

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

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

AP-20240000003241

WEHENG <i>Under</i>	Sections 131, 132, 216, 219, 220, 222, and 338 Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Mataimoana (Māori Customary Land)
I WAENGA I A <i>Between</i>	DEPUTY REGISTRAR Te Kaitono <i>Applicant</i>
ME <i>And</i>	GARRY DAVIS, DESMOND CANTERBURY, PAORA POUTINI, AADN TUME, RONALD HOUGH, PATRICIA BECKER, TE AROHA MCDONNELL, MARILYN KAIRIMU-DAVIS, AS REPRESENTATIVES OF NGĀTI HAU AND NGĀTI POURUA Ngā Kaiurupare Tuatahi <i>First Respondents</i>
ME <i>And</i>	DAVID CHURTON Te Kaiurupare Tuarua <i>Second Respondent</i>

Kōtitanga:
Hearing 481 Aotea MB 222-250 dated 18 December 2023
487 Aotea MB 160-178 dated 4 June 2024
537 Aotea MB 114-143 dated 4 Mei 2026
(Heard at Whanganui)

Kanohi kitea:
Appearances L Watson for the First Respondents
G Paine for the Second Respondent

Whakataunga:
Judgment date 16 July 2026

TE WHAKATAUNGA A KAIWHAKAWĀ A H C WARREN
Judgment of Judge A H C Warren

*Ko te whenua te toto o te tangata***Hei tīmatanga kōrero***Introduction*

[1] By order dated 18 December 2023,¹ I found that the customary owners of Mataimoana, being Māori customary land (“the Mataimoana block”), are Ngāti Hau and Ngāti Pourua (the hapū).² Following that order, an application to constitute a whenua tōpū trust in respect of the Mataimoana block pursuant to s 216 of Te Ture Whenua Māori Act 1993 (the Act) was filed by the Deputy Registrar with the support of the hapū (the whenua tōpū application). The whenua tōpū application followed a hapū engagement process designed to ascertain the views of hapū members regarding how the land was to be held and managed. It is the whenua tōpū application that will be determined in this decision.

[2] Mr David Churton, who has been heavily involved in these proceedings, filed several documents in advance of hearing the whenua tōpū application, including:

- (a) a new application under s 132 of the Act to investigate the status of the Mataimoana block;³
- (b) an affidavit referring to a stay of proceedings (trying to halt the whenua tōpū application);⁴ and
- (c) a subsequent formal application for a stay filed on 1 May 2026 by his counsel, Mr Gordon Paine. Ms Churton opposes the whenua tōpū application.

[3] Further following the hearing on 4 June 2024,⁵ and by direction dated 6 June 2024,⁶ Mr Leo Watson, counsel for the First Respondents, was invited to address several jurisdictional threshold issues concerning the Court’s authority to constitute a whenua tōpū

¹ 481 Aotea MB 222-250 (481 AOT 222-250).

² 481 Aotea MB 222-250 at 247 confirming interim decision of J Harvey at 410 Aotea MB 244-263 (410 AOT 244-263) at 262.

³ See AP-20260000003199.

⁴ See sworn affidavit of David Wayne Churton, with two appendices, dated 16 April 2026.

⁵ 487 Aotea MB 160-178 (487 AOT 160-178).

⁶ This direction was sent to all parties via email on 7 June 2024.

trust.⁷ Written submissions were filed, and Mr Paine was given an opportunity to respond at the hearing as he chose not to file any written submissions in advance of that hearing.

[4] After hearing those submissions, I confirmed in open court that:

- (a) The application for a stay is dismissed.
- (b) The Court has jurisdiction to constitute a whenua tōpū trust with respect to the Mataimoana block.
- (c) I was prepared to make orders constituting the new whenua tōpū trust and appoint the proposed trustees.
- (d) I gave Mr Watson leave to finalise the terms of trust order before issuing all formal orders.

[5] I also indicated that reasons for the above decisions would follow in writing together with all final orders. I now provide those reasons and confirm the orders that I will make, once I receive the final terms of trust.

He tononga ki te whakamoe i ngā kōtitanga

The application for stay of proceedings

[6] The application for stay was filed shortly before the hearing of the whenua tōpū application. Mr Paine submitted that a stay was necessary to enable the Court to determine Mr Churton's s 132 application, which had not yet been set down for hearing. That was the main argument advanced by Mr Paine. The stay application was opposed by Mr Watson.

[7] Mr Paine made no legal arguments as to my jurisdiction to grant a stay in this non-appeal context. Nonetheless, I note that the Māori Land Court does not have a general statutory power to grant a stay of proceedings. The only expressed provisions are ss 43(1) and 59(4) of the Act. Outside of these provisions, the Court must rely on its inherent powers. The Court of Appeal in *McMenamin v Attorney General*,⁸ confirmed that an inferior court may do what is necessary to enable it to exercise its statutory functions, powers and duties conferred on it by statute. A court also has a duty to ensure its process is used fairly and to

⁷ I directed the pae tukutuku to liaise with the applicants at para [4] of the direction; see the order appointing Mr Leo Watson as counsel representing the First Respondents at 509 Aotea MB 95-96 (509 AOT 95-95).

⁸ *McMenamin v Attorney General* CA201/84, 23 October 1985; [1985] 2 NZLR 274 (CA).

prevent abuse of that process.⁹ This Court has applied this principle recognising that it may grant a stay to prevent abuse of process and to ensure its procedures are used fairly. In most circumstances, stays are applied when an appeal has been filed. No appeal has been filed by Mr Churton.

[8] Regardless of the context in which the application for stay is being advanced, I find that it is without merit. The court has already determined the customary ownership of the Mataimoana block and by order named the hapū with the customary rights and responsibilities.¹⁰ That determination is final, subject of course to any successful appeal. As noted, no application for rehearing nor an appeal has been lodged. Mr Churton's s 132 application seeks, in substance, to revisit the determination already made. I am functus officio in respect of the determination of ownership, and the principle of *res judicata* applies. In those circumstances, the application for a stay is procedurally and substantively misconceived as is the s 132 application. There is no basis to grant a stay in these circumstances.

[9] For completeness, the argument about the proper interpretation of s 145 of the Act and how that bears upon my power to constitute the whenua tōpū trust is a live jurisdictional question. It is not a basis to consider granting a stay of proceedings. Nor is the argument that as a matter of tikanga or Aboriginal title/property rights I should stay the whenua tōpū application, because to do otherwise would extinguish or undermine Mr Churton's rights. Those rights have already been determined by order of the court in the earlier determination.

[10] Finally, there is no appetite from the hapū members to stay the whenua tōpū application to allow the exploration of a resolution. As far as the hapū are concerned, the issues were resolved when the court determined which hapū owned the Mataimoana block.

[11] The application for stay is therefore dismissed. I record that, were it not for the fact that the parties are in receipt of special aid, this would have been an appropriate case for an award of costs.

⁹ *McMenamin v Attorney General* CA201/84, 23 October 1985 at 4.

¹⁰ 481 AOT 222-250 at 247.

Ko ngā take o ture*Jurisdictional matters*

[12] By memorandum dated 27 February 2026, Mr Watson filed a comprehensive response to my jurisdictional questions relevant to the whenua tōpū application. These submissions were responded to orally by Mr Paine at the hearing.¹¹ I now address each issue in turn.

Issue One: Whether the Court may vest Māori customary land in a whenua tōpū trust in light of s 145 of the Act

[13] This issue concerns whether the Court is empowered to vest Mataimoana, which remains Māori customary land, in a whenua tōpū trust pursuant to s 132 and/or s 216 of the Act, or whether such vesting is prohibited by s 145(1) of the Act.

[14] Section 132 of the Act sets out:

132 Change from Maori customary land to Maori freehold land by vesting order

- (1) The Maori Land Court shall continue to have exclusive jurisdiction to investigate the title to Maori customary land, and to determine the owners of the land.
- (2) Every title to and interest in Maori customary land shall be determined according to tikanga Maori.
- (3) In any application for the exercise of the court's jurisdiction under this section, the applicant may specify—
 - (a) the class of persons who it is claimed are the owners of the land when the application is made; and
 - (b) any trusts, restrictions, or conditions to which it is proposed the land shall be subject.
- (4) On investigating the title and determining the current owners under this section, the court must define the owners as a class of persons.
- (5) The class of persons must include all descendants of the members of the class, and may or may not be an iwi or a hapu.

¹¹ Mr Paine did not file any written submissions in advance of the hearing on this or any of the jurisdictional questions but rather, was given leave to make oral submissions. Mr Paine did seek leave to file a written response, which I declined on the basis that he had been given a fair opportunity to respond to the written submissions.

- (6) The court may then make an order defining the area dealt with and vesting the land in—
 - (a) the trustees of an ahu whenua trust constituted under section 215 to hold in trust for the class of persons (who are the beneficial owners of the land); or
 - (b) if the class of persons is an iwi or a hapu, the trustees of a whenua topu trust constituted under section 216, to be used or applied for the general benefit of the class of persons (who are the beneficiaries of the trust).
- (7) The vesting order may include any terms of trust that the court thinks fit.
- (8) The court must not make a vesting order under this section unless it is satisfied that—
 - (a) the members of the proposed class of persons have had sufficient notice of the proposal, including the change of status to Maori freehold land, and sufficient opportunity to discuss and consider it; and
 - (b) there is a sufficient degree of support for the proposal among the members.

[15] Section 216 of the Act states:

216 Whenua topu trusts

- (1) The court may, in accordance with this section, constitute a whenua topu trust in respect of any Maori land or General land owned by Maori.
- (2) A whenua topu trust may be constituted where the court is satisfied that the constitution of the trust would promote and facilitate the use and administration of the land in the interests of the iwi or hapu.
- (3) An application for the constitution of a whenua topu trust under this section—
 - (a) shall be made in respect of all the beneficial interests in 1 block or in 2 or more blocks of land; and
 - (b) may be made by or on behalf of any of the owners or the Registrar of the court.
- (4) The court shall not grant an application made under this section unless it is satisfied—
 - (a) that the owners of the land to which the application relates have had sufficient notice of the application and sufficient opportunity to discuss and consider it; and
 - (b) that there is no meritorious objection to the application among the owners, having regard to the nature and importance of the matter.

- (5) The land, money, and other assets of a whenua topu trust shall be held for Maori community purposes, or for such Maori community purposes as the court may specify either on the constitution of the trust or on application at any time thereafter, and shall be applied by the trustees in accordance with section 218 or as otherwise ordered by the court for the general benefit of the members of the iwi or hapu named in the order.
- (6) Except as provided in subsection (7), while a whenua topu trust constituted under this section remains in existence, no person shall be entitled to succeed to any interests vested in the trustees for the purposes of the trust.
- (7) Notwithstanding anything in subsection (5), but subject to subsection (8), the court may, either on the constitution of a whenua topu trust or on application at any time thereafter, order in respect of any specified interests vested in the trustees for the purposes of the trust that the interests shall be deemed to be held for the persons named or described in the order, and the income arising from those interests shall thereafter be paid to those persons and their successors accordingly.
- (8) The court shall not make an order under subsection (7) unless it is satisfied that the order is necessary to protect the interests of any owner of a large interest in the land vested or to be vested in the trustees for the purposes of the trust.

[16] Section 145(1) of the Act sets out:

145 Maori customary land cannot be alienated

- (1) Maori customary land or an interest in that land cannot be—
 - (a) alienated; or
 - (b) disposed of by will; or
 - (c) vested or acquired under an Act.

[17] Mr Paine’s argument is that the vesting of customary land into a trust is impermissible unless the statutory criteria in s 145 of the Act are satisfied. Reliance is placed on s 145(1), which provides that Māori customary land or any interest in that land cannot be alienated, disposed of by will, or vested or acquired under an Act.

[18] In response, Mr Watson submits that this interpretation is incorrect, and that the Court does have jurisdiction to vest customary land in a whenua tōpū trust. The starting point is s 132(1), under which the Court undertook the investigation of ownership. That investigation has been completed, and the customary owners have been determined. Following such determination, s 132(6)-(8) expressly contemplates further consequential orders, including the vesting of the land in trustees, including under s 216.

[19] Section 216 of the Act confers jurisdiction on the Court to constitute a whenua tōpū trust in respect of Māori land, and includes Māori customary land (per s 4 of the Act). Counsel submits that these provisions operate together to provide a clear statutory pathway for vesting such land in a trust following the determination of ownership.

[20] The principal question is therefore whether s 145(1) operates to restrict or override that jurisdiction. Mr Watson advances three key arguments. First, vesting under s 216 is not an alienation for the purposes of s 145, because the definition of alienation in s 4 excludes dispositions effected by order of the Court. Secondly, the vesting is not a disposition by will. Thirdly, the phrase “under an Act” in s145(1)(c) refers to other legislation, not Te Ture Whenua Māori Act 1993 itself. No other Act is engaged here.

[21] Mr Watson also relies on the principle that specific statutory provisions prevail over general ones. Accordingly, the specific vesting powers in ss 132 and 216 prevail over the general restriction in s 145 of the Act.

[22] The resolution of this issue turns on whether vesting under s 216 is properly characterised as an internal administrative mechanism rather than an alienation of land. I agree with Mr Watson’s interpretation of the interplay between ss 145, 132 and 216 of the Act. I find that a vesting under s 216 is not an alienation for the purposes of s 145(1), primarily because s 4 makes an explicit exception and the specific vesting provision overrides the general nature of s 145.

Issue Two: Whether the status of the land must change from Māori customary land upon vesting

[23] The second issue concerns whether, upon the exercise of powers under s 132, the status of the land must change from Māori customary land to Māori freehold land, particularly considering the wording in s 132(8).

[24] This issue arises because s 132(8) refers to notice being given to affected persons, including notice of any change of status to Māori freehold land. The question is whether this implies that a change of status is required. Mr Watson submits that no such requirement exists. Section 132(8) is properly interpreted as procedural only. It requires notice where a

change of status is proposed but does not mandate that such a change occur after the court investigates who the customary owners are. Counsel further relies on s 216, which applies to any Māori land, including Māori customary land, by virtue of the definition in s 4. Accordingly, a trust may be constituted without changing the status of the land.

[25] It is also emphasised that the owners have consistently expressed a desire that the land retain its customary status. This is said to align with ss 2 and 17 of the Act, which promotes retention of Māori land and require the Court to give effect to the wishes of the owners.

[26] The issue for determination is whether vesting necessarily effects a change in land status or may operate purely as a management structure. I accept that the statutory language is slightly confusing and at first blush, s 132 could be interpreted as requiring a change of status upon constitution of a whenua tōpū trust. Yet that outcome would cut against the very essence of the Act and requires hapū to change the land from customary land to freehold land, if they chose to have it vested in a whenua tōpū trust. It would make s 216 restrictive to Māori freehold land only when it currently allows both freehold land and customary land to be included. It cannot follow that a vesting into trustees of customary land means its status changes by operation of the law, unless that is explicit in the Act.

[27] I find that s 216 of the Act allows for Māori customary land to be vested in trustees and for that status to remain as it is. Section 132(8) of the Act does not automatically change the status to Māori freehold land upon a determination that Māori customary land is owned by a certain group.

Issue Three: Whether Māori customary land can be set aside as a Māori reservation

[28] The third issue concerns whether the Mataimoana block may be set aside as a Māori reservation while remaining Māori customary land. This issue is now redundant given my findings above, but I nonetheless make comment as it may help clarify the position for future reference.

[29] Section 338(1) which gives the Court to ability to set up a Māori reservation. Under this provision the land to vested must be Māori freehold land or general land, which raises a

question as to whether customary land is excluded and cannot be vested as a Māori reservation. The central argument is that a Māori reservation is a protective overlay rather than a land status. Accordingly, land may remain Māori customary land while also being subject to a Māori reservation.

[30] Mr Watson submits that this interpretation is supported by the statutory scheme, including s 339(4) of the Act, which contemplates applications in respect of land other than Māori freehold or general land. Section 145 is also said to recognise the compatibility of customary land with reservation protections.¹² The mechanism proposed is an application by the Minister of Māori Development under s 339 of the Act.

[31] Mr Watson's submissions on this issue make sense, and I agree with them.

Ko te whakatūranga o te whenua tōpū kaitiakitanga me ngā kaitiaki

Constituting the whenua tōpū trust and appointing trustees

[32] Having been satisfied that the Court has jurisdiction to constitute a whenua tōpū trust in respect of Māori customary land and to vest that land in trustees, I now turn to the legal requirements that I must consider when being asked constituting such a trust, setting terms of trust and appointing trustees. These are all captured in s 216 of the Act.

[33] I have already determined that I can constitute a whenua tōpū trust in respect of Māori customary land.

[34] Based on the wishes of the hapū, I am satisfied that the constitution of the trust would promote and facilitate the use and administration of the land in the interests of the hapū. I place considerable weight on the views of the hapū given that they have, after discussion and hui, decided to hold this special land in a trust. This goes to the heart of hapū exercising tino rangatiratanga and the court's role in protecting that exercise.

[35] I am satisfied that the owners of the land, to which the application relates, have had sufficient notice of the application and sufficient opportunity to discuss and consider it.

¹² Section 145(2)(b) of the Act.

Neither Mr Churton nor Mr Tume raised any substantive issues about notice or a lack of understanding of what was proposed.

[36] Turning then to the question on whether there are no meritorious objections to the application among the owners, having regard to the nature and importance of the matter. Other than Mr Churton, the only hapū member who lodged a formal objection was Mr Tume. Mr Tume's concerns related to the lack of clarity around the hui process and specifically whether those running the hui were following a specific marae charter, in terms of the election of trustees, i.e., was a quorum present. That concern is unrelated given that the hui run by the hapū were not operating under a marae charter process, but rather a hui-ā-hapū process. That means there was no quorum requirement per se.

[37] In any case, by the end of presenting his issues to the Court, Mr Tume advised that he no longer opposed the Trust being constituted or the appointment of trustees and advised that his objection was resolved.

[38] On that basis, the only objector left was Mr Churton. The substance of Mr Churton's opposition (other than the grounds of his stay application) was because the establishment of the whenua tōpū trust would have the effect of changing its status, and that customary owners such as himself would be prevented from utilising the land. In effect, what Mr Churton was saying is that he wants to continue to have unimpeded use of the Mataimoana block, as he currently has, knowing full well that once trustees are appointed, they may no longer allow him to use the land in that manner.

[39] As a matter of law, Mr Churton's view that the status of the land would change, is incorrect based on my findings above. My orders will not change the status, it will remain as Māori customary land, and the underlying owners will be the hapū members, including Mr Churton who claims to have whakapapa to the land. A point not challenged by the applicants. It follows that under orthodox trust law, the land is vested in trustees who must govern and manage the land in accordance with the Act, the trust order, and other relevant legislation. That legal orthodoxy in no way affects the status of the land. Whilst Mr Churton is entitled to take a view that there should not be any trust constituted in respect of the land, he is the lone voice against the clear choice of the hapū.

[40] I therefore find that the objections made by Mr Churton are not meritorious. I agree with Mr Watson that the objections and new applications of Mr Churton are in effect attempts to revisit the order I made confirming the owners of the land and now the constitution of a trust, that he believes will impact his use of the land. Mr Churton has no more of a right or interest in this land than any other hapū member. Those hapū members who have engaged with this application have spoken to clear terms and there is no basis to refuse what they are seeking.

[41] Turning then to the appointment of trustees. There were no specific objections to the appointment of the trustees representing the hapū, and there is no evidence before me that these trustees do not have the experience or skills to fulfil the role. On that basis, I find that the trustees are broadly acceptable to the owners, and it is appropriate that they are appointed as responsible trustees per s 222 of the Act.

He ōta kaitiakitanga

Trust order

[42] At the end of the hearing, Mr Watson sought a period to finalise the terms of trust, noting that the Court's template was used as a starting point with some bespoke non-operational clauses reflecting the significance of the Mataimoana block being included, to reflect the wishes of the hapū. I have not yet received the final draft for my review, but have decided to issue this decision in the interim.

Ko te whakakorenga o te Whanganui Trust (incorporated)

Removing the Whanganui Trust (incorporated)

[43] Mr Watson appropriately raised the question of the status of the historical vesting of the Mataimoana block in the Whanganui Trust (incorporated) made by order of the court dated 24 June 1971.¹³ It is clear that the role of this entity with respect to Mataimoana is at an end and there is no basis to retain their role and therefore I will cancel that vesting.

¹³ 135 Whanganui MB 119-127 (135 WG 119-127).

Kupu whakataunga*Decision*

[44] In dismissing the stay application and confirming that I have jurisdiction to constitute the trust with respect to the Mataimoana block, I now exercise further powers under s 37(3) to include an order under s 241 and make the following orders pursuant to Te Ture Whenua Māori Act 1993 as follows:

- (a) Section 132(4) defining the owners of the block known as Mataimoana as Ngāti Hau and Ngāti Pourua;
- (b) Section 241 Terminating the Whanganui Trust (incorporated) constituted over the block known as Mataimoana at 135 Whanganui MB 119-127 dated 24 June 1971;
- (c) Section 216(1) constituting the Mataimoana Whenua Tōpū Trust over the block known as Mataimoana;
- (d) Sections 220 and 222 appointing Paora Poutini, Ronald Ahitoro Poutini Hough, Patricia Ann Cathrine Becker, Maia Kathleen Makere Wihare, Paula Whakaara Williams, and Sonya Wirihana-Tawake as responsible trustees of the Mataimoana Whenua Tōpū Trust and vesting the block known as Mataimoana in them in their capacity as responsible trustees, jointly, no survivorship;

[45] Upon approval of the terms of trust to be filed by Mr Watson, the above orders and the order confirming the terms of trust are to be issued without delay under rule 7.5(2)(b) of the Māori Land Court Rules 2011.

[46] Survey plan ML 370660 has already been approved by the Court and approved as to survey. Therefore, no further survey is required and a title for the land should be issued on the strength of ML 370660 and the above orders.

[47] I invite Mr Churton to reflect on whether his s 132 application is tenable considering my findings. His lawyer is to file a memorandum on how his client wishes to proceed within 14 days of the date of this decision.

[48] There will be no order of costs.

[49] The application is adjourned to confirm the terms of trust.

Mauri ora.

I whakapuaki i te 3:00 pm i Kirikiriroa, tekau ma ono o ngā ra o Hōngongoi i te tau 2026.

Pronounced at 3:00 pm in Hamilton on this 16th day of July 2026.

A H C Warren
KAIWHAKAWĀ
JUDGE