

**I TE KOOTI PĪRA MĀORI O AOTEAROA
I TE ROHE O WAIKATO MANIAPOTO**

*In the Māori Appellate Court of New Zealand
Waikato Maniapoto District*

AP-20260000010924

AP-20260000002998

WEHENG
Under

Sections 58 and 338, Te Ture Whenua Māori Act
1993

MŌ TE TAKE
In the matter of

Rangitoto Tuhua 33C3B4B1D2 Māori Reservation
(Te Hokingamai ki te Nehenehenui Marae / Ōtewā
Marae)

I WAENGA I A
Between

MERINGAAHEI PAKI AND BRIAN PAKI
Ngā kaitono pīra
Appellants

ME
And

LORRAINE ANDERSON
Kaiurupare pīra
Respondent

Kōtitanga:
Hearing

12 August 2026, 2026 Māori Appellate Court MB 416 - 439
(Heard at Hamilton)

Kooti:
Court

Judge W W Isaac (Presiding)
Chief Judge C L Fox
Judge C M Wainwright

Kanohi kitea:
Appearances

S Roughton and S Loa for the Appellants
B Lyall and F Porteous for the Respondent

Whakataunga:
Judgment date

8 September 2026

TE WHAKATAUNGA A TE KOOTI
Judgment of the Court

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Hei tīmatanga kōrero*Introduction*

[1] This case concerns the redefinition of the class of beneficiaries for the Rangitoto Tuhua 33C3B4B1D2 Māori Reservation (the reservation). The reservation includes among its purposes the marae known both as Ōtewā Marae and Te Hokingamai ki te Nehenehenui Marae.

[2] The authorities agree that when the court is called upon to redefine the beneficial class of a Māori reservation, and especially a marae, it must proceed with caution.¹ These are momentous decisions, always concerning history and whakapapa. This case is no exception.

[3] When the court created the reservation in 1959, both the purpose of the reservation and its beneficiaries were broadly defined. Its purpose was “marae, meeting place, papakāinga, recreation ground, sportsground and place of historical interest”.² It was for the common use and benefit of “the members of Ngāti Raukawa, Ngāti Rereahu, Ngāti Maniapoto, Ngāti Matakore, Ngāti Paretāpoto, Ngāti Urunumia and Ngāti Ngutu tribes and sub-tribes or of any other tribe or sub-tribe allied with or being offshoots of any of the above”.³ The area of the reservation is 6.0703 hectares.

Kōrero whānui*Background*

[4] The *take* before the court concerning this reservation have a lengthy history. This decision will go back only as far as the court-ordered mediation that took place on 31 October 2024 and 16 December 2024.

[5] In 2024 the appellants applied for dispute resolution between themselves and Lorraine Anderson, a trustee of the reservation. Mediation was sought concerning “the beneficiary class definition issue” and other issues pertaining to the trust.⁴ The beneficiary class definition issue is the appellants’ desire to narrow the beneficiary class. Their key issue

¹ *Gibbs v Te Runanga o Ngati Tama - Part Lot 2 & Lot 1 DP 4866 (TNK 4/901) and Section 1 SO 10359 CT TNK4/792* (2011) 274 Aotea MB 47 (274 AOT 47) at [54]-[56]; and *Campbell v Mahuika – Rahui AJ3* (1992) 32 Gisborne Appellate Court MB 370 (32 AGPS 370) at 11.

² 83 Otorohanga MB 4-6 (83 OT 4-6).

³ 83 Otorohanga MB 4-6 (83 OT 4-6).

⁴ Appellants’ submissions in support of the appeal dated 31 July 2026 at [4(l)].

is what they say is the mistaken inclusion of Ngāti Paretāpoto as a beneficiary hapū.⁵ The appellants say that at the hearing in 1959, the inclusion of Ngāti Pare was discussed,⁶ but this was later wrongly understood to mean Ngāti Paretāpoto.⁷

[6] On 14 January 2025, Judge Milroy made orders to implement the outcome of the mediation. She ordered the appointment of an independent facilitator to run the special general meeting contemplated in the mediation report. She also appointed a lawyer to assist the trustees to develop a trustee code of conduct, and to review contracts referred to in the report. We infer that was another area of dispute at the time.

[7] Glenn Tootill was appointed as facilitator, and on 10 August 2025 the special general meeting took place.⁸

[8] The meeting was asked to vote on this resolution, which was passed by a vote of 73 to 47:⁹

That the beneficiary class of Te Hokingamai ki te Nehenehenui Marae be redefined to be for the common use and benefit of the beneficial owners of Rangitoto Tuhua 33C3B4B1D2 and their descendants

[9] It is apparent that this resolution goes beyond narrowing the beneficial class to exclude Ngāti Paretāpoto and include Ngāti Pare instead. Rather, it excludes all the many hapū and iwi affiliations that those who sought the reservation in 1959 named, restricting the beneficial class to the descendants of the owners. We do not know how or why the resolution came to be framed in this way.

[10] At the special general meeting, there was no information about nor focus upon whether attendees were there as descendants of the original owners of the land in the Māori reservation, or as beneficiaries of the reservation, or indeed in some other capacity. It is therefore not possible to discern in what capacity people voted for or against the resolution.

⁵ Appellants' submissions in support of the appeal dated 31 July 2026 at [6].

⁶ Appellants' submissions in support of the appeal dated 31 July 2026 at [4(e)], citing the minutes from the 19 May 1959 hearing of the application to set aside Rangitoto Tuhua 33C3B4B1D2 as a Māori Reservation (83 OT 4-6); and Affidavit of MereNgaahēi Paki dated 29 October 2025 at 16.

⁷ Appellants' submissions in support of the appeal dated 31 July 2026 at [4(e)].

⁸ Court Report – Ōtewā Marae dated 21 August 2025 at [1].

⁹ Court Report – Ōtewā Marae dated 21 August 2025 at [2].

All we know is that people attended and voted. This is problematical because the authorities stress the need for a judge considering redefinition of the beneficial class to consider the views of the descendants of the original owners of the whenua.¹⁰

[11] On 21 August 2025, Mr Tootill filed his report, and on 25 August 2025 the court directed that the application lodged by the Deputy-Registrar be set down for hearing. The date was 29 October 2025 at Te Kuiti.

[12] At the hearing on 29 October 2025, the judge issued an oral decision in which she declined the application to redefine the beneficiary class.¹¹

[13] At and before the hearing, a number of matters were at play for the judge:

Adjournment

- (a) On 6 October 2025 Ms Barker, then counsel for the appellants Brian and MereNgaabei Paki, applied for an adjournment for reasons including her unavailability on the day appointed for the hearing. On 8 October 2025, the judge declined to grant the adjournment and directed that other counsel must be found from within the ranks of Ms Barker's law firm.
- (b) The appellants say that judge's decision lacked procedural fairness because she did not provide reasons for declining the adjournment. They also argue that the decision denied them representation by counsel familiar with the matter; both parties later supported adjournment; and an adjournment would have allowed the evidence filed late (see below) to be considered properly.

¹⁰ *McLeod v Nga Uri a Maata Ngapo Charitable Trust - Harataunga West 2B2A1* (2020) 198 Waikato Maniapoto MB 5 (198 WMN 5) at [67]; *Campbell v Mahuika – Rahui AJ3* (1992) 32 Gisborne Appellate Court MB 370 (32 AGPS 370) at 11; *Otene – Part Tauhara Middle 4A2A (Tauhara Māori Reservation)* (1977) 58 Taupo 168 (58 TPO 168) at 16; and *Pihema – Section 722, 790, 792, 793 and 794 Town of Orakei (Orakei Marae)* (1990) 3 Taitokerau Appellate MB 44 (3 APWH 44) at [32].

¹¹ 291 Waikato Maniapoto MB 101-145 (291 WMN 101-145).

Uncertainty about evidence before the Court

- (c) Some hearing documents were filed late. Ms Katipo explained at hearing that Ms Anderson’s affidavit – to which Ms Paki’s affidavit was in part responding – was dated 15 October 2025, but she had not received it until 21 October 2025. This means that the appellants had a week to prepare the affidavit. In the event, the court received Ms Paki’s affidavit at 11am on the day of the hearing. The affidavit itself comprised only eight pages but attached 40 pages of whakapapa and related information.
- (d) The judge initially said she would not include the evidence.¹² Then after engagement with counsel at the hearing she modified her position. She said she was excluding “the whole of the affidavit, minus what is already on the court record”.¹³ She thus admitted parts of the affidavit that related to material the court already had on its record, which included the minutes of the hearing when the Māori reservation was created. The judge then said she would “allow any evidence that responds directly to [Ms Anderson’s] evidence”.¹⁴ Ms Anderson is a chief spokesperson for those opposing redefinition of the beneficial class.
- (e) Then, possibly as a result of uncertainty concerning which parts of Ms Paki’s affidavit and its attachments were before the court and which had been excluded, MereNgaاهی Paki was not questioned directly about its contents. Her counsel, Ms Roughton, said before us that information in the affidavit goes to the definition of the beneficial class at the time when the Māori Reservation was created in 1959. She says that this is material to the case, and if Ms Paki had been questioned on her affidavit the judge would have understood the 1959 error in defining the beneficial class.
- (f) The appellants say that the judge erred in her treatment of MereNgaاهی Paki’s evidence because she did not identify the legal test she was applying;

¹² 291 Waikato Maniapoto MB 101-145 (291 WMN 101-145) at 110.

¹³ 291 Waikato Maniapoto MB 101-145 (291 WMN 101-145) at 111.

¹⁴ 291 Waikato Maniapoto MB 101-145 (291 WMN 101-145) at 111.

did not alert counsel that the evidence would be excluded; did not provide an opportunity to address admissibility; and did not consider procedural options such as adjourning part heard. They say that the appellants were not given a reasonable opportunity to be heard.¹⁵

Te Tātaritanga

Our analysis

[14] The appellants challenged the judge's decision in other ways as well, but the objections relating to declining adjournment, excluding evidence and predetermination (which was not really pursued before us) are not, we think, the nub of the case.

[15] We understand, given the history of the reservation and the court's efforts to help the trustees move forward without conflict, that the judge wanted to dispose of the matter efficiently and pragmatically. However, it was not available to her to dismiss the application when she lacked essential information about the proposed change.

[16] This appeal concerns whether the judge properly declined the application to redefine the beneficiary class of the reservation. Our view is that the real problem she had on 29 October 2025 was that she did not know enough about who supported the redefinition and who did not. That is because at the special general meeting, no distinction was drawn, for the purposes of ascertaining support or opposition, between descendants of the owners and beneficiaries. The authorities are clear that the relative opinions of the owners' descendants and the beneficiaries is a matter upon which the court must inform itself.

Relevant authorities

[17] *McLeod v Nga Uri a Maata Ngapo Charitable Trust* provides:¹⁶

[55] In determining whether to exercise the Court's discretion to redefine the purposes and beneficiaries of a Māori reservation, the Courts have taken into account the following factors:

(a) The history of the land both before and after its gazettal as a reservation;

¹⁵ Appellants' submissions in support of the appeal dated 31 July 2026 at [35].

¹⁶ *McLeod v Nga Uri a Maata Ngapo Charitable Trust - Harataunga West 2B2A1* (2020) 198 Waikato Maniapoto MB 5 (198 WMN 5) at [55]-[56].

(b) The view of the owners of the land; and

(c) Any other relevant matters such as the history of any applications relating to the reservation.

[56] Under Te Ture Whenua Māori Act 1993, the Court must also consider the principles set out in the Preamble and ss 2 and 17 of the Act. While counsel for the applicant emphasised that these provisions refer to the importance of the wishes of the owners, I note that the Preamble and s 2 also refer to the whānau and hapū of the owners. In this case, various parts of the Ngapo whānau are before the Court and s 17(2)(c), (d) and (e) are also relevant to how the Court should exercise its discretion under the Act.

[18] The Māori Appellate Court in the *Orakei Marae* case held that the Court should have regard to the wishes of beneficial owners in appointing trustees and amending trusts.¹⁷

[19] The *Tauhara Māori Reservation* case found that where trustees seek to redefine the beneficial class, a meeting of owners should be held.¹⁸ The Court in *Campbell v Mahuika* found that the *Tauhara Māori Reservation* case stood for the proposition that weight should be given to the views of owners and that owners should be consulted when redefining beneficiaries and boundaries.¹⁹ It is on these authorities that we rely for our concern about the lack of evidence before the court upon matters germane to the redefinition of the beneficial class. In the present case, the facilitator at the special general meeting gathered only the names of those who voted. The judge therefore had before her no evidence at all about whether the descendants of the original owners supported the redefinition of the beneficial class.

[20] When we canvassed this issue at the hearing, counsel for the respondents said the appellants – the proponents of the redefinition – were responsible for providing to the court evidence about the relative opinions of owners and beneficiaries. They did not furnish that evidence and so this court can proceed on the basis that the judge rightly dismissed the application.

¹⁷ *Pihema – Section 722, 790, 792, 793 and 794 Town of Orakei (Orakei Marae)* (1990) 3 Taitokerau Appellate MB 44 (3 APWH 44) at [32], cited in *McLeod v Nga Uri a Maata Ngapo Charitable Trust - Harataunga West 2B2A1* (2020) 198 Waikato Maniapoto MB 5 (198 WMN 5) at [50].

¹⁸ *Otene – Part Tauhara Middle 4A2A (Tauhara Māori Reservation)* (1977) 58 Taupo 168 (58 TPO 168) at 6.

¹⁹ *Campbell v Mahuika – Rahui AJ3* (1992) 32 Gisborne Appellate Court MB 370 (32 AGPS 370) at [9].

[21] Even if this approach might in some cases be the correct one, in the present case the situation is more complicated. The Māori Land Court itself convened the special general meeting with an independent facilitator it appointed. The failure to conduct the meeting on a basis that distinguished between beneficiaries and owners for the purposes of voting was therefore not the appellants' failure. It would be unreasonable for us to lay responsibility for that evidential gap at their feet. They were entitled to proceed on the basis that a hui facilitated by a court-appointed lawyer would yield the information that the court needed.

[22] However, it did not. It therefore fell to the judge to identify the gap and address herself to what might be done about it before proceeding to dismiss the application.

Ngā mahi kei mua i te aro

Next steps

[23] We allow the appeal. We consider the judge's inability to consider the relative support for redefinition as between the beneficiaries and the descendants of the owners was a fatal flaw that she did not address.

[24] However, it is not straightforward what should happen as a result of this finding. The problems are these.

[25] It will not work simply to send the decision back to the Māori Land Court to address the application again in light of what we have said. For one thing, the evidence about the opinions of the beneficiaries and the descendants of the owners does not exist.

[26] Moreover, and even more materially, the resolution that was put to the special general meeting is no longer the outcome that anyone wants. The appellants, we were told at the hearing, now seek the restoration of the original order and terms of gazettal except that "Ngāti Paretāpoto" is excluded and "Ngāti Pare" is included instead. To be absolutely clear, then, the appellants now seek a change to the beneficial class from "the members of Ngāti Raukawa, Ngāti Rereahu, Ngāti Maniapoto, Ngāti Matakore, Ngāti Paretāpoto, Ngāti Urunumia and Ngāti Ngutu tribes and sub-tribes or of any other tribe or sub-tribe allied with or being offshoots of any of the above" to "for the common use and benefit of several hapū including Ngāti Raukawa, Ngāti Rereahu, Ngāti Maniapoto, Ngāti Matakore, Ngāti Pare,

Ngāti Urunumia, and Ngāti Ngutu tribes and subtribes, and offshoots”.²⁰ This is vastly different from what the appellants were apparently seeking when Glenn Tootill put to the special general meeting the resolution that redefined the beneficial class as “the beneficial owners of Rangitoto Tuhua 33C3B4B1D2 and their descendants”.²¹

[27] We think that the effect of the appellants’ change of stance is to make the application that was before the Māori Land Court void. The Deputy-Registrar applied to the court for a decision to implement an outcome from the special general meeting that is not now sought by anybody. There is therefore no application for this court to refer back to the Māori Land Court. That application has essentially been abandoned because the appellants have changed their minds.

[28] We note that counsel for the appellants told us that on 1 August 2026 another special general meeting took place at which all the trustees of the reservation stood down. An election took place and there are now new trustees in place. It may be that this is the reset that this Māori Reservation needs to go forward without conflict. We wish the new trustees well in their important role.

Whakataunga *Decision*

[29] Pursuant to section 56(1)(b) of Te Ture Whenua Māori Act 1993, we revoke the order that the Māori Land Court made on 29 October 2025 dismissing the application, because it was not made according to law. However, we do not substitute any other order. Instead, we order the dismissal of the Deputy-Registrar’s application (s 56(1)(f)).

I whakapuaki i te 3.00 pm i Te Whanganui a Tara, i te 8 o ngā rā o Mahuru i te tau 2026.
Pronounced at 3.00 pm in Wellington, on this 8th day of September 2026.

W W Isaac (Presiding)
JUDGE

C M Wainwright
JUDGE

C L Fox
CHIEF JUDGE

²⁰ Appellants’ submissions in support of the appeal dated 31 July 2026 at [8]-[11].

²¹ Court Report – Ōtewā Marae dated 21 August 2025 at [2].