

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

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

AP-20250000014289

WEHENG <i>Under</i>	Section 19, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Paeroa East 5 (Mataarae Marae)
I WAENGA I A <i>Between</i>	DONNAMARIE BARNES, MILLY BARNES, JORDAIN BARNES, CAROLINE MITA, FAYE MITA AND ROBYN BARNES Ngā Kaitono <i>Applicants</i>
ME <i>And</i>	KAY WERAHIKO, MARK SPOONER, RIMA HERBERT, ROBERT WERAHIKO AND ROY TAOHO AS TRUSTEES OF PAEROA EAST 5 PART MĀORI RESERVATION Ngā Kaiurupare <i>Respondents</i>

Kōtitanga: 25 February 2026, 364 Waiariki MB 249-258
Hearing 22 April 2026, 372 Waiariki MB 95-108
(Heard at Taupō)

Whakataunga: 3 August 2026
Judgment date

TE WHAKATAUNGA A KAIWHAKAWĀ MATUA TUARUA C T COXHEAD
Judgment of Deputy Chief Judge C T Coxhead

Hei tīmatanga kōrero*Introduction*

[1] Located immediately adjacent to the Mataarae Marae is a whare. Sometimes referred to as “the cottage”. The Barnes whānau have had a long association with the cottage. It was Te Umanui,¹ with the help of Julia Keremete, who built the cottage in about 1962. Te Umanui and his wife Raupare lived in the cottage.

[2] Over time a number of Te Umanui’s whānau have lived in the cottage. Julia undertook renovations to the cottage. Sometime after Te Umanui’s passing Julia obtained a Court order declaring her as the owner of the cottage.²

[3] With the passing of Julia, the whare has recently been declared to be owned by members of the Barnes whānau.³

[4] In 1970, some eight years after the house was built, the land upon which it is sited was set aside as a Māori reservation.⁴ In light of the land being set aside as a Māori reservation the Paeroa East 5 Part Māori Reservation Trust (the Mataarae Marae Trust) was established that same year.⁵ The current trustees of the Mataarae Marae Trust are Kay Werahiko, Mark Spooner, Rima Herbert, Robert Werahiko and Roy Taoho (the trustees).⁶

[5] Everyone agrees that the cottage is old and is owned by the Barnes whānau.

[6] That’s where agreement ends.

[7] The Barnes whānau consider the whare to be of sentimental and historical significance, having been built and used by their kuia and koroua over many years. The trustees consider the whare to be in a derelict condition, raising health and safety concerns and do not see it as forming part of the future development of the marae and reservation.

¹ Also known as Wiremu Werahiko and sometimes referred to as Te Umanui.

² 276 Waiariki MB 58-63 (276 WAR 58-63).

³ The Court determined at 346 Waiariki MB 65-71 dated 21 August 2025 that:

...the dwelling situated on Paeroa East 5 ... is the sole and exclusive property of Donnamarie Barnes, Norma Ngapene Raina Barnes, Santa Marie Barnes, Aroha Kahu Barnes, Miriama Milly Barnes, Raymond Umanui Barnes, Louise Margaret Rennie, Sharlene Barnes and Wally Barnes in law and equity.

⁴ “Setting Apart Maori Freehold Land as a Maori Reservation” 10 September 1970, 054 *New Zealand Gazette* 1595 at 1605.

⁵ 180 Rotorua MB 58 (180 ROT 58).

⁶ 282 Waiariki MB 265-268 (282 WAR 265-268).

[8] The trustees and the Barnes whānau have not been able to agree as to what should happen with the whare.

[9] This is not a new issue. The whare and what would happen with it was discussed when the Court considered Juliet's application for ownership in 2022. At that time trustee, Mr Rima Herbert, stated to the Court that the trustees were happy for ownership to be determined but the trustees would expect that the cottage was removed.⁷

[10] There have been a number of Court hearings across multiple applications in regards to the whare.⁸

[11] There have also been a number of Court-facilitated hui to try and resolve the issue as what should be done with the whare.

Me aha te whare?

What should happen to the whare?

[12] The options for the Barnes whānau are that the cottage is either left on the reservation so they can use it, moved to another block of land they have interest in, sold to the Mataarae Marae Trust, or demolished (whakamoe).

[13] The trustees of the marae reservation are not willing to grant the Barnes whānau a licence to occupy or to support the granting of an occupation order. They want the cottage either moved or demolished (whakamoe).

[14] With all of these options there are questions around who will pay. The trustees say they are not in a position to pay for anything and if the whare is moved or demolished it should be at the Barnes whānau's cost.

⁷ 276 Waiariki MB 58-63 (276 WAR 58-63).

⁸ The following Court hearings have been held: 25 January 2022, 270 Waiariki MB 98-105 (270 WAR 98-105); 4 May 2022, 276 Waiariki MB 58-63 (276 WAR 58-63); 6 October 2022, 282 Waiariki MB 265-268 (282 WAR 265-268); 4 April 2025, 336 Waiariki MB 239-246 (336 WAR 239-246); 21 August 2025, 346 Waiariki MB 65-71 (346 WAR 65-71); 14 November 2025, 354 Waiariki MB 142-145 (354 WAR 142-145); 25 February 2026, 364 Waiariki MB 249-258 (364 WAR 249-258); and 22 April 2026, 372 Waiariki MB 95-108 (372 WAR 95-108).

[15] The Barnes whānau appear to be open to the trust buying the cottage and obtained a valuation for the purposes of a sale.

[16] For a number of years – even back when Julia applied for her declaration as to ownership, the trustees and in particular Mr Rima Herbert have been discussing the potential use of the area where the cottage is situated.

[17] The trustees, with assistance from others, have established new kaumatua flats next to the whare.

Kōrerorero

Discussion

[18] In August 2025 the matter was heard before Judge Wara and the parties did come to a potential resolution and an agreement that they would “whakamoe i te whare”.⁹

[19] There was a report that the whare was contaminated with asbestos. The report did influence the agreement to whakamoe i te whare.

[20] The whakamoe process was described by one of the trustees, Mr Taoho, whereby they would need to deal with the asbestos in the whare first. He proposed a process to acknowledge that the whare had been on the whenua for a very long time, that it was built by their tupuna and has sentimental and emotional connection. The whakamoe process would be to name the whare, then dig, then lay what can be laid in the ground and then in the night it would be burnt, covered up, and a mauri stone would be put on top of it and a māra.¹⁰

⁹ 346 Waiariki MB 65-71 (346 WAR 65-71).

¹⁰ 346 Waiariki MB 65-71 (346 WAR 65-71) at 70.

Te tono tāria*Injunction application*

[21] After the hearing, where an agreement had been reached to whakamoe i te whare, the Barnes whānau filed an injunction to stop the trustees of Mataarae Marae Trust from removing the whare.¹¹

[22] The Barnes whānau claimed that the trustees had misinformed the Court regarding the inspection report and details as to the seriousness of the asbestos.

[23] The Barnes whānau intend to seek an occupation order before the end of the year. No application has been filed as yet.

[24] The injunction application came before the Court in February 2026.¹²

[25] In that Court sitting there was further discussions as to how the matter could be resolved.

[26] While the injunction was primarily filed to stop the removal of the cottage, it does appear that it may have also been filed to get the parties talking again as to how the matter could be resolved. I say this as all the discussion in the hearing was about how to resolve matters, rather than about injunction matters. There was no discussion or submission made as to the legal elements of an interim injunction.

[27] Purely on an injunction basis there is some difficulty in determining the necessary elements required given submissions were not made on the injunction specifically. Therefore, when considering an interim injunction, it is difficult to draw conclusions as to the principles necessary to be satisfied for an injunction application, such as whether there is a serious question to be tried, where the balance of convenience lies, and the overall justice of the matter lies.¹³

[28] As noted, the Barnes whānau have filed an interim injunction. They ask that the whare not be removed until the occupation order application is decided. There is no

¹¹ AP-20250000014289.

¹² 364 Waiariki MB 249-258 (364 WAR 249-258).

¹³ *Lomax v Apatu – Awarua o Hinemanu Trust* (2013) 22 Takitimu MB 282 (22 TKT 282) at [29]-[31].

application yet filed, although the Barnes whānau say they intend to file. The clear difficulty there is that the trustees have made it clear they will not support the granting of an occupation order. The Barnes whānau face major difficulty in satisfying the requirement that the Court shall not make the occupation order without the consent of the trustees as per s 328(2) of Te Ture Whenua Māori Act 1993 (the Act).¹⁴

[29] The application itself is an injunction application pursuant to s 19(1)(ba)(i) the Act. That section allows the Court on application made by any person to issue an order by way of an injunction requiring any person to remove any structure or object from any Māori land or Māori reservation. That is clearly not what the Barnes whānau were seeking. They were looking to stop the trustees on the Mataarae Marae Trust from physically removing their whare.

[30] Dealing with this matter in a legal way, it is clear that I cannot grant the orders being sought pursuant to s 19(1)(ba)(i) of the Act. The other parts of s 19 of the Act are also not that helpful to the Barnes whānau.

[31] Clearly this is not a situation of actual or threatened trespass or injury when the Reservation trustees have the lands vested in them and cannot be considered to be trespassing.

[32] This could potentially be a situation seeking to stop a person where other proceedings are pending before the Court. The problem here is there are no other proceedings pending before the Court.¹⁵

[33] This is also not a situation that would fall under s 19(1)(c) or (d) of the Act.

¹⁴ Te Ture Whenua Māori Act 1993, s 328(2) states:

(2) Where the land that will be affected by the order is—

(a) land in respect of which a trust is constituted under Part 12; or

(b) land vested in a Maori incorporation,—

the court shall not make the order without the consent of the trustees or of the management committee of the incorporation, as the case may require.

¹⁵ Te Ture Whenua Māori Act 1993, s 19(1)(b).

[34] At the most I could infer that this is an interim injunction pending a potential, yet to be filed, application for an occupation order before the end of the year. However, that is also unclear.

[35] Given the above matters the injunction application is dismissed.

Pēhea te whakataui i tēnei take?

How is this issue to be resolved?

[36] Even though the injunction application is dismissed this does not resolve the issues for the parties.

[37] A possible resolution could be to give the Barnes family three months in which to remove the whare. That removal would be at their cost. Further, if the cottage is not removed within those three months, then the trustees may whakamoe the whare, following the process that was previously discussed and agreed to at the hearing before Judge Wara on 21 August 2025. The whakamoe i te whare would be at the cost of the trustees. The whakamoe process should also be done in consultation with the Barnes whānau.

[38] However, I have dismissed the injunction and have no jurisdiction to make orders and only offer the above as a potential resolution to assist the Barnes whānau, and the trustees, as a way forward in this long-running matter.

I whakapuakina i te 3:00 pm i Rotorua, i tuatoru i o ngā rā o Ākūhata i te tau 2026.
Pronounced at 3:00 pm in Rotorua on Monday this 3rd day of August 2026.

C T Coxhead
DEPUTY CHIEF JUDGE