

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

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

**AP-20250000001460**

WĀHANGA  
*Under*

Section 240, Te Ture Whenua Māori Act 1993

MŌ TE TAKE  
*In the matter of*

Wharetoto 9 Part

I WAENGA I A  
*Between*

DEPUTY REGISTRAR  
 Te Kaitono  
*Applicant*

ME  
*And*

HARVEY KARAITIANA  
 Te Kaiurupare  
*Respondent*

ME  
*And*

ANDREW KENNETH SEAGAR, DIANE  
 JARRA KARAITIANA-BRYANT, LISA  
 CARMEL SEAGAR AND MAKARENA  
 MARGARETTA RANGIMARIA BOSHER AS  
 TRUSTEES OF THE WHARETOTO 9  
 BALANCE TRUST  
 Te Hunga e Whai Take Ana  
*Interested Parties*

Nohoanga:  
*Hearing*

29 July 2024, 490 Aotea MB 92-108  
 6 May 2025, 508 Aotea MB 224-236  
 (Heard at Whanganui and Tūrangi)

Kanohi kitea:  
*Appearances*

G Tootill for the Interested Parties

Whakataunga:  
*Judgment date*

18 August 2025

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

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*He toka tū moana, he ākinga nā ngā tai*

## **Hei tīmatanga**

### *Introduction*

[1] At an online hearing held on 6 May 2025 I removed Harvey Karaitiana as a responsible trustee of the Wharetoto 9 Balance Trust (the Trust).<sup>1</sup> At that hearing I indicated that I would put my reasons for the removal per s 240 of Te Ture Whenua Māori Act 1993 (the Act) in writing, which I now do (the removal application).

## **Context**

### *Te Horopaki*

[2] The Trust is an Ahu Whenua Trust and since October 2022 Harvey Karaitiana has been the sole living responsible trustee of the Trust.<sup>2</sup>

[3] On 19 September 2021 the trustees appointed Whenua Kete as their administrators.<sup>3</sup> Marilyn Connolly is the principal of Whenua Kete and under her leadership, on 29 April 2023 Whenua Kete conducted a general meeting of beneficiaries for the purpose of appointing replacement trustees of the Trust. By application dated 22 June 2023, Whenua Kete applied to the court to have the newly elected trustees appointed to replace those trustees who had passed away (the appointment application).<sup>4</sup> There was no application to remove Harvey in the appointment application. He remained a responsible trustee but took no part in the process leading to the appointment of new trustees, despite efforts by Ms Connolly to locate Harvey.

[4] Given the straightforward nature of the appointment application, and because there was no opposition at that point, the appointment application was deemed simple and uncontested by the Deputy Registrar per s 235A of the Act. Prudently the file was referred to me for review, and I decided to deal with the appointment application in Chambers as

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<sup>1</sup> 508 Aotea MB 224-236 (508 AOT 224).

<sup>2</sup> Harvey was appointed as a trustee in 1995 at 55 Aotea MB 73-75 (55 AOT 73-75).

<sup>3</sup> Whenua Kete have been involved with the trust since 1977 but were appointed as administrators in 2021.

<sup>4</sup> AP-2024000002065.

opposed to a Deputy Registrar decision. I made orders replacing and appointing the new trustees on 2 April 2024.<sup>5</sup>

[5] On 17 April 2024 Tokoahu Karaitiana filed an application for an interim injunction<sup>6</sup> to stop the Court from appointing the new trustees. No similar application was filed by Harvey at this time, although he was referred to as an affected party in the interim injunction application.

[6] A rehearing application was then filed on 29 May 2024 on behalf of Harvey and Tokoahu instead of the interim injunction application. I dismissed this application.<sup>7</sup>

[7] At this time, I exercised my powers per s 238 of the Act and directed that Harvey file a report with all information about a purported lease he entered into with Tokoahu and relevantly to explain why he had taken no steps to replace trustees (the s 238 report). I subsequently determined the status of the lease issue in *Karaitiana v Seagar*.<sup>8</sup> In his report to the court Harvey explained that he could not contact owners and that he had failed on numerous occasions to call meetings to have new trustees appointed.

[8] Harvey and Tokoahu then advised the court via email that they would not attend any judicial conferences with me. As a result, on 30 January 2025 I issued a direction that the Registrar file the removal application on the basis that Harvey was refusing to act and adhere to court directions. I also made a series of timetabling orders for the new trustees and Harvey to respond to the removal application with a view of hearing it in late March/early April 2025. I also advised Harvey that he should take legal advice on the removal application. Understandably, the new trustees supported the removal application.

[9] I gave Harvey until 21 March 2025 to file a response to the removal application including a response to the evidence filed by the new trustees. The court received a response by Tokoahu on behalf of Harvey on 20 March 2025 as follows:

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<sup>5</sup> 483 Aotea MB 129-131 (483 AOT 129-131).

<sup>6</sup> AP-20240000003604.

<sup>7</sup> *Karaitiana v Seagar* (2024) 491 Aotea MB 36 (491 AOT 36).

<sup>8</sup> *Karaitiana v Seagar* (2025) 509 Aotea MB 11 (509 AOT 11).

- (a) He and Harvey had established a lease and sought to file it with the Māori Land Court to claim insurance through Tokoahu's business for the lodge. However they stopped this process given Whenua Kete's appointment;
- (b) Tokoahu claimed that Whenua Kete trustees were all non-owners, and they would be invoiced for works completed on the whenua;
- (c) Tokoahu also submits that he is easily able to set up a meeting with Harvey and Harvey often maintains a watchful eye over the whenua;
- (d) In opposition to the removal application Tokoahu submitted that Harvey has been on multiple trusts and always lent a helping hand to his whānau; and
- (e) Should Harvey be removed as a trustee they will submit a s 45 application if their financial situation allows it.

[10] By direction dated 17 April 2025, I advised all parties that despite attempts to find a date for an in person hearing in Taupō or Tūrangi, we would proceed to hear the removal application online. I gave all parties until 1 May 2025 to file any final responses or affidavits for the removal application. I also offered support to Harvey to attend online as follows:<sup>9</sup>

[9] If any party has difficulty to using Zoom, they should contact the court as soon as possible so that assistance can be provided. I invite Harvey to make plans early, as a non-appearance, without leave of the court, is also a serious matter. Given the difficulty is contacting Harvey and because his spokesperson seems to be Toko, I direct Toko to bring this direction to the attention of Harvey

[11] As it turned out the special pānui confirmed that the removal application would be heard on 6 May 2025 in Tūrangi (the 6 May hearing) with parties able to attend online. This was because I was standing in for Judge Doogan for the Turangi hearing.

[12] Prior to the 6 May hearing Tokoahu in particular, sought several adjournments to the hearing relating to the lease, which was to be heard at the same time as the removal application. These requests were all refused. I note that at no stage did Harvey himself seek an adjournment or make any direct contact with the court in the lead up to the 6 May hearing.

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<sup>9</sup> *Karaitiana v Seagar*, Direction of the Court, 17 April 2024.

On 2 May 2025 I issued an email direction rejecting the last attempt by Tokoahu for an adjournment.

[13] By email on 5 May 2025, Tokoahu advised that he had phoned Harvey’s daughter and she advised that her father was unwell. This was not confirmed by Harvey before the 6 May hearing.

[14] Harvey and Tokoahu did not attend the 6 May hearing. I then proceeded to determine the removal application.

## **The Ture**

### *The Law*

[15] I may only remove a trustee under s 240 of the Act if one or more of the grounds set out in s 240(1)(b) are met.<sup>10</sup> The removal application engages s 240(1)(b)(i) and (iv) of the Act:

#### **240 Removal of trustee**

- (1) The court may at any time, in respect of any trustee of a trust to which this Part applies, make an order for the removal of the trustee, if it is satisfied that—

...

- (b) the removal is desirable for the proper execution of the trust, and 1 or more of the following grounds for removal are met:

- (i) the trustee repeatedly refuses or fails to act as trustee:

...

- (iv) the trustee is no longer suitable to hold office as trustee because of the trustee’s conduct or circumstances.

[16] I note the use of the word “repeatedly” in s 240(1)(b)(i), meaning that the failure or refusal to act must be more than a one-off instance. What constitutes repeatedly is to be judged in context with a focus on the nature of the refusal.

[17] If I am satisfied that one or more of the grounds has been met, then I must consider whether removal is desirable for the proper execution of the Trust. It is a two-stage approach.

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<sup>10</sup> Te Ture Whenua Māori Act 1993, s 240(1)(b).

Based on a recent Court of Appeal decision, determining whether a trustee is suitable to hold office the first stage is not a matter of discretion, but the second stage is.<sup>11</sup>

[18] The Court of Appeal also confirmed that a breach of trust does not mean an automatic removal, but such a breach would be a key focus under s 240(1)(b) of the Act.<sup>12</sup>

[19] Further, that court also emphasised the fact that the question to be considered is whether removal is “desirable” not whether it is necessary, and that the inquiry can be wide-ranging and can extend beyond the trustee’s own actions. To that end the two limbs to the removal test may overlap.<sup>13</sup>

[20] The Court of Appeal agreed that the question of whether to remove, and the court’s discretion, should still be guided, by broader principles set by the Court of Appeal and the Māori Appellate Court under the previous s 240, including:

- (a) Removal is a serious step and is not to be taken lightly.
- (b) Technical breaches of trust and governance instruments may not lead to a removal unless the trust assets have been put at risk or there has been a serious loss or malfeasance; and
- (c) Generally, the court must be satisfied that there is real evidence of abuse, failure or malfeasance and the absence of any tenable defence.

[21] The Court of Appeal made it clear however, that these were guidelines only.

### **He aha ngā whakapae ki a Harvey?**

*What are the allegations against Harvey?*

[22] In very simple terms, Harvey has failed to take steps to replace trustees that have passed away and basically ran the Trust by himself from 2022 until I appointed new trustees in 2024.<sup>14</sup> During that period he entered into a lease in breach of the trust order and general

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<sup>11</sup> *Henderson v Brooking* [2025] NZCA 368.

<sup>12</sup> *Henderson v Brooking* [2025] NZCA 368 at [97].

<sup>13</sup> *Henderson v Brooking* [2025] NZCA 368 at [98].

<sup>14</sup> 483 Aotea MB 129-131 (483 AOT 129).

law, as I determined at *Karaitiana v Seagar* (2025) 509 Aotea MB 11 (509 AOT 11). More than that he has consistently, through Tokoahu, tried to ignore my directions and still has not made any direct contact with the court about the removal application.

[23] The new trustees support the removal application and submit that the threshold for removal has been met. It is the respondent's submission that Harvey is not competent to be a trustee. They rely on similar reasons as found in *Nepata v Karaitiana* where Harvey was removed from another trust.<sup>15</sup> They also submit that a competent trustee would not have entered into an unwritten lease, thus in the trustees view they need to be able to move on with matters as soon as possible to secure the whenua and to ensure that any further risk of damage is reduced. They noted at the 6 May 2025 hearing, that despite attempting to contact Harvey on multiple occasions he refused to engage with the new trustees. Every opportunity has been afforded to Harvey to exercise his rights under natural justice as the new trustees originally raised, by way of memorandum, that he may wish to voluntarily resign.<sup>16</sup> Harvey did not take that opportunity, so the trustees are now faced with having to go through this process to support his removal.

[24] Trustee, Dianne Karaitiana-Bryant expressed her concerns with vandalism on the block, trust pūtea and insurance issues that occurred under Harvey's trusteeship, as well as general concerns with Harvey remaining as a trustee. Her reasons for Harvey's removal are the same as those expressed in *Nepata v Karaitiana*.<sup>17</sup>

[25] Given the very limited response by Harvey, there is no counter to any of these allegations.

### **Tatari** *Analysis*

[26] The evidence is clear and unchallenged that Harvey has failed to repeatedly act as a responsible trustee for far too long and his conduct has been such that removal is warranted. This includes trying to sidestep clear directions of the court over a sustained period, not replacing trustees and making key decisions, like the lease, when he was the sole trustee.

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<sup>15</sup> *Nepata v Karaitiana* (2023) 299 Waiariki MB 8 (2023 WAR 8) at [25].

<sup>16</sup> 508 Aotea MB 224-236 (508 AOT 224) at 229.

<sup>17</sup> *Nepata v Karaitiana* (2023) 299 Waiariki MB 8 (2023 WAR 8).

Harvey's waning health may be a factor in his failures to act, but I do not know that officially because he has chosen not to advise the court directly. Clearly, Harvey no longer wishes to be a trustee or if he does, he has shown no reason why he should remain one. The final straw for me was the fact that Harvey did not attend the hearing or even ask for his appearance to be excused.

[27] In the absence of a response from Harvey I have no basis to reject any of the allegations against Harvey. There are grounds for removal per s 240(1)(b)(i) and (iv).

[28] Having been satisfied of the first step, I now move to the second step, whether the removal of Harvey is desirable for the proper execution of the trust. Harvey has been and will continue to be a block to the progression and protection of the block. Coupled with ignoring court directions and allowing Tokoahu to be his spokesperson since this matter has been before me, which was misplaced, means that he is no longer suitable to hold office as a trustee and his removal is desirable. He has shown no reason why he should remain as a trustee and failing to turn up to court is evidence enough that he should be removed. I find per s 240(1)(b) that the removal of Harvey is desirable for the proper execution of the trust and none of the new trustees says otherwise. No owners have filed in support of Harvey remaining a trustee, that speaks volumes.

[29] Removing Harvey as a trustee is also consistent with the principles of the Act, as him continuing will create an ongoing challenge for the new trustees to use, develop and retain the block. If he cannot attend court hearings, then I have no confidence he will engage with the new trustees in a positive and constructive manner. It is also a direct threat to the safety and mana of the block itself, based on the uncontested evidence of vandalism due to Harvey's failures. In a Māori context, this court focusses on equally on "tangata" and "whenua". Both are at risk if Harvey remains as a trustee and therefore tikanga suggests he should not continue to play a trustee role.

### **Whakataunga** *Decision*

[30] I confirm my order made at the 6 May 2025 hearing but given the timing of my written decision and because Harvey was not present, I revoke that the s 240 order made at 508 Aotea MB 224 be made for immediate release from 6 May 2025.

[31] I make the following new order and direct that it be made for immediate release from the date of this decision. For the avoidance of doubt:

- (a) The Court makes an order under section 240 of Te Ture Whenua Māori Act 1993 removing Harvey Karaitiana as a responsible trustee of the Wharetoto 9 Balance Trust. For avoidance of doubt, the remaining responsible trustees are Andrew Kenneth Seagar, Diane Jarra Karaitiana-Bryant, Lisa Carmel Seagar and Makarena Margaretta Rangimaria Boshier.
- (b) That s 240 order is made for immediate release per rule 7.5(2)(b) of the Māori Land Court Rules 2011.

I whakapuaki i te 2:00pm i Kirikiriroa i te rā 18 o Hereturikōkā i te tau 2025.

*Pronounced at 2:00pm in Hamilton, 18 August 2025.*

*Mauri ora*

A H C Warren  
**KAIWHAKAWĀ**  
**JUDGE**