I TE KOOTI PĪRA MĀORI O AOTEAROA
I TE ROHE O TE WAIARIKI
In the Māori Appellate Court of New Zealand
Waiariki District

A20200007202
APPEAL 2020/5

WĀHANGA *Under*	Section 58, Te Ture Whenua Māori Act 1993
MŌ TE TAKE *In the matter of*	Lot 5 Deposited Plan South Auckland 15580 (Mangakino Pouākani Marae)
I WAENGA I A *Between*	ALAN TE MAARI, ANAHERA PEDERSEN, ERINA TE MAARI, IRIHAPETI KING, LOIS SHELTON, MEMORY HINEARI RORE TE WHAITI, ORAM WHAKAATAKU HEPI, RAIHA RAPATINI, RANGIHAUATA BLANEY AND WILMA KINGI AS TRUSTEES OF MANGAKINO POUAKANI MARAE Ngā kaitono pīra *Appellants*
ME *And*	MEMORY HAMON, WYVERN BRIGHTWELL, JOSEPHINE TAUTE AND LYNETTE WHATA Ngā kaiurupare pīra *Respondents*

Nohoanga: *Hearing*	5 November 2020, 2020 Māori Appellate Court MB 400-420 (Heard at Rotorua)
Kooti: *Court*	Deputy Chief Judge C L Fox (Presiding) Judge P J Savage Judge S F Reeves
Kanohi kitea: *Appearances*	A Warren and K Katipo for the appellants C Bidois for the respondents
Whakataunga: *Judgment date*	23 February 2021

TE WHAKATAUNGA Ā TE KOOTI
Reserved Judgment of the Court

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Hei tīmatanga kōrero – Introduction

[1] On 3 June 2020, His Honour Judge Stone issued a decision where he declined to inquire into the administration of Pouākani Marae (effectively dismissing it), and purported to issue directions and orders pursuant to s 237 of Te Ture Whenua Māori Act 1993 (the Act):[1]

(a) The trustees of the reservation are to hold an AGM;

(b) The agenda will include a presentation of the most recent financial accounts and an election of trustees for any vacant trustee positions;

(c) An independent facilitator, to be appointed by the Court in consultation with the trustees, must chair the AGM;

(d) Any Māori associated with the reservation is eligible to be nominated as a trustee and vote at that meeting regardless of whether they reside in the Mangakino district;

(e) The trustees must apply to the Court as soon as is reasonably practicable to seek the appointment of the new trustees; and

(f) The trustees must undertake a review of the trust in consultation with beneficiaries. As a part of the review, the definition of 'beneficiary' in the Charter and the criteria that should be adopted to determine whether a person can be considered a beneficiary of the reservation, must be reconsidered.

[2] The trustees of Pouākani Marae (the Trustees) appeal to this court on three grounds. Firstly, on the ground that the Māori Land Court erred by making findings in relation to the beneficiary class of the Marae and trustee eligibility after having declined the application for an inquiry. Secondly, by invoking powers under ss 237-245 of the Act after declining to conduct an inquiry. Finally, by making directions under ss 237-245 without following proper procedure and the principles of natural justice.

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1 *Hamon v Te Maari – Lot 5 Deposited Plan South Auckland 15580 (Mangakino Pouākani Marae)* (2020) 233 Waiariki MB 296 (233 WAR 296) at [49].

I tae mai te pira i te wa tika? - Should leave to appeal out of time be granted?

Ngā kōrero a te Kaitono pīra– Appellant's submissions

[3] The Trustees seek leave for this appeal to be accepted out of time. The Notice of Appeal was sent electronically on 3 August 2020; however, payment of the filing fee was not received by the Court until 4 August 2020. This delay resulted in the appeal being filed a day late, outside the two-month time period for appeal.

[4] The Trustees submit that the Court should grant leave to allow the appeal on the following grounds:[2]

(a) The Notice of Appeal was filed electronically on 3 August 2020, within the appeal time period;

(b) The filing fee was posted on 3 August 2020 to the Office of the Chief Registrar;

(c) The filing fee was not received within the two-month time period;

(d) The appellants have not delayed in filing the notice of appeal;

(e) The delay was due to an oversight in ensuring the filing fee was received by 4 August 2020;

(f) The slight delay is unlikely to be prejudicial to any parties;

(g) The appeal raises important issues regarding the beneficiary class of Pouākani Marae; and

(h) It is in the interests of justice that leave to appeal be granted.

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[2] Synopsis of submissions for the Appellant, dated 28 October 2020 at [10].

Te Ture – The Law

[5] Section 58(3) of Te Ture Whenua Māori Act 1993 (the Act) and r 8.14 of the Māori Land Court Rules gives the Appellate Court jurisdiction to grant leave for appeals to be heard out of time. The principles the Court must have regard to are well established and ultimately require an assessment of where the interests of justice lie.[3] In the case *Almond v Read*, the Supreme Court has summarised principles relevant to the consideration of whether to grant leave, namely:[4]

(a) The length of the delay;

(b) The reasons for the delay;

(c) The conduct of the parties;

(d) The extent of prejudice or hardship caused by the delay; and

(e) The public interest of the issues raised by the appeal.

[6] These principles have been endorsed in recent decisions of the Māori Appellate Court, and we apply them here.[5]

Kōrerorero – Discussion

[7] The appeal was filed only a day outside the two-month time period, due to an unintentional administrative oversight. We do not consider there is conduct to justify refusing to grant leave to be heard, nor do we believe the respondents have been unfairly prejudiced by the delay, which is negligible. Taking these considerations into account, we find that the interests of justice favour the appellants and accordingly leave to appeal is granted.

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3 *Robertson v Gilbert* [2010] NZCA 429 at [24]; *Koroniadis v Bank of New Zealand* [2014] NZCA 197 at [19] and *My Noodle Ltd v Queenstown-Lakes District Council* [2009] NZCA 224 at [19].

4 *Almond v Read* [2017] NZSC 80; [2017] 1 NZLR 801 at [38].

5 *Ngakoti v Department of Conservation – Ngaiotonga A3* [2019] Māori Appellate Court MB 213 (2019 APPEAL 213); *Tairua v Aati – Estate of Mere Hare Kerepeti* [2020] Māori Appellate Court MB 224 (2020 APPEAL 224).

Kōrero whānui – Background

[8] Pouākani Marae is a Māori reservation of approximately 1.446 ha located in Mangakino, first set aside in 1958 and again in 1972 as a marae for the common use and benefit of the Māori people of the district.[6]

[9] The application for an inquiry into a reservation was filed in the Māori Land Court on 21 January 2019 by Memory Hamon, Wyvern Brightwell, Josephine Taute and Lynette Whata who claimed to be beneficiaries of the marae.[7] The grounds were that the marae trustees had determined that residents outside of Mangakino did not have the right to be nominated as trustees or to vote in marae matters. The application also raised a concern that tikanga was not being correctly applied, namely denying entry for tupāpaku onto the marae at night. Finally, the application alleged lack of transparency regarding the management and financial accountability of the marae.

Ko te hātepe ture o te tono nei – Procedural background

[10] The key issue before the Māori Land Court was the interpretation of the beneficiary class of the marae, as defined in the 11 July 1972 Order in Council. That order set aside the land "for the common use and benefit of the Māori people of the district."[8] The Trustees of the marae interpreted the definition to mean that only those who reside in the Mangakino district are entitled to vote on marae related matters. The applicants disputed the requirement that they must reside in the district.

[11] The Court instructed the Registrar to prepare a s 40 report, which was issued on 20 August 2019 and distributed to parties for their response. The report focused on the history of the marae and the 11 July 1972 Order in Council. It was recommended in the report that the trustees hold an independently chaired AGM in which the latest financial accounts could be presented and an election for trustees held. The report proposed that any Māori who associated with the marae should be entitled to vote and be nominated as a trustee. The recommendations were supported by the applicants; however, the Trustees did not agree that the facilitator could determine who is eligible to vote.

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6 These notices were gazetted in the *New Zealand Gazette* on 1 May 1958 and 20 July 1972 respectively.
7 The respondents in this appeal.
8 *Hamon v Te Maari – Lot 5 Deposited Plan South Auckland 15580 (Mangakino Pouākani Marae)*, above n 1 at [7].

[12] In their response to the s 40 report, the Trustees provided a letter dated 11 May 1959 that outlined a resolution to amend the 17 April 1958 Order in Council setting aside part of the Pouākani land block as a Māori reservation. This prompted the Court to request further research on any further Orders in Council that may exist. Court staff located three additional *Gazette* notices that were relevant to the marae issued on 17 April 1958, 13 July 1960 and 27 July 1966. By way of a minute dated 4 March 2020, the Court directed parties to review and comment on the *Gazette* notices and indicate whether it would be considered helpful for the Court to express a view on the beneficiaries of the marae prior to the next AGM.

[13] The applicants responded to the minute and highlighted their continued support of the s 40 report's recommendations. They confirmed it would be useful for the Court to express a view on the beneficiaries of the marae and accepted that the 1972 Order in Council excluded owners who reside outside the district. The Trustees maintained their position that beneficiaries of the marae must be resident in the Mangakino district and indicated that the *Gazette* notices supported this. The Trustees proposed two ways forward; reconvene the AGM that was held on 15 January 2019 and restart it from where it was adjourned or begin afresh with a new agenda. The Trustees maintained that only beneficiaries the marae should attend, and they were people who reside in the district. Both parties were given the opportunity to provide final comments on each other's response.

[14] The Court went on to review the material received, such as the May 1959 letter and the *Gazette* notices to determine who are the beneficiaries of the marae. The Court found that the former owners of the Pouākani block, including their successors, are beneficiaries of the marae irrespective of where they reside.[9] Turning to non-owners of the block, the Court indicated that all beneficiaries must be Māori and of the district, however this does not mean that they must reside in the district.[10] The Court also considered the definition of beneficiaries in the Pouākani Marae Charter, which defined beneficiaries as "the Whānau associated with Pouākani Marae." Taking this definition into consideration alongside the principles of the Charter, the Court stated that "the trustees cannot say a person is not a beneficiary of the Marae simply because they no longer reside in the district."[11]

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9 *Hamon v Te Maari – Lot 5 Deposited Plan South Auckland 15580 (Mangakino Pouākani Marae)*, above n 1 at [34].
10 At [37].
11 At [44].

[15] After determining who the beneficiaries of the marae are, His Honour Judge Stone declined to exercise his jurisdiction to undertake an inquiry, effectively dismissing the application, however he invoked s 237 and the Court's jurisdiction in respect of trusts generally and purported to issue orders in relation the Pouākani Marae reservation. Judge Stone commented that the Court's powers under ss 237-24 operated independently of reg 21 and were able to be invoked, despite declining to undertake an inquiry. For ease of reference, the relevant passage of the decision is reproduced below:[12]

> *The way forward*
>
> [45] The application seeks an inquiry into the administration of the Marae. It is apparent that the inquiry was sought primarily because of disagreements as to who are the beneficiaries of the Marae. Although matters relating to tangihanga and the financial position of the Marae were raised in the application, they have not been pursued to any significant extent. The first step under Regulation 21 is to determine whether an inquiry should be undertaken. My determination as to who are the beneficiaries of the Marae should address the main issue between the parties. Therefore, I do not consider that an inquiry is required at this point.
>
> [46] That said, I generally concur with the recommendations in the s 40 report. An annual general meeting must be held to enable the trustees to present the Marae accounts and for trustee elections to be held. The parties accept that an independent facilitator should chair the annual general meeting. The trustees seek input in the selection of the facilitator, which is a reasonable request. Although I have determined that a person need not reside in Mangakino or the surrounding district in order to vote on Marae matters, that person must still associate with the Marae in some way.
>
> [47] I have declined to undertake an inquiry. However, I invoke s 237 and the Court's jurisdiction in respect of trusts generally to make orders in relation to the Māori reservation. There is an argument that the Court may only have recourse to this jurisdiction if it first decides to undertake an inquiry under Regulation 21, as the second stage of that process (in which the Court can invoke its various powers under ss 237-245 as it thinks fit) only occurs if an inquiry is undertaken. I consider that the Court's powers under ss 237-245 are independent of Regulation 21 and can be invoked even though an inquiry is not conducted.

Nga Take – Issues in dispute

[16] The key issue on appeal is whether Judge Stone had the jurisdiction to issue orders pursuant to s 237 of the Act after he had effectively dismissed the application to inquire into the administration of Pouākani Marae.

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[12] *Hamon v Te Maari – Lot 5 Deposited Plan South Auckland 15580 (Mangakino Pouākani Marae)*, above n 1 at [45-47].

Did the Court have jurisdiction to issue orders under ss 237-245 of the Act after having dismissed the application?

Ngā kōrero a te Kaitono pīra– Appellant's submissions

[17] The Trustees submit that the Judge made:

(a) a procedural error at law by issuing the substantive orders regarding the definition of the beneficiary class after dismissing the application.

(b) a substantive error as the orders that determined the beneficiaries of Pouākani Marae were wrong in fact and law.

[18] With respect to the procedural error, the appellants submit that the Court misapplied the two-step process required by reg 21 of the Māori Reservations Regulations 1994. The correct approach, the appellants submit, is to first address whether to conduct the inquiry and afterwards to proceed in whatever manner it deems appropriate. The appellants also raise the issue of the Judge not turning his mind to question whether further hearings were needed to obtain further information and responses from parties, nor did he consider whether the parties required legal representation. The appellants submit that the appropriate approach would have been to:

(a) Determine whether to conduct an inquiry;

(b) Conduct the inquiry (which would include obtaining the views of beneficiaries and owners at a hui held for that purpose);

(c) Inform the parties of the process for the inquiry as well as their right to representation given the complexity of the matter; and

(d) Conduct a full hearing on the issue of the beneficiary class.

[19] The appellants accept that in conducting an inquiry under reg 21, the Court can exercise its inherent powers under s 237. However, the appellants submit that by declining to inquire into the administration of the Pouākani Marae trust the application was concluded, and the Judge therefore had no jurisdiction to issue orders per s 237.

[20] The appellants also submit that by dismissing the application whilst issuing orders per s 237, the parties were deprived of the opportunity to be heard on the issue. The appellants submit that the Court has not issued orders under s 40 of the Act, as any intention to do so would have required specific reference to the section. It was submitted that the information obtained in the s 40 report should have been used to determine whether an inquiry was required or not, rather than who the beneficiary class is and who is eligible to be appointed as a trustee.

[21] In the alternative, the appellants submit that the Judge has wrongfully determined the beneficiaries of Pouākani Marae. This decision limits the trustees' ability to determine who associates with the Marae and the Court's findings are inconsistent with the Charter and tikanga. We note that detailed submissions were made in this respect which we consider it unnecessary to repeat those for the reasons given for determining the appeal discussed below.

Ngā kōrero a te Kaiurupare pīra – Respondent's submissions

[22] The respondents submit that there was no error in the lower Court decision and that Judge Stone possessed the jurisdiction to issue orders per s 237. The respondents rely on *Hamilton – Tuahu 3X (Erepeti Marae)* and submit that it does not preclude the Court from making findings at either stage of the two-step process, nor does it prevent the Court from issuing orders without first conducting an inquiry.[13]

[23] The respondents submit that the Court did not exercise its powers under ss 237 – 245 independently of the application, or in the alternative, that the Court has inherent jurisdiction to exercise its powers under s 237. The respondents submit that the ability to exercise powers under s 237 is not reliant upon an application under reg 21 and in this case, the Court exercised its powers within the context of the application for inquiry, rather than independently of it. The respondents also submit that, by virtue of being contained in the same judgment, the orders issued, and the dismissal of the application were made contemporaneously, and one could not be said to have preceded the other.

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13 *Hamilton – Tuahu 3X (Erepeti Marae)* (2009) 34 Gisborne Appellate MB 230 (34 APGS 232).

[24] The respondents do not consider there to be an issue of natural justice, as both parties were given the opportunity to comment on the s 40 report and allowed the opportunity to submit comments in reply.

[25] For the reasons stated, the respondents submit that the appeal should be dismissed.

[26] At the hearing on 5 November 2020, both parties were given the opportunity to submit further on the issue of inherent jurisdiction, in relation to the respondent's assertion that the Court has inherent jurisdiction to exercise its powers under s 237.

[27] The respondents submit that a court may invoke its inherent jurisdiction whenever the justice of the case requires it, referring to the Court of Appeal case *R v Moke.*[14] The respondents further submit that the Māori Land Court is empowered to exercise its inherent jurisdiction in relation to trusts per s 237.

[28] The respondents acknowledge that the court's inherent jurisdiction is limited so that it must only be exercised in harmony with any express statutory provision, citing *Mikaere-Toto – Te Reti B and C Residue Trust*.[15] The respondents submit that the Court has recognised that exercising its powers per ss 237-245 is appropriate in the context of an application under reg 21.[16] The exercise of the court's inherent jurisdiction in this case, the respondents submit, cannot either be invalidated by a lack of notice.

[29] The respondents submit that the Court does not require an application to exercise its inherent jurisdiction. The respondents rely on the case of *Marino-Repongaere 4G (Part)* as authority that the Court is able to exercise its powers to remove a trustee without an application, subject to giving the parties notice of its intention to do so.[17] The respondents also cite the decision *Short-Pukeroa Oruawhata Trust*, which focuses on the Court's power to amend a trust order and the exercise of jurisdiction per s 37(3) to support their argument.[18]

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14 *R v Moke* [1966] 1 NZLR 263 at 267.
15 *Mikaere Toto – Te Reti B and C Residue Trust* (2014) Māori Appellate Court MB 249 (2014 APPEAL 249) at [45].
16 At [45].
17 *Marino-Repongaere 4G (Part)* (2004) Gisborne Appellate MB 98 (34 APGS 98) at 102.
18 *Short-Pukeroa Oruawhata Trust* (1997) 1 Waiariki Appellate MB 86 (1 WAR APP 86) at 6-7.

[30] The appellants in reply reject the respondents' assertion that the s 237 directions were made contemporaneously with the dismissal of the inquiry application and submit that this is evident from a plain reading of the judgment text at [45]-[47]. Judge Stone, it was submitted, dismissed the inquiry and then issued orders pursuant to s 237, independent of reg 21.

[31] Turning to the issue of the Māori Land Court's inherent jurisdiction, the appellants acknowledge that the inherent jurisdiction conferred upon the Māori Land Court can be exercised when necessary, with the aim of avoiding injustice, and exists in the absence of explicit statutory regulations. The appellants submit that it is not necessary, nor is it appropriate for the Māori Land Court to exercise its inherent jurisdiction when there is an active application and a statutory process that empowers the Court to issue directions per s 237 of the Act. Rather, the Judge dismissed the application and failed to instead invoke his powers under s 37(3) of the Act, or issue directions following a s 40 report.

[32] The appellants further submit that the orders create an injustice in that the appellants were deprived of the opportunity to respond to the Court's proposal to make orders determining the beneficiary class of the marae, nor was there an opportunity for those affected owners and other beneficiaries not involved in the proceedings to have their views heard. The appellants submit that participation in the application for an inquiry does not amount to appropriate notice that the Court is considering making orders under s 237 of the Act. The appellants state that they received no indication that the Māori Land Court intended to issue orders, and nor is there evidence that other owners or beneficiaries received notice.

[33] The appellants disagree that the interests of justice in this case required the Māori Land Court to exercise its inherent jurisdiction. The appellants acknowledge the authorities provided by the respondents and submit that these cases dealt with bespoke issues of removing trustees in circumstances where it is clearly justified. In this case, the Court was faced with two parties in disagreement over the interpretation of the definition of a beneficiary, and in the appellants' opinion, should have been resolved by way of a hui fit for the purpose of discussing these interpretations.

[34] Should the Māori Land Court Judge be seen to have been exercising his inherent jurisdiction, the appellants do not accept the respondents' submissions that it was in harmony

with reg 21. The appellants cite *Mikaere-Toto – Te Rite B and Te Reti C Residue Trust* to support their position that once the application is dismissed, there is no ability to issue orders per s 237 without first invoking s 37(3) and giving notice to parties.[19]

Te Ture – The Law

[35] Regulation 21 of the Māori Reservation Regulations 1994 states:

> **21 Inquiry into administration of reservation**
>
> (1) The court may at any time, upon application made to the court by any beneficiary or person whom the reservation is intended to benefit, conduct or order such inquiry into the administration by any trustee of a reservation, as the court thinks fit.
>
> (2) No inquiry shall be conducted by the court unless—
>
> (a) the applicant for such inquiry has filed with the court a statement, signed by the applicant, containing the detailed grounds upon which the applicant requires the inquiry; and
>
> (b) the applicant has given to each trustee a copy of the application made to the court under subclause (1); and
>
> (c) either—
>
> (i) the court received a written statement, in relation to the application, signed by or on behalf of the trustees; or
>
> (ii) the court has dispensed with compliance with subparagraph (i).

[36] It is well established that reg 21 requires a two-step process, firstly the court must determine whether to exercise its discretion to conduct the inquiry. Secondly, should the court choose to conduct the inquiry, it may do so in any manner it thinks fit.[20]

[37] In the Māori Land Court, directions (described as orders) were issued pursuant to s 237 of the Act which states:

> **237 Jurisdiction of court generally**
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> (1) Subject to the express provisions of this Part, in respect of any trust to which this Part applies, the Maori Land Court shall have and may exercise all the same powers and authorities as the High Court has (whether by statute or by

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19 *Mikaere-Toto – Te Rite B and Te Reti C Residue Trust* (2014) Māori Appellate Court MB 249 (2014 APPEAL 249).

20 *Hamilton – Tuahu 3X (Erepeti Marae)* (2009) 34 Gisborne Appellate MB 230 (34 APGS 230) at [8].

any rule of law or by virtue of its inherent jurisdiction) in respect of trusts generally.

(2) Nothing in subsection (1) shall limit or affect the jurisdiction of the High Court.

[38] Section 37 of the Act addresses the jurisdiction of the Court generally:

37 Exercise of jurisdiction generally

(1) Subject to any express provisions of this Act or of the rules of court relating to the making of applications, the jurisdiction of the court may be exercised on the application of—

(a) any person claiming to have an interest in the matter; or

(b) the Minister or the chief executive or a Registrar.

(2) Notwithstanding subsection (1), the court may grant to any person, body, or association leave to make an application to the court for the exercise of its jurisdiction where the court is satisfied—

(a) that a question of importance to the Maori people or any tribe or group of the Maori people is involved; and

(b) that, because of the standing of the proposed applicant among the Maori people concerned and the proposed applicant's relationship to or connection with any land to which the application relates, it is appropriate that leave be granted to the proposed applicant.

(3) In the course of the proceedings on any application, the court may, subject to the rules of court, without further application, and upon such terms as to notice to parties and otherwise as the court thinks fit, proceed to exercise any other part of its jurisdiction the exercise of which in those proceedings the court considers necessary or desirable.

Kōrerorero – Discussion

[39] It is clear that once having dismissed the application, Judge Stone had no jurisdiction to issue orders. By purporting to make a determination as to the class of beneficiaries he denied the parties' right to be heard. We agree with the appellants' argument that Judge Stone made a procedural error. The result of declining to inquire into the Pouākani Marae reservation means that, under reg 21, Judge Stone could not issue any further orders or determinations. As was noted in *Hamilton – Tuahu 3X*:[21]

> Regulation 21 contemplates a two-stage process. First, the Court determines whether or not to conduct or order an inquiry. Second, if it decides to undertake an inquiry it

[21] *Hamilton – Tuahu 3X* (2009) 34 Gisborne Appellate MB 230 (34 APGS 230) at [8].

> then conducts or orders the inquiry in the manner it thinks fit. *Following the inquiry the Court may then invoke its various powers under sections 237-245 as it thinks fit.*
>
> [emphasis added]

[40] The respondents argue that the Māori Land Court was empowered by its inherent jurisdiction to issue orders pursuant to s 237, and that it exercised its powers contemporaneously with the dismissal of the application.

[41] We do not agree with this interpretation of the decision, and in our view a plain reading of the decision makes it clear that the purported orders were issued following the dismissal of the application.[22]

[42] We further note the appellants submission that it was not necessary or appropriate to invoke the Māori Land Court's inherent jurisdiction, and if the Court were to do so it should have given adequate notice to the parties. We agree. Judge Stone had alternative statutory pathways available to him, such as conducting an inquiry under reg 21 and then issuing the appropriate orders. Judge Stone could also have used s 37(3) to invoke s 338(5)(d) and recommend redefining the beneficiary class of the marae, of his own motion. Alternatively, if he were to invoke the Court's inherent jurisdiction under s 237, he ought to have clearly done so by way of s 37(3). This would have also required the Court to give appropriate notice to affected parties, as outlined in the case *Maxwell v Parata – Maruata 2B2*:[23]

> There was no application before the Lower Court under Sections 239 and 240 and that Court in making those orders did not expressly invoke its power to, of its own motion, exercise that jurisdiction under Section 37 (3)/93 … which allows the Court in the course of any proceedings to exercise any other part of its jurisdiction it considers desirable…
>
> There is a line of judicial decisions to the effect that if the Court exercises jurisdiction of its own motion then it must give notice to the persons affected so that they are able to appear and be heard on the proposed exercise of such jurisdiction. The authority in support of this principle which is perhaps most commonly quoted is the decision in *Coates v Gillanders-Scott and Others* [1981] High Court Gisborne M45/78.

[43] We have found that Judge Stone could not have issued the orders complained of without conducting an inquiry or invoking his own jurisdiction per s 37(3) of the Act. In

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22 *Hamon v Te Maari – Lot 5 Deposited Plan South Auckland 15580 (Mangakino Pouākani Marae)* [2020], above n 1, at [21] and [45]-[47].

23 *Maxwell v Parata – Maruata 2B2* (1994) 4 Taitokerau Appellate MB 18 (4 APWH 18) at 23.

light of this, we do not consider there is a need to evaluate the arguments made by parties on the grounds of the appeal relating to substantive error.

Kupu Whakatau – Decision

[44] For the reasons discussed, we allow the appeal on the procedural error and remit the matter back to the Māori Land Court for rehearing.

[45] The Case Manager is directed to send a copy of this judgment to all parties.

I whakapuaki i te 4:45pm i Tūranganui-ā-Kiwa i te 23o ngā rā o Huitanguru i te tau 2021.

C L Fox	P J Savage	S F Reeves
DEPUTY CHIEF JUDGE	**JUDGE**	**JUDGE**