IN THE MĀORI APPELLATE COURT OF NEW ZEALAND
TAITOKERAU DISTRICT

A20170006144
APPEAL 2017/21

	UNDER	Section 58, of Te Ture Whenua Māori Act 1993
	IN THE MATTER OF	Punakitere 4J2B2B, 4J2B2C, 4J2B2D, 4J2B2E, 4J2B2F, 4J2B2G, 4J2B2H1 and 4J2B2H2 Blocks
	BETWEEN	WIRI RONGO (WIREMU SENIOR) REIHANA Appellant
	AND	ERANA BENEDITO Respondent
Hearing:	On the papers	
Court:	Judge L R Harvey (Presiding) Judge C T Coxhead Judge M J Doogan	
Judgment:	31 January 2018	

JUDGMENT OF THE COURT

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Introduction

[1] On 4 July 2017, Judge Armstrong issued an injunction against Wiri Rongo (Wiremu Senior) Reihana, his agents, employees, contractors or invitees preventing them from obstructing or otherwise interfering with the owners of Punakitere 4J2B2A and other named Punakitere blocks from using the Wharo roadline and right of way across Punakitere 4J2B2H2 to access those blocks.[1]

[2] Mr Reihana now appeals that order. He does so out of time. The appeal was filed primarily on the basis that Mr Reihana did not receive notice of the hearing and did not have an opportunity to be heard and to address the allegations made against him.

[3] On 16 January 2018, counsel for the appellant was directed to provide further particulars regarding the appellant's receipt of notice of the Māori Land Court proceedings. That memorandum was filed on 22 January 2018.

Legal principles - Notice

[4] It is well established that the principles of natural justice require that notice must be given to anyone who may be affected. This is so that such persons can appear and be heard.[2] In *Tioro v McCallum – Ngapiki Waaka Hakaraia* this Court underscored the need for notice:[3]

> [20] It is a fundamental tenet of natural justice that an affected party should be given notice of proceedings that might affect his or her rights or interests. This stems from the maxim *audi alteram partem*, which simply means "hear the other side". As the leading text *Constitutional and Administrative Law in New Zealand* explains:
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> > Where a hearing is proposed, it is elementary that persons who may be affected by the decision must be given notice of the date, time and place of the hearing. The range of interested parties must be determined according to common law requirements as to standing. The courts presume that Parliament does not intend its statutory procedures to prescribe exhaustively those who might have standing to be heard. Reasonable steps must be taken to serve all interested parties, unless the rights or interests affected are speculative or insignificant. An interested party includes those whose public responsibilities are implicated, such as a public official or body administering a statutory scheme. In *Waitemata Health v Attorney-General*, a review tribunal erred by failing to notify the Director of Mental

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1 155 Taitokerau MB 264-281 (155 TTK 264-281).

2 *Tioro v McCallum - Estate of Ngapiki Waaka Hakaraia* [2015] Māori Appellate Court MB 483 (2015 APPEAL 483). See also *White v Potroz - Mohakatino Parininihi No 1C West 3A2* [2016] Māori Appellate Court MB 143 (2016 APPEAL 143).

3 *Tioro v McCallum - Estate of Ngapiki Waaka Hakaraia* [2015] Māori Appellate Court MB 483 (2015 APPEAL 483) at [20]-[25].

> Health of the right of appearance in a hearing to release a mental health patient. The law prescribes no particular procedure for the serving of notice, provided the notice is *reasonable*. Notice may be sent to a party's postal or business address, or it may be more widely disseminated through public notice in the local newspaper. The latter method may be necessary if the number of interested parties is indeterminate or large.

[21] Nevertheless, the requirements of natural justice depend on the circumstances of the case:

> "Natural justice is but fairness writ large and juridically." The duty to act fairly (or simply "fairness") may substitute as a reference for natural justice. They are alternative descriptions for a single but flexible concept whose content may vary according to the nature of the public power in question and the circumstances of its use, including the effect of the decision on personal rights or interests. The requirements of natural justice are "flexible", "adaptable", and "context specific", and cannot be neatly tabulated: "This is an area of broad principle, not precise rules". Prescribing prescriptive rules of universal application would introduce "a new formalism" – a "recipe for judicialisation on an unprecedented scale". The courts will look at the matter "in the round" to determine whether the process was fair. Higher standards of fair treatment are required where a decision has profound or significant consequences, or bears the earmarks of adjudication affecting "rights". Rigorous standards of procedural fairness are expected of courts but only rudimentary standards may apply to employers, trade unions or political parties: "The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth." The courts are concerned with not only the "actuality" but also the "perception": decisions must be reached "justly and fairly", and be seen to be so.

[22] These principles of natural justice apply to the Māori Appellate Court, the Māori Land Court and applications to the Chief Judge.

> [23] In *Ngati Apa ki Te Waipounamu Trust v Attorney-General* Keith J, delivering the decision of the Court of Appeal, observed in relation to the Māori Appellate Court:
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> We begin with the proposition the parties, those appearing before the [Māori Appellate Court], and those affected by the proceeding were entitled to a fair hearing. That entitlement includes the right to have adequate notice of the proceeding and a reasonable opportunity to present their own cases through evidence and submissions and to challenge the cases put up against them.

[24] Keith J noted, quoting a leading American judge, that "The history of liberty has largely been the history of procedural safeguards."

[25] It has similarly been held that the Māori Land Court is obliged to give notice of an application to affected parties, and that an order made without proper notice is beyond the jurisdiction of the Court. In *Jennings v Scott* Savage J of the High Court ruled:

> I am satisfied that the orders were made without jurisdiction and am prepared to found this conclusion on the one ground that the Māori Land Court was under a duty to give the owners of the lands involved a reasonable opportunity to be heard on whether or not the amalgamation order should be made and that in breach of that duty, and thus contrary to the rules of natural justice, it failed to provide the plaintiffs, or at least some of them, with that opportunity.

[5] *Jennings v Scott* (cited above) is also authority for the proposition that an order made without notice is contrary to natural justice and outside the jurisdiction of the Court.[4]

[6] This Court has on several occasions reversed decisions made in the absence of sufficient notice being given to affected parties.[5] This is particularly evident in judgments concerning the appointment and/or removal of trustees where there has been a failure to properly notify the affected trustees and the beneficiaries.[6]

Discussion

[7] Counsel for the appellant has confirmed that Mr Reihana was not personally served notice of the hearing and further states that the Record of Appeal confirms that notification of the Māori Land Court hearing was "unserved – return to sender". If this is correct, and we have no reason to doubt that conclusion, then Mr Reihana did not have proper notice of the hearing.

[8] Counsel further confirms that Mr Reihana's son, Wiremu Reihana, was not personally served notice of the hearing and that Mr Reihana did not attend the hearing on 4 July 2017 as he was not aware of it. Even if he was aware through other means, he is entitled to formal notice of the proceeding from either the Court or the applicant.

[9] The record confirms that the registry staff did attempt to notify Mr Reihana beyond a letter that was returned unopened. In any event, Mr Reihana is now appraised of the case and seeks an opportunity to be heard.

[10] Given the lack of formal notice and the importance of the case to both parties, we are satisfied that the appeal should be allowed and that the proceeding should be reheard before the Māori Land Court. This will then enable the parties affected the opportunity to

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4 *Wech v Fortune - Hoe o Tainui North 5A & 2B* (2001) 19 Waikato Maniapoto Appellate MB 201 (19 APWM 201) at MB 221.

5 See *Samuel v Samuel - Estate of Te Urupiki Samuel* [2017] Māori Appellate Court MB 147 (2017 APPEAL 147) and *Ruru – Glasgow Island* (2009) 6 Te Waipounamu Appellate MB 119 (6 APTW 119).

6 See *Rata - Muriwhenua Incorporation* (1994) 3 Taitokerau Appellate MB 263 (3 APWH 263); *Uruamo v Akarana Ongarahu B (Rewiti Marae)* (1994) 3 Taitokerau Appellate MB 230 (3 APWH 230); *McKinnon v Tikirahi Block Trustees* (1995) 19 Waikato Maniapoto Appellate MB 1 (19 APWM 1); Cameron - Part Maraetai 3B (1996) 19 Waikato Maniapoto Appellate MB 34 (19 APWM 34). In *Wech v Fortune - Hoe o Tainui North 5A & 2B* (2001) 19 Waikato Maniapoto Appellate MB 201 (19 APWM 201).

present their respective cases before the learned Judge for his consideration. We direct that the registrar liaise with the parties to confirm, after direction from the Court, an appropriate fixture as soon as possible, given the issues involved.

Decision

[11] The Court issues the following orders pursuant to Te Ture Whenua Māori Act 1993:

(a) Section 56(1)(b) revoking the order made on 4 July 2017 granting the application for permanent injunction; and

(b) Section 56(1)(e) directing a rehearing by the Māori Land Court of the application as soon as practicable.

[12] If costs are at issue the appellant should file submissions within 1 month.

Pronounced at 5.15pm in Rotorua on Wednesday this 31st day of January 2018.

L R Harvey (Presiding) **JUDGE**	C T Coxhead **JUDGE**	M J Doogan **JUDGE**