

**I TE KOOTI PĪRA MĀORI O AOTEAROA
I TE ROHE O TE WAIARIKI**

*In the Māori Appellate Court of New Zealand
Waiariki District*

AP-20250000010880

APPEAL 2025/19

WEHENG
Under

Section 58, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Lot 3 Deposited Plan South Auckland 19992

I WAENGA I A
Between

DAVID TAUI
Kaitono pira
Appellant

ME
And

JOSEPH EDWARDS
Kaiurupare pira
Respondent

Kōtitanga:
Hearing

11 February 2026
(Heard at Rotorua)

Kooti:
Court

Chief Judge C L Fox (Presiding)
Judge M J Doogan
Judge T K T A R Williams

Whakataunga:
Judgment date

25 February 2026

TE WHAKATAUNGA Ā TE KOOTI
Reserved Judgment of the Court

Hei tīmatanga kōrero

Introduction

[1] David Tauī appeals from a decision removing him as a trustee of the Tura Te Ngakau Lands Trust.¹

[2] We heard the appeal on Wednesday the 11th of February 2026. After hearing from Mr Tauī and the respondent, Joseph Edwards, we dismissed the appeal with reasons to follow. We now set out our reasons.

Kōrero whānui

Background

[3] In the decision of the Court below dated 30th July 2025, Judge Wara concluded that Mr Tauī's removal was desirable for the proper execution of the Trust because he was no longer suitable to be a trustee due to his conduct.

[4] The conduct at issue concerned threatening and abusive behaviour, including an incident on the 4th of October 2022, which Judge Wara found that Mr Tauī had not refuted. Her Honour observed that while Mr Tauī was open and honest in relation to his dealings with the Trust, there was a personality conflict that Mr Tauī was unable to put aside in the interests of the business of the Trust.²

Ngā kōrero a te kaitono pīra

Submissions for the appellant

[5] Mr Tauī filed written submissions dated 21st January 2026. He says that his appeal is not an attempt to re-argue the merits of the case but "is confined to issues of procedural unfairness, error of fact, failure to consider relevant evidence, and disproportionality."

[6] In terms of procedural unfairness, Mr Tauī argues that at the time of hearing, video footage existed that captured part of an interaction between himself and Mr Edwards that is central to the application for removal. The existence of this video was, however, not inquired into at the hearing and the Court did not request that it be produced or viewed. Mr Tauī

¹ *Edwards v Tauī – Lot 3 Deposited Plan South Auckland 19992* (2025) 344 Waiariki MB 9 (344 WAR 9).

² At [17]-[21].

argues that this meant that the Court did not have the opportunity to consider relevant and material evidence, giving rise to procedural unfairness.

[7] Mr Tauī also argues that the video footage is relevant as it is capable of providing objective context for the interaction relied upon in the findings of the Court. The decision to remove him was made without consideration of this evidence, which he considers material. Mr Tauī says there is an inconsistency between the oral evidence and the findings recorded in the decision, which amounts to an error of fact or inadequate reasoning.

[8] Mr Tauī further argues that character evidence from individuals who were not present at the incident contributed to an unbalanced assessment by the Court.

[9] Finally, Mr Tauī argues that since the incident, he has continued to work alongside Mr Edwards in other contexts, which demonstrates that the incident did not reflect an ongoing or unmanageable risk. The outcome is therefore argued to be disproportionate when viewed against subsequent conduct and available context.

[10] Mr Tauī asks this Court to allow the appeal or, in the alternative, set aside the decision and direct reconsideration of the application in the Court below with all relevant evidence properly before the Court.

Ngā kōrero a te kaiurupare pīra
Submissions for the respondent

[11] Mr Edwards maintains that Judge Wara's decision was correct and that it should be upheld.

He tono hei tuku taunaki anō
Application to adduce further evidence

[12] In response to a direction from the Court, Mr Tauī filed an application to adduce further evidence, pursuant to r 8.18 of the Māori Land Court Rules 2011 (the Rules). This application was filed on the 22nd of January 2026 and included Mr Tauī's written submissions, a short affidavit, and a short video clip from the 4th of October 2022 showing part of an interaction between himself and Mr Edwards.

[13] On appeal, no party is entitled to adduce evidence that was not adduced at the hearing of the lower court. Parties are generally restricted to evidence adduced before the lower court.³

[14] However, the Māori Appellate Court may allow such further evidence to be adduced if such evidence is deemed “necessary to enable it to reach a just decision”.⁴

[15] Previous Māori Appellate Court decisions have noted that an applicant who seeks to adduce further evidence on appeal must demonstrate that:⁵

- (a) the evidence could not have been obtained with reasonable due diligence for use at trial;
- (b) the evidence would probably have an important influence on the result of the case though it need not be decisive; and
- (c) it is presumed the evidence will be believed though it need not be incontrovertible.

[16] At the outset, Mr Tauī is not entitled to adduce the video as evidence for this appeal, given that it was not adduced as evidence before the court below. That said, we may allow such evidence to be adduced if we are of the opinion that it is necessary to enable us to reach a just decision.

[17] Applying the principles outlined at [15] above, we consider that the video could have been obtained with reasonable due diligence for use at trial before the court below. We were able to clarify with Mr Tauī that the video was in fact available at the time the matter was heard before Her Honour Judge Wara. Mr Tauī told us that he had referred to the video during the hearing but had not produced it or asked that it be viewed. The minutes record Mr Tauī saying:⁶

³ Te Ture Whenua Māori Act 1993, s 55(2); and Māori Land Court Rules 2011, r 8.18(1).

⁴ Te Ture Whenua Māori, s 55(2); and Māori land Court Rules, r 8.18(2).

⁵ *Re Hoko* [2003] 20 Appellate MB 167 (20 APWM 167) at 174, citing *Dragicevich v Martinovich* [1969] NZLR 306 (CA). This was most recently affirmed in *Ratu v Marshall – Whangape Lot 65B Sec 2A Block* [2003] Māori Appellate Court MB 115 (2003 APPEAL 115) at [16].

⁶ 331 Waiariki MB 225-236 (331 WAR 225-236) at 229.

As for our trustees, especially Ana, because I've got a video of what happened that day and it wasn't nice, and I apologise to you. I tried to apologise to Joe.

[18] Despite referring to it at hearing, Mr Taui acknowledged that he had not at the time thought to produce or ask Judge Wara to view the video.

[19] Nor do we consider that the video would have an important influence on the result of the case. We have viewed the video and do not accept that it can bear the weight Mr Taui seeks to put upon it. It is a relatively short clip, which shows Mr Edwards approaching Mr Taui in the context of what appears to be an ongoing argument. As Mr Edwards is approaching, Mr Taui asks him to leave and can be heard speaking in an agitated state. Mr Edwards approaches very close to Mr Taui, his demeanour calm but firm. At the end of the clip a woman's voice can be heard shouting. The entire clip is approximately 20 seconds long. In our view, the video is simply too short and inconclusive to constitute evidence of such material relevance or probative value, that failure to view it led the Court below into material error.

[20] Therefore, we do not consider that adducing the video as evidence before this Court is necessary to enable it to reach a just decision. Accordingly, the application to adduce further evidence is declined.

Te ture

The law

[21] Judge Wara correctly summarised the law concerning removal of a trustee in the following passages from her decision:⁷

[15] Section 240 of Te Ture Whenua Māori Act 1993 provides that the Court may order the removal of a trustee if it is satisfied that:

- (a) The trustee has lost the capacity to perform their role; or
- (b) Their removal is desirable for the proper execution of the trust, meeting one or more of:
 - (i) Repeatedly failing to act as a trustee;
 - (ii) Becoming an undischarged bankrupt or subject to an insolvency event;

⁷ *Edwards v Taui*, above n 1, at [15]-[16].

- (iii) Being no longer suitable to be a trustee due to their conduct or circumstances – for example due to a conviction involving dishonesty, being uncontactable, or becoming prohibited from involvement in a company, incorporated or unincorporated body.

[16] The Māori Appellate Court in *Henderson v Brooking* set out what should be taken into account when considering removal of a trustee under s 240 as follows:

- (a) The Court must first be satisfied that one or more of the grounds for removal listed in s 240(1)(b) has been met. That list is prescriptive.
- (b) One of those grounds is that a trustee is no longer suitable to hold office because of his or her conduct or circumstances. This ground is wide in scope and ambit. This wide-ranging ambit is necessary to allow the Court to consider the range of conduct or circumstances that may result in a trustee being unsuitable to hold office.
- (c) Section 240(3) sets out examples of conduct or circumstances that mean a person may no longer be suitable to hold office as a trustee. The examples are a guide and do not form an exhaustive list.
- (d) If the Court is satisfied that one of the grounds in s 240(1)(b) has been met, the Court must then consider whether removal is desirable for the proper execution of the trust. This involves an exercise of discretion and the kaupapa of the Act, as set out in the Preamble and ss 2 and 17, must be taken into account.
- (e) Despite the amendments to s 240 in 2020, the earlier principles concerning removal of trustees continue to apply, including:
 - (i) Removal is a serious step and is not undertaken lightly;
 - (ii) The trustee(s) at risk must be properly notified in advance;
 - (iii) Technical breaches of trust and governance instruments may not lead to removal unless the trust assets have been put at risk or there has been serious loss or malfeasance; and
 - (iv) Generally, the Court must be satisfied that there is evidence of real abuse, failure or malfeasance and the absence of any tenable defence.

[22] These principles, derived from the earlier case law (aside from the notice requirement at (e)(ii) above), were recently endorsed by the Court of Appeal in *Henderson v Brooking*.⁸

[23] This is an appeal from Judge Wara's exercise of discretion to remove Mr Tauī. In order to successfully overturn an exercise of discretion on appeal, the appellant must show one or more of the following:⁹

⁸ *Henderson v Brooking* [2025] NZCA 368, [2025] 3 NZLR 187 at [99].

⁹ *Kacem v Bashir* [2010] NZSC 112 at [32], which has been applied in several Māori Appellate Court cases, including: *Ross v Edwards - Waikite 3A* [2024] Māori Appellate Court MB 100 (2024 APPEAL 100); *Phillips v Trustees of the Te Hanataua Trust - Ōuri 1A3* [2024] Māori Appellate Court MB 84 (2024 APPEAL 84); *Henderson v Brooking - Wharekahika A47* [2023] Māori

- (a) an error of law or principle;
- (b) taking account of irrelevant considerations;
- (c) failing to take account of a relevant consideration; and
- (d) the decision is plainly wrong.

Ngā pūnga e whakakorehia ana te pira

Reasons for dismissal of the appeal

[24] We explained to Mr Tauī and Mr Edwards the legal criteria against which we needed to consider the appeal. We have listened closely to Mr Tauī's arguments and have reviewed the Record of Appeal. We do not accept that any of the grounds for setting aside Judge Wara's exercise of discretion are made out. In our view, Judge Wara correctly applied the appropriate law to the evidence before her and the decision to remove Mr Tauī was one that was clearly available to her.

[25] We do not accept that failure to view the video produced before us by Mr Tauī led the Court into error, and neither do we see any error of law or principle.

[26] It is appropriate to say a little more in response to Mr Tauī's evident concern that the decision is plainly wrong. He sees it as a disproportionate response to what he describes as a one-off incident between himself and Mr Edwards. He argues that he doesn't have an issue with the other trustees and in other contexts – he has been, and continues to be, able to work constructively with Mr Edwards.

[27] Judge Wara observed that Mr Tauī presented as open, honest, and transparent in relation to his dealings with the Trust. That aligns with what we observed during the appeal. Before us, Mr Tauī was also honest, and transparent. He is articulate and clearly the land held by the Trust is of significance to him and his whānau.

Appellate Court MB 17 (2023 APPEAL 17); *Nicholls v Nicholls - Part Papaaroha 6B Block* [2011] Maori Appellate Court MB 64 (2011 APPEAL 64); and *Larkins v Kaitaia - Waihou Hutoia D2A Block* [2013] Maori Appellate Court MB 159 (2013 APPEAL 159).

[28] Nonetheless, after hearing from Mr Tauī and Mr Edwards, we concur with the following conclusion reached by Judge Wara:¹⁰

[18] Allegations have been made regarding threatening behaviour. David had an opportunity to refute the allegations before the Court but did not do so. I am satisfied from the evidence that there was an incident that resulted in David threatening violence towards Joseph. While I accept that David has apologised to at least one trustee five (5) months after the event, and tried to apologise to Joseph, an apology does not excuse the behaviour.

[29] It is also clear from the evidence before Judge Wara that concerns about Mr Tauī's behaviour were not confined to Mr Edwards. While there is clear evidence of what Judge Wara described as a "personality conflict" between Mr Edwards and Mr Tauī,¹¹ other trustees shared concerns about the effect Mr Tauī's behaviour was having on the operation of the Trust and its ability to function. John Newton is chair of the Trust. In his evidence before Judge Wara, he said that the incident with Mr Edwards isn't the first time such issues had arisen and refers to the impact Mr Tauī's behaviour has had on the business of the Trust. Mr Newton said:¹²

But to do a governance role on our lands trust, I think its quite challenging. Because its like Joe said, his way or the highway, and this is 15 years of that. Pretty serious stuff too. I was the one that implemented the trespass notice on him because I overheard the threats.

[30] Mr Newton refers to an incident between David and Koro Dinty at the marae at Parawai and the abuse directed not just at Mr Edwards but also at a Priest of the Catholic Church when they were doing karakia. Mr Newton said:¹³

... David got up to get him some food while we were doing karakia which really was enough for me as the chair. I said: "That's it, David. I think the only way I can stop you from attending meetings is to put a trespass notice on you," which I did. I took it to the police, gave him a copy, he screwed it up, threw it on the ground, and every meeting we had there, he had to leave. He couldn't be in there. So that was the only way to protect us moving forward.

[31] Trustee Ana Te Whata-Jacobs gave evidence before Judge Wara referring to personal differences within the Trust that had occurred over a period of time – some of which they were able to resolve honourably. However, she said that efforts to develop a code of conduct

¹⁰ *Edwards v Tauī*, above n 1, at [18].

¹¹ At [19].

¹² 331 Waiariki MB 225-236 (331 WAR 225-236) at 230.

¹³ At 230.

were interrupted, and further noted Mr Edwards trespassing Mr Tauī from the Trust’s office in March 2025.¹⁴ Ms Te Whata-Jacobs acknowledged that now the Trust is facing difficulties due to very strong personalities. Further, she said that after the incident of 4th October 2022, Mr Tauī apologised to her about five months afterwards. Notwithstanding that apology however, she noted that “[t]he cogs were moving” and the Trust hadn’t really been operating for the last three years. As secretary-treasurer, Ms Te Whata-Jacobs felt she needed evidence confirming that Mr Tauī had been removed. She saw a need for the re-election of trustees to happen sooner rather than later.¹⁵

[32] After hearing this and other evidence, Judge Wara noted the difficulty the Trust faced and raised with Mr Tauī the possibility that he might resign, which would mean he would not be prevented from being re-elected. Such a course, she said, may provide some space between the events that have occurred. Mr Tauī responded by saying:¹⁶

... there’s no way I’m ever going to resign from anything to do with our whenua. That’s never going to happen.

[33] Mr Tauī went on to say he doesn’t believe he is purely at fault for what happened on the night of the incident on 4th October 2022.¹⁷

[34] We note these aspects of the evidence before Judge Wara because it lends weight to our view that, far from being plainly wrong, the decision to remove Mr Tauī was clearly one which was reasonable and open to Judge Wara. Judge Wara concluded that Mr Tauī’s removal was warranted due to his conduct and, we infer, was also a necessary ‘circuit breaker’ for the functioning of this Trust. We agree.

[35] This Trust has not been functioning properly for at least three years, primarily because of a breakdown in relationships between Mr Tauī and one or more of his fellow trustees. Whilst we acknowledge that such a breakdown is rarely the fault of just one party, it is apparent to us from the record in the Court below and from the tenor of Mr Tauī’s arguments before us that, for him, the conflict has become deeply personal. At least at this

¹⁴ See *Edwards v Tauī*, above n 1, at [11].

¹⁵ At 231-232.

¹⁶ At 234.

¹⁷ At 233-234.

time, Mr Tauī is unable to stand back and objectively consider what may be in the best interest of the Trust and, ultimately, the beneficiaries.

[36] We see no error in Judge Wara’s decision, and accordingly, the appeal is dismissed.

Whakataunga
Decision

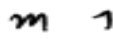
[37] Pursuant to s 56(1)(g) of Te Ture Whenua Māori Act 1993, the appeal is dismissed.

I whakapuaki i te wā 10am i Te Whanganui-a-Tara, i te 26th o ngā rā o Huitanguru i te tau
2026

Pronounced at 10am in Wellington, on this 25th day of February 2026.



C L Fox (Presiding)
CHIEF JUDGE



M J Doogan
JUDGE



T K T A R Williams
JUDGE