

**IN THE MĀORI APPELLATE COURT OF NEW ZEALAND
WAIARIKI DISTRICT**

**A20150005958
APPEAL 2015/19**

UNDER Section 79, Te Ture Whenua Māori Act 1993

IN THE MATTER OF TAHORAKURI A NO 1 SEC 33A 2

BETWEEN SHANE MONSCHAU AND HARRY TE
NGARU AS RESPONSIBLE TRUSTEES OF
AN AHU WHENUA TRUST IN
TAHORAKURI A NO 1 SEC 33A 2
Appellants

AND BRUCE BAMBER AND KATHLEEN
BAMBER
Respondents

Hearing: 17 February 2016
(Heard at Rotorua)

Court: Deputy Chief Judge C L Fox (Presiding)
Judge S Te A Milroy
Judge S F Reeves

Appearances: Mr Michael Sharp, Counsel for the appellants
Mr Curtis Bidois, Counsel for the respondents

Judgment: 11 October 2016

JUDGMENT OF THE MĀORI APPELLATE COURT AS TO COSTS

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Introduction

[1] In our reserved judgment of 29 June 2016 we found in favour of the appellants and directed them to file submissions as to costs.¹ Submissions were received from the appellants on 27 July 2016. The respondents, who are no longer legally represented, filed submissions in response dated 8 August 2016.

[2] Counsel for the appellants seeks costs in the sum of \$4,900.00 plus GST, giving a total of \$5,635.00. Such an award represents 70 per cent of the total costs incurred by the appellants.

Appellants' submissions

[3] The appellants submit that:

- a) The background to the proceedings is lengthy and complicated, with the issues having been the subject of multiple hearings in the Māori Land Court over a period of 20 years;
- b) The respondents aggressively opposed the proceedings at every stage. These were difficult and hard fought proceedings;
- c) The respondents' claims in the appeal were tenuous and without merit; and
- d) The respondents could have avoided litigation, but have resisted every attempt by the appellants to resolve all claims.

Respondents' submissions

[4] The respondents submit that:

- a) On two occasions in the lower Court proceedings one of the co-lateral applications to remove one of the trustees of the block was adjourned twice for the convenience of the appellants, and then ultimately withdrawn;

¹ 2016 Maori Appellate Court MB 286 (2016 APPEAL 286).

- b) The land has only become productive because of the respondents' work, which has been done without any assistance from other owners or the trustees. The respondents have paid rates and associated debts on the land;
- c) One of the appellants has a home in Auckland and should be able to afford a lawyer; and
- d) The solicitor acting for the appellants, Mr Copeland, engaged Mr Sharp as counsel to conduct the hearing, which was not cost effective.

[5] The respondents also made various unsubstantiated and irrelevant allegations regarding the appellants, which we have not taken into account.

The law

Legal principles

[6] Section 79(1) of Te Ture Whenua Māori Act 1993 sets out the Court's jurisdiction as to costs:

79 Orders as to costs

- (1) In any proceedings, the court may make such order as it thinks just as to the payment of the costs of those proceedings, or of any proceedings or matters incidental or preliminary to them, by or to any person who is or was a party to those proceedings or to whom leave has been granted by the court to be heard.

...

[7] The legal principles that apply to an award of costs are well established.² We adopt the principles as set out in the Māori Appellate Court decision of *Samuels v Matauri X Incorporation – Matauri X Incorporation*:³

- a) The Court has an absolute and unlimited discretion as to costs;

² See *Nicholls v Nicholls – Part Papaaroha 6B Block* [2011] Māori Appellate Court MB 64 (2011 APPEAL 64); *Riddiford v Te Whaiti* (2001) 13 Takitimu Appellate Court MB 184 (13 ACTK 184); *Manuirirangi v Paraninihi Ki Waitotara Incorporation - Paraninihi Ki Waitotara Incorporation* (2002) 15 Whanganui Appellate Court MB 64 (15 APWG 64); *De Loree v Mokomoko – Hiwarau C* (2008) 11 Waiariki Appellate Court MB 249 (11 AP 249).

³ *Samuels v Matauri X Incorporation – Matauri X Incorporation* [2009] 7 Taitokerau Appellate Court MB 216 (7 APWH 216) at [10].

- b) Costs normally follow the event;
- c) A successful party should be awarded a reasonable contribution to the costs that were actually and reasonably incurred;
- d) The Māori Land Court has a role in facilitating amicable, ongoing relationships between parties involved together in land ownership, and these concerns may sometimes make awards of costs inappropriate. However, where litigation has been conducted similarly to litigation in the ordinary Courts, the same principles as to costs will apply; and
- e) There is certainly no basis for departure from the ordinary rules where the proceedings were difficult and hard fought, and where the applicants succeeded in the face of serious and concerted opposition.

[8] A two step approach is required in determining costs. The Court must first determine whether costs should be awarded and if the answer is yes, then the Court moves to consider the level of costs that should be awarded.

Should costs be awarded?

[9] In our view costs should be awarded in this matter. Costs normally follow the event and, while the Court has a role in facilitating amicable, ongoing relationships between the parties involved, this litigation has been conducted similarly to litigation in the ordinary courts. The attitude of the respondents has been to deny all liability or accountability to other owners in the land to such an extent that settlement of the issues has not been possible except by way of litigation. The length of the proceedings and the somewhat technical points taken by respondents' counsel in the appeal indicate how hard fought the matter was. In these circumstances we consider that costs should be awarded.

Quantum

[10] We agree with counsel for the appellants that one of the arguments for the respondent was without merit, and in fact the respondents agreed with one of the appellants' main grounds for the appeal.

[11] The conduct of the appeal by the appellants was completely reasonable and the actual costs incurred for the appeal are also reasonable.

[12] However, we do not consider that the respondents' conduct of the appeal was so poor as to warrant an award of 70 per cent. We consider that an award of 60 per cent of costs is more appropriate.

Decision

[13] There is an award costs in favour of the appellants pursuant to s 79 of Te Ture Whenua Māori Act 1993 in the sum of \$4,200.00 plus GST, totalling \$4,830.00.

This judgment will be pronounced at the next sitting of the Māori Appellate Court.

C L Fox
DEPUTY CHIEF JUDGE
(Presiding)

S Te A Milroy
JUDGE

S F Reeves
JUDGE