IN THE MĀORI LAND COURT OF NEW ZEALAND
TAITOKERAU DISTRICT

A20140006871
A20110012598
APPEAL 2011/22

UNDER	Section 98 Te Ture Whenua Māori Act 1993
IN THE MATTER OF	An application by WAIHOROI SHORTLAND for TE RŪNANGA O NGĀTI HINE pursuant to section 98 of Te Ture Whenua Māori Act 1993 for Special Aid in relation to proceedings before the Māori Appellate Court in the appeal of the determination of a dispute between TE RŪNANGA O NGĀTI HINE and TE RŪNANGA Ā IWI O NGĀPUHI made on 20 May 2013
BETWEEN	TE RŪNANGA O NGĀTI HINE Appellant
AND	TE RŪNANGA Ā IWI O NGĀPUHI Respondent

Hearing: On the papers

Judgment: 15 July 2014

JUDGMENT OF THE MĀORI APPELLATE COURT

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[1] On 20 May 2014 an application seeking Special Aid and a memorandum in respect of the application was filed by counsel for Te Rūnanga o Ngāti Hine ("the applicants") per s 98 of Te Ture Whenua Māori Act 1993 ("the Act") in relation to attendances before this Court (A20110012598).

[2] On 21 January 2014 at 71 Taitokerau MB 2-4,[1] Judge Ambler granted the applicants Special Aid in relation to their application filed on 26 August 2011 (A20110008445), in respect of the applicants' application under ss 19 and 26C of the Act and s 187 of the Māori Fisheries Act 2004. That proceeding concerned a dispute that had arisen between the

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[1] *Te Rūnanga o Ngāti Hine v Te Rūnanga ā Iwi o Ngāpuhi* (2014) 71 Taitokerau MB 2-4 (71 TTK 2).

applicants and Te Rūnanga ā Iwi o Ngāpuhi ("TRAION") over the withdrawal of the applicants from TRAION pursuant to section 20 of the Māori Fisheries Act 2004 (A20110008223).

[3] Judge Ambler accepted that the legal issues in those proceedings were complex and that the applicants had limited funding and were not eligible for legal aid. Judge Ambler set out the following criteria:[2]

> Special Aid funding is only available in relation to a proceeding before the Court. As noted at the last judicial conference, pursuant to s 26D(6) of the Act, I only have jurisdiction in relation to the application if I am satisfied that the parties have complied with s 181(1) of the Māori Fisheries Act 2004. That section contemplates the parties agreeing to a process for resolving the dispute and then engaging with that process. Accordingly, special aid funding is not available to meet the costs of the parties engaging in that alternative dispute resolution process. TRONH will need to separately meet those costs.

[4] Counsel was directed to file invoices for attendances to date that fit within the above criteria and an estimate for future attendances in respect of the initial proceeding. On receipt of these, confirmed that he would then make the orders for payment from the Special Aid Fund.

[5] The Court has since requested amended invoices which include only the attendances of the Māori Land Court and not attendances in respect of this Court. No application for appeal has been made in respect of Judge Ambler's decision to date and orders for payment are still pending the amending invoices.

[6] As foreshadowed, the applicants now apply for Special Aid in this Court, on two grounds. First, in relation to proceedings under Te Ture Whenua Māori Act 1993, namely this appeal. Second, to cover the reasonable out of pocket expenses and the reasonable fees of the applicants' lawyer. The work has already been completed on the matter and filed in support is a copy of counsel's invoice in the amount of $6,239.44 (including GST) dated 27 March 2014.

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[2] Ibid, at 4.

Discussion

[7] The decision of this Court in *Pomare v Rangihaeta - Hongoeka 7 Lots 2 and 3*,[3] is relevant as it too concerns an application for assistance from the Special Aid fund filed well after the proceedings were complete. In that case this Court held that only where special circumstances existed was it possible to receive a grant of assistance where the application was filed after the proceedings had concluded. For convenience we have set out the relevant extracts:[4]

> [6] There are good reasons why parties who claim that they are unable to prosecute their case without special aid are expected to apply for special aid prior to any hearing taking place. This encourages the parties to obtain a determination or an indication of whether special aid will be granted and to consider financial implications of proceeding if there is no prospect of funding. By providing an advance estimate of costs they allow the Court to make an order that special aid up to a specified amount will be paid, or, where the Court has insufficient information to do this, for the Court to provisionally indicate whether aid for reasonable costs is likely to be granted, and any conditions that might attach.
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> [7] As special aid is generally only available to those who, because of special circumstances, would be otherwise unable to prosecute their case, a party who is able to demonstrate this could be expected to make an application in order to obtain some certainty about whether it is going ahead with proceedings that they would otherwise be unable to afford. This is particularly so given that the Court has issued guidelines saying that applications for special aid funding should be filed in advance of the hearing.
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> [8] Therefore an application which is received months after the hearing and months after the decision must have exceptional reasons before it will succeed.
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> [9] Putting aside the issue of the failure to file an advance application, it remains necessary to consider the objectives and principles in the Preamble to the Act and in section 2, and the primary objectives of the Māori Land Court in section 17 to consider, in a manner consistent with the guidelines set down in *Hiwarau*.
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> [10] One factor is that counsel in this case were representing a class of people, namely the Hongoeka Marae Committee. Another is that the appellants did not make an application for special aid funding in the lower Court and were therefore prepared to advance their case up

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[3] *Pomare v Rangihaeta - Hongoeka 7 Lots 2 and 3* (2009) 16 Whanganui Appellate Court MB 108 (16 WGAP 108).

[4] Ibid, at 109-111.

> until that point at their own expense. It is therefore conceivable, although not made out in the application, that the further cost of appeal proceedings may impose some financial hardship.
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> [11] The fact that proceedings are brought or defended on behalf of a class of persons will not, however, be sufficient in itself to obtain a grant of special aid. In Māori Land Court proceedings this is frequently the case, and something more is required. In addition, even if it were possible to demonstrate a degree of hardship if special aid is not granted, nor would that of itself be sufficient, as otherwise the fund would be a general aid fund and not a special one.[5]
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> [12] On the whole, having taken into account the principles and objectives in the Act, no special circumstances that would justify a grant of special aid are made out in the application or appear from the facts of the case or the information before the Court. In addition, the fact that the appellants are seeking special aid funding in retrospect after having proceeded to hearing stage without any application for the same is significant. It raises considerable doubt as to whether they would satisfy the guideline criteria that aid is generally only available to those who by reason of special circumstances would be otherwise unable to prosecute their case.

[8] Having carefully considered the evidence on the Court file, we are satisfied that special circumstances exist in this case. The proceedings were complex and involved important legal questions that affect not only the ongoing rights of the parties, but also their future relationships. While the appeal was unsuccessful, nonetheless we consider that the prosecution of the case was appropriate given the implications for the parties and their beneficiaries. Accordingly, we accept the application and grant Special Aid based on the estimate of costs dated 27 March 2014.

[9] As a side issue the $1,000.00 security for costs directed to be paid by the applicants (formerly the appellant) at 2011 Chief Judge's MB 406 is to be refunded to the applicants through their solicitors.

Decision

[10] The following orders are now issued per Te Ture Whenua Māori Act 1993:

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5 *Barcello-Gemmell – Gore Blocks XVII and XIX S90B2* (2004) 6 Te Waipounamu Appellate MB 29 (6 APTW 29).

(a) Section 98(3)(b) for payment of $6,239.44 (including GST) to be paid out of the Special Aid Fund to the applicants' solicitors; and

(b) Refunding the $1000.00 security for costs to Te Rūnanga o Ngāti Hine.

[11] The Case Manager is directed to forward a copy of this decision to all parties.

Orders are to issue immediately per r 7.5(2)(b) of the Māori Land Court Rules 2011.

C L Fox	L R Harvey	S F Reeves
DEPUTY CHIEF JUDGE	**JUDGE**	**JUDGE**