

**I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TĀKITIMU**

*In the Māori Land Court of New Zealand
Tākitimu District*

A20130007311

WĀHANGA <i>Under</i>	Sections 98 and 231, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Mangatainoka No 1BC No 2C No 1 and Other Blocks
I WAENGA I A <i>Between</i>	RICHARD TATERE, BRENDA TATERE and DENISE CAWSEY Te Kaitono <i>Applicant</i>
ME <i>And</i>	JOHN DOUGLAS HAURAKI Te Kaiurupare <i>Respondent</i>

A20170004132

WĀHANGA <i>Under</i>	Sections 241 and 242, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Part Tamaki 2A1C (Lot DP7840) and Other Blocks
WAENGA <i>Between</i>	CLINTON HEMANA AS RESPONSIBLE TRUSTEE OF RUA ROA TRUST Te Kaitono <i>Applicant</i>

Nohoanga: On the papers

Whakataunga: 24 December 2021
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ M J DOOGAN
Judgment of Judge M J Doogan

(Further proceedings continued overleaf)

(Proceedings continued)

A20130007311

A20170004132

WĀHANGA <i>Under</i>	Section 98, 231, 241 and 242 Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Mangatainoka No 1BC No 2C No 1 and Other Blocks
WAENGA <i>Between</i>	TAU ANTHONY HOHEPA EDWARDS, BELINDA PUANANI EDWARDS, DONNA MAHUE MARSH, MICHELLE AWHINA EDWARDS, ESTER VANESSA EDWARDS, JOSEPHINA MARIANA HENDERSON, TE AUTE TRUST BOARD and THE WAIAPU BOARD OF DIOCESE Ngā Tāngata Whaitake <i>Interested parties</i>

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Hei tīmatanga kōrero*Introduction*

[1] This decision addresses two long standing applications relating to the Ngawapurua and Rua Roa Trusts. One is an application for review of the administration of the Trusts and the second is an application to terminate the Rua Roa Trusts and for payment of monies held. The Trusts were established in 1968 by Hohepa Tatere.¹

[2] The application for review of trust was filed in late 2013 and the application for termination of the Rua Roa Trust was filed in 2017. Since that time a good deal of evidence has been filed and the Court has appointed independent accounting expert Mr Lyne to investigate and report. Pursuant to directions I issued on 4 February 2021, Mr Lyne's final report was completed and filed with the Court on 10 March 2021.²

[3] At that time, I also directed counsel to file memoranda confirming whether there was support or opposition to the determination of these applications and if they opposed the grounds and a proposed timetable. Counsel filed memoranda in March and early April 2021. I regret the subsequent delay in the issue of this decision.

[4] The issue to determine is whether the application for review can now be concluded and whether the application to wind up the Rua Roa Trust and distribute funds should be granted.

[5] I thank counsel and Mr Hemana for the submissions filed. I have concluded that I can bring these matters to conclusion on the papers. None of the parties identified issues in respect of which further evidence was necessary and no parties sought a further hearing. It is necessary to begin with some relevant background.

Te horopaki*Context*

[6] On 9 July 1968, the Ngawapurua and Rua Roa trusts were established by order of the Māori Land Court over blocks owned by Hohepa Tatere.³ The land at Tamaki 2A1C and

¹ 102 Napier MB 140 (102 NA 140).

² 87 Takitimu MB 238 (87 TKT 238).

³ 102 Napier MB 140 (102 NA 140).

Tamaki 2A2A were vested in the Rua Roa Trust and Mangatainoka 1BC No 2C1 in the Ngawapurua Trust.

[7] The Trusts initially provided for payment of income to the settlor Hohepa Tatare. When Hohepa died in 1971 there was a further period of income distribution to certain named beneficiaries. The residual beneficiaries for both Trusts were the Te Aute Trust Board (TATB) and the Anglican Parish of Dannevirke ('the Parish') as to a 4/5 share and a 1/5 share respectively.

[8] Both trusts were involved in farming operations. In 1995, the trustees entered into a deed of partnership which resulted in the two farms being run as one financial unit. The parties referred to this arrangement as the Tatere Partnership.

[9] On 10 October 2007, Hohepa Tatare II and Te Aroha Edwards applied to the Māori Land Court to vary the terms of the Ngawapurua and Rua Roa Trusts and bring forward the date of distribution to 1 February 2008.⁴ The application was made to bring into effect an agreement negotiated by the trustees whereby the capital beneficiaries would receive the benefits of the Ngawapurua trust and the income beneficiaries would receive the benefits of the Rua Roa Trust. The plan was that the residual beneficiaries remained the same for the Ngawapurua Trust but for the Rua Roa Trust they changed from the TATB and the Parish to nine named individuals (being the six children of Aroha Edwards and three children of Hepa Tatare).

[10] The application was initially granted but objections were lodged before orders issued and the variation of Trusts orders were not made.

[11] On the appeal against the dismissal of the application to vary the terms of the trust, the Māori Appellate Court found that the Māori Land Court was in error.⁵

[12] The Māori Appellate Court issued the following orders:⁶

⁴ *Tatere II – Mangatainoka No 1 BC No 2C and others* (2012) 15 Takitimu MB 4 (15 TKT 4).

⁵ *Tatere – Mangatainoka NO 1BC No 2C Tamaki 2A2A Balance* [2013] Māori Appellate Court MB 243 (2013 APPEAL 243).

⁶ *Tatere – Mangatainoka No 1BC No 2C Tamaki 2A2A Balance* [2013] Māori Appellate Court MB 243 (2013 APPEAL 243) at [117]-[119].

- (a) Per s 24(1) of the Act vesting the Ngawapurua lands in TATB and the Waiapu Board of Diocesan Trustees as to a 4.5 and 1.5 share in common respectively and terminating the Ngawapurua trust in respect of those lands.
- (b) Per s 244 of the Act varying the Rua Roa trust order to substitute for the existing capital beneficiaries the nine discretionary beneficiaries, namely Tau Anthony Hohepa Edwards, Belinda Puanani Edwards, Donna Mahue Marsh, Michell Awhina Edwards, Hester Vanessa Edwards, Josephine Mariana Henderson, Richard Tatere, Brenda Mei Tatere and Denise Casey in common as to a 1/9th share each.

[13] The TATB appealed that decision to the Court of Appeal.⁷ The Court of Appeal concluded that it was not shown that the Board and the Parish had any proper justification to withdraw their consents to the variation, and concluded that the Māori Appellate Court was right to make the orders it did, thereby restoring the terms of the variation and the distribution arrangement.

Te tono arotake

The review application

[14] The Review Application first came before me in Masterton in December 2013. At this time litigation over the variation of the Trusts was still ongoing. I directed Mr Hauraki to provide a report to the Court on the following matters;⁸

- (a) an overview of his administration of the trusts since his appointment;
- (b) an indication of time and costs involved in administration of the trusts (including the expenses of Mr Meroiti);
- (c) an explanation of steps taken to comply with the Court's earlier directions to call a meeting with beneficiaries, to appoint a second trustee and copies of any relevant documents;

⁷ *Te Aute Board v Hauraki* [2014] NZCA 532.

⁸ 29 Takitimu MB 80-105 (20 TKT 80-105).

- (d) information related to the financial state of the Rua Roa farm, including information from Rabobank or financial advisers;
- (e) an outline of steps taken to comply with Rabobank's directions in relation to the required debt equity ratio; and
- (f) to indicate at the time of filing whether there are any confidentiality concerns with the information provided.

[15] Mr Clinton Hemana was appointed as a second trustee in October 2014.⁹

[16] Mr Hauraki resigned as responsible trustee of the Trusts in February 2015. Mr Hemana later resigned as responsible trustee for the Ngawapurua Trust on 7 September 2015, and the Court issued orders appointing Mr Grant Hope as his replacement.¹⁰

[17] Mr Hauraki submitted extensive records and comprehensive reports to the Court that cover the period of his trusteeship from 2012 to 2015. Key points include:

- (a) Financial reports for each of the Trusts had not been kept since 2003 and Mr Hauraki flagged concerns regarding the appropriateness of various land transactions and arrangements.
- (b) Mr Meroiti's consultancy group, Merolin Research & Management Group (MRMG) were engaged by Mr Hauraki to undertake a comprehensive audit and review of the trusts, beginning on 9th April 2012 and concluding on 13th July 2012. The total paid to MRMG in contract fees was \$44,500 and \$3,121.83 in disbursements.
- (c) Following the completion of the review, Mr Hauraki retained Mr Meroiti for further assistance in relation to whakapapa and tikanga, research related to a BNZ mortgage, livestock reconciliation and research into the Waimarama lease.

⁹ 36 Takitimu MB 43 (36 TKT 43).

¹⁰ 44 Takitimu MB 46-101 (44 TKT 46-101).

- (d) Mr Hauraki identified debts that existed between the Ngawapurua Trust, the Tatere Partnership and Rua Roa Trust. In his report dated 20 May 2015, Mr Hauraki stated that the former trustees and Mr Richard Tatere owed a debt to the Tatere Partnership to the amount of \$463,603.70.
- (e) Mr Hauraki also discussed various farm management issues relating to the Rua Roa dairy farm, financial and accounting issues and outstanding loans.

[18] On 24 June 2016, I appointed Mr Brendan Lyne of Lyne Davis Opinion to investigate and report on a debt said to be owed to the Tatere Partnership by former trustees and Mr Richard Tatere, and on the extent of costs incurred by Mr Hauraki during the course of his trusteeship.¹¹ Mr Lyne's instructions were:

- (a) Review a full and complete set of files and information accessed by Mr Hauraki during his term as trustee.
- (b) Review a full and complete set of the reports, evidence and other materials filed in the Māori Land Court or other proceedings by Mr Hauraki during his term as trustee, including Mr Hauraki's 12 December 2013 report to the Court and supporting documents and Mr Hauraki's evidence submitted to the Court of Appeal.
- (c) In the event that Mr Lyne is considering making findings adverse to Mr Hauraki, former trustees, or Mr Richard Tatere, the Court recommended that Mr Lyne inform that person (or persons) in draft form of the nature of those findings and provide that person (or persons) with an opportunity to comment prior to finalising the report.

[19] On 1 November 2017 I issued further instructions to Mr Lyne, having considered his draft report dated 1 August 2017.¹² I directed Mr Lyne to investigate and further report on:

¹¹ 50 Takitimu MB 113 (50 TKT 113).

¹² 63 Takitimu MB 165 (63 TKT 165).

- (a) How much of Mr Meroiti's costs have been paid and how much remains outstanding?
- (b) What portion of Mr Meroiti's costs can be properly attributed to the work of the responsible trustee?
- (c) What portion of Mr Meroiti's costs can be properly attributed to the Te Aute Trust Board or any other party?
- (d) Have any of Mr Meroiti's costs (including those of his sub-contractors or agents) been met by the Te Aute Trust Board or any other party?

[20] Mr Lyne filed a Second Draft Report on 26 October 2018, which took into account the comments submitted by parties and the updated instructions. On 10 March 2021 Mr Lyne filed the Final Report, noting feedback that had been received from Mr Morely on behalf of Te Aute Trust Board.

[21] Mr Lyne noted that Mr Hauraki had invoiced a total of \$153,972 throughout his time as a trustee, according to Mr Ivamy's records (the trusts accountant at the time). Mr Lyne acknowledged that, with reference to Mr Hauraki's invoices, this total came to \$156,949.99 due to the GST being incorrectly calculated. Of this, \$45,082.88 had not been paid. Correspondence from Mr Milner indicated that once Mr Hauraki became aware of the dire state of the Trusts, he dropped his fee to \$50 per hour and did not charge for all his time. Invoices were supported with indications of the time worked for each day and a brief description of the activities undertaken. Mr Lyne considered the description to be consistent with accepted professional practice and with the duties and responsibilities of a trustee. Mr Lyne found that, while Mr Hauraki's costs and expenses were significant, they were in his opinion not untoward.

[22] Mr Hauraki accordingly applied for special aid for the reimbursements of the costs incurred during the costs of his work as an independent trustee of the Ngawapurua and Rua Roa Trusts. The application was granted by the Court and the sums of \$45,499 with respect

to Mr Hauraki's costs and the further sum of \$1,120.68 being reimbursement of legal costs, were approved for payment.¹³

[23] Mr Lyne identified that Mr Meroiti invoiced a total to \$238,300 to the Trusts, including the amounts disbursed to Morrison Kent and the Court of Appeal. Mr Meroiti has been paid the amount of \$142,075, and to date a total of \$96,225 remains unpaid. Mr Lyne did not consider he had sufficient information to conclude on the appropriateness of Mr Meroiti's expenses.

[24] Three invoices to Morrison Kent for legal services were paid by Mr Meroiti and invoiced to the Responsible Trustee, amounting to a total of \$33,858.75. Morrison Kent addressed these invoices to the Trustee of the Ngawapurua and Rua Roa Trusts (for the amount of \$972.66), to the Te Aute Trust Board (for the amount of \$20,673.94 and \$6,332.15). Security for costs for which no invoice was provided was also paid by Mr Meroiti, to the amount of \$5,880. Mr Lyne considered that the invoices addressed to Te Aute Trust Board should be paid by the Board, together with the payment for security for costs. This finding was opposed by counsel for TATB.

[25] Mr Lyne considered that the fees Mr Meroiti rendered for his time, totalling \$104,161 and \$100,280 should be the cost of the Responsible Trustee, and of the Morrison Kent invoices paid by Mr Meroiti, \$32,886 should be reimbursed by the TATB and \$973 by the Responsible Trustee.

Te tono mō te whakatepenga me te utu

The termination and payment application

[26] On 26 July 2016, Mr Hemana applied to the Court pursuant to s 151 of the Act for an order of confirmation of alienation of Tamaki No 2A 1C and Part Tamaki 2A2A blocks (Tamaki blocks), for a purchase price of \$4,800,000.00 plus GST. On 8 December 2016, the Court made a conditional order confirming the alienation by way of sale of the Tamaki blocks.¹⁴ The alienation application arose from the need to clear unsustainable and rising debt secured over the lands held by the Rua Roa Trust.

¹³ 87 Takitimu MB 203-204 (87 TKT 203-204).

¹⁴ 56 Takitimu MB 71-72 (56 TKT 71-72).

[27] On 1 June 2017 the transfer of Tamaki No 2A No 1C, Tamaki 2A2A and the general land vested in the Rua Roa trust was settled in accordance with the agreement for sale and purchase between Mr Hemana and ME & SA Brunton Family Trust. Most of the sale proceeds were applied to clear debt, and a balance of \$1,158,474.87 now remains (as at 30 November 2021).

[28] In June 2017, counsel for Mr Hemana applied for payment of money held and termination of the Rua Roa trust. I issued a minute dated 2 August 2017 noting claims in the review application concerned various debts or liabilities said to be owed by the Rua Roa Trust to either the Tatere Farming Partnership or the Ngawapurua Trust.¹⁵ I also noted potential jurisdictional issues. I directed that the application for payment of funds and termination of trust be made on notice to all parties to the review application.

[29] Mr Hemana applies for an order for payment of the remaining funds held to the beneficiaries of the Rua Roa Trust. His counsel Mr Koning submits that such an order is necessary, given indications from the Ngawapurua trust that Te Aute reserves its rights to claim against Mr Hemana should he expose himself to personal liability by distributing or dissipating Rua Roa's surplus funds.

[30] Mr Hemana also applies for an order terminating the Rua Roa trust. After the sale of the Tamaki blocks, there is no longer any land vested in the Rua Roa trust.

[31] Mr Koning argues that the Court does not have jurisdiction to make orders for the Rua Roa Trust to pay any part of the outstanding Meroiti or Morrison Kent invoices.

Submissions for Mr Richard Tatere, Brenda Tatere and Denise Cawsey – Applicants for the review of trust

[32] The Tatere whānau position is that they filed the application with the Court on the basis that they were concerned at the activities and expenditure of Mr Hauraki as trustee. As a result, the Court engaged Mr Lyne to investigate and report. Counsel for the Tatere whānau submits that his clients now take a pragmatic view of the proceedings, given the length of

¹⁵ 61 Takitimu MB 153 (61 TKT 153).

time that has passed and the continued impact of the delays on the Tatere and Edwards beneficiaries.

[33] Mr Watson notes that the Tatere whānau do not have further evidence to adduce and agree that the application for review can be determined. Mr Watson states that the whānau will abide by the decision of the Court as to whether there are extant issues which require a hearing, or whether the proceedings may be determined on the papers.

[34] The Tatere whānau also support the application for termination of the Rua Roa Trust and consequential directions concerning the distribution of proceeds from the sale of the Rua Roa lands to the beneficiaries.

Mr Hauraki's submissions

[35] Mr Hauraki does not take a position on the application to wind up the Rua Roa Trust and the distribution of funds.

[36] Counsel for Mr Hauraki seeks the dismissal of the application for review of trust. Mr Milner submits that leave was granted for the applicants to file an amended application for review in relation to costs, however instead the application contained numerous inaccurate and misleading allegations concerning Mr Hauraki's trusteeship. Mr Milner maintains that Mr Hauraki acted honestly in accordance with the trust orders and maintained a high level of reporting to the Court and beneficiaries. Mr Milner acknowledges expenditure has been incurred, however the Court has also recognised the difficulties faced by Mr Hauraki in his efforts as a trustee and working through the complex arrangements between the two trusts and the Tatere Partnership. Mr Milner also submits that it would be inequitable for Mr Hauraki to incur further personal expense to defend an inquiry into his trusteeship, given he was asked by the Court to accept the trustee position and has no whakapapa, or personal interest in the lands vested in the trust or the parties.

[37] Mr Milner argues that the independent report completed by Mr Lyne found no fault with the expenditure incurred by Mr Hauraki, nor did he consider it improper. Mr Milner highlights that it has now been more than five years since Mr Hauraki resigned his position, and that the significant delay, as well as Mr Lyne's report only focusing on part of his initial

instructions, prejudices Mr Hauraki's ability to respond to the allegations against him in the first amended application for review.

Te Aute Trust Board submissions

[38] Counsel for Te Aute Trust Board submits that the applicants for the review application have no standing to pursue a review of the Ngawapurua Trust and as such, the application as it relates to the Ngawapurua Trust should be dismissed. Mr Morely notes that the applicants are neither trustees, nor beneficiaries of the Ngawapurua trust.

[39] Counsel submits that Mr Lyne's report focuses solely on the extent of costs incurred by Mr Hauraki during the course of his trusteeship, and that the Court has confirmed its lack of jurisdiction over claims for monies due as between the two trusts arising out of the operation of the Tatere Partnership.

[40] Mr Morely submits that the Te Aute Trust Board will abide by the decisions of the Court should the review application, insofar as it relates to the Rua Roa Trust, be set down for hearing. Given that the Trust Board is not a beneficiary of the Rua Roa Trust and there is no jurisdiction for the Court to inquire into the Tatere Partnership, TATB does not anticipate being affected by any review of the Rua Roa Trust.

[41] Mr Morely makes several points in regard to the costs of Mr Hauraki and Mr Meroiti which were raised in the amended application for review, and in response to Mr Lyne's final report:

- (a) Mr Ivamy had advised the Court and parties that Mr Hauraki and Mr Meroiti's invoices had been paid out of the Tatere Partnership bank account. Mr Ivamy's statements that the payment was effectively made by Rua Roa does not acknowledge the claims that Ngawapurua has against Rua Roa for debts arising from the Tatere Partnership. However, issues in relation to the Partnership falls outside the Court's jurisdiction and are matters for arbitration.
- (b) It is acknowledged that Mr Hauraki was a necessary and active party in the appeal to the Court of Appeal and the costs of bringing matters to the court

for clarification and direction were and are properly a tax on the Trust, not the beneficiaries.

- (c) Mr Lyne has failed to consider Hesketh Henry's letter dated 17 January 2019 regarding TATB submissions on his earlier draft report. TATB considers Mr Lyne has failed to appropriately investigate the Morrison Kent invoices. Mr Morely submits that TATB is not responsible for the Morrison Kent invoices paid by Mr Meroiti.
- (d) In agreement with Mr Koning's submissions, Mr Morely submits that Mr Meroiti's invoices and the Morrison Kent invoices are claims based on a contract retainer which are now time barred, not in relation to Māori freehold land, and as such is outside the Court's jurisdiction under s 18(1)(d) for contract claims even if a separate application were made. Mr Morely also argues that it is not within the scope of a review of trust to consider reimbursement of these costs.

Edwards Whanau Submissions

[42] Mr Appleby, counsel for the Edwards whānau, submits that his clients have considered the contents of Mr Lynes final report and ask the Court to accept those findings. The Edwards whānau wish to have the application for termination of trust brought to conclusion.

Kōrerorero *Discussion*

The application for review of trust

[43] It is clear to me that the application for review of trust has run its course. To the extent that there remain matters in contention between some of the parties, it is common ground that they fall outside the jurisdiction of this Court being primarily matters subject to the arbitration clause in the Tatere Farming Partnership Deed.

[44] The review application has focused upon Mr Hauraki's role as a court appointed trustee. It is important that I record and acknowledge that none of the complaints concerning

Mr Hauraki's conduct as trustee have been substantiated. Mr Hauraki's trusteeship has not in any way found to have been at fault.

[45] If issues remain concerning Mr Meroiti's costs or the Morrison Kent invoices I accept that they are matters which also fall outside the jurisdiction of this Court for the reasons summarised in Mr Koning's submissions.

[46] The application for review can therefore be dismissed.

The application to terminate the trust and distribute trust funds

[47] The Court may terminate a trust per s 241 of the Act:

241 Termination of trust

(1) The court may at any time, in respect of any trust to which this Part applies, terminate the trust in respect of—

(a) the whole or any part of the land; or

(b) the whole or any part of any interest in land subject to the trust,—

by making an order vesting that land or that part of that interest in land in the persons entitled to it in their respective shares, whether at law or in equity, or in such other persons as the beneficial owners may direct.

[48] In *Larkins v Kaitaia – Waihou Hutoia D2A Block*, the Māori Appellate Court outlines how s 241 should be applied.¹⁶ The key points are summarised in, *Phillips v King – Phillips Whānau Trust*:¹⁷

- (a) The Court's power to terminate a trust is discretionary and should be invoked cautiously.
- (b) There is no automatic right to terminate a trust. An applicant must establish that the discretion to refuse termination should not be exercised.
- (c) A change of mind is usually an insufficient ground for termination unless there is an absence of opposition.
- (d) Termination should be refused where it is likely to result in detriment or create unreasonable disadvantage to affected parties.

¹⁶ *Larkins v Kaitaia – Waihou Hutoia D2A Block* [2013] Māori Appellate Court MB 159 (2013 APPEAL 159).

¹⁷ *Phillips v King – Phillips Whānau Trust* (2020) 418 Aotea MB 249 (418 AOT 249) at [26]-[27].

- (e) Evidence of trustees failing to adhere to the terms of trust and core accountabilities may be sufficient grounds for termination.

[27] In exercising its discretion, the Court should consider the following factors:

- (a) The Preamble, s 2, and other matters listed in s 17 of the Act, including the extent to which termination achieves better retention, use, development and control of the land in accordance with the fundamental principles and purposes of the Act;
- (b) The purposes of the trust;
- (c) The extent of beneficiary and trustee consent;
- (d) The impact of any termination on the remaining beneficiaries and the trust; and
- (e) Any evidence of dysfunction among the trustees to justify the Court's intervention.

[49] The Court's powers to order distribution of funds held in trust are contained in s 242 of the Act. The Court has a broad discretion.

Kupu Whakatau

Decision

[50] Notwithstanding the litigation history I see the application of the relevant principles as relatively straight forward. The beneficiaries of the Rua Roa Trust support the winding up of the Trust as does the responsible trustee. There is no longer a corpus of land in the trust and the only assets remaining are the balance of the proceeds of sale. I am satisfied that it is appropriate to make orders terminating the Rua Roa Trust and to authorise Mr Hemana to distribute the funds to the nine beneficiaries.

[51] Mr Koning has appropriately drawn to the Courts attention a number of matters that need to be taken into account. There are nine beneficiaries each holding a 1/9 share of the Trust capital. One of the beneficiaries, Richard Taterere has passed away. His 1/9 share will pass to his estate. Mr Koning also advises that there are the following debts due and owing to the Trust;

- (a) P Emery \$10.00
- (b) T Edward \$1,553.00

(c) H Tatere \$10,000.00

[52] There are two groups of beneficiaries, one being the Edwards whānau and the other the Tatere whānau. Mr Koning proposes that the Emery and Edwards debts are deducted from the 6/9 share to be paid to the Edwards whānau. The H Tatere debt is to be deducted from the 3/9 share of the Tatere whānau.

[53] Mr Koning had also helpfully provided proposed draft orders based on calculations adjusted for these debts and in the alternative based on equal allocation amongst the nine beneficiaries with the debts written off.¹⁸

[54] To my mind the correct and fair approach is that the debts owing to the Trust are accounted for in the final distribution and I will accordingly make orders based upon a deduction of the Emery and Edwards debts from the 6/9 share to be distributed to the Edwards whānau and for the H Tatere debt to be deducted from the 3/9 share due to the Tatere beneficiaries.

[55] The final orders will be adjusted from the draft orders initially proposed by Mr Koning to take account of the fact that the balance of funds currently held (as at 30 November 2021) is now \$1,158,474.87.

Ngā ōta *Orders*

[56] Application A20130007311 for review of trust is dismissed.

[57] Pursuant to Section 241 Te Ture Whenua Māori Act 1993 there is an order terminating the Rua Roa Trust.

[58] Pursuant to Section 242 Te Ture Whenua Māori Act 1993 there is an order that the responsible trustee for the Rua Roa Trust Mr Clinton Hemana pay the sum of \$1,158,474.87, being a balance of Trust funds held for the Rua Roa Trust to the following nine named beneficiaries in equal shares subject to the adjustments required with respect to debts due to the trust as set out in paragraphs 52 and 55 above. The beneficiaries being;

¹⁸ Memorandum of Counsel, 24 November 2017, Attachments A-C.

- (a) Tau Anthony
- (b) Hohepa Edwards
- (c) Belinda Puanani Edwards
- (d) Donna Mahue Marsh
- (e) Michelle Awhina Edwards
- (f) Hester Vanessa Edwards
- (g) Josephina Mariana Henderson
- (h) Brenda Mei Tatere
- (i) Denise Casey
- (j) Estate of Richard Tatere

I whakapuaki i te 9.00am i Pōneke te 24th o ngā rā o Hakihea te tau 2021.

M J Doogan
JUDGE