

I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TE WAIPOUNAMU
In the Māori Land Court of New Zealand
Te Waipounamu District

AP-20230000022224
A20200013802

WĀHANGA <i>Under</i>	Section 241, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Jacobs River 100 Block XXV Section 80 and Others
NĀ <i>By</i>	ADA KAREN CAMPBELL AND PATRICIA ANNE MCCORMACK Ngā kaitono <i>Applicants</i>

AP-20230000022197
A202000007253

WĀHANGA <i>Under</i>	Section 239, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Jacobs River 100 Block XXV Section 80 and Others
NĀ <i>By</i>	BEVERLEY JOAN TURNER Te kaitono <i>Applicant</i>

Nohoanga:
Hearing

4 March 2021, 70 Te Waipounamu MB 82-89
9 September 2021, 74 Te Waipounamu MB 3
16 December 2021, 77 Te Waipounamu MB 14
24 May 2023, 77 Te Waipounamu MB 15-21
6 May 2025, 94 Te Waipounamu MB 110-127
(Heard at Christchurch)

Whakataunga:
Judgment date

4 July 2025

TE WHAKATAUNGA Ā KAIWHAKAWĀ S F REEVES
Judgment of Judge S F Reeves

Hei tīmatanga kōrero*Introduction*

[1] This decision concerns two applications. One application was filed by Ada Karen Campbell and Patricia Anne McCormack, who are trustees and beneficiaries of the Ada Phyllis Cowie/Patterson Whānau Trust (the Trust). They seek to partially terminate the Trust so as to remove the interests they vested into it.

[2] The other application was filed by Beverley Joan Turner, who is a trustee and beneficiary of the Trust. She seeks to replace Peter James Patterson (deceased) with Bryan Patterson as trustee.

[3] The issues to determine are first, whether to grant the partial termination, second, what proportion of the interests should remain in the Trust, and third, whether to appoint the trustee replacement.

Kōrero whānui*Background*

[4] Ada Phyllis Patterson (nee Cowie) passed away in January 2007. She was a mother to four daughters – Patricia, Beverley, Marie, and Ada Campbell – and two sons – Rodney, who predeceased his mother, and Peter. Ada Patterson left her estate by will to her four daughters, including interests in four blocks of Māori freehold land, although those interests were not mentioned explicitly.

[5] The Court made an order on 23 August 2007 for succession, vesting Ada Patterson's interests in the four daughters. A whānau trust was established as part of the same hearing with all the descendants of Ada Patterson as beneficiaries, including the lines of Peter and Rodney.¹

[6] Peter James Patterson died in May 2008. In 2020, Beverley applied to replace Peter as trustee with his son, Bryan and Ada Campbell and Patricia McCormack applied to partially terminate the Trust. I adjourned Beverley's application and directed that a meeting

¹ 120 South Island MB 11-13 (120 SI 11-13).

of trustees and a meeting of beneficiaries be held to gather views on partial termination of the Trust.

[7] All four trustees attended the trustee meeting. Attendees at the meeting of beneficiaries were the applicants' children, Marie's child, and the trustees. The Court also received emails prior to the meetings from Patricia's child and grandchildren; and emails after the meetings from the children of Rodney, Peter, Marie, and Beverley.

[8] I address the application for partial termination first.

Te tono whakamutunga wāwāhanga

Application for partial termination

Ngā kōrero a ngā Kaitono – Applicants' submissions

[9] The applicants have given the following reasons for seeking a partial termination of the Trust:

- (a) They have been excluded from communications about the Trust. The applicants referred to trust meetings which they said they were not included in or made aware of.
- (b) The Trust is not operating as it should. There has been no activity or communication to do with the Trust for years.
- (c) The applicants' expectations have not been met in terms of information provision and opportunity to attend hui and express their views.
- (d) The applicants experience a lot of distress working with their sisters in relation to the Trust, due to their view of the family dynamic.
- (e) The applicants signed the documents to constitute a Trust and to include their brothers under duress. The applicants did not understand the documents that they signed nor that their mother's will left the interests to the four daughters solely. There was no discussion beforehand.

[10] The applicants are of the view that if the Trust is partially terminated, they should receive $\frac{1}{4}$ share each, as that is in accordance with their mothers' will.

Ngā kōrero a te hunga whai panga me ngā tarahitī – Views of the beneficiaries and trustees

[11] All of the trustees support partial termination. In terms of share proportions, Beverley and Marie say their sisters should remove only a $\frac{1}{6}$ share each, based on the Trust including their late brothers. Beverley and Marie argue that they all agreed to include their brothers' lines in 2007, and Ada Campbell and Patricia cannot go back on that arrangement now.

[12] Beverley and Marie reject the argument that Ada Campbell and Patricia signed documents under pressure or without understanding what they were agreeing to. They say that emails about Trust meetings have been sent to the applicants, but they have not ever responded to or acknowledged those emails.

[13] Views of beneficiaries were gathered at a beneficiary meeting and from emails before and after that meeting. All beneficiaries who attended the beneficiary meeting supported partial termination, though opinions differed on share division. No support was expressed for appointing new trustees instead of partially terminating the Trust. At the meeting, beneficiaries also discussed whether and how they would vary the Trust order if the Trust were partially terminated. That included changing the named tūpuna and redefining the beneficiaries. The applicants discussed forming their own trust and the possibility of including their brothers' children in that new trust.

[14] On 11 April 2025, the court sent a draft submission and meeting report to all affected parties. Several non-attending beneficiaries responded via email, including children of Rodney, Peter, Marie, and Beverley. Many email responses supported appointing new trustees from the next generation to preserve family unity and shareholding, instead of partially terminating the Trust. The emails also expressed support for keeping Rodney and Peter's descendants in the Trust.

[15] The descendants of Beverley and Marie tend to believe that if the Trust is partially terminated, only a $\frac{1}{6}$ should be removed for each of the applicants. The descendants of Ada

Campbell and Patricia tend to believe that a ¼ share should be removed for each of them. The descendants of Rodney and Peter did not support partial termination.

Te Ture – Law

[16] Section 241 of Te Ture Whenua Māori Act 1993 (the Act) states:

241 Termination of trust

(1) The Court may at any time, in respect of any trust to which this Part applies, terminate the trust in respect of—

(a) the whole or any part of the land; or

(b) the whole or any part of any interest in land subject to the trust, —

by making an order vesting that land or that part of that interest in land in the persons entitled to it in their respective shares, whether at law or in equity, or in such other persons as the beneficial owners may direct.

(1A) However, for land vested in trustees by an order made under section 132(6) (for which a class of persons are the beneficial owners or beneficiaries), the order must vest that Maori freehold land in the trustees of another trust under section 132(6), and section 132 applies for that purpose, excluding section 132(8) and with any other necessary modifications.

(2) Where a trust terminated under subsection (1) of this section is a whanau trust, the court shall, notwithstanding anything in subsection (1), make an order vesting the land or the part of the land or the interest in the land in the persons entitled to it in their respective shares, whether at law or in equity, which persons are—

(a) the persons who were, at the creation of the trust and are at the date of the order, the beneficial owners of the land or the part of the land or the interest in the land; and

(b) any persons who, at the date of the order, are successors of any of the persons who were, at the creation of the trust, the beneficial owners of the land or the part of the land or the interest in the land.

[17] Regarding partial termination, the Court must take into account a range of important considerations before taking the serious step of removing interests from a trust, since the jurisdiction to do so is discretionary and should only be invoked with caution.²

² *Scott - Tiaho Mateparae Whānau Trust* (2020) 417 Aotea MB 123 at [16].

[18] In *Larkins v Wi Kaitaia — Waihou Hutoia D2A*, the Māori Appellate Court considered the application of s 241 of the Act and set out the following principles:³

- (a) A change of mind is usually insufficient as a ground for termination unless there is an absence of opposition;
- (b) Termination should be refused where it is likely to result in detriment or create unreasonable disadvantage to affected parties;
- (c) Evidence of a trust failing to adhere to their terms of trust and core accountabilities may be sufficient grounds for termination.

[19] The Māori Appellate Court further found that there is no requirement for unanimous owner or beneficiary support in respect of the termination of a trust under s 241 and, except in certain limited circumstances, the Court is not bound by the outcome of a majority vote either in favour of or in opposition to termination. In redirecting the matter back to the Court below, the Appellate Court directed consideration of the following factors when determining whether to terminate the whānau trust:⁴

- (a) the Preamble, s 2, and other matters listed in s 17, including the extent to which partial termination achieves better retention, use, development and control of the land in accordance with the fundamental principles and purposes of the legislation;
- (b) the purposes of the whānau trust;
- (c) the extent of the beneficiary and trustee consent;
- (d) the impact of any termination on the remaining beneficiaries and the trust; and
- (e) any evidence of dysfunction by the whānau trustees to justify the Māori Land Court's intervention.

[20] It is also trite law that the Act's underlying purpose is the retention and utilisation of Māori land by the owners, their whānau and hapū. As noted by the Appellate Court in *Rata*

³ [2013] Māori Appellate Court MB 159 (2013 APPEAL 159) at [27].

⁴ At [30].

– *Te Rongoroa A7 Block*, the Act leans away from alienation and the facilitation of individual holdings towards collective outcomes for owners of Māori freehold land.⁵

Kōrerorero – Discussion

[21] It is clear to me that there is significant tension between the trustees, which has made it very difficult for the whānau to work together with regards to the Trust. It is promising that the next generation of the whānau are focussed on unity, and the ideal outcome would have been if new trustees from that generation were appointed and overcame their parents' dysfunction. However, having carefully considered the dynamics of the whānau as a whole, I do not think that keeping this Trust together will achieve that unity.

[22] Instead, partial termination is likely to achieve better use, development, and control of the land. It may also relieve the strain on whānau relationships. Partial termination will result in the interests being divided, which goes against the Act's kaupapa of collective outcomes. However, in this particular context it is likely to result in a closer engagement with the land interests. The four trustees have each described trying to engage with or manage the Trust and feeling obstructed by other trustees. I am encouraged by the fact there is general support for a partial termination among trustees and beneficiaries. I further note that partial termination would not cause unreasonable disadvantage to other parties.

[23] With regard to the issue of share proportions, I consider that the applicants are entitled to a 1/6 share each. Before the Court heard Ada Patterson's succession, it was provided with a family arrangement deed dated 19 January 2007, where the four daughters agreed to include Peter and the children of Rodney in the succession to their mother's Māori land interests. The Court was also provided a document, dated 6 August 2007, where the children of Rodney agreed for any interests they had as a result of the deed of family arrangement to be vested into the whānau trust.

[24] It is clear that the Court vested Ada Patterson's interests in the Trust in accordance with that family arrangement deed. The succession and constitution of a whānau trust were addressed in the same hearing.

⁵ *Scott - Tiaho Mateparae Whānau Trust* (2020) 417 Aotea MB 123 at [19] citing *Rata – Te Rongoroa A7 Block* (1991) Aotea Appellate MB 223 (13 APWG 228) at 244.

[25] I am not persuaded that there is sufficient evidence to show that the family arrangement deed, or the consents to establish a whānau trust, were signed under duress. Ada Campbell and Patricia said during the hearing that no threats were made and there were no negative economic consequences of not signing the documents. Nor am I persuaded that Ada and Patricia did not genuinely agree to the inclusion of their brothers. The documents were signed nearly 6 months after their mother passed away, and on 23 August 2007, both applicants were present at the hearing of the application for succession and whānau trust. No objections were made.

[26] In accordance with s 241(2), the shares will be vested in Ada Campbell, Patricia McCormack, and their successors.

Te tono whakakapi tarahitī

Application for replacement of trustee

[27] When the Trust was formed, the Court appointed Beverley, Marie, Ada, Patricia and Peter as trustees. Peter died in 2008 and this application now seeks to replace Peter with his son Bryan. Communications from Beverley in 2020 indicate that the whānau would like a trustee from each branch of the family to be appointed to the Trust. Bryan is Peter's son, and the children were at that time considering how to bring on an additional trustee to represent Rodney's whānau. In 2025 Beverley advised the Court that Rodney's son Phillip Patterson has now filed an application to become a trustee.⁶

[28] In deciding whether or not to appoint a trustee, I must have regard to the ability, experience, and knowledge of the individual. I must not appoint an individual unless I am satisfied that the appointment would be broadly acceptable to the beneficiaries.⁷ In considering those issues, the Court will have regard to such matters as the nature and scale of the assets of the trust concerned and the issues the Trust is facing.⁸

[29] In relation to Bryan's ability, the Court has received a trustee consent for Bryan dated 16 June 2020. That records that he is a trustee on the SGL Family Trust and the Bryan

⁶ An application to appoint Phillip has not been identified in Pātaka Whenua as at the date of issue of this judgement.

⁷ Te Ture Whenua Māori Act 1993, s 222.

⁸ *Clarke v Karaitiana* [2011] NZCA 154.

Patterson Trust, and that he works as an owner/director of Longslip Station Ltd. I am satisfied that he will be a capable trustee, and I did not receive any evidence challenging that position.

[30] I now turn to whether his appointment will be broadly acceptable to the beneficiaries. Given I have decided to allow partial termination in relation to Ada and Patricia's interests, I must take into account the views of the remaining beneficiaries. Evidence provided to the Court includes a minute from a Trust hui dated 30 May 2020 stating that the trustees agree that Bryan be appointed. The minute was only signed by Beverley, but Court staff called Marie and confirmed she supports Bryan's appointment.

[31] This issue was not specifically discussed in the recent Court-facilitated hui of beneficiaries, because it was overshadowed by the issue of partial termination of the Trust. However, I am satisfied that appointing Bryan is consistent with the views expressed at that hui. That is, that the Trust should include representation from Rodney's and Peter's lines. In particular, I note the email of Rebecca Riant which included the view that there should be one trustee from each of the six siblings' lines so there is fair representation. Several beneficiaries supported the views expressed in that email.

[32] There will be an order replacing Peter Patterson as trustee with Bryan James Patterson.

Ngā ōta

Orders

[33] The application for partial termination of trust is granted pursuant to s 241, Te Ture Whenua Māori Act 1993.

[34] Pursuant to s 241(2), a 1/6 share of the interests in the Ada Phyllis Cowie/Patterson Whānau Trust is to be vested in Ada Karen Campbell and her current successors.

[35] Pursuant to s 241(2), a 1/6 share of the interests in the Ada Phyllis Cowie/Patterson Whānau Trust is to be vested in Patricia Anne McCormack and her current successors.

[36] The trust order for the Ada Phyllis Cowie/Patterson Whānau Trust is varied pursuant to s 37(3) and s 244(2) to remove the applicants and their uri as beneficiaries of the Trust.

[37] The number of trustees in the Ada Phyllis Cowie/Patterson Whānau Trust is reduced per s 239 of the Act to reflect that Ada Karen Campbell and Patricia Anne McCormack are no longer trustees of the Trust.

[38] Pursuant to s 239, Peter James Patterson is replaced as a trustee by Bryan James Patterson.

I whakapuaki i te wā 4.30pm ki Te Whanganui-a-Tara, wha o ngā rā o Hōngongoi i te tau 2025.

Pronounced at 4:30pm in Wellington on this 4th day of July 2025.

S F Reeves

JUDGE