

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

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

AP-20230000028560

AP-20230000032499

WĀHANGA
Under

Sections 19 and 240, Te Ture Whenua Māori Act
1993

MŌ TE TAKE
In the matter of

Kaikou H

I WAENGA I A
Between

DION EPIHA
Te kaitono
Applicant

ME
And

VICTOR PEIHOPA, GLEN PEIHOPA AND
SHEENA PEIHOPA
Ngā kaiurupare
Respondents

Nohoanga:
Hearing

27 June 2025
1 October 2024, 283 Taitokerau MB 274-285
20 December 2023, 273 Taitokerau MB 37-54
30 August 2022, 265 Taitokerau MB 43
26 October 2022, 260 Taitokerau MB 198-226
(Heard at Whangarei)

Kanohi kitea:
Appearances

T Barker, for Respondents

Whakataunga:
Judgment date

7 August 2025

TE WHAKATAUNGA Ā KAIWHAKAWĀ TKTAR WILLIAMS
Judgment of Judge TKTAR Williams

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Hei tīmatanga*Introduction*

[1] The application concerns the Kaikou H Ahu Whenua Trust (the Trust). The Trust holds the Kaikou H block which comprises 114.8512 hectares of land in the Northland Auckland Registry block.

[2] The Trust was constituted on 20 July 1992,¹ and has a long history of litigation in front of this Court.

[3] In February 2022, two applications were filed by Dion Epiha, the current Chairperson of the Trust. The first was an injunction against another trustee, Glen Peihopa (Glen), and his wife, Sheena Peihopa (Sheena).² Sheena is not a trustee of the Trust but is said to have been assisting with administration functions of the Trust.

[4] The second is an application seeking the removal of Victor Peihopa and Glen Peihopa as trustees of the Trust for breaches of trustee obligations, breaches of the Trust Deed, and a failure to attend meetings.³

[5] The injunction application, was filed against Glen and Sheena submitting that they have:

- (a) Acted alone and without formal resolutions of the Trust;
- (b) Withheld trust records and financial records;
- (c) Inappropriately used Trust funds, including for personal use;
- (d) Used and damaged Trust assets without consent;
- (e) Incurred personal debts in the name of the Trust; and
- (f) In relation to the operations of the Trust, there has been discriminatory practices and prejudice.

¹ 73 Whangarei MB 41-43 (73 WH 41-43).

² AP-20230000032499.

³ AP-20230000028560.

[6] The second application seeks the removal of Victor and Glen as trustees of the Trust. This application was essentially filed on the same grounds as the injunction application. In addition, the second application also put to the Court that the Trust had not conducted any meetings and that Victor and Glen refused to attend meetings despite notices being issued for a meeting of the Trust since the Court appointed trustees in April 2021. As such, the operations, business and affairs of the Trust have not been able to be carried out appropriately.

Ngā take

Issues

[7] The issues to be addressed are:

- (a) Has Glen been acting in breach of his trustee obligations and in a manner which can or may cause actual or threatened trespass or other injury to the Trust property;
- (b) Has Sheena been permitted to act in a manner that can or may cause actual or threatened trespass or other injury to the Trust property; and
- (c) Have Glen and Victor acted in breach of their obligations as identified in the Trust Deed and/or the provisions of s 240 of Te Ture Whenua Māori Act 1993 (the Act) sufficient to justify their removal as trustees.

Kōrero whānui

Background

[8] Prior to 2021, the trustees were Glen Peihopa, Carol Cooper, Kere Peihopa, Leon Peihopa and Olive Peihopa. Glen was the Chairperson of the Trust between 2017 and 2021.

[9] After a facilitated trustee meeting conducted by the Court's Principal Liaison officer in early 2021, Judge Armstrong issued orders on 21 April 2021 (the 2021 decision) appointing Victor Peihopa, Dion Peihopa, Derna Trifilo, Rita-Lee Peihopa and Glen Peihopa as responsible trustees to replace all prior trustees.⁴

⁴ 230 Taitokerau MB 53-73 (230 TTK 53-73).

[10] Following the 2021 decision, Glen and Victor filed a s 45 application to the Chief Judge seeking to cancel the orders made by Judge Armstrong. The decision by Deputy Chief Judge Coxhead on that application was that the orders made by Judge Armstrong were not erroneous due to a mistake nor was there an omission on the part of the Court. Therefore the application was dismissed.⁵

[11] Since 2021, given Glen and Victor's opposition to the appointment of the trustees, all trustees have had difficulties in acting cohesively. There have been no AGMs called and no financial accounts presented to the trustees or the beneficiaries.

[12] In addition, it is alleged that despite repeated requests, the financial records of the Trust were not being provided by Glen, as the administrator of the Trust bank account.

[13] Hearings have been held on 26 October 2022,⁶ 20 December 2023,⁷ 1 October 2024,⁸ and finally 27 June 2025.

[14] The applications were adjourned at those various dates in order for Glen and the accountants to provide appropriate accounting information and substantive responses to the applications as directed by the Court.

[15] In October 2024, Victor resigned. Orders were made acknowledging his resignation as at that date.⁹ Therefore, the application seeking his removal is no longer required.

[16] The application for an injunction against Glen and Sheena has proceeded alongside the application seeking the removal of Glen. Final accounting information, and other relevant information that had been requested, as well as responses to the affidavits filed, were filed in a piecemeal manner, which meant that a final hearing could not be held until June 2025.

[17] This decision addresses the injunction and removal application following the hearing on the 27th of June 2025.

⁵ 2025 Chief Judge's MB 142-162 (2025 CJ 142-162).

⁶ 260 Taitokerau MB 198-226 (260 TTK 198-226).

⁷ 273 Taitokerau MB 37-54 (273 TTK 37-54).

⁸ 283 Taitokerau MB 274-285 (283 TTK 274-285).

⁹ 283 Taitokerau MB 274-285 (283 TTK 274-285).

Position of the applicant

[18] The position of the applicant, Dion Epiha, in relation to both the injunction and removal applications is the same, which is that Glen, as the former chairperson of the Trust and continuing trustee, has failed to act as a responsible trustee.

[19] As Chairperson it is alleged that he exercised sole control over the Trust bank accounts and finances. As such he controlled how the funds were deposited into and withdrawn from the Trusts bank account. In so doing, the applicant submits, Glen allowed the funds to be put at risk by incurring personal expenditure, allowing the disposition of funds without appropriate resolutions from the Trust, approved pre-signed blank cheques or enabled them to be made out to cash.

[20] Further, when requested, Glen refused to make Trust financial records available to trustees and to beneficiaries at AGMs. In addition, he has failed to ensure that appropriate financial accounts for the Trust or any audits of those accounts were obtained in order to report to beneficiaries.

[21] Finally, the applicant submits that he had refused to attend at least three consecutive trustee meetings. Notification of those meetings were sent to Glen. The applicant filed notices advertising hui and minutes of several meetings in 2021 and 2022 that were called and were to be attended by zoom. However, Glen failed to attend those meetings.

[22] In relation to Sheena Peihopa, the applicant submits that she has acted in a secretarial type role purportedly for the Trust but essentially for Glen and in doing so has interfered in the operations of the Trust, Trust affairs and played a part in the inappropriate use of Trust finances without trustee approval.

Position of the respondents

[23] Counsel for Glen opposed the application, asserting that he has not breached his duties as a trustee sufficient to warrant his removal and that his conduct did not render him unsuitable to hold office as a trustee.

[24] The Court was aware that following the appointment of trustees in the 2021 decision, Glen advised the Court in 2022 that he and Victor did not agree with the 2021 decision. On this basis they refused to adhere to instructions of the Court to recognise those trustees appointed in 2021 and to hold AGMs in accordance with the trust deed.

[25] In relation to the obligation to call AGMs, pursuant to cl 4.5 of the trust deed, when queried, Glen confirmed that he was aware of that obligation.

[26] The Court also raised with Glen the requirement in the trust deed pursuant to clause 4.4, that trustees are to keep proper accounts and prepare annual financial statements. After some initial resistance Glen acknowledged that he had only recently become aware of the obligation to provide appropriate financial accounts and he acknowledged that since he had been chairperson of the Trust from 2019 at least through to the period of 2023 that financial accounts had not been provided to beneficiaries of the Trust at an AGM.

[27] Counsel submits that Glen has been active as a trustee and has now provided the information sought in the applications. However, counsel acknowledged that he has done so predominantly in response to the Court directions requiring the production of financial records and trustee minutes.

[28] Counsel submits that the evidence shows that Glen has not acted without trustee approval, that he has not used trust funds for his own benefit and that he has acted based on valid resolutions passed at trustee hui including the pre-approval of pre-signed blank cheques, authorising building on trust land and matters in respect of licences to occupy.

[29] On the issue of unsigned blank cheques, the Court questioned Glen about the pre-signed blank cheques that had been discovered. Glen was able to provide a copy of a resolution of the Trust authorising the signing of five blank cheques. He also acknowledged that he has now learnt that the act of approving pre-signed blank cheques is inappropriate.

[30] Further, when queried about the existence of receipts for the use of those pre-signed cheques, he was unable to provide any receipts or confirmation that the pre-signed cheques were utilised for the purposes suggested, given there were no receipts for those cheques.

[31] Again, under questioning from the Court, Glen acknowledged that he did not keep those trustees that had been appointed in 2021 informed of actions in relation to the Trust accounts and accepted that he should have kept them abreast of the use of those trust funds.

[32] Counsel for the respondent quite appropriately acknowledged in oral submissions that Glen's past behaviours cannot be remedied and that the actions that were taken in contravention of the trust deed were not best practice but also, counsel submits, that going forward he has learnt from those matters and is willing to uphold best practice to work alongside the other trustees.

[33] Counsel then sought to downplay the failure to hold AGMs by suggesting that in doing so it was a technical breach in terms of the trust deed. However, again, counsel quite appropriately acknowledged that pre-signing over 30 blank cheques, some made out to cash, puts the Trust's assets at risk and is not good trustee practice.

[34] Counsel submitted that Glen's conduct does not make him unsuitable to hold office as a trustee in terms of the allegations made, and that the applications are unfounded. Therefore, counsel submits that the removal of Glen is unnecessary for the proper execution of the Trust and the high threshold for removal has not been met. Therefore, there is no utility in granting an injunction.

[35] Counsel went on to suggest that Glen is now operating with best intentions for the Trust and the land and once he has been informed or receives advice, then he has agreed to comply. Counsel says that taking into account the broader circumstances of the Trust, his removal would not be desirable for the proper execution of the Trust.

Te Ture

The law

[36] Section 240 of the Act provides for the ability to remove a trustee as follows:

240 Removal of trustee

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 —

- (a) the trustee has lost the capacity to perform the function of a trustee; or

- (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 a trustee
 - (ii) the trustee becomes and undischarged bankrupt:
 - (iii) the trustee is a corporate trustee that is subject to an insolvency event:
 - (iv) the trustee is no longer suitable to hold office as trustee because of the trustee's conduct or circumstances.

[37] The decision in *Henderson v Brooking – Wharekahika A47* sets out the combined analysis of Māori Land Court judgments under s 240 for removal of a trustee:¹⁰

- (a) The Court must first be satisfied that one or more of the grounds for removal in section 240(1)(b) has been met.
- (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 of the Trust. This involves an exercise of discretion and the kaupapa of the Act, as set out in the Preamble to 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;

¹⁰ *Henderson v Brooking – Wharekahika A47* [2023] Māori Appellate Court MB 17 (2023 APPEAL 17) at [28].

- (i) Removal is a serious step and is not undertaken lightly;
- (ii) The trustees at risk must be properly notified in advance;
- (iii) Technical breaches of Trust in 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 in the absence of any tenable defence.

Korerorero *Discussion*

[38] As identified by Deputy Chief Judge Coxhead in *Sycamore v Trustees of the Rangatira E Development Trust*¹¹ the requirement to hold AGMs is fundamental, and necessary for trustees to be able to engage with beneficial owners in order to obtain and consider their views and ensure they are acting in their best interest.¹²

[39] It is clear from the evidence that whilst Glen was the chairperson of the Trust in 2019 and since the orders of the Māori Land Court in 2021 up to 2023, he has failed and/or refused to convene AGMs of the Trust. I have directed responsibility for this issue to Glen specifically, as opposed to the trustees generally, as it was clear that the AGMs were not being called due to his and Victor's resistance/refusal to call them.

[40] As discussed in the decision of *Pue v Kingi*, the Court noted the importance of consulting with beneficiaries on a regular and ongoing basis where the trustees have an obligation under their trust order to represent those beneficiaries.¹³

[41] It is of particular relevance here that the trustees have failed to confer with their beneficiaries on a regular basis by way of general meetings, and Glen as the chair of the Trust has failed to ensure that the trustees are fulfilling their obligations.

¹¹ *Sycamore v McLaughlin – Rangatira E* (2025) 335 Waiariki MB 40 (335 WAR 40) at [33].

¹² Para [33].

¹³ *Pue v Kingi – Te Rūnanga o Ngāti Maru (Taranaki) Whenua Tōpu Trust* (2015) 335 Aotea MB 1 (335 AOT 1) at [78].

[42] Further, in relation to the Trust account operations and financial statements there is a clear obligation in cl 4.4 of the trust deed that the trustees shall keep proper accounts and prepare annual financial statements, which shall be audited unless prepared by a chartered accountant if their annual income is greater than \$10,000.00.

[43] Here the Trust's annual income exceeded \$10,000.00. Therefore, audited or financial statements should have been provided by an accountant. Neither occurred until directed by the Court.

[44] Even when the Court ordered the production of these accounts for the previous five years, Glen is recorded in trust meeting minutes as seeking to undermine the Court's order and provide only three years' worth of financial accounts rather than the five as directed.

[45] This was the second time that Glen sought to undermine directions or orders issued by the Court.

[46] Then there are the considerable concerns raised by the auditors once the accounts were able to be audited, to the extent that information was provided. The report provided by the auditor confirms that Glen was the sole administrator of the bank account until September 2023 and that withdrawals from April 2021 were made without the approval and knowledge of the new board members. Further, there were 33 pre-signed blank cheques in the period between 2017 and 2022.

[47] The report records that Glen as the ex-chair also withheld financial and non-financial information including minutes. It was only with the Court's intervention that these were provided to the trustees and beneficiaries.

[48] The auditor says that they could not verify the authenticity of the minutes as they were unsigned, and they included retrospective approval of expenditure. They could have been confirmed by the former board, but due to the ongoing disagreement between the former and current board this may have resulted in a lack of impartiality.

[49] It is clear that Glen was solely responsible for the administration of the Trust's bank account and did so without being accountable to other trustees. It is also clear that he put

the Trust assets, which are the funds held by the Trust, at risk by pre-signing blank cheques or making them out to cash and then did not obtain receipts to validate the expenditure for those payments.

[50] In addition, he was unable to provide either the Court or the auditors with resolutions to authorise the execution of the majority of these blank cheques and in the period of 2019 through to 2021 there were over 27 disbursement transactions that were not adequately accompanied by corroborative documents such as billing invoices or official receipts.

[51] Therefore, it is my view that Glen has acted in breach of cl 4.4 and 4.5 of the trust deed with no reasonable excuse.

[52] These are actions that the Court cannot overlook as they are in breach of his obligations as described in the trust deed. That includes the obligation to hold AGMs, engage with beneficiaries and to provide financial statements. These actions are evidence of real abuse and failure in his role as a trustee. Therefore, in my view he is no longer suitable to hold office as a trustee due to his conduct.

[53] Particularly concerning for the Court was the concluding statement made by Glen at the hearing, which indicated that he did not believe that his actions were wrong or inappropriate. His inability to recognise his failings reinforces my view that he is no longer suitable to act as a trustee.

Conclusion on removal application

[54] Therefore, I am satisfied that Mr Glen Peihopa has repeatedly failed to act appropriately as a trustee in failing to convene annual general meetings.

[55] I am also satisfied that Glen Peihopa has repeatedly failed to act as an appropriate trustee by failing and/or refusing to provide information in the form of annual accounts to trustees and beneficiaries in a timely manner, particularly given that he was the sole administrator of the accounts.

[56] I am concerned by the continuing pattern of breaches over an extended period of years. These are not technical breaches but substantive ones. I am also concerned at Glen's attempts to undermine directions or orders of the Court.

[57] Failing to provide accounts to trustees and beneficiaries in a timely manner is inexcusable. The removal of trustees is a serious process. He has been put on notice and provided with considerable opportunities to respond to the application for his removal.

[58] Given the above, in my view Glen Peihopa should be removed as a trustee. That removal is to be effective immediately.

Conclusion on injunction application

[59] Given the orders approving Glen Peihopa's removal, there is in my view no real need to make orders around the injunction application as he will no longer be involved as a trustee with the Trust.

[60] I anticipate his wife, Sheena, will also no longer be involved in an administration role with the Trust. However, if a formal injunction order to that extent is required, the applicants may come back to the Court to seek formal orders, which can be addressed in chambers.

Whakataunga

Decision

[61] Glen Peihopa is to be removed as a trustee in accordance with s 240 of Te Ture Whenua Māori Act 1993.

[62] Glen Peihopa will be ineligible to stand for re-election.

[63] The application for injunction is dismissed.

I whakapuaki i te 4:00pm i Whangārei i te 7 o ngā rā o Here-turi-kōkā i te tau 2025.

T K T A R Williams
JUDGE