IN THE MĀORI APPELLATE COURT OF NEW ZEALAND
AOTEA DISTRICT

A20180005607
2018/11

UNDER	Section 58, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	TE RŪNANGA O NGĀTI MARU (TARANAKI) TRUST
BETWEEN	HAEMONA MARUERA Appellant
AND	TE RŪNANGA O NGĀTI MARU (TARANAKI) TRUST Respondent

Hearing:	8 November 2018 (Heard at Wellington)
Court:	Judge Wainwright (Presiding) Judge Coxhead Judge Doogan
Appearances:	J Kahukiwa for Appellant S Hughes QC for Respondent
Judgment:	9 November 2018

JUDGMENT OF THE COURT

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Hei tīmatanga kōrero - Introduction

[1] Haemona Maruera appeals against a judgment of the Māori Land Court at 385 Aotea MB 7 dismissing an application made under s 237 of the Act.[1]

[2] In the Māori Land Court, counsel for Haemona Maruera, Mr Kahukiwa, sought various declarations and orders relating to the validity of a trust order constituting a whenua tōpū trust in January 2010. In particular, he asked the court to declare invalid those parts of the order that 'clothe[d] the trustees of the Rūnanga with power or authority in general terms to act as an agent for the iwi of Ngāti Maru (Taranaki)', and also sought a declaration that trustees of the rūnanga 'are not competent to act as agent for the iwi of Ngāti Maru (Taranaki)'.[2] An important contextual fact is that the period within which Mr Maruera could have appealed the court's decision to constitute the whenua tōpū trust in the way it did had long since expired.

[3] When Mr Maruera's application came before the Māori Land Court, the court had to decide whether it had jurisdiction to consider the validity of its own order that was now impugned – that is, the order constituting the whenua tōpū trust. Judge Harvey heard the parties at a judicial conference on 2 May 2018, instructed them to make written submissions on the question of jurisdiction, and adjourned the application.[3] On 31 May 2018, the Māori Land Court issued the decision that is the subject of this appeal. Judge Harvey accepted that the Court has inherent power to revisit its decisions in exceptional circumstances, and went on to find that this was not such a case.

[4] In his points on appeal, Mr Kahukiwa argued that the Māori Land Court did not meet its obligation to act in accordance with the principles of natural justice when it gave him no opportunity to be heard on the substantive matter of the declarations and orders sought, but determined the issue of jurisdiction and dismissed the application.[4] At the judicial conference Mr Kahukiwa asked the judge to clarify whether the issue the judge intended to determine was 'in relation to the point on jurisdiction', and the judge replied 'yes'.[5] Mr Kahukiwa

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[1] *Maruera v Te Runanga o Ngāti Maru (Taranaki) Trust – Te Runanga o Ngāti Maru (Taranaki) Trust* (2018) 385 Aotea MB 7 (385 AOT 7).
[2] Notice of Appeal, 26 July 2018 at 2.
[3] 384 Aotea MB 219-221 (384 AOT 219-221).
[4] Above n 2 at 5.
[5] Above n 3 at 220.

argues that his client's legitimate expectation of a hearing on the substantive matters if jurisdiction was accepted, was accordingly denied.[6]

Matapaki - Discussion

[5] The power that Mr Maruera was asking the court to invoke – that is, its inherent jurisdiction to set aside what the appellant characterises as a nullity – is one that is exercised only in exceptional circumstances. We concur with Judge Harvey's interpretation of the authorities on point. Those authorities point to courts' having 'a residual jurisdiction in exceptional circumstances' to reopen a decided matter in order to avoid injustice.[7] However, the language of this and other judgments to the same effect make it clear that the practice is to be strictly limited.[8] It arises where a court must exercise its 'necessary implicit powers to suppress abuses of its process and control its own practice' where 'a significant miscarriage of justice would result if fundamental error in procedures is not corrected **and where there is no alternative effective remedy reasonably available.**'[9] It comes into play where, otherwise, 'public confidence in the administration of justice would be undermined.'[10]

[6] It is immediately apparent that an applicant for the exercise of such a power is facing a high bar. That is because the interests of finality are also very important, and must always be taken into account. A court would need to be satisfied that, viewed in the round, the circumstances demanded that it took steps to set aside its own previous actions that were properly characterised as a nullity.

[7] We are satisfied that Judge Harvey took into account the many reasons why the present case is not one where it was appropriate for the court to exercise this jurisdiction. It may be said that, in doing so, he effectively also determined the substantive issues without giving the appellant the opportunity to be heard. But this was a case where the jurisdictional and substantive issues converged. The Judge effectively decided that, because the exceptional circumstances did not arise here, he did not have jurisdiction to go further, and dismissed the application.

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[6] Synopsis of Submissions for the appellant dated 5 November 2018 at [12].
[7] *R v Smith* [2003] 3 NZLR 617 (CA) at [36].
[8] *R v Nakhla (No 2)* [1974] 1 NZLR 453; *Craig v Kanssen* [1943] KB 256; [1943] 1 All ER 108;
[9] Above n 4 at [35]-[36], emphasis added.
[10] Above n 5.

[8] The reasons for the judge's decision that this case did not present the necessary exceptional circumstances were:[11]

(a) The importance of finality;

(b) The appellant could have appealed the order constituting the whenua tōpū trust when it was made, but did not;

(c) Considerable time had elapsed since the trust order was issued in 2010;

(d) Other options for varying the trust order were available;

(e) The declarations sought (declaring aspects of the whenua tōpū trust order invalid) would not prevent the Crown's continuing to deal with the rūnanga.

[9] We agree with his assessment. We see no error of fact or in law that would warrant our intervention. We emphasise that the capacity of the appellant to apply to the Chief Judge pursuant to ss 44 and 45 of Te Ture Whenua Māori is an important factor that tells against triggering jurisdiction to revisit an earlier order. The authorities are clear that a court should be slow to revisit its own mistaken decisions where other reasonable avenues exist. The Chief Judge's powers in ss 44 and 45 are such an avenue.

Kupu whakatau - Decision

[10] We dismiss the appeal.

[11] Counsel are to file memoranda within 14 days of decision as to costs

Pronounced at 5.00pm in Wellington this 9th day of November 2018.

C M Wainwright
JUDGE

C T Coxhead
JUDGE

M J Doogan
JUDGE

[11] Above n 1 at [29]-[30].