

**IN THE MAORI LAND COURT
OF NEW ZEALAND
TAIRAWHITI DISTRICT**

**5 TAIRAWHITI MB 87
A20080012121**

UNDER Sections 238 and 240, Te Ture Whenua
Māori Act 1993

IN THE MATTER OF Tamati Whanau Trust

BETWEEN WI RATIMA TAMATI
Applicant

AND ADDIE WAINOHU
JOHN HOANI TAMATI
Respondents

Hearing: 7 November 2008 (by Deputy Registrar)
5 December 2008
(Heard at Wairoa)

Appearances: Mr P Harman for the applicant

Judgment: 19 April 2010

RESERVED JUDGMENT OF JUDGE C T COXHEAD

Introduction

[1] Wi Tamati (the applicant) says the trustees of the Tamati Whanau Trust have failed in their duty to account to the beneficiaries for the management and use of the trust assets since the trust began in 1997. He seeks the removal of one of the trustees, John Tamati.

[2] This application raises two issues for me to decide:

- 1) Have the trustees been performing their duties to the required legal standard; and
- 2) if not, should the trustees be removed.

[3] As a side issue, I also note that there is some uncertainty over which whanau lands are included in the trust's assets. This issue does not form part of the application before the Court but is relevant to the administration of the trust.

[4] On 7 November 2008 the applicant, the trustees and various whanau members gave evidence concerning the performance of the trustees to the Deputy Registrar, pursuant to a direction from Chief Judge Isaac under s 39 of Te Ture Whenua Māori Act (TTWMA).

[5] I then heard the application at a substantive hearing on 5 December 2008 where both parties gave further evidence as to the functioning of the trust.

Background

Tamati Whanau Trust

[6] The Tamati Whanau Trust was created on 5 June 1997 at 148 Napier MB 205. The trust is made up of the land interests from the estates of Wiremu (Laddie) Ratima Tamati and Te Waiti Jean Tamati (nee Pohatu). The trust administers these lands for the benefit of Mr and Mrs Tamati's descendants.¹

[7] Mr and Mrs Tamati had ten children that survived to adulthood, including the applicant and one of the trustees (John). Those children are: Josephine Pewhairangi or McKerchar, Turipo Dorothy (Dot) Wainohu, John Hoani Tamati, Wi Ratima Tamati Jnr, Margaret or Mawete Tamati, Hamahona or Sam Tamati, Sandy or Alexander Morrisson Tamati, Ginny Tamati, Mohi Tamati and Frances or Beverly Hauraki.²

[8] The current trustees, John Tamati and Addie Wainohu, were appointed on 4 September 1998 and 8 October 2001 respectively. Addie is a grandchild of Mr and Mrs Tamati.

¹ Mrs Tamati died on 24 July 1983 and Mr Tamati died on 12 March 1988, neither left a will.

² There were three more children who died in infancy.

[9] According to Māori Land Court records, there are land interests from 13 land blocks currently vested in the trust, these are:³

Hereheretau B2K2A
Kaiti 313 2F2B
Kauhouroa 4B1
Kopututea 1 and 2
Pt Mahia Rural Sections 1 & 2 being Lot 1 on DP No 4091
Mangarara 2A5C
Panikau A2
Paremata 2F8B
Taumataoteo 22E
Te Kuri X50
Te Kuri X73
Wharepu 1G1
Wharepu 1G2

[10] These land blocks are listed in the trust schedule attached to the trust order. None of these lands are solely owned by the trust. Most of the land blocks are vested in larger trusts and list over 100 owners.

[11] The trust is also vested with shares from several Māori Incorporations, including Proprietors of Hauti, Proprietors of Tawapata South, Proprietors of Pakowhai 2 and Proprietors of Arai Matawai.

[12] Both the applicant and the trustees have provided evidence about several land blocks that were owned by Mr and Mrs Tamati but do not appear in the trust schedule as they are not currently vested in the trust. Importantly, one of these blocks is Taumataoteo 24C4, the land upon which the Tamati whanau homestead sits.

[13] Various children of Mr and Mrs Tamati and other whanau have lived at the homestead including one of the trustees. The actions of the trustees regarding the homestead form a central part of the current application. Given this, I think it important to briefly outline the ownership history of Taumataoteo 24C4.

³ See 148 Napier MB 205 (creation of trust) and 154 Napier MB 82 (variation of trust).

Ownership of the Tamati whanau homestead, Waihirere Road, Wairoa

[14] In or around 1962, Mr and Mrs Tamati built a house (the whanau homestead) on a 1998 square metre block of Māori freehold land known as Taumataoteo 24C4. The street address of the whanau homestead is Waihirere Road, Wairoa.

[15] On 3 January 1963 Mr and Mrs Tamati had the land at Taumataoteo 24C4 registered and obtained a certificate of title. On 24 October 1968 the status of Taumataoteo changed from Māori freehold to general land.⁴

[16] Following the deaths of Mr and Mrs Tamati, ownership of Taumataoteo 24C4 was vested in nine of their children. The certificate of title records eight children as owning a 1/10 share each: Mawete, Josephine, Ginny, Hamahona, John, Sandy, Mohi and Beverly. The applicant has two 1/10 shares recorded under his name. One 1/10 share used to be owned by Turipo.

[17] At a whanau hui held on 22 September 1996 the Tamati children agreed to vest all their parents' land interests into a whanau trust.

[18] In October and November 1996 all ten children signed consent forms that stated the following:

“I consent to all my interests in land, shares and any other assets inherited from my Parents Ratima Tamati and Waiti Jean Tamati (Nee) Pohatu be included in our family Whanau Trust, which is named Tamati Whanau Trust.”

[19] The consent forms included a list of land blocks in which Mr and Mrs Tamati had or have interests and one of the blocks on the list was “Taumataoteo” with no further identifier. These consent forms were filed at the Court along with the application to form a whanau trust.

[20] However, on 5 June 1997, when the trust was created, Taumataoteo 24C4 was not included in the lands vested in the trust. The reason for this apparent administrative oversight is not clear but as Taumataoteo 24C4 is no longer Māori

⁴ See Declaration of Change of Status of Land (Part 1 of the Māori Affairs Amendment Act 1967) (Office Copy), M.A. 830B. C.T A2/505

freehold land, it may not have shown up when court staff conducted a search of Mr and Mrs Tamati's Māori land interests. I note that Taumataoteo 22E, a Māori freehold block, was located in the search.

[21] Despite this omission, it is clear from the wording of the consent forms that Taumataoteo 24C4 should have been included in the schedule of lands vested in the trust. Moreover, the trustees and their whanau have always assumed (and acted on that assumption) that the homestead was an asset controlled by the trust.

[22] Therefore, I now make an order under s86 of TTWMA to amend the schedule of land interest to be vested in the trust so the schedule includes Taumataoteo 24C4. This amends the order at 148 Napier MB 205 which created the trust and corrects the administrative error that has occurred. The effect of this is to have, as was always contemplated, Taumataoteo 24C4 vested in the trust.

Whareongaonga 6

[23] During the hearing on 5 December 2008, another whanau land block, Whareongaonga 6, was discussed. This is a Māori freehold block consisting of 1.3152 hectares. Like Taumataoteo 24C4, this land block is also missing from the trust schedule.

[24] This land block was omitted because it did not formally exist at the time the trust was created in 1997. The land, formerly owned by Mrs Tamati, had been subsumed into a consolidation block known as Whareongaonga 5. Whareongaonga 5 is listed on the consent forms.

[25] As part of his research into Mr and Mrs Tamati's lands, John Tamati made a s 45 application to the Chief Judge, stating that Mrs Tamati's land had been included in Whareongaonga 5 without her consent.

[26] On 27 May 2004 at 158 Gisborne MB 141 the Chief Judge amended the consolidation order for Whareongaonga 5 and Whareongaonga 6 was partitioned out as a separate block. Whareongaonga 6 is now owned by all 10 children equally.

[27] Accordingly, I now make an order under s 220 of TTWMA vesting Whareongaonga 6 in the trust.

[28] I now turn to the real substance of the application, namely the performance of the trustees.

Submissions about trustees' performance

Applicant's submissions

[29] The applicant, on behalf of several members of the Tamati whanau, submits that the trustees have failed to perform their obligations in relation to the trust, specifically that the trustees:

- a) have failed to keep beneficiaries properly informed of the financial affairs of the trust. Accounts have not been sent out annually to all beneficiaries and the trustees have ignored several requests by beneficiaries for a whanau trust hui;
- b) have failed to keep proper financial accounts for the trust and therefore have not accurately recorded:
 - i) the amount of rent paid by two of the Tamati children, Margaret and Ginny, during their residence at the whanau homestead, despite the house being the trust's main asset;
 - ii) loans provided by whanau to the trust and loans provided by the trust to beneficiaries;
- c) have made trust loans to some beneficiaries without informing other beneficiaries;
- d) did not notify all beneficiaries about plans for renovations of the whanau homestead, which involved the trust obtaining a loan and the

seemingly unjust and unnecessary expulsion of whanau members who were living at the house;

- e) failed to refund approximately \$1,200 of rent owed to Ginny that she had continued to pay to the trust while being unable to live in the whanau homestead due to renovations taking longer than promised;
- f) failed to consult beneficiaries or formalise a written agreement between John and the trust regarding him living rent-free in the whanau homestead in lieu of labour costs to renovate whanau homestead;
- g) did not ensure minutes of meetings were properly recorded as the minutes were not properly signed off by trustees and hui attendance was not accurately recorded.

[30] The applicant also submitted that one of the trustees, Addie, has not lived in New Zealand for over 12 months and therefore cannot perform her duties as trustee. He also raised an allegation that John may have signed trust cheques in Addie's name.

[31] The applicant concluded his submissions by stating that he regrets having to bring this application, however he and several whanau members have made numerous attempts to discuss these concerns with the trustees to little or no response.

[32] The Court received affidavits in support of the application from Te Waiti Jean-Anne Amorangi Tamati, Ginny's daughter, and Beverly Hauraki, one of the applicant's sisters. Mohi Tamati, also a sister of the applicant, and Rangi Tamati, a grandchild, also gave evidence at the hearing in support of the applicant.

Trustees' submissions

[33] John and Addie presented most of their submissions at the evidential hearing of 7 November 2008.

[34] John's evidence focussed on the type of work he had done for the trust, in particular that he had spent many years researching his parents' land interests and trying to get them back into whanau ownership. John cited his s 45 application for Whareongaonga 6 as an example at 125 Wairoa MB 297:

"I paid for that. I paid for my own research. I took out of my pocket for years and years and years. I am still taking out of my own pocket. If you are a trustee, you have to go and sort out Māori Land Court, sort out every act concerning your block of land, your tiny little block of land, to try and reach an outcome. ..."

[35] John said he had seen the Court's pamphlet on the role of trustees of whanau trusts, and has adhered to those duties and responsibilities, promoting the health and wellbeing of the whanau.

[36] In response to Mr Harman's (counsel for the applicant) contention that beneficiaries were not being suitably informed about the trust's activities, John emphasised that:

"We are just a whanau trust. We are only a small family. It is not a wealthy trust. ..."⁵

[37] John stated that the whanau held informal hui "all the time" but that the trust could not afford to send out panui before these hui. Addie added that it is difficult to locate all the beneficiaries and to get them to attend hui.

[38] When Mr Harman asked Addie about her performance as trustee, she stated:

"I believe that I have gone beyond the duty of a trustee. I think that I have acted in the best interests of the whanau over the years. I have given personal finances to the trust to help it through. I have given a lot of time and a lot of hours. I have done a lot of research over the years and not been reimbursed by the trust. I have not asked or requested for any return of money. I have tried to inform the family and educate the family. So when I look back over the years I believe that I was more a researcher in the Tamati trust because of all the land searches and all the historical events and the whakapapa I have accumulated quite a documentation over it. I have informed the family. I have provided the minutes. I have provided the finances. I have tried to be the best that I could. Like I said we have a 120 beneficiaries and the majority believe and have said to me directly that."

⁵ 125 Wairoa MB 294.

[39] Turipo, one of John's sisters, also gave evidence in support of the trustees. She believes they are very good trustees and stated that John is one of the most trusted in the family. Turipo added that she and both trustees have used their own money to locate and reclaim the whanau lands of Mr and Mrs Tamati.⁶

The Law

[40] This Court has extensive supervisory powers in relation to trusts, including all the same powers and authorities as the High Court.

[41] Section 238 of TTWMA provides the Court with jurisdiction to enforce the obligations of trust and to require trustees to account for their performance as trustees. Section 240 allows the Court to remove a trustee if the trustee has failed to, or is incapable of, satisfactorily carrying out their duties as trustee. Those sections state:

238 Enforcement of obligations of trust

- (1) The Court may at any time require any trustee of a trust to file in the Court a written report, and to appear before the Court for questioning on the report, or on any matter relating to the administration of the trust or the performance of his or her duties as a trustee.
- (2) The Court may at any time, in respect of any trustee of a trust to which this section applies, enforce the obligations of his or her trust (whether by way of injunction or otherwise).

240 Removal of trustee

The Court may at any time, in respect of any trustee of a trust to which this [Part] applies, make an order for the removal of the trustee, if it is satisfied –

- (a) That the trustee has failed to carry out the duties of a trustee satisfactorily; or
- (b) Because of lack of competence or prolonged absence, the trustee is or will be incapable of carrying out those duties satisfactorily.

[42] Trustees of trusts constituted under TTWMA have four main responsibilities:

- (a) Carrying out the terms of the trust;
- (b) The proper administration and management of the business of the trust;
- (c) The preservation of the assets of the trust;
- (d) The collection and distribution of the income of the trust.⁷

⁶ 125 Wairoa MB 299.

⁷ Section 223, TTWMA.

[43] The Māori Appellate Court in *Karena – Owahaoko C1, C2, C4, C5, C7* provides a useful summary of trustee duties, especially concerning trustee independence:

“Turning to the matter of trustees’ duties, it is basic trust law that trustees may not profit from that office: *Robinson v Pett* (1734) 3P Wms 249. Any profits the trustees make must be accounted for to the trust for the unauthorised retention of trust capital: in *re Macadam* [1945] 2 All ER 644. While section 73 of the Trustee Act 1956 does provide some possibility of relief it is not lightly given: in *re: Tauhara Middle 4A2B2 C-Opepe Farm Trust* (1996) 68 Taupo MB 27. The trustees have the onus of establishing that they have acted honestly and reasonably. They also have the option of seeking directions from the Court, and when they fail to do so must also be excused for that omission. Of course there are exceptions to the general principles, including the power of the Court to authorise remuneration or other gain where appropriate, per section 72 of the Trustee Act 1956. Reimbursement of expenses properly incurred in the exercise of that office is also permissible: in *re: O’Donoghue* [1998] 1 NZLR 116. The overarching principle however is that trustees must act gratuitously and without profiting from their role: *Peach v Jagger* (1910) 30 NZLR 423. They must not allow their duties to the beneficiaries to conflict with their own interests.”⁸

[44] As the Māori Appellate Court has emphasised, the burden borne by trustees is not a light one and the standard of performance required of them is high, *De Loree v Mokomoko – Hiwarau C*.⁹ This standard applies equally to all trustees, whether they work for whanau trusts or larger trusts with a more commercial focus.

[45] Turning now to the present case, the Tamati Whanau Trust order sets out the purpose of the trust and the powers and duties of the trustees. Clause 2 of the trust order states:

“the objects of the Trust shall be to provide for the management of the Trust property to the best advantage of the beneficiaries of the Trust, to make provision for any special needs of the beneficiaries of the Trust and to represent the beneficiaries of the Trust on all matters relating to the shares and to the use and enjoyment associated therewith.”

[46] Clause 3(a) provides the trustees with all the same rights as that of normal owners with the proviso in 3(b) that such rights must be exercised for the trust’s objects, namely the promotion of the health, social, cultural and economic welfare,

⁸ *Karena – Owahaoko C1, C2, C4, C5, C7*⁸ (2004) 14 Takitimu Appellate MB 4 (14 ACTK 4) at 14 ACTK 11-12

⁹ *De Loree v Mokomoko – Hiwarau C* (2006) 11 Waiariki Appellate MB 106 (11 AP 106).

education and general advancement of beneficiaries, or for Māori community purposes as set out in s 218 of TTWMA.

[47] As stated in *De Loree v Mokokoko*, it is the basic right of every beneficiary to have the trust's land, income, and other assets duly and prudently administered in accordance with the trust order.¹⁰ A beneficiary is entitled to bring proceedings against any trustee who breaches any duties of trust.

Have the trustees performed their duties to the required legal standard?

[48] I am required to ask whether the trustees have performed their duties to the required legal standard. The most relevant duties in the current case are the duties to keep proper accounts and beneficiaries informed, and the duty to treat all beneficiaries equally.

Duty to keep proper accounts

[49] A trustee must keep accurate and up to date accounts for the trust and beneficiaries have a right to inspect them on demand.

[50] At the hearing, John admitted that the trust's financial affairs were dealt with largely by Addie, who takes care of the cheque book and finances.¹¹ As part of her response to this application, Addie provided the Court and beneficiaries with ten years of trust bank statements from 1998 until August 2008. Prior to 1998, Addie says her aunt Ginny Tamati was in charge of the trust's accounts but that these accounts were missing.

[51] There were two bank accounts for the trust, a savings and an investment account. The trust's income derives from two basic sources: dividend payments from Pakowhai Incorporation and the Māori Trustee, and various rental payments from whanau who occupied the whanau homestead. Most of the trust's expenses appear to be rates, insurance and renovations on the homestead.

¹⁰ Ibid at [20].

¹¹ 125 Wairoa MB 295.

[52] Apart from the bank statements and copies of trust cheques, the Court has not received any other evidence of record-keeping undertaken by the trustees except a summary of the bank statements compiled by Addie for 2005 to 2008.

[53] The minutes of the trust's meeting on 23 September 2008 record that the trustees have carried out approximately 4800 hours of land and whakapapa research at \$10 per hour including personal costs incurred by the trustees. The following additional expenses were listed:

Stationery	\$1500
Photocopying	\$600
Petrol	\$4000
Phone	\$3000
Death certificates	\$300
Research internal affairs	\$2000

[54] It is unclear what portion of these expenses were paid for by the trust itself or paid personally by the trustees. It is also uncertain whether, from the evidence provided, the trustees are seeking reimbursement for these expenses. Counsel for the applicant submitted that it would be unreasonable for the trustees to incur such expenses and expect reimbursement from the trust when they knew the trust account had a balance of only \$4000.

[55] The information provided to the Court paints an incomplete picture of the trustees' dealings with the trust's assets and income. In particular, the bank statements show several large withdrawals made with no explanation of where the money went. For example see the entries on 4 February 1999 for \$1,526.80 and 7 May 2002 for \$2,500.

[56] The minutes of meetings held by the trustees before 2001 suggest that the trust made loans to certain beneficiaries, although it is unclear as to how many, to whom, and on what terms the loans were made. It is also unclear how much trust income was used by John to research whanau lands and how much has been spent on renovations of the whanau homestead.

[57] This is obviously not satisfactory. Proper financial accounts must show all receipts and payments (and details of what these amounts are for) so that beneficiaries can see how the trust funds are being dealt with.

[58] I would not expect financial accounts for small whanau trusts to be extensive or overly complicated. In such a context it would be too much of a burden. In most cases for small whanau trust, bank statements that clearly show what each receipt or payment represents along with source documents (e.g. receipts and cheque butts) will be sufficient evidence of satisfactory recordkeeping by the trustees.

[59] However in the present case, given the information in the trust's bank statements does not adequately describe the nature of each receipt or payment, the trustees ought to have known that supplementary records were necessary. Such records could include a cashbook, handwritten ledger or a typed spreadsheet, which are inexpensive to maintain. The trustees cannot hide behind the suggestion that the trust is too small or lacks the resources to keep such records.

[60] Accordingly, I find that the trustees have failed to satisfactorily perform their duty to keep proper accounts for the trust.

Duty to keep beneficiaries informed

[61] A trustee must provide beneficiaries with information concerning the trust's assets and any investments or dealings with trust property.

[62] One of the key drivers behind this application is the trustees' failure to meet with the beneficiaries and to send out regular reports about how the trust is being managed.

[63] Addie admitted at the hearing that no full set of bank statements has been sent to beneficiaries between 2001 and 2008. Even if the bank statements had been sent out annually, the statements alone would be insufficient information for beneficiaries who want to get an overall picture of how the trustees are dealing with

the trust property. This problem would be overcome by regular meetings and/or newsletters.

[64] The Tamati Whanau trust order does not require the trustees to hold meetings, either annually or otherwise, with the beneficiaries. However, I note that the trust held its first meeting on 22 September 1996 and the meeting's minutes stated:

“the trustee(s) are to meet once a year with the whanau to address all matters concerning our parents and whanau affairs: being the Tamati Whanau Trust”.

[65] The Tamati Whanau trust has not met once a year. In fact, no formal trust meeting has taken place between 2002 until 2008, when this application was filed. At the hearing, I asked John¹²:

“Court: How do you keep the beneficiaries informed about financial matters?

J Tamati: Right. Sometimes I might give an answer. It depends whether there is a dispute going on between me and whoever is asking.”

[66] Clearly, this is unacceptable behaviour for a trustee and as well as breaching the duty to inform, also breaches the duty to act impartially towards all beneficiaries. Although there is no legal obligation on the trustees to meet once a year, the minutes of any meetings held should be properly signed off by the trustees and the minute-taker should be clearly identified. This has not occurred in most of the meeting minutes filed in Court.

[67] Like maintaining proper accounts, the duty to keep beneficiaries informed can be done with little resourcing on the part of a whanau trust. There are also many ways to fulfil this duty.

[68] Within the context of this whanau trust I would still expect simple meeting minutes to be kept and to be provided to beneficiaries. Meeting minutes can be handwritten into a notebook, or typed. The minutes can be emailed or posted around

the beneficiaries. An alternative could have been that the minutes and likewise bank statements or other accounts could be held in a safe place and made available for the beneficiaries to inspect.

[69] I find that the trustees have not kept beneficiaries sufficiently informed about the activities of the trust.

Duty to treat all beneficiaries impartially

[70] Trustees must not act in such a way as to benefit one class of beneficiaries at the expense of another.

[71] Trustees have discretion in dealing with trust funds. They may for good reason pay out or advance money to particular beneficiaries or use money to preserve or improve trust assets such as the whanau homestead. However trustees must also act fairly between the beneficiaries and there needs to be good reason for different treatment among beneficiaries.

[72] I have heard evidence from several beneficiaries that there appears to be a degree of unfairness in the management of the trust. There are obvious tensions between the Tamati children concerning who has occupied the whanau homestead and some whanau appear to have been excluded from the homestead. Other beneficiaries have received loans from the trust and the reasons for these loans have not been properly documented.

[73] These tensions are certainly not unique to this trust. This Court has seen many similar applications arise, where whanau disagreements have spilt over and tarnished the operation of a trust. It is part of a trustee's duty to act impartially, regardless of personal feelings, so that all beneficiaries can derive benefits fairly from the trust.

[74] Given my findings at paragraphs 60 and 69, it is clear that the trustees have failed to ensure there is transparency in their dealings with the trust's assets. This has exacerbated the appearance of bias towards some beneficiaries.

Trust cheques

[75] I note the applicant's allegation that John has signed Addie's name on certain trust cheques. John and Addie deny this, although the minutes of the trust meeting held on 17 June 2006 record that Addie admitted such forgery had occurred. This is a serious allegation but I have not received enough evidence to consider its veracity, therefore I will not address it in this judgment.

Conclusion on performance

[76] It is obvious that the operation of this trust has been below standard. Basic trustee duties such as the duty to inform beneficiaries and to keep proper accounts have not been adhered to.

[77] While I have some sympathy for John's contention that the whanau trust is under-resourced, this does not excuse poor performance and trustees are always able to seek directions and advice from the Court if they are unsure whether their actions comply with their trustee obligations. Moreover, fulfilment of the duties to keep proper accounts and to keep beneficiaries informed does not necessarily involve much expense for the trust.

Should the trustees be removed?

[78] An application for the removal of a trustee is not mandatory before the Court can exercise these powers of removal, however the trustee must be given notice of removal, *Marino – Repongaere 4G (Part)*.¹³ When applying s 240, the Court assesses the trustees' performance against the standard duties of trustees under trust law. However the Court will also consider the special nature of Māori land trusts and the provisions of TTWMA. In *Karena*, the Māori Appellate Court stated:

¹³ *Marino – Repongaere 4G (Part)* (2004) 34 Gisborne Appellate MB 98 (34 APGS 98) at 102.

“section 240 requires a trustee to have failed to carry out the duties of a trustee “satisfactorily”. Consequently, the prerequisite for removal was not simply failure or neglect of duties, but failure to perform them satisfactorily. Accordingly, an assessment of a trustee’s performance was essential when applying section 240. Alongside with that section, [Judge G D Carter] considered that it was important, per section 222, that trustees be broadly acceptable to the beneficial owners. Therefore, a wide interpretation of section 240 was necessary.”¹⁴

[79] I consider that the trustees’ performance has not been satisfactory. While it is accepted that this trust is relatively small and whanau-based, and that John and Addie have worked hard to research and return whanau lands to the trust, these facts cannot be used as an excuse for the trustees’ failure to perform basic duties of trusteeship.

[80] Moreover, John and Addie can still carry out their valuable research and represent whanau on land issues before the Court, without being trustees.

[81] Accordingly, for the reasons discussed above, I find that John and Addie should be removed as trustees.

Decision

[82] I also note that Addie has been living in Sydney since February 2007. Section 240 states that if a trustee’s prolonged absence makes them incapable of carrying out their duties satisfactorily, they may be removed. Living in Sydney does not automatically mean Addie cannot attend to her duties as a trustee. Distance makes matters difficult but not impossible. However, I consider that Addie’s absence from New Zealand has meant that she has been incapable of carrying out her duties satisfactorily.

[83] John Tamati and Addie Wainohu are removed as trustees of the Tamati Whanau Trust for failing to fulfil their duties as trustees satisfactorily, as required by s 240 of the Act.

¹⁴ *Karena – Owahaoko* at 12.

[84] This leaves the Tamati Whanau Trust without trustees. Therefore the Registrar will arrange a meeting of the beneficiaries for the purposes of electing trustees.

[85] There will be no order as to costs.

Pronounced in open court in Wellington at 12 am on the 19th day of April 2010.

C T Coxhead
JUDGE