

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

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

AP-20240000009939

WĀHANGA <i>Under</i>	Section 240, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Lot 3 Deposited Plan South Auckland 19992
I WAENGA I A <i>Between</i>	JOSEPH EDWARDS Te kaitono <i>Applicant</i>
ME <i>And</i>	DAVID TAUI Te kaiurupare <i>Respondent</i>

Nohoanga: 4 February 2025, 331 Waiariki MB 225-236
Hearing (Heard at Rotorua)

Whakataunga: 30 July 2025
Judgment date

TE WHAKATAUNGA A KAIWHAKAWĀ T M WARA
Judgment of Judge T M Wara

Hei tīmatanga kōrero

Introduction

[1] Joseph Edwards is a trustee of Tura Te Ngakau Lands Trust, and has applied for the removal of his co-trustee, David Tauī.

[2] Joseph seeks David's removal on the basis of threatening and abusive behaviour towards fellow trustees. The issue is whether I should remove David as a trustee.

Kōrero whānui

Background

[3] Tura Te Ngakau Lands Trust was constituted in 1997 in relation to Lot 3 on Deposited Plan S 19992.

[4] The land is 0.0463 ha of Māori freehold land that was formerly railway land. The land was declared as surplus land by the Crown and in 1993, Cabinet approved the return of the lands to Ngāti Tura and Ngāti Te Ngakau.

[5] Joseph is one of the seven original trustees appointed in 1997. David was appointed as a trustee in 2015.

[6] An incident occurred in October 2022, that has affected the administration of the trust. The incident involved David threatening another trustee. Since this incident the trust has not moved forward, as the trustees are waiting for this matter to be determined.

Kōrero taunaki

Evidence

Joseph Edwards - trustee

[7] Joseph describes David as a very difficult man to work with. He seeks David's removal on the basis of his threatening behaviour towards fellow trustees.

[8] On 4 October 2022, an incident occurred during a meeting with the Catholic Church to discuss the return of land to the trust. Joseph says that David became agitated following a disagreement and threatened to break Joseph's legs. He says that David tried to charge him into the kitchen and another trustee, Ana Te Whata, had to intervene. Afterwards, David removed a plaque from the wall.

[9] Joseph issued a complaint to the Police, which is contained in a Police Report made on 4 October 2022. The incident recorded in the report was in relation to the theft of a plaque taken from the office. Joseph says the Police failed to record his concerns about the threatening behaviour in the report.

[10] Joseph says that this incident is not isolated, and that there was also another prior incident where David had threatened to 'knock his block off' at a tangihanga.

John Newton - chair

[11] John says that the trustees have experienced years of abuse from David, which impacts on the business of the trust. He says that David has a 'my way or the highway' approach. He concurs with Joseph's account of the October incident and says that David's behaviour ultimately led to him (John) trespassing David from the trust's office on 26 March 2025 by way of a Trespass Notice.

Ana Te Whata-Jacobs - trustee

[12] Ana says that there are strong personalities within the trust. She acknowledges that there was a previous altercation, but that it was worked through, and David apologised to her about 5 months after the incident. She says that the trust has not really been operating in the last 3 years, as the secretary was waiting for confirmation of David's removal.

David Tauī – trustee and respondent

[13] David did not deny the allegations about his behaviour and considered that the incident that occurred back in 2022 was an escalation of frustration. During the hearing he addressed it as follows:

Firstly, I just want to address the fact that I don't know if this is the first blowup we've had. I'm going to call it a blowup or a whānau blowup. That's what I'm going to call it. But I don't believe we have had any other than that one. Now if I'm wrong, forgive me on that. So, the information that I received was a police statement or something to the police to do with theft. So, the investigations were had and the officer in charge of the investigation was very happy that the picture that I took belonged to the tribe, and he said give it back and boom. So, I just want to just get that theft part out of the way. That's what it was, a picture that belonged to us as a tribe. It didn't belong to any individual.

Secondly, it's quite widely known through our whānau the indifferences that a few of us have towards each other. I've come to realise at the end of last year that I need to probably not have those differences. It's going to be very hard because I don't like to

listen to crap. I don't like to listen to anything that might be in any way seeming dishonest or not transparent. I don't like those sorts of actions if I'm part of the trust, and those sorts of things happen.

[14] David also said he tried to apologise:

As for our trustees, especially Ana because I've got a video to what happened that day and it wasn't nice, and I apologise to you. I tried to apologise to Joe. I try my best to be as sincere as I can but then he ruins it by trying to stand on me. I'm just not into that.

Te Ture

The Law

[15] Section 240 of Te Ture Whenua Māori Act 1993 provides that the Court may order the removal of a trustee if it is satisfied that:

- (a) The trustee has lost the capacity to perform their role; or
- (b) Their removal is desirable for the proper execution of the trust, meeting one or more of:
 - (i) Repeatedly failing to act as a trustee;
 - (ii) Becoming an undischarged bankrupt or subject to an insolvency event;
 - (iii) Being no longer suitable to be a trustee due to their conduct or circumstances – for example due to a conviction involving dishonesty, being uncontactable, or becoming prohibited from involvement in a company, incorporated or unincorporated body.

[16] The Māori Appellate Court in *Henderson v Brooking* set out what should be taken into account when considering removal of a trustee under s 240 as follows:¹

- (a) The Court must first be satisfied that one or more of the grounds for removal listed in s 240(1)(b) has been met. That list is prescriptive.
- (b) One of those grounds is that a trustee is no longer suitable to hold office because of his or her conduct or circumstances. This ground is wide in scope and ambit. This wide-ranging ambit is necessary to allow the Court to consider the range of conduct or circumstances that may result in a trustee being unsuitable to hold office.
- (c) Section 240(3) sets out examples of conduct or circumstances that mean a person may no longer be suitable to hold office as a trustee. The examples are a guide and do not form an exhaustive list.
- (d) If the Court is satisfied that one of the grounds in s 240(1)(b) has been met, the Court must then consider whether removal is desirable for the proper execution

¹ *Henderson v Brooking – Wharekahika A47* [2023] Māori Appellate Court MB 17 (2023) Appeal 17 at [28].

of the trust. This involves an exercise of discretion and the kaupapa of the Act, as set out in the Preamble and ss 2 and 17, must be taken into account.

- (e) Despite the amendments to s 240 in 2020, the earlier principles concerning removal of trustees continue to apply, including:
 - (i) Removal is a serious step and is not undertaken lightly;
 - (ii) The trustee(s) at risk must be properly notified in advance;
 - (iii) Technical breaches of trust and governance instruments may not lead to removal unless the trust assets have been put at risk or there has been serious loss or malfeasance; and
 - (iv) Generally, the Court must be satisfied that there is evidence of real abuse, failure or malfeasance and the absence of any tenable defence.

Kōrerorero

Discussion

[17] I find that that David is open, honest, and transparent in relation to his dealings with the trust, and that the land holds significance for him and his whānau. While these are important qualities for any trustee, I must consider the allegations before me.

[18] Allegations have been made regarding threatening behaviour. David had an opportunity to refute the allegations before the Court but did not do so. I am satisfied from the evidence that there was an incident that resulted in David threatening violence towards Joseph. While I accept that David has apologised to at least one trustee five (5) months after the event, and tried to apologise to Joseph, an apology does not excuse the behaviour.

[19] It is apparent from the evidence that there is a personality conflict between Joseph and David, however the measure of a good trustee is whether they can put personalities aside to deal with the business of the trust. It is clear to me that this will be a struggle for David. When asked whether he would consider resignation, David responded as follows:

D Taui: So there's no way I'll ever do that. Because I don't believe I'm purely at fault for what happened on that night. I believe I was put into a situation of – yes, and I didn't know the way out and that was the way out that I knew and that's how it eventuated.

[20] It is quite clear that David struggles to manage his emotions in the heat of a disagreement between trustees. During the hearing I asked David:

The Court: Is there a way to work through this raru? Because it is clear to me that everybody is closely connected, that there is a close connection through whakapapa, that you all connect to Parawai Marae. Is there a way in which this raru can be worked

through? Because I mean ultimately as trustees, we have got to be able to manage our emotions in the heat of the moment. It is okay to disagree but how we show our disagreement is a different thing and that is the take that has to be I guess addressed and how can that be addressed. I hear from you, David, about your desires to be able to – I guess the way in which you react to things when it is emotionally charged. But what steps have you taken to be able to manage the way in which you reflect those emotions?

D Taii: Yes, well I've tried to become a better communicator so that's what I'm actually putting into effect, and I've pretty much put that into effect over the last year now. Not just in my personal life but my marae life, hence when I came on in July to the marae again. I've listened more, I hope. We don't clash. We haven't clashed and we've had lots of hui in our marae life. So yes, I think that's where I've got to learn is just don't jump in and listen more. Yes.

[21] While David has reflected on how he can better manage his emotions going forward, the reality is that his threatening behaviour is not acceptable behaviour for a trustee, and it warrants his removal.

[22] It is my genuine hope that David, whom I recently appointed as a trustee to the Parawai Marae Reservation Trust, can demonstrate his ability to better communicate and manage his emotions within that trust. The Court will consider how he demonstrates those qualities, alongside his removal from this trust, for any future appointments.

Whakataunga

Decision

[23] I am satisfied that removal is desirable for the proper execution of the trust, as David Taii is no longer suitable to be a trustee due to his conduct. I therefore grant an order for removal pursuant to section 240(1)(b)(iv) of Te Ture Whenua Māori Act 1993.

I whakapuaki i te 2:00pm i Rotorua, toru tekau o ngā rā o Hūrae i te tau 2025.

Pronounced at 2:00pm in Rotorua on Tuesday this 30th day of July 2025.

T M Wara
KAIWHAKAWĀ