IN THE MĀORI APPELLATE COURT OF NEW ZEALAND
TAITOKERAU DISTRICT

A20170001829

UNDER	Section 59, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Te Tii Waitangi A
BETWEEN	MEREHORA TAURUA Appellant
AND	HINEWHARE HARAWIRA Respondent

Hearing:	11 August 2017 (Heard at Whangārei)
Court:	Judge P J Savage (Presiding) Judge S F Reeves Judge M J Doogan
Appearances:	Barney Tupara for Appellant Hinewhare Harawira (in person)
Judgment:	29 September 2017

RESERVED JUDGMENT OF THE MĀORI APPELLATE COURT

Copies to: Mr Barney Tupara, Ranfurly Chambers, 10 Kaihu Street, Auckland 0627

Introduction

[1] This appeal is part of a long running litigation in relation to Te Tii Marae at Waitangi. The issue on appeal concerns a trustee appointment, but wider issues have been raised and it is necessary to place this appeal in context.

Procedural History

[2] On 11 November 2015, Ngāti Kawa Aramiha Taituha applied to appoint three trustees and to remove Hinewhare Harawira as a trustee. The application for removal was said to be in accordance with a Special General Meeting held on 28 March 2015 and an Annual General Meeting held on 31 November 2015.

[3] At that time, there were several other applications before the Court relating to this Marae raising a number of separate issues. Those other applications were heard on 19 and 20 November 2015, and 24 June 2016, and after being recalled they were then heard together with this application on 2 and 3 August 2016.

[4] On 20 December 2016, Judge Ambler issued a decision on this application appointing trustees as sought but declining to remove Ms Harawira. While concerned about aspects of her performance he concluded that there were insufficient grounds to remove her. He ended his judgment, in so far as it related to this application, by declaring that it was concluded.

[5] The decision not to remove Ms Harawira as a trustee is the decision now being appealed from.

The Appeal

[6] Merehora Taurua, the Appellant in these proceedings, filed a notice of appeal on 27 March 2017 which set out the grounds of the appeal as follows:

1. The decision breaches the Preamble of the 1993 Act.
2. The decision breaches He Whakaputanga 28 October 1835 hapu rangatira.
3. The decision breached Te Tiriti O Waitangi 6 February 1840 hapu rangatira.

4. The decision breached the 1994 Charter – Te Tiriti O Waitangi Marae.

5. The decision allows the Waitangi Marae trustees to breach the Māori Reservation Regulations 1994.

   To clarify, this application to appeal is from one of the three applications heard on 2nd and 3rd August 2016 and specifically opposes the Court determination at A20150006417 whereby marae trustees were still appointed despite opposition to their activities and processes of the AGM.

[7] Application A20150006417 is the application referred to in paragraph two above.

Scope of the Appeal

[8] The appeal does not seek to overturn Judge Ambler's appointment of three trustees, but focuses on the failure to remove Ms Harawira. At the outset we were concerned with the ambit of this appeal and sought clarification from counsel for the Appellant. Upon questioning from the Court, Mr Tupara said:

> You are quite correct in saying that the scope for this appeal is turning on one question and that was whether the Judge got it right or wrong in terms of whether Hinewhare Harawira should be removed or not.

[9] That being said, the argument on appeal did not address the usual issues to be expected when the exercise of a discretion to remove a trustee is contested, and it was not always easy to relate the assertions made for the Appellant back to the point at issue in the notice of appeal.

[10] Counsel for the Appellant spoke at length on the matters raised in the notice of appeal and espoused a number of views that were clearly forcefully and sincerely held by his client and her supporters. They thought that the lower Court should have had more regard to these particular matters. In a general sense they rely upon He Whakaputanga, Te Tiriti and tikanga to argue that persons other than the Court have power to remove the trustees. There was also reference to the Taumata, the Charter and the Waitangi Tribunals' stage one Te Paparahi o Te Raki report.

Discussion

The Preamble of Te Ture Whenua Māori Act 1993, He Whakaputanga October 1935 and Te Tiriti o Waitangi 1840

[11] The first three grounds of appeal allege that the lower Court's decision breaches the Preamble of Te Ture Whenua Māori Act 1993, He Whakaputanga October 1935 and Te Tiriti o Waitangi 1840. The proposition seemed to be that where hapu or those present on this Marae pass a resolution (in this case a resolution to remove a trustee) the Māori Land Court is bound by that decision. We immediately recognise that views expressed by Marae beneficiaries must be carefully considered by the Court when they are relevant to an issue that is being dealt with.

[12] The Māori Land Court has however consistently held to the general principle of trust law that trustees will not be removed simply because beneficiaries no longer wish them to be trustees. Trustees, in the exercise of their duty to fairly and prudently manage the affairs of the trust, will often have to make difficult decisions which are not viewed with favour by all beneficiaries. They are entitled to the protection of the Court, providing they adhere to the terms of the Trust and perform their duties satisfactorily.

[13] The jurisdiction to remove a trustee requires unsatisfactory performance in an objective sense as a jurisdictional precursor, and then the exercise of a discretion by the Court to decide whether or not to actually remove.[1] The discretion is to be exercised in accordance with the well-known provisions in Te Ture Whenua Māori Act 1993 (including the Preamble).[2]

[14] Counsel for the Appellant relied upon the findings of the Waitangi Tribunal in the Te Paparahi o Te Raki Stage One Report relating to sovereignty. It was argued that the lower Court's decision breaches the Preamble of Te Ture Whenua Māori Act 1993, He Whakaputanga 1935 and Te Tiriti o Waitangi 1840. It should be remembered that the Waitangi Tribunal is not a Court and, in any event, the submissions seemed to us to be

[1] Te Ture Whenua Māori Act 1993, s 240; *Rudd Senior v Procter – Horowhenua 11 (Lake) Trust* [2012] Māori Appellate Court MB 107 (2012 APPEAL 107) at [14]-[15].

[2] See *Chambers v Keepa – Te Hinau A Pura Whānau Trust* (2016) 350 Aotea MB 74 (350 AOT 74) at [28]-[29].

based on a liberal reading of the Tribunal's report. We don't believe that these arguments carry the Appellant's case any further and we return to the basic proposition that, while the views of beneficiaries are relevant and deserve close consideration, the jurisdiction to remove a trustee is vested in the Court and no one else.

The Marae Charter

[15] The fourth ground of appeal alleges that the lower Court's decision breaches the Marae Charter. The Charter formed a good deal of Mr Tupara's submissions, and the proposition seemed to be that because the Charter provided for a removal process, the Court should simply recognise that process and make removal orders on the basis that the process under the Charter has been followed.

[16] There is a difficulty with that. The power and the duty of the trustees to draw up a Charter in agreement with the beneficiaries of the Marae has its source in Regulation 7 of the Māori Reservation Regulations 1994:

> **7 Charter in respect of marae**
>
> (1) Subject to subclause (2), where a reservation is a marae, the trustees of that reservation shall draw up, in agreement with the beneficiaries of the marae, a charter for the reservation, which charter may include provision for the following matters:
>
> (a) the name of the marae:
> (b) a general description of the marae reservation (including a plan if appropriate):
> (c) a list of iwi, hapu, or whanau (whichever is relevant) who are the beneficiaries of the marae reservation:
> (d) the process for nominating and selecting marae trustees:
> (e) principles to which the trustees will have regard in relation to the marae:
> (f) the manner in which the trustees are to be accountable to the beneficiaries:
> (g) the process by which conflicts between beneficiaries and trustees are to be resolved:
> (h) the recognition of existing marae committees:
> (i) the appointment by the trustees of 1 or more committees for the purposes of carrying out the day to day administration of the marae:
> (j) the procedure for altering the charter:
> (k) provision for the keeping and inspection of the charter:
> (l) subject to the provisions of the Act or any regulations made under the Act, such other matters as the beneficiaries of the marae may require.

> (2) Where a reservation that is a marae is to be held for the common use and benefit of the people of New Zealand, the charter for the reservation shall, instead of being drawn up in agreement with the beneficiaries of the marae, be drawn up in agreement with the beneficial owners of the land.

[17] Mr Tupara submitted that the fact that the Charter was ignored and was not referred to in the lower Court's decision was the cornerstone of the appeal. But the Charter can only have legal effect in so far as it deals with the matters listed in Regulation 7(1)(a)-(l) set out above. Removal of a trustee is not a matter for the Charter. There is no reference to such a power in Regulation 7, and paragraph (l) can certainly not be read so as to allow for the suspension or amendment of either the Act or the Regulations.

[18] Considering the removal of trustees is not a matter for the Charter, it is not surprising that Judge Ambler did not refer to it in his decision. In any event, the argument was not presented in the manner in which it is now argued in this appeal and the Charter was not particularly relevant to the decision he was required to make. He did however have proper regard to the views of the beneficiaries, as evidenced by the references in his decision to the minutes of the meetings referred to in the application before the lower Court.

The Regulations

[19] The final ground of appeal was that the decision allows the trustees to breach the Māori Reservation Regulations 1994. The argument in support related to the performance of other trustees whose performance was not called into question by the lower Court application now appealed from. At the hearing, Mr Tupara attempted to broaden the scope of the issues being considered in order to raise the issue of the performance of those other trustees. We did not allow this as that issue was not properly before us.

Conclusion

[20] We return to the central point at issue in this appeal: namely whether the Court ought to have removed Hinewhare Harawira. The decision appears to have been finely balanced. Judge Ambler clearly had concerns about aspects of Ms Harawira's performance. He considered whether or not to remove her, having regard to the requirements of the Act as to the exercise of discretion. He did not in our view stray from

consideration of the relevant matters and the applicable principles. Neither is the decision plainly wrong. We can see no reason to overturn his decision.

[21] Ms Harawira, appearing for herself, made a number of points during the hearing which have been considered. We do not rehearse them here as we are satisfied that the appeal must fail.

Decision

[22] The appeal is therefore dismissed.

Further matters

[23] There are two ancillary matters that also need to be dealt with:

(a) an issue of further evidence; and

(b) an application for special aid.

Further Evidence

[24] Mr Tupara sought to adduce further evidence within days of the hearing of this appeal.

[25] Rule 8.18 of the Māori Land Court Rules 2011 prohibits further evidence on appeal and limits this Court's ability to hear it unless an application is made to this Court to produce that evidence one month before the hearing of the appeal.

[26] It appears that this rule is made in the face of s 55 of Te Ture Whenua Māori Act 1993 which allows this Court to receive such evidence if, in its opinion, it is necessary in order to enable it to reach a just decision in the case before it. There is no requirement for an application in that regard to be brought within any particular time and if the rule is saying to this Court that it cannot hear that evidence if it wishes to, it may well be ultra vires. In particular, we can forsee circumstances where this Court ought properly to receive late evidence and not be precluded from doing so by rule 8.18(3). The matter does not need to be decided in this case. The evidence that Mr Tupara sought to call was not

even close to meeting the threshold requirements for the calling of further evidence on appeal under the well-recognised procedure of this Court.

Application for Special Aid

[27] The application for special aid was, again, only made days before the hearing. We were not assisted by the submissions made as they did not focus on matters which were properly arguable.

[28] There was an associated application for out-of-pocket expenses for two kaumatua. Neither of those persons were heard or represented in the proceedings before this Court. We received no submission as to why they were in need of special aid other than the fact that they were Superannuitants. We do not have jurisdiction to grant Special Aid in any event as there was no representation entered for them and they were not heard. Special Aid is therefore declined.

This judgment will be pronounced in open Court at the next sitting of the Māori Appellate Court.

P J Savage **JUDGE** (Presiding)	S F Reeves **JUDGE**	M J Doogan **JUDGE**