

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

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

AP-20250000004628

WĀHANGA
Under

Section 19, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Pipiwai A2 being Part Lot 1 DP 12852

I WAENGA I A
Between

MAUDE HELENA LARISSA DAVIES AND
KOKETAI HAPI AS TRUSTEES OF THE RIU
ROA NIHA DAVIES WHANAU TRUST
Ngā kaitono
Applicants

ME
And

DERRELL DAVIES
Te kaiurupare
Respondent

Nohoanga: 20 August 2025, 296 Taitokerau MB 10-17
Hearing (Heard at Whangarei)

Whakataunga: 12 September 2025
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ T K T A R WILLIAMS
Judgment of Judge T K T A R Williams

Hei tīmatanga kōrero*Introduction*

[1] On the 8th of September 2025, I reheard an injunction application that had previously been heard on the 28th of August 2025.

[2] I reheard the application as the respondent had been provided with an incorrect notice to attend the hearing on the 28th of August. As a result, he arrived late to Court intending to respond to the application only to be told that the matter had already been dealt with.

[3] Given the respondent's late appearance was due to the Court's error, I determined that he should not be prejudiced by the failure of the Court to provide him with the correct notice. Therefore, pursuant to s 43 of Te Ture Whenua Māori Act 1993, I ordered that the matter be reheard as soon as possible in order to give all parties the opportunity to address the injunction application.

[4] The rehearing was held on the 8th of September 2025. All parties attended and gave evidence on the application. I then made oral orders granting an injunction requiring Derrell Davies to vacate the property within seven days of the hearing date with reasons to follow.

[5] This decision sets out those reasons.

Kōrero whānui*Background*

[6] The land that is the subject of the application is the Pipiwai A2 block, commonly known as 3067 Pipiwai Road, which is vested in the Riu Roa Niha Davies Whānau Trust. The trustees of the trust are Maude Davies, Koketai Hapi and George Harold Cooper.

[7] The land was originally purchased in 1989 by Maude Davies (Cook), Koketai Hapi and Pera Davies for the sum of \$10,000.00. Mr Pera Davies is the father of the respondent Derrell Davies.

[8] The land at the time of purchase was General land. In 1995, the owners sought a change of status of the land from General land to Māori land and applied to the Māori Land

Court for that to occur. By order dated 3 May 1996 the status of land was determined to be Māori freehold land by the Māori Land Court.

[9] However, Mr Pera Davies passed away on the 24th of December 1995. His Will provided that Maude Cook and Hemi Rua Rapata, solicitor of Whangārei, were to be appointed as executors and trustees of his Will. His Will also stipulated that his interests in the Pipiwai A2 block should be provided equally to his children Ashley Davies, Derrell Davies, Duayne Davies, Anthony Davies, Pera Davies and Serena Paniora in equal shares with the ability for them to build a house on the said land with the first preference to build to be given to his sons Duayne Davies and Derrell Davies.

[10] In 2001, an application was filed by Mr Rua-Rapata to constitute the Riu Roa Niha Davies Whānau Trust in respect of the land. That application was heard by Judge Spencer who made orders constituting the trust and appointing Maude Davies, Koketai Hapi and Mabel Cooper as responsible trustees of the trust and vested all of Pipiwai A2 block in the trust.

[11] Succession to Pera Davies interests in the land had not occurred at that time. A question therefore arises as to whether or not that vesting is appropriate. However, that is not a matter which is presently before this Court.

[12] Then, in 2016, an application was made to replace Mabel Cooper as a trustee and appoint George Cooper as a trustee. The Court granted those orders in December 2016.

[13] It then transpires that in September of 2020, Duayne Davies applied to succeed to the interests of Pera Davies in the Māori Land Court and orders were made by the Rotorua Māori Land Court in favour of Pera Davies' five children. However, the application and the orders made do not include the Pipiwai A2 block. There is no reference to it in the orders made by the Court in September 2020.

[14] There is a homestead on the land at Pipiwai and the homestead is part of the assets that have been vested in the Riu Roa Niha Davies Whānau Trust.

Te tono*The application*

[15] The applicants Maude Davies and Koketai Hapi, say that they are the trustees of the trust that own the land and dwelling which is situated on the Pipiwai A2 block. As such, they are entitled to determine what happens with the assets that are the land and the house on the land.

[16] Their evidence was that in or about September 2021, a verbal agreement was entered into between them and Derrell Davies, which provided that he would be permitted to occupy the homestead on the land.

[17] The agreement provided that he would be permitted to live in the property rent free for the first seven months and in return, he along with a nephew who was also living in the property would do some repair and maintenance work to the house and to a fence. The rent-free period was to end in April 2022, at which point Derrell was to commence paying rental of \$50.00 per week. That rental sum may increase after a 12-month period.

[18] The applicants say that payment of rental has been very inconsistent and in the last two years has been non-existent. In addition, they say he has failed to maintain the property and keep it in a liveable state. They also say that he has become verbally abusive to the trustees and other family members. They also say that when the trustees have tried to maintain or provide improvements to upgrade the property (for example, with solar panels and security doors), Derrell has damaged a lot of that work and those upgrades without any substantive justification, and he has not provided any recompense or repair.

[19] The applicants say that Derrell did not bring any furniture or chattels to the property as he has just used what was already in the property. However, the photographic evidence that has been provided by the applicants to the Court show considerable damage to the house, chattels and furniture. They say that a lot of the furniture in the property will now need to be thrown out and replaced and damage that has been done to the property will now need to be repaired at considerable cost to the trust.

[20] They have provided evidence that they have asked Derrell to vacate the property which he has declined to do, and they have issued trespass notices to Derrell which he has

ignored. The Court has seen correspondence sent to Derrell outlining that as at the end of 2024, rent arrears were \$6,600.00 and there has been no payment for the year 2025. On the Court's estimation, that would be an additional \$1750.00 of rent arrears for the year of 2025, meaning a total of approximately \$8,350.00 is outstanding in rent.

[21] Given that Derrell has refused to adhere to the notice to vacate and the trespass notices issued in November 2024, the state of the house and the abuse that they have received, the trustees have felt that they have had no alternative than to seek orders from the Court.

Ngā kōrero a Derrell Davies

Derrell Davies' response

[22] Derrell's response is that he does not acknowledge the Riu Roa Niha Davies Whānau Trust as it was constituted on the basis of misleading information provided to the Māori Land Court. He says that he and his family who descend from Pera Davies have been ostracised and omitted from the land. He says he has a legal and equitable interest in the land and that the Will of Pera Davies indicated that he along with his siblings were to receive an interest in the land and that the Will provided him with an opportunity to build on the land. However, none of that has happened.

[23] He further says that he intends to apply for a s 45 review of the vesting orders and as such rejects the application for an injunction.

[24] When questioned by the Court about the agreement he entered into to live on the land, he acknowledged that he had a discussion with Maude Davies to be allowed to live on the land. He also acknowledged that he had obligations to pay rent and that he has not paid the rent as agreed. He further disputes the proposition that the standard of the house is unliveable and that he blames the trust for not having done the maintenance work on the property, despite the fact that he lives in the house and was required to keep it in a liveable standard.

[25] He acknowledges that he was asked to vacate the property but that his mana motuhake to the property has not been recognised as he and his family have not been

involved with the creation of the trust. He also suggested that his father did not agree to the land being transferred into the trust.

[26] His position around the trust is that he and his siblings have not been appropriately recognised by the trust or the trustees and that is at the core of his complaint with what is happening with that land.

Ngā take *Issues*

[27] The issues for the Court to determine are:

- (a) Do the trustees of the Riu Roa Niha Davies Whanau Trust have the ability to seek an injunction against Derrell Davies?
- (b) Do the trustees have the ability to prohibit Derrell Davies from living in the homestead which is on the land.
- (c) Are the trustees entitled to the vacant possession of the homestead.

Te Ture *The Law*

[28] In determining those issues, the question for me to decide is whether or not the grounds for an injunction pursuant to s19 have been made out.

[29] In the case of *Taueki v Horowhenua Sailing Club Horowhenua 11 (Lake) Block*,¹ the Māori Appellate Court discussed the requirements for granting an injunction being that in an action for trespass to land we are primarily concerned to protect possessory rights, rather than rights of ownership. Accordingly, the person prima facie entitled to sue is the person who is in 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.

¹ *Taueki v Horowhenua Sailing Club – Horowhenua 11 (Lake) Block* (2014) Māori Appellate Court MB 60 (2014 APPEAL 60).

[30] Once the elements for the trespass 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 discretion include the party's conduct.

Kōrerorero

Discussion

[31] In this matter, it is clear that at this point in time, the trustees are entitled to the possession of the house and land. Their correspondence also clearly shows that they intend to possess the land and exercise control over it.

[32] It is also clear that succession to the Pipiwai A2 block in accordance with Pera Davies Will should have been addressed by Maude Davies and Hemi Rua-Rapata as executors of his estate. For some reason that has not occurred, and despite Duayne Davies filing an application to succeed in 2020 it was not addressed at that point in time either. However, that is not a matter for this Court to consider and may well be the subject of a s 45 application. I express a view that this issue should be rectified. If not by consent, then by formal application to the Chief Judge.

[33] What I am presently asked to determine is an application by the current registered owners in the land who are the trustees of the Rua Roa Niha Davies Whānau Trust seeking an injunction against someone who is neither a trustee nor a registered owner in the land.

[34] The records show that the land is held by the trust. There are no orders suggesting that the homestead or house which is situated on the land is held separately from the trust and as such it is my view that the house and land are owned by the trust.

[35] Therefore, it is for the trust to determine the use, management and occupation of the land and the house which is on the land.

[36] Derrell Davies is the son of Pera Davies who was one of the original owners in the land prior to it being transferred into the trust. He does not currently have a legal interest in the land and was permitted to occupy the house by the trust. He has acknowledged that his

occupation was pursuant to an oral agreement and that he had obligations to pay rent and perform works on the house whilst he was in occupation.

[37] He has acknowledged that he has not met his obligations to pay rent. He disputes that the extent of disrepair of the house is as asserted by the trust. However, the photographic evidence provided by the trustees indicate to the Court that the condition of the house is sub-optimal, that the chattels in the house are damaged and that the state of the house in general is inappropriate for accommodation.

[38] It is clear that the trustees have asked Derrell to vacate the property and issued a trespass notice to him both of which he has refused to acknowledge or adhere to. It is also clear that he has been asked to meet rent arrears which he has also failed to do.

[39] Given the failure to have his and his siblings' interests recognised in the land, his attitude and response in relation to the authority of the trust are perhaps understandable.

[40] That said it seems that at the present time, Derrell has no authority to be on the land or in the house, and consent for him to be there has been withdrawn by the trust.

[41] Therefore, it is the Court's determination that the application seeking an injunction should succeed.

Whakataunga *Decision*

[42] Therefore, I have granted the injunction in favour of the trust and require Derrell Davies to vacate the property within seven days.

[43] Further to that, when he vacates the property, he is to cause no further damage to the property or the chattels or any furniture which are currently in the property.

I whakapuaki i te 3:00pm i Whangārei, tekau ma rua o ngā rā o Hepetema i te tau 2025.
Pronounced at 3:00pm in Whangārei on this 12th day of September 2025.

T K T A R Williams
KAIWHAKAWĀ