

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

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

AP-20230000028261

A20160005223

WEHENGĀ
Under

Section 330, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Part Matapouri 1A

NĀ
By

JUSTIN FLETCHER AND CUSHLA ANNE
SMITH
Ngā kaitono
Applicants

Kōtitanga:
Hearing 23 February 2017, 150 Taitokerau MB 104-110
17 February 2026, 309 Taitokerau MB 246-293
(Heard at Whangarei)

Whakataunga:
Judgment date 14 April 2026

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

Hei tīmatanga*Introduction*

[1] This is an application by Cushla Anne Smith and Justin Desmond Fletcher, seeking to vary an occupation order made in favour of Karetai Fletcher, dated 5 September 2000, as Karetai passed away in 2015.

[2] There were several applications in front of the court at the time that this application was being considered. The land that is the subject of the occupation order is managed by the Pera, James and Mange Whānau Trust.

[3] The current trustees of the trust are Ada McLeod, Aperahama Waetford, Cushla Smith, Caroline Waetford, Kararaina Nelson, and Suzie Waetford.

[4] Karetai's husband, Desmond, remained in the family home until his passing in 2016.

[5] On the 16th of July 2025 the court appointed counsel, Paula Wilson, to facilitate a special general meeting (the SGM) of the trust, in order for the beneficiaries to consider the following matters:

- (a) An amendment of the trust order to allow for electronic attendance by trustees and beneficiaries;
- (b) The election of trustees; and
- (c) Whether Justin Fletcher and Cushla Smith can succeed to their mother, the late Karetai Fletcher's occupation order on Matapouri 1A.

[6] Voting on the above agenda items was to be done in accordance with cl 8(d)(1) of the trust deed.

[7] This meant that there shall be one vote each per first generation family, i.e. 13 votes. Each vote was to be registered in-person or by properly appointed proxy.

[8] Ms Wilson facilitated that SGM and issued a report to the court, dated 26 September 2025.

[9] At that SGM, a vote was taken to consider whether or not Justin and Cushla should succeed to Karetai's occupation order. The result of that voting process was that seven lines of the family were in favour, and four were against. Two lines did not vote.

[10] On that basis, the applicants seek that the occupation order held by Karetai Fletcher now be vested in them.

Hearing held 17 February 2026

[11] At the hearing held on 17 February 2026, several parties attended including Ms Wilson.

[12] She appeared to speak to her report on the various matters considered at the SGM. Ms Wilson confirmed that there were seven lines in support of the occupation order variation, four in opposition. She also indicated that the two lines who did not vote were Karetai Fletcher's line, and also Hepi Pera Waetford's who was not present at the SGM. Her submission to the court was that, based on the vote, there is sufficient support for the application to succeed.

[13] Dorothy Waetford appeared at the hearing to oppose the proposed variation to the occupation order. Ms Waetford confirmed that she is not a trustee of the trust, but a beneficiary of the trust. She also confirmed that she had attended the SGM facilitated by Ms Wilson, and their line's opposition to the variation to the occupation order was conveyed at the SGM. Her appearance was to confirm their continued opposition.

[14] The basis of the opposition was that Karetai Fletcher was not a shareholder of the land, and her right to occupy was agreed in return for her service and contribution to the beneficiaries at that time. Ms Waetford suggested, therefore, that the occupation granted to her was personal and specific to Karetai Fletcher. Her view is that it should not pass down by way of succession.

[15] She acknowledged, however, that in the intervening time Cushla has acquired shares in the block, which gives her status as an owner in Matapouri 1A.

[16] She also acknowledged that as a result of being granted an occupation order, Karetai Fletcher had placed a house on the land, and incurred expenditure as a result. She also acknowledged that there would be a cost to whānau, or the Trust, if they were required to remove that house and chattels, or the Trust may be required to purchase it.

[17] Her final point was that Karetai Fletcher had not been provided shares in the land by her father previously, and as such Ms Waetford submitted that issues of succession had been addressed at that point, when her father decided not to grant shares in favour of Karetai Fletcher.

[18] She reiterated that the decision to grant her an occupation order, was to recognize her service and her desire to retire on the land, but that recognition was personal to Karetai Fletcher only, as she had no ownership interest in the land.

Te Ture *The Law*

[19] Section 328 of Te Ture Whenua Māori Act 1993 grants the court discretionary powers to grant occupation orders:

328 Occupation orders

- (1) The Maori Land Court may, in its discretion, make, in relation to any Māori freehold land or any General land owned by Maori, and order vesting in –
 - (a) the owner of any beneficial interest in that land; or
 - (b) any person who is entitled to succeed to the beneficial interests of any deceased person in that land; or
 - (c) any beneficiary of a whanau trust that holds a beneficial interest in that land, –
- (2) Where the land that will be affected by the order is –
 - (a) land in respect of which a trust is constituted under Part 12; or
 - (b) land vested in a Maori incorporation, –

the court shall not make the order without the consent of the trustees or of the management committee of the incorporation, as the case may require.
- (3) Notwithstanding any rule of law, an order under subsection (1) shall not be deemed to be a partition, development, or subdivision of the land to which the order relates.

- (4) In making an order under subsection (1), the Maori Land Court may specify —
- (a) that the occupation order is for a specified period; or
 - (b) that the occupation order ends on the occurrence of a defined event.

[20] Section 329 also provides matters to be considered by the court in considering whether or not to exercise its discretion under s 328, as follows:

329 Matters to be considered

- (1) In deciding whether or not to exercise its jurisdiction to make any occupation order, the Maori Land Court shall have regard to—
 - (a) The opinions of the owners as a whole; and
 - (b) The effect of the proposal on the interests of the owners of the land; and
 - (c) The best overall use and development of the land.
- (2) Notwithstanding subsection (1) of this section, the Maori Land Court shall not make any order, unless it is satisfied—
 - (a) That the owners of the land to which the application relates have had sufficient notice of the application and sufficient opportunity to discuss and consider it; and
 - (aa) that the owners of the land to which the application relates understand that an occupation order—
 - (i) may pass by succession; and
 - (ii) may be for a specified term or until the occurrence of a defined event:
 - (b) That there is a sufficient degree of support for the application among the owners, having regard to the nature and importance of the matter.
 - (c) that, in the circumstances, the extent of the beneficial interest in the land held by the person in whose favour the occupation order is to be made, or to which that person is entitled to succeed, justifies the occupation order.

[21] In *Adlam v Reihana – Hīmatangi IHIA*, the court reiterated the principles to be followed with respect to an application for occupation orders, as developed by the Māori Appellate Court:¹

¹ *Adlam v Reihana – Hīmatangi IHIA* (2022) 447 Aotea MB 1 (447 AOT 1) at 29.

- (a) The Māori Land Court may grant an occupation order in spite of opposition, but must consider each of the requirements as set out in s 329 of the Act and make a decision based on merit;
- (b) In exercising jurisdiction the Court must be mindful of the interests of other owners in the land and has power to take into account those interests by limiting the term of the order;
- (c) In exercising discretion, the Court must take into account relevant matters of context. The Court must measure the matters set out in s 329 against the factual background and all the circumstances in each particular case;
- (d) The Court has adopted the decision of the High Court in *Brown v Maori Appellate Court* that what amounts to “sufficient” support for a proposal is a matter for case-by-case analysis. In *Brown*, the High Court in the context of a partition application, stated that because of ss 2 and 17 of the Act, greater support than a straight majority either in shares or numbers may be required.

(footnotes omitted)

[22] The sufficient degree of support requirement for occupation orders that is set out in s 329(2)(b) uses identical wording to the test set out in the legislation for partitions. In *McDonald v McDonald*, considering an application for partition, the Māori Appellate Court found that while the requirement for there to be a sufficient degree of support will be assessed according to the circumstances of each case, the general rule is that support for the application must outweigh the opposition for there to be a sufficient degree of support.² Given that the test is identical, the reasoning applies equally to an application for an occupation order as it does for an application for a partition.

[23] It is relevant to note, in *Bidois – Te Puna 154D 3B 2B* the Māori Appellate Court stated:³

[37] An occupation order grants “exclusive use and occupation” of land as a site for a house: section 328(1). It creates a property right. It is not moveable. It can be enforced by the Court, whether under section 18(1)(a) or section 19 or otherwise. ...

[24] Then again, at paragraph [39] in relation to s 108(2A), the Māori Appellate Court said:⁴

² *McDonald v McDonald – Wairau block XII Section 6C2C* [2016] Māori Appellate Court MB 259 (2016 Appeal 259) at [64]-[66].

³ *Bidois – Te Puna 154D 3B 2B* [2008] 12 Waiariki Appellate MB 102 (12 AP 102) at [37]-[38].

⁴ At [39].

[39] We do not accept the Appellants' arguments that section 108(2A) requires the will maker to *expressly* gift the occupation order to someone in his or her will and that, if he or she does not, the residue clause will not apply. The section does not stipulate that there must be any special form of wording used. It is axiomatic that a residue clause or a residue gift includes all property that a will maker has not otherwise specifically disposed of in the will: *Nevill's Law of Trusts, Wills and Administration* (2004) Paragraph 15.1.1(e). That includes occupation orders.

[25] At paragraph [41], they say:⁵

[41] Section 108(2B)(b) provides that a person is entitled to succeed to an occupation order by will:

"if the court is satisfied in the circumstances, that the extent of the person's beneficial interest in the land justifies that person succeeding to the occupation order"

[26] As far as the text of section 108(2B)(b) is concerned, the court is required to consider the extent of the persons beneficial interests in the land "in the circumstances." As the Court in *Bidois* stated, this immediately points to the court making a wider enquiry than simply calculating whether there is an ownership match. The Appellate Court wrote that the "circumstances" "may include the land area, the number of owners, previous arrangements among the owners, the geography of the land, the history of land use, land uses other than housing, the requirements of the district plan and so forth. The term "justifies" contemplates an exercise of judgement on the courts part. In our view, the subsection as a whole contemplates that the court exercises discretion and not that it simply calculates whether there is an ownership match."⁶

Kōrerorero *Discussion*

[27] The will of Karetai Fletcher does not specifically vest the occupation order in Cushla Smith and Justin Fletcher. However, as has been referred to above, the lack of specific wording is not determinative. As identified in *Bidois v Māori Land Court*, reference to the residue of the estate is sufficient.

⁵ At [41].

⁶ At [48].

[28] I also note that Ms Smith has acquired shares in the Matapouri 1A block, and therefore would be entitled to the benefit of an occupation order, if one were to be granted.

[29] Section 329 requires that I shall have regard to the opinion of the owners as a whole, in relation to the proposal seeking to vary the occupation order in favour of Cushla Smith and Justin Fletcher.

[30] The owners have had a special general meeting and had the opportunity to consider the application. It is clear that there was more support than opposition to the application.

[31] I note Ms Waetford's opposition, which was also articulated at the SGM. She was one of the four lines in opposition to the proposal for a variation. Their opposition was taken into account at that meeting and has been heard by me.

[32] However, in my view there is a sufficient degree of support from the owners for the variation to the occupation order. The degree of support in favor, is higher than the degree of opposition to the proposal.

[33] I have reflected on the submission that the occupation order was specific to Karetai and should not be succeeded to. Whilst she was not bequeathed shares in the land, she still has whakapapa to it and her connection to it remains albeit not legally recognized. This connection was apparent from her continued service to the land and the people. Therefore, I am unpersuaded by that argument.

[34] In addition, Cushla has become a shareholder in the land so despite the lack of initial vesting of shares to Karetai, which would have been succeeded to, that issue has been remedied by the subsequent acquisition.

[35] Therefore, I grant the order seeking a variation of the occupation order held by Karetai Fletcher, in favor of Cushla Anne Smith and Justin Fletcher.

Kupu whakataau

Decision

[36] The application seeking a variation of the occupation order in favour of Karetai Fletcher to Justin Fletcher and Cushla Smith is granted.

I whakapuakina i te 12:30pm i Whangārei, i 14th o ngā rā o Āperira i te tau 2026.

Pronounced at 12:30pm in Whangārei, on this 14th day of April 2026.

T K T A R Williams

JUDGE