I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TE TAITOKERAU
In the Māori Land Court of New Zealand
Taitokerau District

A20220011759
A20220004045

WĀHANGA *Under*	Sections 67 and 231, Te Ture Whenua Māori Act 1993
MŌ TE TAKE *In the matter of*	Pukahakaha East 5B
I WAENGA I A *Between*	HONE TANA Te kaitono *Applicant*
ME *And*	GRAHAM MAHANGA, HANA MAXWELL, JOANNE WALTERS, TAIPARI MUNRO and VALERIE TIMBERS AS TRUSTEES OF THE PUKAHAKAHA EAST 5B AHU WHENUA TRUST Ngā kaiurupare *Respondents*

Nohoanga: *Hearing*	11 October 2022, 254 Taitokerau MB 174-192 8 June 2022, 252 Taitokerau MB 156-173 (Heard at Whangarei)
Kanohi kitea: *Appearances*	Mr Chris Beaumont, for the applicant Ms Paula Wilson, for the Pukahakaha East 5B Trust
Whakataunga: *Judgment date*	1 December 2022

TE WHAKATAUNGA Ā KAIWHAKAWĀ T K T A R WILLIAMS AS TO COSTS
Judgment of T K T A R Williams as to Costs

Copies to:
C Beaumont, Te Haa Legal, PO Box 138, Ōtaki 5542 chris@tehaalegal.co.nz
P Wilson, Henderson Reeves, PO Box 11, Whangārei 0140 paulawilson@hendersonreeves.co.nz

Hei tīmatanga kōrero
Introduction

[1] This costs decision follows the substantive decision issued by the Court on 11 October 2022 in which the applications of Hone Tana were dismissed by this Court. Counsel for the parties were to file and serve submissions on costs in accordance with the timetable issued in the substantive decision.

[2] Ms Wilson filed her submissions on costs on 25 October 2022 for and on behalf of the respondent, The Pukahakaha East 5B Trust (the trust). Mr Beaumont filed submissions on costs on 1 November 2022 on behalf of the applicant, Mr Tana.

He Take Hukikuki
Preliminary Matter

[3] Mr Beaumont in his submission has outlined that in response to the determination that he had failed to meet timetabling directions, that what actually occurred is that on the due date of filing and serving the application being the 8 July, he on behalf of his client had filed electronically an unsigned application with the Court that did not include a list of the affected parties and did not include whakapapa details. He also confirms that the application was not served on the respondents on the due date.[1]

[4] Mr Beaumont has therefore requested that the Court amend its records to reflect what he submits is the accurate position which is that an application for a review of trust was filed and received by the Court on 8 July 2022 in accordance with the Court's direction.

[5] What this submission reflects is an exceptional failure by Mr Beaumont to comprehend what is required when filing and serving documents on the Court and parties. The timetabling direction was to **file and serve** an amended application and evidence in support of the application within one month of the Judicial Conference (being 8 July 2022).[2]

[6] Rule 4.2 of the Māori Land Court Rules 2011 provides:

---

1 Applicant's Submissions on Costs 1 November 2022, at [5]-[10].
2 252 Taitokerau MB 171.

> **4.2 Form of application or other proceeding**
>
> (1) An application or other proceeding must be filed by using the appropriate form set out in the Schedule
>
> (2) The general form of application (see form 1) must be used if these rules do not require a specific form to be used.
>
> (3) The form must be –
>
> (a) **completed as indicated on the form**; and
>
> (b) **signed by the applicant or party bringing the proceeding**, or by that persons solicitor on his behalf.
>
> (4) The form and any documents or information accompanying may be in Māori or English or a combination of Māori and English
>
> (5) The application or proceeding must –
>
> (a) comply with the specific requirements of the Act and these rules relating to the type of application or other proceeding in question and
>
> (b) be accompanied by the documents or information that are required by these rules.
>
> (Emphasis added)

[7] Obviously and as conceded by Mr Beaumont himself, the emailed application said to have been sent on 8 July was incomplete and unsigned. Therefore, the emailed application failed to comply with rule 4.2(3)(a) and (b) and 4.2(5)(a). I note that the physical copy of the application filed with the Court is signed and dated by the Applicant, 11 July 2022.

[8] No evidence was filed in support of the application on 8 July 2022. The first affidavit that was filed in support of the review application is sworn and dated 11 July 2022 so it could not have been filed any earlier. Therefore, the application filed also failed to comply with rule 4.2(5)(b).

[9] In addition, neither the signed application nor the affidavit were served on the respondents or the Court by the date directed.

[10] Therefore, the submission by Mr Beaumont seeking an amendment to the Court's record is rejected.

[11] I now proceed to decide the issue of costs.

He aha ngā mātāpono o te ture nei?
Which legal principles apply?

[12] The decision for this Court to make, having issued the substantive decision, is whether the Court should now award costs pursuant to s 79 of Te Ture Whenua Māori Act 1993. If my decision is to award costs, then the second step for me to decide is what amount of costs should be awarded. The relevant principles to be applied in considering cost awards have been set out in *Trustees of Horina Nepia and Te Hiwi Piahana Whānau Trust v Ngāti Tukorehe Tribal Committee and Tahamata Incorporation,* a decision issued by Judge Harvey (as he then was): [3]

> The principal authorities concerning costs are considered in *Nicholls v Nicholls – Part Papaaroha 6B Block*.[4] Those decisions include *Riddiford v Te Whaiti*,[5] *Manuirirangi v Paraninihi ki Waitotara Incorporation*[6] and *De Loree v Mokomoko and Ors – Hiwarau C*[7] and they identify the following principles:
>
> (a) the Court has an unlimited discretion as to costs;
>
> (b) Costs follow the event and a successful party should be awarded a reasonable contribution to the costs that were actually and reasonably occurred;
>
> (c) the Court has an important role in attempting to facilitate amicable relationships between parties who are invariably connected by whakapapa to both the land and each other and on occasion that aim will be frustrated by an award of costs. Even so, where litigation has been pursued in accordance with conventional principles then the starting point will be that costs are appropriate;
>
> (d) if a party has acted unreasonably – for instance by pursuing a wholly unmeritorious and hopeless claim or defence – a more liberal award may well be made in the discretion of the Judge, but there is no invariable practice;
>
> (e) an award of costs at a level of 80% was warranted in the Riddiford case due to the difficult nature of the arguments, their lack substance, the unsuccessful party's lack of realism, the parties' legal situation, the degree

---

3 *Trustees of Horina Nepia and Te Hiwi Piahana Whānau Trust v Ngāti Tukorehe Tribal Committee and Tahamata Incorporation* (2014) 319 Aotea MB 238 (319 AOT 238) at [11].

4 *Nicholls v Nicholls – Part Papaaroha 6B Block* (2011) Māori Appellate Court MB 64 (2011 APPEAL 64).

5 *Riddiford v Te Whaiti* (2001) 13 Tākitimu Appellate MB 184 (13 ACTK 184).

6 *Manuirirangi v Paraninihi ki Waitotara Incorporation* (2002) 15 Whanganui Appellate MB 64 (15 WGAP 64).

7 *De Loree v Mokomoko and Ors – Hiwarau C* (2008) 11 Waiariki Appellate Minute Book 249 (11 AP 249).

of success achieved by the respondent and the time required for effective preparation;

(f) there is no basis for departing the ordinary rules where the proceedings were difficult and hard fought, and where the applicants succeeded in the face of serious and concerted opposition; and

(g) where the unsuccessful party has not acted unreasonably it should not be penalised by having to bear the full party and party costs of his/her adversary as well as their own solicitor and client costs.

[13] I propose to adopt this approach.

Should the Court award costs?

[14] As identified, the general proposition is that costs follow the event. In this event, there were two applications before me that are the subject of this costs application. The first being an application filed by Mr Tana on his own account seeking a Judicial Conference and asserting a vast array of issues, which were beyond the jurisdiction of the Court.

[15] Whilst a Judicial Conference was held, it was clear that the application, which also brought a number of unrelated parties to Court, was deeply flawed. However, I did not dismiss the application at that time and instead provided Mr Tana with an opportunity to amend or file a new application.

[16] Mr Tana with the assistance of counsel filed a second application in which he sought a review of the Pukahakaha Trust.

[17] With the filing of the second application, the first application was dismissed. However, as Ms Wilson has submitted, the respondents were put to considerable cost and expense in responding to Mr Tana's first application.[8] That response was necessary and appropriate.

[18] In terms of the second application, it will be clear that I dismissed the second application for the reasons outlined in the 11 October 2022 decision which I do not propose to repeat.

---

[8] Memorandum of Counsel as to Costs on behalf of the Pukahakaha East 5B Trust, 25 October 2022, at [7].

[19] In essence both applications before this Court failed entirely. Given that both applications have failed entirely, that the litigation was conducted akin to civil litigation, it was pursued in accordance with conventional principles, and the applications disclosed no reasonable causes of action, I consider that costs are appropriate to be awarded in this case.

[20] I note that Mr Beaumont also agrees that an order for costs are appropriate.[9] Having made that determination, I proceed below to identify quantum.

What amount of costs should be awarded?

Respondents' Position

[21] Ms Wilson argues that costs that the respondent has incurred amount to $25,391.50 in responding to the two applications.[10] Ms Wilson has filed a schedule of invoices breaking up attendances into three periods; the period 28 April to 14 July which relate largely to the first application, and two successive periods which relate to the second application.

[22] Ms Wilson submits that the proceedings were unmeritorious,[11] conducted akin to civil litigation,[12] pursued the normal procedures and rules of civil litigation and were comprehensively pursued and contested.[13] Ms Wilson therefore submits that costs should be at the higher end of the scale. Further, the applicant made serious allegations against the trustees in both applications which meant that the respondents had to take the applications seriously and had no choice but to respond.[14] Ms Wilson also submits that the applicant has attempted to use the Māori Land Court to try and assuage his personal conviction about who should have purchased the Ngunguru land.[15]

[23] Finally, Ms Wilson submits that the trust was put to significant cost in responding both to the first application[16] and in responding to the review application, which involved

---

9 Applicant Submissions on Costs, 1 November 2022 at [2].
10 Memorandum of Respondent Counsel, above n 8 at [2].
11 At [3].
12 At [34].
13 At [14].
14 At [21]-[22].
15 At [28].
16 At [7].

consideration of a number of pleadings and hundreds of pages of evidence filed out of time and without the leave of the Court.[17]

[24] Ms Wilson submits that these issues should be reflected in any costs award against the applicant.[18]

Applicant's Position

[25] In response, Mr Beaumont opposes the request for costs on the basis that costs in relation to the first application are unreasonable as that application was made without oversight of legal counsel, that the applicant had no knowledge of the scope of the issues that the Court would be willing to consider and had no knowledge of litigation risk or that costs may be payable.[19] As such Mr Beaumont submits that the applicant should not be penalised for actions taken as a lay litigant.[20]

[26] In relation to the extent of documents filed in support of the first application, Mr Beaumont submits that documents from the Wai 1040 Waitangi Tribunal Inquiry were filed to provide historical context in the event that such information may have been helpful for matters going forward.[21] Finally, Mr Beaumont submits that as both the applicant and respondent had been involved in the Wai 1040 Waitangi Tribunal Inquiry, that the general contents of the documents should have been known to all parties and it was not envisaged that extensive review of those documents by the respondent or their counsel might be required.[22]

[27] In relation to the application for review, Mr Beaumont submits that the applicant had been considering mediation in order to resolve matters and that he had emailed the Court advising the Court that mediation was being considered. Mr Beaumont then submits that as he received instructions to file further evidence, he is uncertain if the offer of mediation was put by the applicant to the respondent. However, he submits that by virtue

---

17 At [17].
18 At [18].
19 Applicant Submissions on Costs, 1 November 2022 at [15].
20 At [15].
21 At [16].
22 At [16].

of the applicant thinking about mediation, that this should be a matter to take into consideration as a mitigating factor in a costs award.[23]

[28] In terms of the evidence filed by Mr Beaumont in support of the review application which included affidavits filed in July and September 2022, Mr Beaumont submits that the applicant thought "long and hard" about filing the evidence and that despite the Court finding that the documents filed were prolix and irrelevant, it was preferable that all parties have the information available and that in doing so it was helpful as it allowed the Court to deal with the application on the papers.[24]

[29] In terms of quantum, Mr Beaumont submits that whilst it is ultimately at the Court's discretion as to quantum, it should be calculated on what is reasonable in the circumstances.[25]

[30] Mr Beaumont submits that the Court should not adopt a "Rolls Royce" approach to costs. The costs sought must have been "actually and reasonably incurred". On this basis, he submits that the Courts adopt a "sliding scale" approach, where the Court determines what is a "reasonable contribution" to the costs of the successful party's prosecution of the proceeding.[26]

[31] Mr Beaumont submits that it would be reasonable to apply scale costs in determining quantum bearing in mind that costs should not be awarded in relation to the first application. He submits therefore that costs should only be considered from 8 June 2022, which was the date of the Judicial Conference.[27]

[32] Mr Beaumont also submits that the financial circumstances of the applicant be taken into consideration, that he had applied for Special Aid for the applicant but given the outcome of the applications, conceded that a grant of Special Aid is unlikely. Mr Beaumont says that the applicant is in his 70s, works three days a week and is near retirement.

---

23 At [18]-[20].
24 Applicant Submissions on Costs, 1 November 2022 at [23].
25 At [26].
26 At [27].
27 At [31].

[33] Finally, Mr Beaumont asks the Court to take into account that the parties are linked by whakapapa and whilst he acknowledges that this should not impede an award, that the Court has a role in facilitating amicable relationships between parties.[28]

Kōrerorero
Discussion

[34] It is understood by both parties that generally a successful party should be awarded a reasonable contribution to the costs that were actually and reasonably incurred. If a party has acted unreasonably, a more liberal award may be made (in other words an uplift) but there is no invariable practice.

[35] It is clear that there are no scale costs in the Rules and that the scale costs outlined in the District Court and High Court Rules do not apply but may provide a useful guide to assess what is reasonable. I have not considered either as a helpful guide in this matter.

[36] Therefore, that leaves the sum of $25,391.50 which Ms Wilson has asserted were the costs incurred of engaging legal counsel on the two applications.

[37] The issue becomes what contribution to those costs should be awarded by this Court. I propose to deal with the quantum of costs of the two applications separately.

First Application

[38] It is clear that the applicant filed this application as a lay litigant. That said, the Māori Land Court is not to be used as a forum for ad hoc applications or lay litigants to try and raise issues which are not matters for this Court to deal with or to litigate against parties whose decisions have been exercised appropriately. On that basis I do not agree that costs should only be considered from 8 June 2022.

[39] Further, the Māori Land Court is not a Court for people to make unmeritorious allegations against trustees who are performing their role as trustee appropriately, requiring Counsel to be retained to defend wholly inappropriate applications, or to make unsubstantiated claims about third parties who should not have been included in pleadings,

---

[28] At [37]-[38].

causing considerable distress and anxiety for all those who were required to attend Court. The costs of third parties and individuals who attended the Judicial Conference as a result of the applicants scattergun application have not been sought , which is fortunate for the applicant.

[40] There is no doubt that the respondent had to defend the allegations being made by the applicant and that the work undertaken by counsel for the respondent in this application was reasonable, considered and necessary. Those are costs which the respondent should not have been required to incur and the ultimate result is that those funds are now unavailable to the beneficiaries of the trust as a result of defending the flawed applications.

[41] Ms Wilson has identified that for the period from 28 April to 14 July 2022, costs largely in relation to this first application were incurred by the respondent in the amount of $11,338.70. A proportion of those costs relate to the receipt of the review application, but Ms Wilson has not identified what that proportion is, and the Court is not in a position to identify that for itself.

[42] I see no merit in the submission made by Mr Beaumont that given the parties involvement in the Wai 1040 Waitangi Tribunal Inquiry, that extensive review of the documentation filed would not be required. Responsible counsel would be required to review all documentation filed against their client. That would be a standard obligation in order for counsel to fulfil their obligations under the Lawyers and Conveyancers Act 2008.

[43] However, I do consider that while the application was ill conceived, the applicant has acted as a lay litigant, without the benefit of legal advice. Therefore, I propose to award 50% of those costs incurred by the respondent for the period 28 April to 14 July 2022.

Review Application Costs

[44] The first concern here is that despite clear advice from this Court to both the applicant and Mr Beaumont that the Court was here to deal with issues surrounding the utilisation of Māori land and the trusts that are vested with the administration and development of that land, and not to deal with mandate issues or inter-hapū issues, those allegations continued in the review application. Despite the availability of counsel, the

deficiencies in the review application largely repeated the deficiencies in the first application and the evidence filed did not support the review application or remedy the defects in the initial application. Those continued deficiencies resulted in this application being dismissed.

[45] Secondly, despite the assertion that mediation was contemplated by the applicant, there is no evidence that mediation was proposed to the respondent, there is no evidence that the respondent would have countenanced mediation as an option, and as such this purported suggestion has no weight.

[46] In addition, I note the submission that the applicant thought long and hard before filing the affidavits that he had sworn. However, I consider that he should have thought longer and harder, and Mr Beaumont should have had the Court's prior directions at the forefront of his advice to his client, prior to filing affidavits that were not only late, but in the end did not assist the applicant's position or this Court to make any decision other than to dismiss it.

[47] The only benefit of the evidence that was filed was that it became clear that the Court should not progress the application to a hearing, meaning that the respondent would not have to bear any further costs in defending what was a wholly unmeritorious application and the beneficiaries were saved from any further losses occasioned by the review application.

[48] In terms of the submission by Mr Beaumont that the Court should take into account the financial circumstances of the applicant, Mr Beaumont has filed no evidence to support this submission and I am not prepared to take evidence from the bar. The fact that Mr Beaumont has filed a Special Aid application does not of itself establish that the applicant is impecunious.

[49] Where an applicant has pursued a wholly unmeritorious and hopeless claim or defence – a more liberal award may well be made in the discretion of the Judge.

[50] As identified earlier, an award of costs at a level of 80% was warranted in the *Riddiford* case due to the difficult nature of the arguments, their lack substance, the

unsuccessful party's lack of realism, the parties' legal situation, the degree of success achieved by the respondent and the time required for effective preparation.[29]

[51] I do not consider that this is a case that warrants an award at 80% as identified in *Riddiford*. However, it is clear that the application lacked substance, the application was wholly unsuccessful, and despite the benefit of legal advice, the application lacked realism.

[52] Therefore, in my view the starting point of 70% contribution to costs post 14 July 2022 is appropriate.

Kupu Whakatau
Decision

[53] Per section 79 of Te Ture Whenua Māori Act 1993, I grant an order requiring Hone Tana to pay costs to the Pukahakaha East 5B Trust in the amount of $15,506.31 which is made up as follows:

(a) $5,669.35 being 50% of the costs incurred 28 April to 14 July 2022

(b) $9,836.96 being 70% of the costs incurred 1 August to 30 September 2022.

I whakapuaki i te 4:00 karaka i Te Taitokerau o te rā tuatahi o Hakihea te tau 2022.

T K T A R Williams
JUDGE

[29] *Riddiford v Te Whaiti*, above n 5.