

**IN THE MĀORI LAND COURT OF NEW ZEALAND
TE WAIPOUNAMU DISTRICT**

**A20160001008
A20160001013
A20160001014**

UNDER Section 19, Te Ture Whenua Māori Act 1993

BETWEEN THE RAKIURA TĪTĪ COMMITTEE
Applicants

AND GLORIA DAVIS AND LISA PHILLIPS
Respondents

Judicial Conference: 11 February 2016, pursuant to s 67 of Te Ture Whenua Māori
Act 1993
(Heard via teleconference)

Judgment: 10 May 2017

RESERVED JUDGMENT OF JUDGE S F REEVES

Introduction

[1] The applicant, the Rākiura Tītī Committee (the “RTC”) is a decision-making body which acts under the Tītī (Muttonbird) Islands Regulations 1978 (the “Regulations”). The purpose of the Regulations is to provide for the control and management of birding activities on the Tītī Islands.

[2] Early in 2016 the RTC applied without notice and on an urgent basis for the following interim injunction orders pursuant to s 19 of Te Ture Whenua Māori Act 1993 (the “TTWMA”):

- (a) Preventing Gloria Davis from accessing and/or residing in her whare situated on the manu of Waikatua, Taukihepa, as she had failed to remove or dispose of the whare following written notification to do so from the RTC.
- (b) Removing Gloria Davis’ whare for the reasons stated above.
- (c) Preventing Lisa Phillips and any member of her whānau from accessing or utilising her building situated on the manu of Te Puketakohe, Taukihepa, as she had failed to remove or dispose of the building following written notification from the RTC.
- (d) Removing Lisa Phillip’s whare for the reasons stated above.

[3] I directed that these applications be provided to Ms Davis and Ms Phillips. Both respondents provided written responses, and judicial teleconferences were subsequently held on 11 February 2016. Both matters were adjourned for decisions to issue.

[4] The issue for determination is whether the Māori Land Court has jurisdiction to grant injunctive relief to enforce the decisions of the RTC in these circumstances.

[5] I regretfully note the time which has passed since the conference was held and the decision which now follows.

Background

[6] The RTC seeks injunctions enforcing its final decisions, made pursuant to reg 6(2) of the Regulations, that buildings erected by the respondents should be removed. They also seek injunctions preventing each respondent from accessing and or/residing in their buildings on the manus where they are situated.

[7] In relation to Ms Davis, the RTC accepts she has a right to build elsewhere on Taukihepa but says she is not entitled to build on the Waikatua manu because she has not yet succeeded to her mother's beneficial interests. The RTC says this is not a boundary issue as termed under the Regulations, but rather an issue that the whare on Waikatua has been built at the wrong location.

[8] In response, Ms Davis says she built her house on Waikatua manu in accordance with the process set out in reg 5(1) and that she has a right to access and occupy her whare there.

[9] In relation to Ms Phillips, there is a straight disagreement as to the boundary between two manu. The RTC say that the building is located on the manu of Puketakohe and that Ms Phillips and her whānau are not entitled to build there.

[10] In response, Ms Phillips and her whānau say that the building is located on the Heretatua manu, and further that the Court has no jurisdiction to intervene in relation to boundary disputes.

[11] Mr Stewart Bull, chairman of the RTC, says they have followed the dispute processes set out in reg 6 for both matters and have arrived at final decisions that the buildings must be removed. He also says that, because both Ms Davis and Ms Phillips have failed to remove or destroy the buildings as directed, the RTC now seeks injunctive relief to enforce the Committee's final decisions.

The Law

[12] Section 19(1)(a) TTWMA provides as follows:

19 Jurisdiction in respect of injunctions

(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;

...

[13] Regulation 6(2) provides as follows:

6 Supervisors

...

(2) If there is any dispute between Supervisors concerning the allotting of manus or any other dispute arising out of these regulations, the dispute shall be referred to the Committee who shall call a meeting of the Supervisors or other parties concerned to settle the dispute as soon as possible thereafter. Failing agreement being reached by the Supervisors or parties, or if they do not attend the meeting so called, the Committee shall make the decision, which shall be final and binding on all parties.

Discussion

[14] The Māori Land Court's injunction jurisdiction under s19(1)(a) is specific to "actual or threatened trespass or other injury" to Māori freehold land. The question of jurisdiction turns on whether the Regulations are a code which provides for disputes of this nature and, as a result, excludes the ability of the Māori Land Court to intervene.

[15] Over the last 20 years, both the Māori Land Court and the general courts have consistently found that the Regulations are a complete code for the control and management of birding activities on the Tītī Islands.¹ The Regulations have also been described in the High Court as "a code for the governance of the Tītī Islands".²

¹ *Reihana v Rakiura Titi Committee and Ngai Tahu Maori Trust Board – Taukipeha Island, Titi Islands* (1996) 4 Te Wai Pounamu Appellate MB 144 (4 APTW 144) at 154; *Reihana v Maori Land Court* [2002]

[16] In relation to dispute resolution and enforcement, this Court has previously found that the Regulations “are a code providing exclusively for the way in which disputes arising under them are to be resolved”.³ The High Court has described the language of reg 6(2) as broad and including “any other dispute arising out of these regulations” and the Court of Appeal has found that the Māori Land Court has no jurisdiction over any matter that the RTC is empowered to finally decide under reg 6(2).⁴

[17] Birding activities include all activities related to birding; such as entry onto the islands, approving building sites, allocation of manus, and general supervision of birding operations. The allocation of building sites and manus are dealt with in regs 5 and 6. In the event of disputes, the RTC has power of final decision making under reg 6(2). Any matters relating to birding are, therefore, outside the jurisdiction of the Māori Land Court.

[18] Mr Bull conceded in the judicial teleconference that the issue in relation to Ms Phillips is a boundary dispute within the jurisdiction of the RTC. I agree. The dispute in relation to Ms Phillips’ house is accordingly outside this Court’s jurisdiction and must be dismissed.

[19] However in relation to Ms Davis, the RTC says that the issue is not a boundary dispute as such, but about her entitlement to build on the Waikatua manu. Mr Bull says this issue concerns Ms Davis’s right to build at a specific location, and as this involves her succession rights, the issue must therefore be a matter for the Māori Land Court.

[20] Mr Bull makes an argument that has frequently been raised in the courts in relation to the Māori Land Court’s jurisdiction over the Titi Islands. That is, by virtue of s 6(3) of the Māori Purposes Act 1983, which deems the beneficially-owned islands to be Māori freehold land, the Māori Land Court has jurisdiction over the land as per s 18(1)(a) TTWMA and, therefore, by implication, also has jurisdiction to provide injunctive relief under s 19.

CA80/01, 25 March 2002.

² *Reihana v Rakiura Titi Committee* [2016] NZHC 2048 at [20].

³ *Reihana v Maori Land Court* [2002] CA80/01, 25 March 2002 at [2].

⁴ *Reihana v Rakiura Titi Committee* [2014] NZHC 2436 at [7]; Above n 3 at [9].

[21] There is now an established line of authority which draws a distinction between, on the one hand, access and entry to the islands through determination of interests and succession (over which the Māori Land Court has jurisdiction) and, on the other, territorial issues which are within the ambit of the Regulations.

[22] In the 2001 High Court judgment of *Reihana v Christchurch Māori Land Court & Rākiura Tītī Committee*, Panckhurst J stated the following:⁵

The Māori Land Court continued to have jurisdiction [under s 6(4) Māori Purposes Act] to determine “interests and succession” of Rākiura Māori ... that is to determine who at any given time are beneficiaries in terms of the regulations. Those who hold succession orders have of course the paramount right of entry and others only lesser rights but the definition or allotment of bird-catching areas, manus, on an island is a further and separate issue. As to that rangatiratanga applies. The beneficiaries decide, or the Supervisor for the island (in default of agreement) and ultimately the Director General pursuant to regulation 6 ... this aspect is not within the jurisdiction of the Māori Land Court, regardless of which Act is used as a vehicle for the applications to that Court.

[23] This distinction was supported in the Court of Appeal, where Tipping J stated the following:⁶

Although the Tītī Islands are Māori freehold land pursuant to s6(3) of the Māori Purposes Act 1983, the right to catch muttonbirds in a manu and hence the delineation for that purpose of a manu, is not a question of ownership or possession of Māori freehold land. Nor does it relate to “any right, title, estate or interest in any such land” within the meaning of s18(1)(a).

[24] More recently, Chief Judge Wilson Isaac of the Māori Land Court stated that:⁷

...while the [Māori Land] Court can determine entitlement to rights and interests in Taukihepa as a whole, the manu within Taukihepa, unless partitioning occurs and separate

⁵ *Reihana v Christchurch Māori Land Court & Rākiura Tītī Committee* (2001) HC Christchurch, CP 94/00 at [52].

⁶ Above n 3 at [4].

⁷ *Wright v Cameron – Heretatua (manu on the Tītī Island of Taukihepa)* [2015] Chief Judge’s MB 108 (2015 CJ 108) at 150.

title is created, are not defined parcels of land under Te Ture Whenua Māori such that the Court can deal with rights and interests in them individually.

[25] While the decisions referred to above relate to boundary disputes, the same principle applies to an issue of location, or “right to build”. Ms Davis’s right to enter onto Taukihepa is unchallenged, but the issue raised is whether she can build on Waikatua manu. Ultimately this is not an issue of succession rights but a territorial issue; specifically whether the building site was properly approved under the Regulations. Ms Davis says she followed the procedure set out in reg 5(1) but the Committee now says she is not entitled to be on her current site.

[26] The RTC has power to determine any dispute over allocation of building sites under reg 5(3), and also to make a final decision under reg 6(2). For this reason I conclude that the Māori Land Court has no jurisdiction in relation to the dispute concerning Ms Davis’s site and cannot grant injunctive relief to enforce the decision of the RTC.

[27] It was unclear from the evidence and submissions whether the dispute resolution process set out in the Regulations had been fully concluded in relation to both disputes.

[28] A recent decision by Gendall J in the High Court usefully sets out the full scheme for decision-making under the Regulations, including the effect of the 2007 amendments. These amendments reduced the decision making role of the Director General of Conservation in some aspects while increasing the role of the RTC.⁸ Gendall J also makes the point that “the appropriate course ... is for the necessary regulatory procedure to be implemented and exhausted before any proceedings (if appropriate in any event), are to be brought or pursued...”⁹ This includes the process under reg 9 where a beneficiary who is dissatisfied with a decision of the Committee can refer the matter to an independent decision maker for resolution.

[29] Once the regulatory process is exhausted, the RTC has powers of enforcement under reg 11 including power to lay an information against any person who commits a breach of the Regulations, and to authorise police to enter the islands. The High Court also

⁸ Above n 3.

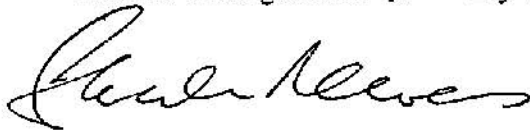
⁹ Above n 3 at [49].

retains inherent jurisdiction to grant injunctions in the appropriate circumstances, as well as its judicial review jurisdiction.

Decision

[30] The applications for injunctions are dismissed.

Dated at Wellington this 11th day of May 2017

A handwritten signature in black ink, appearing to read 'SF Reeves', written in a cursive style.

SF Reeves
Judge