bar over hypothetical scenarios cannot discharge this burden. Indeed we are surprised an officer of this Court would not only take

[18] *Slade v Parengarenga 3G* (2014) 87 Taitokerau MB 46 (87 TTK 46).
[19] *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd* [1985] 2 NZLR 129 (CA); *Whitmarsh v A'mon Corporation Ltd* (1988) 2 PRNZ 576 at 583; and *Bowkett v Action Finance Ltd* [1992] 1 NZLR 449; (1991) 4 PRNZ 114.

such a remarkable approach, but would maintain such a position in the face of questioning from the bench.

[62] For these reasons, even if Mr Nikora had filed an application seeking injunctive relief per s 237 of the Act, there was no basis to grant the injunction sought.

[63] Finally, we note that during the hearing before us, there was some discussion with Mr Harman on the possibility of seeking an interim injunction per s 238(2) of the Act. This was not pleaded in the Notice of Appeal or the further particulars on appeal. Mr Harman did not argue this as a ground of appeal and so we do not consider it here.

He mahi whakawā ma te Kooti Pīra ki te TUT, he rōpū kaitiaki, pupuri tāonga hoki o te iwi? - Does the Court have jurisdiction over TUT, a settlement trust?

[64] After dismissing the injunction application, Judge Coxhead referred to the s 238 application, stating that it still needs to be determined. He also raised the question of jurisdiction as follows:

> The question of whether the Court has jurisdiction to determine the ss 238 and 240 applications is still open. The Court will need to be persuaded that it has jurisdiction to make such orders with regards to TUT.

[65] Mr Harman argued that we should make a finding that the lower Court has jurisdiction in relation to TUT, per s 236 of the Act, adopting the principles set out in *Moke v Trustees of Ngāti Tarāwhai Iwi Trust*.[20] In *Moke*, this Court found that the Ngāti Tarāwhai Iwi Trust, a common law trust established to receive Treaty settlement assets, came within the definition of s 236(1)(c) of the Act, being a trust constituted in respect of General land owned by Māori.

[66] There are obvious similarities between TUT and the Ngāti Tarāwhai Iwi Trust. Both are common law trusts established to receive Treaty settlement assets. It is not clear to us what Judge Coxhead needs to be persuaded about. The decision in *Moke* has settled this issue. It seems to us that this is a straight forward exercise of applying those principles in

[20] *Moke v Trustees of Ngāti Tarāwhai Trust* [2019] Māori Appellate Court MB 265 (2019 APPEAL 265).

this case. Nevertheless, we make no formal finding here as the s 238 application is still before the lower Court.

Hei te Mutunga Noa Iho - Result

[67] The appeal is dismissed.

[68] As the respondents did not appear there is no issue as to costs.

I whakapuaki i te 12:00pm o te rā i Rātū te 23rd o ngā rā o Pipiri te tau 2020

C L Fox (Presiding)	M J Doogan	M P Armstrong
DEPUTY CHIEF JUDGE	**JUDGE**	**JUDGE**