

In the Maori Appellate Court
of New Zealand
Waiariki District

Appeal 1993/4

IN THE MATTER of Waiohau B Section 11 and
Oputea B2 Blocks

AND

IN THE MATTER of an Appeal by **MAANU
PAUL** against an Order of the
Maori Land Court made on 13
November 1992 pursuant to
Section 438(3)(a) of the Maori
Affairs Act 1953 vesting the above
blocks in the Maori Trustee as
trustee

Coram: Judge H B Marumaru, Presiding
Judge A D Spencer, Member
Judge G D Carter, Member

Counsel: Mr D F Dugdale and Ms A E Tunks
for Mr Maanu Paul, Appellant

Mr A J H Witten-Hannah
for Mr Chester Pickering

Ms Gale Webster
Mrs Marama Sturch
Mr Hepi Paul, Respondents

Decision of the Court delivered at Wanganui on ~~28~~²⁸ day of October 1993.

Interlocutory applications by the Appellant seeking leave to file further grounds of appeal and to adduce further evidence were heard on 21 September 1993. During the course of the hearing it became apparent that the Appellant sought to dispute not only the Order appearing above (Section 438(3)(a)) but two other Orders (Section 438(3)(b) and Section 30(1)(e)) made by the Lower Court arising out of the same proceedings.

This Court found that it was quite clear from the Notice of Appeal that only the Order under Section 438(3)(a) was appealed from, there being no reference in the notice of the other orders, and held that the Appeal must be confined to that order.

The Court then granted leave to file further grounds of appeal to adduce further evidence.

Part of the reason for granting leave to adduce further evidence was that the Lower Court, of its own motion, made the order under Section 438(3)(a) without giving notice to the parties. The parties were therefore denied the opportunity to adduce evidence and make submissions with respect to that matter.

This Court then expressed the view that if the appeal were to proceed, in the light of existing authorities, there was a strong likelihood of the matter being referred to the Lower Court for rehearing. Counsel were invited to consider the position: whether to consent to a rehearing at this stage or proceed to a full hearing of the Appeal at the forthcoming sittings in November.

Counsel have taken instructions and now inform this Court that their respective clients' consent to this matter being returned to the Maori Land Court for rehearing.

Accordingly, in pursuance of Section 45(1)(e) of the Maori Affairs Act 1953 there is an Order by consent directing a rehearing of the question whether the Maori Trustee should be appointed trustee to replace the existing trustees.

In the circumstances it is appropriate that the sum of \$2,000.00 paid by way of security for costs and preparation of the record be refunded. Order Section 57(3) accordingly.

As Judge Spencer is currently on leave the decision of the Court is issued as a majority decision so that it can be promulgated without further delay.



Judge H B Marumaru
Presiding



Judge G D Carter
Member