

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

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

AP-20230000022892

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WĀHANGA
Under

Sections 231 and 238, Te Ture Whenua Māori Act
1993

MŌ TE TAKE
In the matter of

Hautu 1B 1B 2B 5B Sec 3 and others

I WAENGA I A
Between

LISA MARIE DOIG
Te kaitono
Applicant

ME
And

AARON DAVID KAHIA, ANDREA MARY
KAHIA, ANNA BROPHY, JUDY HARRIS,
SHARON ANNE WILLIAMS, DARYN KAHIA,
KAREN TANIA BROWN, AND BRENDA
SONIA KAHIA AS TRUSTEES OF THE ALICA
KAHIA AND RAWIRI KAHIA HAPETA
WHĀNAU TRUST
Ngā kaiurupare
Respondents

Nohoanga: 27 May 2025
Hearing (Heard at Aotea via Zoom)

Kanohi kitea: M J Radich for the Applicant
Appearances S Northey and A Grant for the Respondents

Whakataunga: 3 July 2025
Judgment date

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

Korero tīmatanga*Introduction*

[1] Applications to review and enforce the obligations of the Alice Kahia and Rawiri Kahia Hapeta Whānau Trust (the Trust) have been before the court since 2021. I have now received two reports from independent experts about the performance of the Trust. I have also received submissions and statements from the applicant, Lisa Doig, and the respondent trustees, all of which were presented and explored by counsel at an online hearing on 27 May 2025.

[2] I am now able to make my preliminary findings about the performance of the Trust and to discuss next steps, based on those findings. To be clear this is a preliminary decision and subject to the steps outlined below.

He aha te horopaki o tenei tairati me ngā tono?*What is the context of this Trust and these applications?*

[3] The Trust is a whānau trust that was established in 1995 for the uri of Alice Kahia and Rawiri Kahia Hapeta.

[4] The current trustees are Aaron David Kahia, Andrea Mary Kahia, Anna Brophy, Judy Harris, Sharon Anne Williams, Daryn Kahia, Karen Tania Brown, and Brenda Sonia Kahia (the Trustees).

[5] The applicant is Lisa Doig who is a beneficiary of the Trust.

[6] The income of the Trust is over \$99,000 per year. The income is derived from rental income, dividends, and interest.

Nā te aha ngā tono i tuku ai?*Why were the applications filed?*

[7] On 13 December 2021 Ms Doig filed an enforcement of obligations application per s 238 of Te Ture Whenua Māori Act 1993 (the Act) and a review of trust application per s 231 of the Act.

[8] The concerns raised in the enforcement of obligations application include:

- (a) The Trustees breaching their trustee duties, specifically around their roles and responsibilities as set out in the Act, and the Trustee Act 1956. Ms Doig raised specific concerns around impartiality, delegation of responsibilities, the Trustees acting jointly, the Trustees paying the right people, trust account information and regular disclosure issues.
- (b) Issues around beneficiaries' meetings, in particular about notice, frequency and voting.
- (c) The administration of the Trust in particular about the annual reports, financial accounts, audit of accounts and the income.

[9] The review of trust application raises concerns about:

- (a) The trust order and requests that the Court confirms the trust order dated 2 December 1996 as the current trust order.
- (b) The bank transactions where trust funds were paid directly to Ms Doig from the personal account of E N Harris on 31 March 2020.
- (c) Dividend payments and whether they are being paid into a trust account or being paid into the personal accounts of the Trustees.
- (d) Distributions being paid to the Frank Kahia Hapeta Whānau, cancelled cheques and what has happened with the funds associated with the cancelled cheques.

[10] The applicant has stated that the active trustees have refused to provide documentation to her directly since 2003. She requests that the Court review that the Trustees are being fair and impartial and acting in accordance with the various laws and trust order.

I aha ngā huarahi ki te mohio i ngā take i ngā tono?*What steps were taken to understand the issues identified in the applications?*

[11] On 7 July 2022, following a judicial conference, I issued a direction confirming that a formal review of trust was agreed to by all parties.¹ In terms of the review I directed that:

- (a) an auditor would be appointed to audit the Trust accounts; and
- (b) an agent would be appointed to provide a report to the Court on the policies and procedures of the Trust, particularly around disbursements and grants to beneficiaries.

[12] On 18 August 2022 Cameron Town of Silks Audit was appointed to complete an audit of the Trust accounts. On the same day Amalie Blackman of Govett Quilliam Solicitors was appointed to undertake the review of the Trust. On 11 December 2023 Troy Wano was appointed as the new representative for Govett Quilliam Solicitors.

[13] The audit report with the financial statements from 2017-2020 were provided to the Court and counsel on 3 April 2025.²

[14] The report of the Court Appointed Agent prepared by Troy Wano (the Wano report) was filed with the Court and counsel on 14 May 2025.

[15] I invited counsel to submit memoranda in advance of the 27 May 2025 hearing. The memoranda were to include the parties views as to what, if any, direction or orders the Court should consider in light of the Wano report and the audit report.

I aha ngā kitenga o ngā pūkenga?*What were the findings of the independent experts?*

[16] The findings of the Wano report are:

- (a) There appears to be a lack of formal documentation outlining the structure, authority, and operation procedures of the Trust's sub-

¹ 450 Aotea MB 265-267 (450 AOT 265-267).

² I note that counsel for the applicant states in the Memorandum of Counsel for the Applicant dated 21 May 2025 that they did not receive a copy of the audit report until 28 April 2025.

committee. The decision-making practices within the sub-committee lack consistency with some decisions being made informally between individual trustees, outside of documented trustee or sub-committee meetings. This may also be true of other grants.

- (b) At least three current trustees have received personal loans from the Trust. As of 2020 there are three outstanding loans to trustees. Judy Harris was a serving trustee at the time her loan was issued. There are no clear policies or repayment terms and the Trust has not taken any steps to recover the outstanding amounts. Discussions around the repayment or the writing-off of the loans has occurred, however no consensus has been reached and no further action has been taken.
- (c) There is limited transparency to beneficiaries regarding the Trust's financial activities. This includes the disbursement of grants and distributions, and the issuance of loans. Facebook pages have been created to engage with beneficiaries but do not include detailed trust information.
- (d) The criteria for approving grants is set out in various application forms the Trust has created. Applications that meet the criteria are approved subject to the Trust's annual income. Some current trustees have received these grants that were approved by the sub-committee, and it is unclear if the wider trustees also approved these grants. There is limited awareness on the part of some of the Trustees as to who the grants are awarded to and in what amounts.

[17] The audit report identified six urgent problems with the operation of the Trust:

- (a) The Trust lacks a fraud policy. The Trust is making payments for grants sometimes in cash, and having a fraud policy would enable the Trust to be able to take action on potential financial threats or fraud activities.

- (b) Minutes were requested for the audit and were not able to be retrieved for the correct periods despite being required multiple times. The Trust should have minutes readily available and provided to all the Trustees. The lack of minutes hindered the audit by not having the information for formal approval of grants and payments. Retaining documentation such as minutes is also a trust requirement under the Act.
- (c) There is a lack of evidence and formal process for reconciling income and expenditure. The Trust's process is that the payments are being recorded in their internet banking. Some payments were recorded as being made in cash, therefore not all payments are electronically accounted for. It is recommended that all income and expenses are reconciled against relevant documentation. Not reconciling against supporting documentation or with formal processes may result in misuse of funds and/or fraudulent activities.
- (d) There were a significant number of invoices requested for the audit, however the invoices provided did not match the audit periods. This proved difficult for the audit and resulted in there being no evidence to test books and record keeping. The Trust should implement a system for books and record keeping be implemented and utilised effectively.
- (e) The Trust's dividends from their Contact Energy shares are not being paid into a Trust account, and instead are being paid into the personal account of Sharon Williams, which creates a huge financial risk, specifically around reconciliation and multi-handling of funds. It is recommended that all funds for the Trust should be paid to a Trust bank account and reconciled against payment advice notices.
- (f) There are significant outstanding loans that have been provided by the Trust that are not being repaid. It is recommended that all loans be followed up with each individual concerned and a plan implemented to recover the funds owing to the Trust or consider bad debt/write-off.

I aha ngā whakaaro o nga pāti i nga kitenga o ngā pūkenga?*What did the parties say about the expert findings?*

[18] The Trustees did not seek to challenge the findings of the expert reports at the 27 May 2025 hearing. Rather the focus of submissions by their counsel was to advocate for a reset of the Trust, based on a meeting the Trustees held on 17 May 2025. This included taking the issues to the beneficiaries for their views, and more specifically their views on whether the loans should be repaid or not.

[19] Miriam Radich, counsel for the applicant, seeks the appointment of a receiver and that her clients costs are met by the Trust in bringing these proceedings.

He aha au whakaaro i ngā kitenga o ngā pūkenga?*What are my views on the expert findings?*

[20] There is no real contest to the findings in the expert reports. The question then to be addressed is whether these findings amount to breaches of trustee duties and if so, what remedies should be imposed, if any.

[21] As I intimated at the 27 May 2025 hearing, the performance of the Trust has been poor by any measure. That remains my clear view, now that I have had time to reflect after hearing from counsel and rereading the various reports and submissions.

[22] In determining how bad the performance has been, understanding the context and objectives of the Trust is critical. They provide a yard stick to assess how well trustees have met their mandatory and default trustee duties.³ I accept that most whānau trusts have modest income and play passive roles generally in terms of commercial operations and distribution of income. Here the context is somewhat different and is in many respects akin to an ahu whenua trust, given the fact that the Trust receives significant annual income, had the ability to purchase power company shares, and provides considerable grants/dividends to its beneficiaries. The fact that this is a whānau trust creates, in my view, another layer of obligations at tikanga. This is because the whakapapa ties are so direct to the land interests vested in the Trustees and of course to each other as whanaunga and beneficiaries.

³ There is no evidence that these trustees have excluded the default duties under the Trusts Act 2019 and therefore they all apply.

[23] It is within this context that I have read the expert reports and considered the submissions filed to this point.

[24] I agree with Ms Radich, that the findings in the Wano report, amount to more than technical breaches of trustee duties. The findings go to the heart of trustee duties. The single most concerning issue is the fact that current trustees have existing loans from the Trust, with no terms or conditions attached to them. There is no paperwork to support these loans. There is also no process to manage their repayment or otherwise. The natural perception is that the trustees with such loans would have no interest in ensuring that the loans were being managed, discussed, and processed appropriately. This has effectively placed them all into a conflict-of-interest position.

[25] Save for Ms Harris, I accept that the loans to current trustees were put in place before their appointment as trustees, but once these trustees took office they had a positive duty to appropriately manage this arrangement to avoid any perception of a conflict of interest, as did the other trustees in office at the time. They took no such positive steps.

[26] The lack of transparency and failure to provide responses to reasonable requests for information by the applicant is also concerning as is the fact that the auditor did not receive the relevant information to complete the audit. The fact that the applicant was forced to bring these proceedings, and still had to wait for many years for the Trust to provide the necessary information, adds to the perception that these trustees either do not understand their role as trustees or see the Trust as theirs to run as they please. That is neither right at law or at tikanga. If whānau choose a trust structure to manage their land interests, then compliance with the law within those structures follows. There is no mandatory requirement to have a trust, it is a choice.

[27] In most circumstances, findings of this nature would lead to a hearing about whether the court should remove some or all of the Trustees for cause. It may still require that process. For now, given that these are my preliminary findings and because counsel did not specifically address me in any substantive way as to which trust duties have been breached, their gravity and any mitigation, I will not take the removal option any further. I may reconsider the removal option after I get the feedback from the beneficiaries as directed below.

[28] For now, my preliminary view is that the Trustees have all, in some way, breached their trustee duties. It is also my preliminary view that some trustees may well be more culpable than others, especially those that have made no attempts to repay loans they have received from the Trust, even when these proceedings were on foot and the issue with the loans was before me.

[29] I agree that a reset is needed, including a refresh of the current trustees. I am now advised, after the 27 May 2025 hearing, that all current trustees wish to resign. That is their right. The question of their breaches of trustee duties and any remedies, remains a live issue regardless of their desire to resign. They remain trustees until removed by court order. Resignation does not remove potential liability nor prevent a removal per s 240 of the Act.

[30] I now turn to issuing my directions for the beneficiary hui.

He aha au ngā ōta me kupu whakahau i tukua?

What orders or directions should I make?

[31] I direct that a meeting of beneficiaries and trustees is held to discuss my preliminary findings and the findings in the expert reports (the meeting). I understand that the date for the meeting will be 12 July 2025. I have already issued directions as to the focus of the meeting and how it is to be advertised.

[32] I have also appointed Glenn Tootill to facilitate the meeting per s 40 of the Act.

[33] I direct that Mr Wano and the auditor attend the meeting and speak to their reports. The reports, along with this decision, should be sent by the current trustees to as many beneficiaries as possible, before the meeting. Copies of all documents should also be made available at the meeting.

[34] The meeting is to be structured as follows:

- (a) After the formal opening by the Trustees, the meeting will be facilitated exclusively by Mr Tootill.

- (b) In setting the purpose and process of the meeting, Mr Tootill will advise all attendees, that this is a court-directed meeting for a specific purpose, and whilst the views expressed at the meeting will be considered by the court, they are not determinative of the applications before the court.
- (c) Mr Tootill is then to invite Mr Wano and the auditor to provide summary presentations of their reports. Mr Tootill will also present a summary of this decision. These will be uninterrupted presentations, other than questions of clarification.
- (d) Once these presentations are completed, the Trustees may have an opportunity to address the meeting. Again, this will be uninterrupted, other than for questions of clarification.
- (e) At that point, there will be a break in the meeting to allow beneficiaries to collect their thoughts and review the reports in more detail. After the break beneficiaries will have an opportunity ask questions of the report writers and the Trustees. This will be facilitated and recorded by Mr Tootill. The key matters that court would like beneficiary views on are as follows:
 - (i) Is a trust and trustee reset necessary, if so, what does that look like.
 - (ii) Should a receiver or appropriate person be appointed to undertake a forensic review of the Trusts financials.
 - (iii) Should the loans to the current trustees be repaid and if so, by when and on what terms, interest etc.
 - (iv) Should some or all of the Trustees be removed by the court or allowed to resign.

- (f) There will be no election of trustees, but the issue of when and how that might occur can be discussed and recorded for consideration by the court.
- (g) Mr Tootill is to prepare a report and have that submitted to the court within 15 days of the meeting. A copy can be sent to counsel for both the parties.

[35] All parties have leave to seek directions of the court at any time.

[36] No distributions of Trust funds is to be made until further order or direction of the court.

[37] I reserve my position to revisit the order granting special aid to the Trustees, given the income that is now sitting with the Trust and reserve the position of costs.

[38] The applications are formerly adjourned pending Mr Tootill's report, after which I will issue further directions.

Mauri ora

I whakapuaki i te 10:00am i Kirikiriroa i te rā 3 o Hōngongoi i te tau 2025.
Pronounced at 10:00am in Hamilton, 3 July 2025

A H C Warren
JUDGE