IN THE MĀORI APPELLATE COURT OF NEW ZEALAND
WAIARIKI DISTRICT

A20160007140
APPEAL 2017/1

UNDER	Section 58, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Runanga No 2C No 2B No1 and an injunction order made at 153 Waiariki MB 21 - 36 on 28 November 2016
BETWEEN	RIKI RAHUI Applicant
AND	RUNANGA 2C2B1 AHU WHENUA TRUST Respondent

Hearing:	8 May 2017 (Heard at Rotorua)
Court:	Deputy Chief Judge Fox, Judge Reeves, Judge Armstrong
Appearances:	Mr Bloor, agent for the Respondent
Judgment:	02 June 2017

RESERVED JUDGMENT OF THE MĀORI APPELLATE COURT

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Introduction

[1] On 28 November 2016, Judge Coxhead granted an injunction prohibiting Riki Rahui and his invitees from occupying any part of the Māori freehold land known as Runanga No2C No 2B No1 and requiring them to remove all their possessions within one month of the order.[1] On 23 December 2016, Mr Rahui filed an appeal against that order.[2]

[2] The trustees of the land oppose the appeal and argue that Mr Rahui has not set out sufficient grounds to disturb the order granted. On 22 February 2017, Chief Judge Isaac directed Mr Rahui to pay $800 as security for costs, which was paid on 15 March 2017.[3]

Pre-hearing Matters

[3] On 4 May 2017, Deputy Chief Judge Fox issued directions setting out a number of preliminary matters to be dealt with at the appeal hearing.[4] These matters were addressed with the parties at the start of the hearing. Mr Bloor, agent for the Runanga 2C2B1 Ahu Whenua Trust (the "Trust") sought leave from the Court to act for the Trust on appeal.

[4] Mr Rahui opposed Mr Bloor appearing on the basis that the meeting of beneficial owners held on 5 November 2016, which supported the appointment of Mr Bloor to act for the Trust, was inquorate and, by implication, the trustees had no authority to instruct Mr Bloor.

[5] We granted Mr Bloor leave to appear pursuant to s 70(1)(c) of the Act. The trust order empowers the trustees to instruct an advisor to act on their behalf and the trustees do not require the agreement of owners to appoint Mr Bloor.[5] We note that the trustees have filed an application to amend the trust order to reduce the quorum for general meetings from 40 to 15.

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[1] 153 Waiariki MB 36 (153 WAR 36).
[2] 2017 Chief Judge's MB 127 (2017 CJ 127).
[3] 2017 Chief Judge's MB 127 (2017 CJ 127).
[4] 2017 Māori Appellate Court MB 76 (2017 APPEAL 76).
[5] See Clause 3(b)(iv) of Terms of Trust, 3 Waiariki MB 140-143 (3 WAR 140).

[6] Mr Rahui did not have legal representation at the hearing, despite being advised by the Court to do so.[6] The appeal hearing was adjourned so Mr Rahui could consult with a lawyer who was present in the courtroom. He subsequently advised he did not wish to instruct the lawyer concerned and instead presented his own appeal.

[7] In his letter to the Court, received on 2 May 2017, Mr Rahui requested that a tikanga expert be appointed pursuant to s 62 (1)(b) of the Act. We declined that request. Section 62 is only available where a case is stated per s 61 (1)(b) of the Act from the High Court to the Māori Appellate Court.

Grounds of Appeal

[8] Mr Rahui confirmed the main grounds of his appeal, as follows:

(a) Under s 19 of the Act the Court does not have jurisdiction to grant a permanent injunction;

(b) Pursuant to s 145 of the Act, the Māori Land Court does not have the power to make an order the effect of which is to alienate Mr Rahui from his turangawaewae;

(c) The eviction of Mr Rahui and his whānau from the land is in breach of the Preamble of the Act and the objects of the Trust;

(d) The lower Court should have allowed an adjournment of the injunction application to enable Mr Rahui to present evidence to rebut the allegations made against him.

Parties' arguments

[9] Mr Rahui submitted that s 19 of the Act only allows for interim and not permanent injunctions to be granted.

[10] In response, Mr Bloor argued that s 19 does allow for the granting of final injunctions.

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[6] 2017 Māori Appellate Court MB 78 (2017 APPEAL 78) at [6].

[11] In relation to the second issue, Mr Rahui submitted that the effect of the injunction is to evict him from his turangawaewae, which he says is contrary to s 145 of the Act.

[12] Mr Bloor argued that s 145 does not apply as it concerns Māori customary land and the block is Māori freehold land. Further, Mr Rahui is a beneficial owner of a whānau trust, not of the block directly.

[13] Mr Rahui submitted that, by seeking to remove him and his whānau from the land, the trustees are acting in breach of the Preamble of the Act. He says he was initially asked by trustees to go onto the land to clear tracks. In 2014 he wrote to the trustees asking for a licence to occupy the land. He didn't receive a response and viewed that as assent, or at least as a lack of opposition from the trustees to his occupation of the land.

[14] In response, Mr Bloor submitted that the trustees are the legal owners of the block with authority to decide who goes onto the land. Even if the trustees had given Mr Rahui permission to be on the land, that permission has been revoked. The land is under risk from fire or other hazards, and the trustees have authority to issue trespass notices and have unauthorised persons removed. Mr Bloor relied on the Māori Appellate Court decisions of *Nicholls v Nicholls* and *Eriwata*.[7]

[15] Finally, Mr Rahui says he was not given the opportunity to rebut evidence presented by the trustees at the lower Court hearing, and the judge should have allowed an adjournment for this to occur.

[16] Mr Bloor says the evidence showed that there was serious risk of fire and other damage to the land, which could result in financial losses and other costs to the trustees. Also, Mr Rahui and other members of his whānau were obstructive and threatening to fire personnel and others legally entitled to access the block. Mr Bloor argues that, in the circumstances, Judge Coxhead was right to make the final order.

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[7] *Nicholls v Nicholls – WT Nicholls Trust* [2013] Māori Appellate Court MB 598 (2013 APPEAL 598) at [53]; *Eriwata v Trustees of Waitara SD s 6 and s 91 Land Trust – Waitara SD s 6 and s 91 Land Trust* (2015) 15 Aotea Appellate MB 192 (15 WGAP 192).

Law

[17] Section 19, subsections (1), (3), and (4) of the Act provide:

> **19 Jurisdiction in respect of injunction**
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> (1) The Court, on application made by any person interested or by the Registrar of the Court, or of its own motion, may at any time issue an order by way of injunction –
>
> (a) Against any person in respect of any actual or threatened trespass or other injury to any Māori freehold land, Māori reservation, or wahi tapu: or
>
> …
>
> (3) Any injunction made by the Court under this section may be expressed to be of interim effect only.
>
> (4) Every injunction made by the Court under this section that is not expressed to be of interim effect only shall be of final effect.

Discussion

[18] In relation to Mr Rahui's first ground of appeal, s 19(4) of the Act makes it clear that injunctions issued per s 19 may be interim or final. The lower Court judge had jurisdiction to make the final order and this ground of appeal must fail.

[19] The next ground of appeal concerns the effect of s 145 of the Act. Mr Rahui appears to be arguing that, by removing him from the block, the trustees are alienating him from his customary land. Section 145 of the Act concerns the inalienability of Māori *customary* land. This land is Māori freehold land and so s 145 of the Act does not apply. In any event, removing Mr Rahui and his whānau is not an alienation of land. Mr Rahui remains a beneficial owner of the Wiremu Rahui Whānau Trust which holds a total of 0.6416143 shares in the block.[8] The whānau trust's shareholding equates to an area of 2570.880 square metres or 0.2570 of a hectare, whereas the evidence is that Mr Rahui and his whānau have been occupying a much larger area, have paid no rent or rates, and have

[8] 153 Waiariki MB 24 (153 WAR 24).

been lighting fires on the land. For these reasons the second ground of appeal is also unsuccessful.

[20] The third ground of appeal is that the eviction is in breach of the Preamble to the Act. At the hearing Mr Rahui made two other related submissions: first, that the eviction is in breach of the objects of the Trust; and second, that the trustees had no authority to evict him and his whānau because the meeting of owners was inquorate.

[21] These issues can be determined by an application of the principles set out by this Court in the *Eriwata* decision.[9] The objects of the Trust are broadly consistent with the Preamble to the Act in relation to retention, utilisation and occupation of land for the benefit of the owners. The trustees are the legal owners of the land and it is within their general powers, and those per cl 3(b)(xii) of the trust order, to control occupation and possession of the land at their discretion. Mr Rahui and his whānau have occupied the land for several years with no payment of rent or rates. At best, there may have been a bare licence to occupy, but that was not established on the facts before us. The trustees have requested that they leave the land and so if any such licence existed, the trustees have demonstrated their intention to revoke it. There is no requirement for the trustees to have the agreement of the owners in order to issue notice and evict Mr Rahui and his whānau, as it is within their powers to do so. The third ground of appeal is also unsuccessful.

[22] Finally, Mr Rahui raised the issue of the refusal to grant an adjournment. In making his decision to grant final orders, Judge Coxhead took into account that Mr Rahui did not have the trustees' permission to remain on the land, and that there was a serious risk the land could be damaged through further fires. There was no error of law in this decision. We also note that the failure to grant an adjournment is not a final order or provisional or preliminary determination which is capable of appeal to this Court.[10] This ground of appeal also fails.

Decision

[9] *Eriwata v Trustees of Waitara SD s 6 and s 91 Land Trust,* above n 9 at [5].
[10] *Davis v Mihaere – Torere Reserves Trust* [2012] Māori Appellate Court MB 641 (2012 APPEAL 641) at [32].

[23] The appeal is dismissed.

[24] Mr Bloor had sought an award of costs for both the lower Court and Appellate Court hearings. The Court has since ordered payment of Mr Bloor's costs of $3,680.00 (including GST) out of the Special Aid Fund per s 98(3) of the Act, and a separate award of costs will not be made.

Orders

[25] There are orders as follows:

(a) Dismissing the appeal per s 56 (1)(g) of the Act; and

(b) Refunding the $800.00 security for costs to Mr Riki Rahui per s 79 of the Act.

[26] The Case Manager is directed to forward a copy of this decision to both parties.

Orders are to issue immediately per r 7.5(2)(b) of the Māori Land Court Rules 2011.

CL Fox (Presiding)	S F Reeves	M P Armstrong
Deputy Chief Judge	**Judge**	**Judge**