

**IN THE MĀORI LAND COURT OF NEW ZEALAND  
AOTEA DISTRICT**

**A20180005264**

UNDER Sections 239 and 240, Te Ture Whenua Māori  
Act 1993

IN THE MATTER OF Puketapu 3C7B1 Block

BETWEEN ADRIENNE AMARU  
Applicant

AND KAHIKATEA DICKSON  
Respondent

Hearings: 15 October 2018, 392 Aotea MB 84-96  
(Heard at Turangi)

Appearances: Gary Turner, Fabian Turner, Valentine Te Akau and  
Kanui Brougham in person  
Kahi Dickinson in person

Judgment: 29 April 2019

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**JUDGMENT OF JUDGE L R HARVEY**

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**Introduction**

[1] Adrienne Amaru applies for the appointment of four trustees to the Puketapu 3C7B1 Reservation Trust, to replace Waretini Te Akau, who has resigned, and Kahikatea Dickinson, whose removal is sought based on a vote of no confidence passed at a meeting of beneficiaries held on 21 April 2018.

[2] Kahikatea Dickinson (also known as Estrelita Dickinson) opposes her removal. She argues she was not given proper notice of the application nor was she aware of the outcome of the meeting where her removal was proposed. She also says that many of the other trustees refuse to engage with her and the trustees have not met collectively for some time.

[3] The application was heard on 15 October 2018 and there were no objections to the issuing of orders for the appointment of replacement trustees.<sup>1</sup>

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<sup>1</sup> 392 Aotea MB 84-96 (392 AOT 84-96). Mrs Dickinson, however, identified that the trustee consents incorrectly recorded the name of the trust as the Ripeka Te Taite Whānau Trust.

[4] Those orders were conditional on the nominees filing the correct consent forms within one month. They were also directed to hold a trustee meeting before the end of year to elect office holders and attend to any other trust business deemed necessary. The minutes of that meeting were to be filed with the Court within one month of that meeting. Consent forms have now been received from Frank Leo Hicks Te Waaka, Moana Awatea Rakaupai and Waimata Patricia Mehana, and so their appointments can be confirmed. The applicant Adrienne Amaru however, has not filed a correctly completed consent form. A trustee meeting was held on 27 October 2018 and was filed to the Court on 15 November 2018. Of the eight trustees, five attended the meeting and three filed apologies. An election of officers was not held, however, the duties of responsible trustees was discussed as well as trustee training. Also discussed was the tupuna's will and plans to hold a meeting of beneficiaries.

[5] The issue now remaining is whether Mrs Dickinson should be removed as a trustee.

### **Background**

[6] Puketapu 3C7B1 is Māori freehold land, 5.2862 hectares in area. There are currently 17 owners with a total shareholding of one share.

[7] The land was originally owned by Ripeka Taite Corbett as General land. By her Will, she expressed a desire that the land be retained for use by her whānau as a papakainga. On 8 March 1994, the status of the land was changed to Māori freehold land and a recommendation made to set apart the land as a Māori reservation.<sup>2</sup>

[8] Eventually, by gazette notice dated 12 August 2004, the land was set aside as a Māori reservation for the purpose of a papakainga for the common use and benefit of the descendants of Ripeka Taite Corbett.<sup>3</sup> The current trustees are Waretini Te Akau, Garry Wayne Te Ropo Turner, Estrelita Kahikatea Dickinson, Cheryl Elizabeth Maria Ripia and Blanche Turner.<sup>4</sup>

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<sup>2</sup> 38 Aotea MB 26 (38 AOT 26)

<sup>3</sup> "Setting Apart Māori Freehold Land as a Māori Reservation" (12 August 2004) 97 *New Zealand Gazette* 2411 at 2448

<sup>4</sup> 145 Aotea MB 78-80 (145 AOT 78-80)

**Submissions in support of the removal of Mrs Dickinson**

[9] As foreshadowed, the application records that the removal of Mrs Dickinson is sought based on a vote of no confidence carried at a meeting of beneficiaries held on 21 April 2018. The applicant, Ms Amaru, did not appear at the hearing, however several others spoke in support of Mrs Dickinson's removal.

[10] Garry Turner, a current trustee, referred to Mrs Dickinson's behaviour, noting that there had been instances where he claimed she had verbally abused owners, both at their homes and places of work, along with her own father. He argued that such behaviour was not acceptable. Mr Turner also suggested that Mrs Dickinson had not made a significant contribution to the land or the trust during her tenure. He did however acknowledge that this could equally apply to the other trustees.

[11] Fabian Turner gave evidence regarding the incident referred to by Garry Turner. He claimed that Mrs Dickinson turned up at his house one night and verbally abused him and his wife after he requested a trustee meeting to address who had given Mrs Dickinson's son permission to build on the papakainga. He said that he asked her to leave and the next day she visited his wife at work. Mr Turner also recounted an incident where he alleged Mrs Dickinson verbally assaulted an uncle while he was sitting in his car. He argued that these are not the actions expected of responsible trustees.

[12] Trustee Valentine Waretini Te Akau also spoke in relation to Mrs Dickinson's behaviour, agreeing that she had been verbally abusive. He submitted that since Mrs Dickinson built on the papakainga there has been nothing but "hassle after hassle", although this appeared to relate to Mrs Dickinson's son rather than her. Mr Te Akau also argued that Mrs Dickinson does not know some of the whakapapa or the history of the papakainga and was not brought up there.

[13] Kahui Brougham submitted that her understanding was that Mrs Dickinson was to be removed on the basis that there was to be one trustee from each whānau. As Mrs Dickinson and her sister are both trustees, Mrs Dickinson was to be removed. Ms Brougham acknowledged that this was not written in a charter or trust order but was agreed at a meeting of beneficiaries.

**Submissions of Mrs Dickinson**

[14] Mrs Dickinson opposed her removal. She submitted that she was not made aware of the application or the outcome of the meeting at which the vote of no confidence was passed. She argued that although the applicant later advised she was “removed” as she had not attended two meetings, she in fact tendered her apologies for those meetings via another trustee. However, those apologies were not conveyed to the meeting by that trustee or recorded in the minutes.

[15] In addition, Mrs Dickinson contended that the responsible trustees have not met for some time and when she has made attempts to call a meeting, the other trustees have been reluctant. She acknowledged that the trust has issues with her son, but as they do not have meetings those matters cannot be discussed. She says she even arranged a bus to try and compel a meeting, however the trustees refuse to engage with her. Despite this, Mrs Dickinson noted that the trustees have maintained the land to a certain degree and have completed work on the land, such as clearing certain hazards.

[16] In response to the incident referred to by Fabian Turner and allegations regarding her verbal abuse, Mrs Dickinson claimed that she went to Mr Turner’s house when she heard of his visit to her son and that a meeting was to be held, as she had not been informed. Mrs Dickson stated that she went to the place of work of Mrs Turner to leave her contact details and it was the latter who swore at her. In terms of the disagreement with her father, she noted that this was of a personal nature.

[17] Further, Mrs Dickinson submitted that, despite Mr Te Akau’s assertion, they know each other’s whakapapa well, and she in fact lived on the land with her husband for 10 years. During that time her husband maintained the road to the papakainga and they have tried to get their son to do the same.

[18] Blanche Turner, who is also a trustee, spoke in support of Mrs Dickinson. She claimed that when the issue of Mrs Dickinson’s removal was raised at the meeting, she was not happy with it. Her view was that while there were “raruraru” between Mrs Dickinson and her son, that does not mean she is not doing a good job as a trustee. Ms Turner noted that Mrs Dickinson has assisted the trust in terms of the land.

## The Law

[19] The removal of trustees is set out in s 240 of Te Ture Whenua Māori Act 1993:

### **240 Removal of trustee**

The court may at any time, in respect of any trustee of a trust to which this Part applies, make an order for the removal of the trustee, if it is satisfied—

- (a) that the trustee has failed to carry out the duties of a trustee satisfactorily; or
- (b) because of lack of competence or prolonged absence, the trustee is or will be incapable of carrying out those duties satisfactorily.

[20] In *Rameka v Hall*, the Court of Appeal identified a two-stage approach for determining whether trustees should be removed under s 240.<sup>5</sup> Firstly, have the trustees failed to carry out their duties satisfactorily? Secondly, if so, should the Court exercise its discretion to remove the trustees? It is now well settled that the prerequisite for removal is not simply a failure or neglect of duties, but a failure to perform them satisfactorily. Therefore, an assessment of the trustees' performance is required.

[21] The Court of Appeal endorsed the approach of the Māori Appellate Court:<sup>6</sup>

[30] The settled approach in the Maori Appellate Court in applying s 240 is to make an assessment of these standard duties together with what the Court has described as:

... the broader approach having regard to the special nature of Maori land trusts and the provisions of [the Act]. Thus the prerequisite for removal of a trustee was not a simple failure or neglect of duties, but a failure to perform them satisfactorily. Accordingly an assessment of the trustee's performance was essential when applying s 240.

We endorse this approach as part of the first stage inquiry.

[22] The Court of Appeal underscored the need for caution as removal should be considered in its context:

[90] We agree that there is a need for caution before a trustee is removed. The issue of removal cannot be determined by viewing each relevant factor in isolation from others. The Maori Land Court must consider the bigger picture which may involve examining the history of the trust as well as each trustee's performance.

[23] Recently, in *Smith v Smith – Nuki o Te Hapū Tahawai ki Rataroa Whānau Trust* the Māori Appellate Court had cause to affirm the proper approach to the removal of trustees:<sup>7</sup>

[15] In summary, the authorities confirm that removing a trustee requires a careful approach that must include proper notice of the risk of removal, an assessment of the trustee's performance and consideration of any possible defences and relief. They also confirm the

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<sup>5</sup> *Rameka v Hall* [2013] NZCA 203 at [82]

<sup>6</sup> *Ibid*

<sup>7</sup> [2019] Appellate Court MB 110 (2019 APPEAL 110)

legal orthodoxy that decisions by beneficiaries, while often highly persuasive, are not binding on the Court or the trustees unless there is express provision in the trust order. The only further exception is where a trust order provides for triennial or periodic elections and the election process has been followed correctly.

...

[31] The short point is, that unless the trust order contains provisions for the regular election of trustees, and in the absence of a formal determination per s 240 of the Act preceded by proper processes, and the absence of any tenable defence, then a vote by beneficiaries – to the extent that all beneficiaries were able to participate – cannot act to “remove” a trustee. That is the role of the Court.

[24] As the trust is a Māori reservation, reg 3 of the Māori Reservation Regulations 1994 is also relevant. It states:

### **3 Trustees-**

Any trustee for the time being appointed, by order of the court, in relation to any reservation,—

- (a) shall, subject to paragraphs (d) to (f), hold office, pursuant to, and in accordance with, the relevant order of the court, from the date of the order or from such other date as is specified in the order:
- (b) shall have, during the trustee's term as trustee, in addition to any powers and obligations at law, the powers and obligations contained in these regulations, except to the extent that such powers and obligations are varied by order of the court made at the time of the trustee's appointment, or at any later time:
- (c) shall exercise personally the office of trustee and shall have no power to delegate the office of trustee to any other person:
- (d) [Revoked]
- (e) may retire from the office of trustee upon giving notice to that effect to the court or to the other trustees:
- (f) may be removed from office by order of the court made at any time and shall cease to hold office from such time as the order shall specify:
- (g) shall, upon ceasing to hold the office of trustee, comply with any directions of the court in relation to the reservation and the trustee's office:
- (h) shall be eligible for reappointment unless removed from office by order of the court.

[25] Regulations 3(f) and 3(h) provide that a trustee may be removed from office by order of the Court and where a trustee is so removed from a Māori reservation they will not be eligible for reappointment. Accordingly, this underscores the point that the decision to remove a trustee is a serious step that should not be made lightly.<sup>8</sup>

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<sup>8</sup> See *Perenara v Pryor – Matatā 930* (2004) 10 Waiariki Appellate MB 233 (10 AP 233) at 241

## Discussion

[26] As a general principle, it is within the rights of any trustee to disagree and to do so stridently if they are so inclined. Indeed, robust debate can often be healthy and might even lead to a more mature and considered decision. Moreover, s 227(6) of the Act provides that where trustees disagree then they will be absolved from any liability arising out of a decision that they disagree with by having their dissent recorded in writing. However, such disagreements and opposition should not spill into the public domain, lest the trust's good name become compromised. Where disagreements are personalised and individuals' conduct turns unprofessional then the beneficial owners of the land will have cause to be concerned to the extent that the intervention of the Court may be required.

[27] The evidence reveals that the relationship between Mrs Dickinson and her fellow trustees, for whatever reasons, has become strained, bordering on hostile. The cause of this rancour appears to relate, in part at least, to the presence of Mrs Dickinson's son on the land and various issues this appears to have caused, along with the several allegations regarding verbal abuse. While she cannot be held accountable for the actions of her son, it should be obvious that abuse of any kind, either physical or verbal is unacceptable and certainly not consistent with the office of a responsible trustee.<sup>9</sup>

[28] Even so, I am not satisfied that there is sufficient evidence to warrant the extreme remedy of removal of Mrs Dickinson. This is particularly so when it is considered that removal for cause from a Māori reservation will result in Mrs Dickinson being ineligible for reappointment. Apart from the incidents of verbal abuse, I do not understand there to be any other allegations that Mrs Dickinson has breached her duties as a trustee or committed other acts of serious misconduct in the administration of the trust which would justify the exercise of the Court's discretion to remove her in this instance.

[29] It is evident, however, that the trust as a whole has not been functioning as it should. It became apparent that the trustees have not been meeting to conduct trust business and there are questions as to whether proper process, such as regarding notification of meetings, has been adhered to as would be expected. I note that the trustee meeting held on 27 October 2018 appears to show some progress. The issues appear to be somewhat complicated by the fact that the trust is without a guiding document such as a trust order or some type of charter.

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<sup>9</sup> See *Deputy Registrar - Ihaia Taueki Trust* (2005) 161 Aotea MB 96 (161 AOT 96)

Mrs Dickinson should take care to ensure that she is acting in accordance with her duties and responsibilities on this trust. I know she is an experienced trustee with a long history of involvement in land governance with a number of trusts in this district. Yet she should be under no illusion that if allegations like those that have been made during this proceeding recur then a different approach may be required.

[30] I direct that the trustees liaise with the case manager within one month from the date of this judgment for convening a further meeting to discuss, inter alia, the election of officers, the preparation of any accounts and the consideration of a trust order. In the absence of any viable alternative, the trustees will consider the application of a standard form ahu whenua trust order to start the discussions. I expect that the draft minutes of that meeting should be filed no later than 1 July 2019. Any failure to hold a meeting, without reasonable excuse, may result in the suspension or removal of trustees for cause. If the trustees are unsure about any aspect of this decision and these directions, then they should contact the case manager urgently.

[31] If Ms Amaru does not file a trustee appointment consent form within one month from the date of this judgment, then the application to appoint her will be dismissed without further notice. If a nominee cannot arrange for the filing of a consent to appointment, without reasonable excuse, then that cannot give the Court or the owners confidence that the nominee is likely to take their duties seriously. As this trust had already been hampered by a lack of engagement of trustees, adding someone else who may exhibit comparable behaviours is not an ideal start.

### **Decision**

[32] Waimata Mehana, Moana Rakaupai, Frank Te Waaka and Adrienne Amaru are confirmed as responsible trustees to replace Valentine Waretini Te Akau are confirmed. The current trustees are therefore Blanche Turner, Cheryl Ripia, Estrelita Kahikatea Dickinson, Garry Turner, Waimata Mehana, Moana Rakaupai, Frank Te Waaka and Adrienne Amaru.

[33] The application for removal of Mrs Dickinson is dismissed.

[34] The trustees are directed to:

- (a) File any outstanding trustee consents;



- (b) Convene a meeting to elect office holders, consider the preparation of any accounts and review the standard wide powers trust order;
- (c) File within one month of such meeting a copy of the draft minutes.

[35] To avoid doubt, any failure to comply with these directions may result in the suspension or removal of the trustees.

These orders are to issue immediately, per r 7.5 Māori Land Court Rules 2011

Pronounced at 2.15pm in Whakatane on Monday this 29th day of April 2019

L R Harvey  
**JUDGE**