IN THE MĀORI LAND COURT OF NEW ZEALAND
TAITOKERAU DISTRICT

A20160003609

UNDER	Rule 4.10, Māori Land Court Rules 2011 & section 19, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Lot 2 DP 29547 (9 Old North Road, Orewa)
	NGĀTI TAIMANAWAITI MĀORI INCORPORATION Applicant

Hearing: On the papers

Judgment: 10 August 2016

JUDGMENT OF JUDGE M P ARMSTRONG

Copies to: TR Hetaraka & DL Doney 9 Old North Road, Orewa 0931

Introduction

[1] On 6 April 2016, Tuari Hetaraka and Dianne Doney filed an application on behalf of the Ngāti Taimanawaiti Māori Incorporation seeking an injunction in relation to Lot 2, Deposited Plan 29547, Computer Freehold Register NA815/273 ("Lot 2").

[2] On 4 May 2016, the Registrar refused to accept the application for filing. A further application has now been filed seeking a review of the Registrar's decision.

Background

[3] Lot 2 is 878 square meters in size. The registered proprietors of Lot 2 are Dianna Lois Doney as to a 1/3 share, Rafael Mrowinski as to a 1/3 share, Dianne Lois Doney as to a 1/6 share, and Rafal Mrowinsky as to a 1/6 share. Although not explicit in the application, it appears that Ms Doney, who has filed the injunction application along with Mr Hetaraka, is one of the proprietors of Lot 2.

[4] A mortgage is registered over Lot 2 in favour of Brian Manson Spooner, Mark Richard White and David James White.

[5] There is nothing in the certificate of title which confirms the status of Lot 2. On the face of it, it appears that Lot 2 is General land.

[6] The injunction application is brought by Ms Doney and Mr Hetaraka on behalf of the Ngāti Taimanawaiti Māori Incorporation. There is no evidence in the application, or the Court records, that this is a Māori Incorporation incorporated by the Court.

[7] The applicants seek an injunction:

> …against any and all further actions of the Riley White Trust until a final determination from the Waitangi Tribunal for Wai 2063 and any wāhi tapu.

The decision of the Registrar under review

[8] On 4 May 2016, a Deputy Registrar wrote a letter to the applicants rejecting the injunction application. That letter states:

Thank you for filing the above injunction application in our Auckland Information Office on 6 April 2016.

Upon review of your application the following matters have been considered by the Court:

(a) Does the Court have jurisdiction?

(i) The land of which the injunction relates to is claimed as Lot 2 DP 29547 being General Land. Under Section 19 of Te Ture Whenua Māori Act 1993 the Court only has power to deal with Māori freehold land, Māori Reservations or wāhi tapu when granting an injunction.

(ii) A historical title search of Lot 2 DP 29547 shows no evidence that the block was ever Māori freehold land.

(b) Ngāti Taimanawaiti Incorporation

(i) The Ngāti Taimanawaiti Incorporation is unable to be located within the Māori Land Court records. This suggests that the Ngāti Taimanawaiti Incorporation is not an Incorporation constituted under Te Ture Whenua Māori Act 1993 or the Māori Incorporations Constitution Regulations 1994.

(ii) The Ngāti Taimanawaiti Incorporation is not the legal owner of Lot 2 DP 29547 as evidenced by the Certificate of Title to the land. This raises the question of entitlement to file such application.

(iii) There is no evidence filed by the owners of Lot 2 DP 29547 in support of the Ngāti Taimanawaiti Incorporation in this matter.

(c) Purpose of the Injunction application?

(i) The application seeks an injunction to cease any further actions from Riley White Trust pending the outcome of the Waitangi Tribunal Claim. The Riley White Trust is not a trust constituted by the Court under Section 214 or 215 of Te Ture Whenua Māori Act 1993 or under the incorporated societies.

(ii) The application does not specify the actions being undertaken by the Riley White Trust resulting in injury to the land. No evidence has been filed clearly identifying any injury to the land.

At this stage the Court is unable to be satisfied with the claim for an injunction against the Riley White Trust, with concern to the General Land known as Lot 2 DP 29547 for the reasons set out above.

Therefore please find returned your application, your filing fee of $200.00 is being processed and a cheque will be sent to you in due course.

In the event that a further claim for an injunction concerning Lot 2 DP 29547 is filed, parties will need to satisfy the Court on the matters raised above.

Discussion

[9] Rule 4.10 of the Māori Land Court Rules 2011 ("the Rules") states:

> **4.10 Registrar may refuse to accept proceeding or other document for filing**
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> (1) A Registrar may refuse to accept for filing a proceeding or other document for any of the following reasons:
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> (a) it is illegible;
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> (b) if in electronic form, it cannot be opened;
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> (c) it does not comply with a requirement of these rules;
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> (d) it is not in the correct form;
>
> (e) it is not accompanied by the prescribed fee;
>
> (f) it is not accompanied by other information or documents required by these rules to be filed with it.
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> (2) The Registrar must advise the person filing the proceeding or other document that it is refused and must state the reason for refusal.
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> (3) The party or person filing a proceeding or other document that has been refused for filing by the Registrar may apply in writing for the review of the Registrar's decision by a Judge, and a Judge must then determine the matter.

[10] Although the Registrar did not expressly refer to r 4.10 in refusing to accept the injunction application, the Registrar must have relied on this provision.

[11] Rule 4.10(1) sets out specific grounds upon which a Registrar may refuse to accept an application for filing. These grounds are restricted to the form of the application, failure to comply with the Rules, and failure to pay the prescribed filing fee.

[12] The injunction application was filed using Form 1 in the Schedule to the Rules. The application is supported by a statutory declaration from Mr Hetaraka and Ms Doney. The applicant has also filed tracking records from New Zealand Post which indicate that the application has been served on the respondents by post.

[13] As such, the application complies with rr 9.5 and 9.6 of the Rules concerning injunctions. The filing fee of $200 was also paid at the time the application was received.

[14] In the present case, the Registrar has not refused to accept the application on the basis of irregularity of form, failure to comply with the Rules, or failure to pay the filing fee. Rather, the Registrar has rejected the application on more substantive grounds that the Court lacks jurisdiction to hear the application, the applicant lacks standing to bring the application, and that the application itself lacks merit. The question arises whether the Registrar had jurisdiction to refuse to accept the application on such grounds.

[15] There is little case law on the application of r 4.10. In *Wilson – Oue 2B3* Chief Judge Isaac upheld an application seeking a review of a Registrar's decision per r 4.10.[1] Chief Judge Isaac found that the decision by the Registrar in that case to decline an application to waive the filing fee, and to then refuse the substantive application on the basis of non-payment of the fee, was in error. That decision did not address whether a Registrar can refuse to accept an application on grounds not expressly provided for in r 4.10.

[16] Rule 5.2 of the High Court Rules state:

> **5.2 Non-complying documents**
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> (1) A document that does not comply with rules 5.3 to 5.16 may be received for filing only by leave of a Judge or the Registrar.
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> (2) The cost of an application under subclause (1) must be borne by the party making it, and may not be claimed as costs against another party under Part 14.

[17] Rules 5.3 to 5.16 of the High Court Rules are limited to the form of the documents such as margin, headings, paragraphs and formatting. Most decisions concerning r 5.2 of the High Court Rules concern documents which do not comply with those form requirements.[2]

[18] In *Ward v ANZ National Bank Limited*,[3] Venning J reviewed a decision of the Registrar which refused to accept a document for filing. In that case, the Registrar did not reject the statement of claim because of the defects contemplated by rr 5.3 to 5.16 of the High Court Rules. Instead, the Registrar rejected the document because of substantive

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1 [2015] Chief Judge's MB 215 (2015 CJ 215). Also see *Bratton v Le Lievre – Te Hapua 42* [2016] Chief Judge's MB 662 (2016 CJ 662).

2 See *Te Toki v Pratt* (2002) 16 PRNZ 160 and *Haden v Wells* [2012] NZHC 31.

3 *Ward v ANZ National Bank Limited* [2012] NZHC 2347.

defects, and in particular, that the statement of claim did not set out sufficient particulars as required by r 5.26 of the High Court Rules.

[19] Venning J considered that the statement of claim failed to provide sufficient particulars and so was in breach of r 5.26. Venning J stated:[4]

> [11] However, there may be an issue as to whether the Registrar, as opposed to a Judge, had jurisdiction to refuse to accept the document on the basis of failure to comply with r 5.26(b) where they otherwise comply with the "form" requirements…

[20] Ultimately, Venning J found that as the statement of claim did not comply with r 5.26(b), he had jurisdiction to reject the document even if the Registrar did not. As such Venning J did not decide the issue.

[21] In *Fuimaono v Housing New Zealand Limited*,[5] Ellis J considered an appeal against a decision to refuse leave to bring a cross-appeal out of time. In that case, a notice of appeal was filed on 21 October 1997. The Registrar returned the notice stating that it was out of time. Ellis J found that the notice was filed in time. Ellis J held:[6]

> In my view it is not the function of the Registry to decide whether or not the filing of a particular document is out of time. It should be accepted and left to the parties to object and to the Court to decide.

[22] I accept that there are legitimate questions in this case as to jurisdiction, standing (at least with respect to the Ngāti Taimanawaiti Incorporation), and whether the applicant can demonstrate a sufficient basis justifying injunctive relief. However, it is not the function of the Registrar to determine such matters.

[23] Rule 4.10 sets out specific grounds on which the Registrar may refuse to accept an application for filing. This rule is clear that the Registrar's jurisdiction is limited to the form of the application, whether the Rules have been complied with, and whether the filing fee has been paid. There is no scope within r 4.10 for the Registrar to consider substantive issues.

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4 *Ward v ANZ National Bank Limited* [2012] NZHC 2347.
5 *Fuimaono v Housing New Zealand Limited* (2000) 15 PRNZ 115.
6 Ibid at [7].

[24] I note that r 13 of the Māori Land Court Rules 1994, the predecessor to r 4.10, was phrased in much wider terms:

> **Power of Registrar to refuse application**
>
> The Registrar, if in his or her opinion an application is not properly made, may refuse to accept the same, unless directed otherwise by a Judge.

[25] This earlier rule arguably provided a broader jurisdiction to the Registrar to refuse an application. That may well have extended to substantive issues such as jurisdiction or standing. On the other hand, it could also be argued that whether an application is 'properly made' within r 13 is also limited to form, compliance with the Rules and payment of the filing fee, as opposed to more substantive matters.

[26] Ultimately it is not necessary to decide the breadth of the Registrar's jurisdiction under the 1994 Rules. Any wider jurisdiction that may have existed was severely curtailed under the 2011 Rules.

[27] There are also good reasons as to why the jurisdiction of the Registrar to refuse to accept an application should not extend to substantive issues. As was the case in *Fuimaono,* there is a clear danger if such a determination is made by a Registrar as opposed to a Judge. This is particularly so in the Māori Land Court as applications are often filed by lay persons without legal advice or representation. In many such cases, the applicant does not, or is unable to, set out detailed particulars of the proceeding in the application itself, and it is not until the hearing that the details of the application are made clear.

[28] If a respondent takes issue with a lack of particulars, or merit, in an application, he or she can apply to strike it out. If a Registrar is in doubt as to whether to receive an application, they can refer it to a Judge.

[29] There is also some question around the assessment made by the Registrar in the present case. The Deputy Registrar raised whether the Ngāti Taimanawaiti Incorporation is entitled to file the injunction application. The Registrar then stated that:

> There is no evidence filed by the owners of Lot 2 DP 29547 in support of the Ngāti Taimanawaiti Incorporation in this matter.

[30] The Registrar appears to have overlooked that Dianne Doney, who has filed the application along with Mr Hetaraka on behalf of the Ngāti Taimanawaiti Incorporation, appears to be a registered proprietor of Lot 2.

[31] I also disagree with the decision of the Deputy Registrar that the Court only has jurisdiction to grant an injunction with respect to Māori freehold land per s 19 of Te Ture Whenua Māori Act 1993. There may well be circumstances in which the Court does have jurisdiction to grant an injunction with respect to General land.[7]

[32] This does not necessarily mean that the Court has jurisdiction, or the applicants have standing, in the present case. It merely highlights the risks of a determination being made by the Registrar on such issues particularly where the parties have not been heard.

[33] In the present case, the application complies with rr 9.5 and 9.6 of the Rules. If the Registrar had concerns as to jurisdiction, standing or merit, the Registrar should have accepted the application for filing and referred it to a Judge for directions. It was not open to the Registrar to assess those substantive issues and then reject the application.

[34] For these reasons, while there are legitimate questions as to the substance of the application, the Registrar was wrong to refuse the application on that basis.

Decision

[35] I direct the Registrar to accept the injunction application for filing.

[36] I set the injunction application down for hearing on a date to be determined by the Registrar. Notice of the hearing is to be sent to the applicant and those persons whom the applicant has indicated are affected parties.

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[7] See the discussion in *Hettig v ANZ Bank of New Zealand Ltd – Lot 1 Deposited Plan 158328, CT NA95A/121* (2014) 93 Taitokerau MB 238 (93 TTK 238).

[37] At the hearing, the applicant will need to address whether the Court has jurisdiction to grant the order sought, whether the applicant has standing to bring the application, and whether there are sufficient grounds to justify injunctive relief.

Pronounced at 3.30 pm at Whangarei this 10th day of August 2016

M P Armstrong
JUDGE