

Place: Wellington
Date: 7 March 2017
Present: W W Isaac, Chief Judge
M Dittmer, Clerk of the Court

A20160006717
APPEAL 2016/9

An appeal by **MIHINGARANGI GREENAWAY** pursuant to sections 58 and 58(3) of Te Ture Whenua Māori Act 1993 against orders of the Māori Land Court made on 3 March 2015 at 114 Waiariki MB 195-203 in respect of **PAENOA TE AKAU**

Introduction

1. On 17 December 2012 the Māori Land Court made an order of partition, conditional on the completion of a survey.¹ On 3 March 2015 the Court finalised the order, stating:²

“I therefore make an order determining that the partition orders made on 17 December 2012 be amended per s 86 of Te Ture Whenua Act 1993 by deleting the reference to Plan 2077A and inserting reference to ML 14654. As ML 14654 is approved as to survey, I determine that the partition orders now be finalised the condition as to survey having now been completed.”

2. On 22 November 2016 Mihingarangi Greenaway filed an appeal in respect to the final order of the Court dated 3 March 2015. The appeal was over 20 months out of time, and was accompanied by an application for leave to appeal out of time.
3. This minute considers the application for leave to appeal out of time.

Submissions of the parties

4. In support of the application to appeal out of time, counsel for the Appellant stated that the delay resulted from the technical nature of both the surveys and the partition application, and the nature of the research involved. Furthermore, it took a long time to understand the change in survey/mapping and the effects these changes have had on other owners.
5. To date, the Court has received opposition to the appeal and the application to file out of time from Marion Chase-Seymour, Reima Hall, Nick Duff and Tom Walters. This opposition essentially states that the applicants to the partition followed correct process to have the partition completed. No objections were received during that process. These applicants consider they will be prejudiced if the application for leave to appeal out of time is granted. Further they say the partition is beneficial for the owners and as applicants and owners, they have invested both financially and emotionally in the partition process.

¹ 69 Waiariki MB 147-162 (69 WAR 147)

² *Chase-Seymour – Paenoa Te Akau* (2015) 114 Waiariki MB 195 (114 WAR 195).

Discussion and decision

6. Section 58(3) of Te Ture Whenua Māori Act 1993 and r 8.8(d)(i) of the Māori Land Court Rules 2011 require a notice of appeal to be filed within two months of the date of the minute of the order appealed from, unless the Court gives leave for a late filing.
7. The Māori Appellate Court therefore has a discretion to grant leave to file an appeal out of time,³ although, as that Court found in *Ross – Part Rangatira E Block*.⁴

... it is incumbent upon the Appellant to bring such proceedings before the Court as soon as possible after becoming aware of the terms of the order appealed from.
8. In 2015, the Māori Appellate Court in *Matchitt v Matchitt*⁵ consolidated the applicable principles, as articulated in the Court of Appeal⁶ and adopted in other Māori Appellate Court cases,⁷ for an application for leave to appeal out of time. Namely, the overarching consideration is where the overall interests of justice lie,⁸ and in this inquiry, the relevant factors are:⁹
 - a. the length of delay and the reasons for it;
 - b. the parties' conduct;
 - c. the extent of the prejudice caused by the delay;
 - d. the prospective merits of the appeal; and
 - e. whether the appeal raises any issue of public importance.
9. In this case, we do not consider that the appellant has taken the necessary steps to bring the appeal as soon as possible after the order. This appeal is nearly two years late from the 3 March 2015 decision. It is also important to note that the provisional order granting the partition was made on 17 December 2012 and it was this decision which set out the terms of the partition. This was over five years ago. However, notwithstanding that the terms of the partition were set out in the 2012 order and it was open to the Appellant to seek leave under s 59 to appeal that provisional determination, the Appellant took no steps at that time.
10. Following the final decision of 3 March 2015 the appellant again took no steps within the statutory filing time and waited nearly two years to file the appeal.
11. Generally speaking, the Court's approach has been that when an appellant files an appeal that is later than a few days or weeks, with no reasonable cause for this delay, leave will be more difficult to attain.¹⁰ In this case, the delay has been particularly long. The duration of delay and the reasons provided (the need to do further research about the Lower Court decision) are comparable with the situation in *Rogers – Te Aute A1A*, in which the Acting Chief Judge declined leave to appeal out of time.¹¹

³ Te Ture Whenua Māori Act 1993, s 58(3); Māori Land Court Rules 2001, r 8.14.

⁴ *Ross – Part Rangatira E Block* (1998) 1 Waiariki Appellate MB 111 (1 AP 111) at 114.

⁵ *Matchitt v Matchitt – Te Kaha 65* [2015] Māori Appellate Court MB 433 (2015 APPEAL 433).

⁶ *Robertson v Gilbert* [2010] NZCA 429; *Koroniadis v Bank of New Zealand* [2014] NZCA 197.

⁷ Such as *Davis v Mihaere – Torere Reserves Trust* [2012] Māori Appellate Court MB 641 (2012 APPEAL 641); *Nicholls v Nicholls – WT Nicholls Trust* [2013] Māori Appellate Court MB 636 (2013 APPEAL 636).

⁸ *Robertson v Gilbert*, above n 6, at [19].

⁹ *Koroniadis v Bank of New Zealand*, above n 6, at [19].

¹⁰ *Nicholls v Nicholls*, above n 7, at [13].

¹¹ *Rogers – Te Aute A1A* (2009) Chief Judge's MB 188 (2009 CJ 188).

12. Similarly, the case of *Nicholls v Nicholls*,¹² where leave was also declined, featured a delay of roughly two years and a finding that the respondents would suffer unjustified prejudice should the appeal be allowed to proceed.
13. The circumstances in this case are similar. There was nearly a two year delay in filing the appeal and the applicants to the partition, having taken all the necessary steps in that intervening two year period to finalise the conditional order of the Court, would now suffer undue prejudice if leave is granted.
14. For the reasons set out above, we decline leave to appeal out of time and the application is dismissed.

W W Isaac
CHIEF JUDGE

S F Reeves
JUDGE

M J Doogan
JUDGE

¹² Above n 7.