

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

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

AP-20250000005169

WĀHANGA
Under

Section 19, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Tuhuna 12A1

I WAENGA I A
Between

CLARENCE LEE BROWN
Te kaitono
Applicant

ME
And

POMPEY JAY BROWN
Te kaiurupare
Respondent

Nohoanga: 26 June 2025, 292 Taitokerau MB 122-146
Hearing (Heard at Whangarei)

Kanohi kitea: Paula Wilson for the Respondent
Appearances

Whakataunga: 16 July 2025
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ TKTAR WILLIAMS
Judgment of Judge TKTAR Williams

Copies to:
Paula Wilson, Henderson Reeves, paulawilson@hendersonreeves.co.nz

Hei tīmatanga kōrero

Introduction

[1] The Court received an application from Clarence Brown seeking an injunction order, pursuant to s 19 of Te Ture Whenua Māori Act 1993 (the Act), removing Pompey Brown junior from the house at 15 Taheke Road, Kaikohe which is situated on the Tuhuna 12A1 block.

[2] The Tuhuna 12A1 block is a residential section in Taheke Road, Kaikohe. The family home of the late Moehau Paraone (Pompey Brown senior) and his widow, Barbara Brown, is located upon the section. It is in respect of this house and that land that orders are sought.

[3] Clarence Brown says that he owns the land and house, and Pompey Brown is occupying the property unlawfully. He says Pompey is also resisting any suggestion about vacating the property in the belief that he is rightfully entitled to occupation.

Kōrero whānui

Background

[4] The Tuhuna 12A1 block was held by Moehau Paraone (also known as Pompey Brown senior) who passed away in 1995. The Will of Moehau Paraone left a life interest in the house on Tuhuna 12A1 to his second wife Barbara and the land and remainder to their son Clarence. Barbara and Clarence were also named as the executors in Moehau Paraone's estate.

[5] In 1996, Clarence Brown filed an application to change the status of the Tuhuna 12A1 block from Māori Freehold land to General land. Judge Spencer declined the application and his minute stated that:¹

Without any doubt, the change of status would deny the children of the first family a right, being within the preferred class of alienees under s493, should Clarence (when he takes title to his father's will as his father's remainderman) ever wish to sell the property there is a very real issue here to the immediate Brown whanau of ancestral significance within tikanga Māori of this land.

[6] Then in March 2010, the Court issued orders confirming that the owners of the Tuhuna 12A1 block were Barbara Brown and Clarence Lee Brown as executors for Moehau

¹ 24 Kaikohe 146-148 (24 KH 146).

Nell Paraone (Pompey Brown senior). The transmission that should have occurred to them in 1996 had not been noted by the Court and therefore the order in 2010 sought to rectify that issue.

[7] Following this, an application was made by Toni Brown to succeed to the interests of Moehau Nell Paraone. That application was heard in April 2024. Barbara Brown had passed on by that time so in accordance with clause 3(b) of Moehau's Will, the Tuhuna 12A1 block was vested absolutely in Clarence Lee Brown.

[8] Pompey Brown junior appeared at the April 2024 hearing to oppose the vesting of the Tuhuna 12A1 block in Clarence Brown. However, his opposition was unsuccessful due to the Will provision, and a lack of evidence or supporting information for his opposition.

[9] Clarence Brown says that he has asked Pompey Brown to leave the property. He says that Pompey Brown junior has refused to adhere to those requests.

[10] That has resulted in the injunction application being filed in December 2024.

Nga kaupapa *Issues*

[11] Therefore, this Court needs to decide if it should grant an injunction restraining Pompey Brown junior from any actual or threatened trespass or injury to the Tuhuna 12A1 block and whether to prohibit him from dealing with or doing any injury to that land.

[12] The issues to be decided are;

- (a) Is Clarence Brown entitled to seek an injunction requiring Pompey Brown Junior's removal;
- (b) Is Pompey Brown Junior in unlawful occupation of the house;
- (c) Will the granting of an injunction cause disproportionate hardship.

Te Nohonga ō te Kooti*The Hearing*

[13] The Court convened a hearing of this matter in June 2025, which was attended by Pompey Brown junior in person and his counsel, and by Clarence Brown, Gloria Hunt, Toni Brown and Pania Brown online.

[14] There was no dispute by any party that Pompey Brown junior was currently occupying the house on the Tuhuna 12A1 block. He gained access to the property after his sister, Hinemoa Toki vacated the property.

[15] Ms Hinemoa Toki, a half-sister to Mr Clarence Brown and a full sister to Pompey Brown, had been permitted by Clarence Brown and Barbara Brown to occupy the house following the hearings in 2010.

[16] In or around 2021, Hinemoa required medical care which necessitated her being relocated from the property into a residential care facility. At that point in time, Pompey Brown junior was permitted by the trustees, Clarence Brown and Barbara Brown, to occupy the property on a limited basis.

[17] Clarence Browns evidence is that since Pompey Brown has moved into the whare his approach and attitude towards Clarence Brown and their other siblings has become hostile. He says this was not foreseen nor was it in alignment with the purpose or reasons set out in the original agreement to allow firstly his sister, Hinemoa Toki, to occupy the house and secondly Pompey Brown Junior to occupy the house once Hinemoa was no longer there to care for her possessions.

[18] He says he was withdrawn consent for Pompey Brown to be in the house or on the land. As such he is now trespassing.

[19] Clarence says he communicated the withdrawal of his consent to occupy the house by Facebook Messenger.

[20] Clarence's evidence was that despite request, Pompey has refused to vacate the house and as such he is now forcefully and unlawfully occupying it. He says that Pompey refused

to acknowledge Clarence's ownership of the land, and that he was advised by Pompey that he would be taking the issue to Court on the basis that the first family had a rightful claim to it. He then says that Pompey refused to engage in amicable discussions about the house and land, and worse has been obstructive and verbally abusive.

[21] Pania Brown, (Clarence Brown's niece – her father is Clarence's half-brother, and therefore Pompey's full brother) who descends from the first family, stated in evidence to the Court that Pompey Brown had caused a lot of conflict on the land to the extent that they have not been able to visit the property. She stated he has threatened to trespass her off the property when visiting the old homestead. She asserts that there has had no access to the land nor have there been any appropriate conversations between Pompey Brown and herself. She stated that the difficulty accessing property and the threats by Pompey to trespass them has created a lot of mamae in the family.

[22] Gloria Hunt, who is the second eldest sibling of the family (Hinemoa being the eldest), and a full sister to Pompey thanked her half-brother Clarence for allowing their sister, Hinemoa, to live in the home for 20 years free of rent and was saddened to see that matters were now in Court requiring resolution.

[23] At the hearing, Pompey Brown junior did not contest the evidence provided by Clarence, Pania or Gloria and there was no cross examination of their evidence.

[24] Two documents were filed in opposition to the injunction application. An email statement from Pompey Brown junior and a Statement by Danae Smith.

[25] In his email, Pompey Brown says that Clarence Brown has never asked him to vacate the property and never requested that he leave. He asserts that Clarence Brown is not the sole legal owner and that he was not in contact with Clarence until he became aware of the application for an injunction in December 2024.

[26] He further asserts that there was never an agreement between Clarence and his sister Hinemoa, as his sister always wanted their mother's whenua back.

[27] He finally states that there never has and never will be any discussions with Clarence Brown as the relevant legislation will do that for him. He then says that the land came from his mother who was their father's first wife. He asserts that his father and Clarence do not whakapapa to the land and asserts that Judge Spencer in April 1996 indicated that the first family has a right to the land.

[28] Danae Smiths statement appears to oppose the injunction primarily on the basis that Pompey junior as a child of Moehau Paraone and his first wife, is entitled to succeed to his land. This position ignores and seeks to undermine the provision of the Will that vests the land in Clarence Brown.

[29] At the hearing, counsel for Pompey attempted to walk back the written response he had filed with the Court on the basis that it was not sworn evidence.

[30] Counsel also submitted that Pompey Brown had filed a s45 application with the Chief Judge in or about December 2024 as he is entitled to do.

[31] Counsel acknowledged that following Hinemoa's relocation to a full-time residential care facility, there was an informal "custodial agreement" in 2021/2022 between Clarence and Pompey that he would occupy the house in order to provide secure care for Hinemoa's possessions and that Pompey's family would meet the rates obligations for the land during that period.

[32] Counsel also acknowledged that consent for Pompey to occupy had now been withdrawn. There was some debate about the date that it had been withdrawn, however, there was no doubt that the consent for Pompey to occupy the house had expired.

[33] Clarence says consent expired when he assumed the obligation to pay the land rates around May 2024. This date seemed to be accepted by counsel.

[34] Counsel for Pompey quite properly acknowledged that Clarence Brown is the legal owner of the property and during the course of the hearing, sought an adjournment in an attempt to find an amicable resolution. The suggestion for an adjournment was opposed by Clarence Brown who continued to seek orders as per his application.

[35] The question of whether Pompey Brown has the ability to obtain alternative accommodation was also raised with counsel who submitted that Pompey would talk to whanau about that.

What is the law regarding injunctions?

[36] I have jurisdiction to grant a permanent injunction per s 19 of the Act to protect Māori freehold land, Māori reservations or wahi tapu from actual or threatened trespass or other injury. An application may be advanced by a person claiming to have an interest in the matter.

[37] The application before the Court pertains to both trespass and injury to land.

[38] In *Taueki v Horowhenua Sailing Club - Horowhenua 11 (Lake) Block* the Māori Appellate Court has discussed the legal elements for granting a permanent injunction in an action of trespass:²

[15] In applying for a permanent injunction, applicants must also fulfil the legal elements relating to the action of trespass before the Court will exercise its jurisdiction to grant the remedy. These elements are set out below:

The action for trespass to land is primarily intended to protect possessory rights, rather than rights of ownership. Accordingly, the person prima facie entitled to sue is the person who had possession of the land at the time of the trespass. Actual possession consists of two elements: the intention to possess the land and the exercise of control over it to the exclusion of other persons. Either element alone is not sufficient...

[16] Once the elements for the trespass action are made out, the Court then considers what remedy is appropriate. The prima facie rule is that a landowner is entitled to an injunction to restrain a trespass. However, the Court still has discretion as to whether to grant the injunction or not. Matters affecting the exercise of the discretion include the parties' conduct.

(footnotes omitted)

[39] The principles concerning the grant of a permanent injunction are summarised in the Māori Appellate Court decision of *Meroiti v Meroiti*:³

² *Taueki v Horowhenua Sailing Club – Horowhenua 11 (Lake) Block* (2014) Māori Appellate Court MB 60 (2014 APPEAL 60).

³ *Meroiti v Meroiti* [2025] Māori Appellate Court MB 142 (2025 APPEAL 142) at [32].

- (a) The Court must be satisfied that the grant of the injunction will not cause disproportionate hardship.
- (b) The Court must consider the overall justice of the case and refrain from granting a permanent injunction that would cause injustice to the respondent. The test is oppression rather than a balance of convenience.
- (c) The general principle is that an injunction should ordinarily be granted in favour of an applicant whose rights have been affected, unless damages are a more appropriate remedy. This is referred to as “the good working rule”.
- (d) It would be oppressive to grant a permanent injunction where the good working rule applies.
- (e) As the decision to grant a permanent injunction is discretionary, the Preamble and the general objections set out in s 17 of the Act are also relevant to the exercise of discretion.

Is Clarence Brown entitled to seek an injunction seeking Pompey Brown Junior's removal

[40] It is apparent from the Court record and the evidence provided by Clarence Brown that he is the registered proprietor of the land which is Tahuna 12A1. Court orders were made to that effect, in accordance with the Will of Moehau Paraone in April 2024.

[41] Pompey Brown was also present at the hearing, where he opposed orders being made in accordance with the Will, but he was unsuccessful in his opposition. He is well aware therefore that Clarence is the owner of the land. There was no evidence submitted that the Will was being contested nor was there any evidence submitted to support the proposition that Pompey Brown juniors claim to the land supercedes s108(2) of the Act. In that event the Court was obligated to make orders in accordance with the Will.

[42] In terms of the evidence received by the court, the veracity of which counsel for Pompey Brown sought to downplay, I note that s69(1) of our Act provides that *the Court*

may act on any testimony , sworn or unsworn, and may receive as evidence any statement, document, information, or matter that, in the opinion of the Court, may assist it to deal effectively with the matters before it, whether the same would, apart from this section, be legally admissible in evidence or not.

[43] I have not sought to rely heavily upon the written statement provided by Pompey Brown junior, nor on the facebook messenger exchanges provided by Clarence Brown. That said, I consider that those documents appeared to be consistent with the evidence provided by Clarence and supporting whanau members and provide contextual background.

[44] The simple point is that as the legal owner, Clarence Brown is entitled to actual possession of the house and land. He has expressed a clear intention to possess it and to exercise of control over it, and as such is entitled to an injunction to restrain trespass.

Is Pompey Brown junior in unlawful occupation of the house

[45] Whilst Pompey Brown's occupation was initially authorised to be in the house, there is no doubt that consent for him to be on the land and in the house has been withdrawn. I have little doubt that message was conveyed in some form or manner to Pompey Brown in May 2024, when Clarence Brown took over payment of rates obligations.

[46] I also have no doubt that by December 2024, that position was very clear when Pompey was aware, by his own statement, that an injunction application seeking his removal, had been filed by Clarence.

[47] Pompey Brown is not an owner in the land or the house. He also knows that Clarence Brown is the legal owner of the land and house and that he does not have a right to be in the house or on the land without Clarence's consent.

[48] Given that consent has been withdrawn, Pompey Brown junior is in unlawful occupation of the house and is trespassing.

Will the granting of an injunction cause disproportionate hardship

[49] I address this issue under the next headings.

Should I grant a permanent injunction?

[50] The Court notes the verbal advice provided by Mr Pompey Brown and counsel that a s45 application has been filed with the Chief Judge seeking the Chief Judge exercise her jurisdiction. A copy of that application was not provided to the Court and there were no submissions made around the grounds for that application. No application for a Stay had been filed either.

[51] Counsel suggested that proceeding with the application might be an abuse of process given the s45 application. However, the filing of a s 45 application does not change the fact that Clarence Brown as the legal owner is entitled to possession and occupation. Nor does the granting on an injunction render his s45 application nugatory. If Pompey Browns application is successful, the Chief Judge could make orders pursuant to s44 that the vesting orders are incorrect and therefore the grounds and order granting an injunction would be incorrect. Clarence is not obligated to await the outcome of a s45 application.

[52] Pompey Brown asserts that he is entitled to be in the house not only because he has filed a s 45 application with the Chief Judge but that Judge Spencer in 1996 recognised the rights of the children of Moehau Paraone's first wife.

[53] It is not clear to me that the order made by Judge Spencer in 1996 supports the proposition made by Pompey Brown that he is entitled to occupy the house or land. All the 1996 order does is retain the status of the land as Māori land to ensure that the rights of the first family are retained in the event of the potential sale of the property by Clarence Brown, as members of the preferred class of alienees.

[54] Neither of these matters restrains me from granting an injunction.

The Court must be satisfied that a grant of the injunction would not cause disproportionate hardship

[55] Counsel quite appropriately acknowledged that Mr Clarence Brown is the legal owner of the property but indicated Pompey Brown would be without a home if removed from the property.

[56] The evidence suggests that Pompey Brown did not occupy the house until 2021/2022. He has been aware of this application since at least December 2024. With the withdrawal of the consent to occupy, there is no lawful justification for him to be in the house. There was no evidence that Pompey Brown couldn't obtain alternative accommodation or that there were financial constraints to that.

[57] Therefore, I find that there was no evidence provided by Pompey to assert that the granting of an injunction would cause disproportionate hardship to the respondent.

The Court must consider the overall justice of the case and refrain from granting a permanent injunction that would cause injustice to the respondent.

[58] The test is oppression rather than a balance of convenience.

[59] As stated, Pompey Brown is not the owner of the land or the house. Nor does he lawfully occupy the house.

[60] I have also stated, that the granting of an injunction and his proposed removal from the property does not cause any injustice to his application to the Chief Judge pursuant to s 45.

[61] The evidence of the wider family is that whilst Pompey Brown has been in occupation of the house, he has not only resisted requests by Clarence to vacate the property but has been obstructive and abusive to whanau members and has sought to restrain them from entering the property. They say he has threatened to trespass family members from entering the property, and I have no reason to refute that evidence.

[62] Therefore, I do not see that in the overall justice of the case, granting a permanent injunction would be oppressive or cause injustice to Pompey Brown.

It would be oppressive to grant a permanent injunction where the good working rule applies.

[63] Counsel for the respondent referred to the good working rule in oral submission when alluding to the impact of the injunction order if it is made, granting his removal.

[64] The good working rule requires me to must consider whether damages are a more appropriate remedy. In this situation I consider that damages would be inadequate as a remedy. Damages might have been an appropriate remedy if we were dealing with resolving past actions only. Here, the nuisance caused by Pompey Brown juniors continued occupation would mean that further applications for damages would be required to remedy the persisting nuisance. It is not appropriate to require Clarence Brown to have to file further and on-going proceedings to seek damages.

[65] In addition, given the evidence about his conduct towards Clarence and the wider whanau, I do not consider damages to be an appropriate remedy as an alternative to granting an injunction.

As the decision to grant a permanent injunction is discretionary the Preamble and the general objectives set out in s 17 of the Act are relevant to the exercise of discretion.

[66] I note that s 17(1) provides for the retention of Māori land by Māori in the hands of the owners and secondly it provides for the effective, use, management and development by or on behalf of the owners of Māori land.

[67] Given the above this Court is obligated to ensure the retention of the Tuhuna 12A1 block in the hands of Clarence Brown unless further Court orders dictate otherwise. Further Court orders do not presently exist. They may arise following the s45 application and can be given effect to at that time if necessary.

[68] The Court is obligated to ensure that Clarence Brown as the owner has the effective use and management of the land. To allow Pompey Brown to remain in unlawful occupation of the house on Tuhuna 12A1 would restrain Clarence Brown's effective use and management of that land.

[69] Therefore, a decision to grant a permanent injunction is appropriate in this circumstance.

Te Otinga
Conclusion

[70] For these reasons I am satisfied that a permanent injunction is not oppressive to Pompey Brown Junior and that it is necessary under the circumstances.

[71] I am satisfied that the overall justice of the case supports the grant of a permanent injunction.

[72] Pursuant to section 19(1)(a) of Te Ture Whenua Māori Act 1993 the Court grants a permanent injunction as follows:

- (a) Granting the removal of Pompey Brown Junior from the property at 15 Taheke Road situated upon the Tuhuna 12A1 block. That removal is to occur within seven days of these orders.
- (b) Pompey Brown Junior is not to return to the land at Tuhuna 12A1 unless by further order of the Court.
- (c) Mr Pompey Brown Junior is not to obstruct Clarence Brown or any persons authorised by him from accessing the land or residing on the land at Tuhuna 12A1.
- (d) Pompey Brown Junior is not to destroy, remove or damage any of the chattels in or the property and dwelling on Tuhuna 12A1 block.

[73] This order is to be completed without delay under rule 7.5(2)(b) of the Māori Land Court Rules 2011.

I whakapuaki i te 5:00pm i Whangarei i te rā 16 o Hōngongoi i te tau 2025.
Pronounced at 5:00pm in Whangarei, 16 July 2025.

T K T A R Williams
JUDGE