

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

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

AP-20250000007623

WĀHANGA
Under

Section 240, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Lot 3 Deposited Plan South Auckland 89753 and
Lot 2 Deposited Plan 471179

I WAENGA I A
Between

ANDRE LYONEL ORIENT GRANT
Te kaitono
Applicant

ME
And

SALLY JANE PAHNIA SKINNER
Te kaiurupare
Respondent

Nohoanga: 30 June 2025
Hearing (Heard at Rotorua)

Kanohi kitea: C Bidois for Applicant
Appearances S Skinner via Zoom

Whakataunga: 27 August 2025
Judgment date

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

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Hei tīmatanga kōrero*Introduction*

[1] This decision is about a relationship breakdown between two parties, where property issues have not been resolved and court intervention is sought. The application relates to the operations of the Waiohewa Trust, a common law trust constituted by deed.

[2] The applicant, Lyonel Grant, has applied for the removal of Pahnia Skinner as a trustee of Waiohewa Trust, on the basis that she has failed to act as a trustee and is no longer suitable due to her conduct. Pahnia opposes the application and says that this court should not grant orders on the basis that she rejects the applicant's account of events and says she has not failed to act as a trustee, and that this court has no jurisdiction with respect to the Waiohewa Trust.

[3] There are two issues for determination:

- (a) whether the Court has jurisdiction to hear and determine the application for removal; and
- (b) in the event that the Court does have jurisdiction, should Pahnia be removed as a trustee?

Kōrero whānui*Background*

[4] Lyonel and Pahnia constituted the Waiohewa Trust, a common law trust, by deed dated 27 June 2013. Lyonel and Pahnia are trustees of the Waiohewa Trust, and they and their children are discretionary beneficiaries.

[5] Two properties are vested in the trustees of the Waiohewa Trust, including one located at Onehunga, Auckland, and another at Tikitere on the outskirts of Rotorua. Both these properties are General land and are subject to mortgages in favour of ANZ Bank.

[6] At some point there has been a relationship breakdown between the parties, which has affected the operation of the Waiohewa Trust. There are now considerable mortgage arrears associated with the trust properties.

[7] Lyonel engaged JB Morrison Lawyers, and in December 2024 they wrote to Pahnia, seeking resolution as to the mortgage arrears. At this time the correspondence indicates that

the mortgage arrears were approximately \$60,000.00.

[8] The property issues between the parties were not resolved. On 3 June 2024 ANZ issued a final request for payment to the Waiohewa Trust, seeking the immediate repayment of \$104,900.00.

[9] Following the demand, on 5 June 2025, Lyonel initiated proceedings in the Māori Land Court seeking Pahnia’s removal on the basis that she refused to engage with Lyonel as her co-trustee in relation to the arrears.

[10] On 23 June 2025, I directed that this application be fixtured for an urgent hearing, and on 24 June 2024, I confirmed the issues for determination and signalled that Pahnia should consider obtaining legal representation for the hearing.

[11] I heard the application on 30 June 2025. Lyonel was represented by Mr Bidois, and Pahnia represented herself.

Kei a te Kooti te mana ā-ture ki te whakarongo ki ngā whakahaerenga ā-ture, ki te whakatau hoki i te tono?

Does the Court have jurisdiction to hear and determine the application?

[12] Pahnia has been consistent in her view that the Māori Land Court does not have jurisdiction in respect of the Waiohewa Trust.

[13] Mr Bidois for the applicant submits that *Nikora v Kruger* [2024] NZSC 130 applies, and therefore this Court has jurisdiction to hear the application for Pahnia’s removal.

[14] Section 236(1)(c) of the Te Ture Whenua Māori Act 1993 (the Act) confirms the jurisdiction of the Māori Land Court over every trust constituted in respect of any General land owned by Māori. The issue is whether the Waiohewa Trust is constituted with respect to General land owned by Māori.

[15] Section 236(1)(c) has been the source of much debate and litigation over the last five years due to the potentially broad jurisdiction of this court in relation to private trusts. The phrase “General land owned by Māori” is a defined term in the 1993 Act.¹ It “means General land that is owned for a beneficial estate in fee simple by a Māori or a group of persons of whom a majority are Māori”.

¹ Te Ture Whenua Māori Act 1993, section 4.

[16] In the Māori Appellate Court decision of *Moke v The trustees of the Ngāti Tārawhai Iwi Trust (Moke)*, it was noted that:²

[74] The relevant words from the definition of ‘general land owned by Māori’ are ‘owned for a beneficial estate in fee simple’. Because the term ‘beneficial estate’ is defined as excluding an estate vested in any person by way of trust it is necessary to look beyond the trustees to the underlying beneficial ownership, in order to determine whether ownership resides with a Māori or group of persons that majority of whom are Māori.

[17] In *Moke*, the Māori Appellate Court determined that the Court did have jurisdiction to determine an application in relation to the Ngāti Tārawhai Iwi Trust pursuant to s 236(1)(c) of the Act.

[18] In order to determine whether the Waiohewa Trust was constituted in respect of General land owned by Māori, I must determine who the beneficial owners of the land are. *McCaw Lewis Trustee (No 1) Ltd (as trustee of the Tuala-Warren Family Trust)* — *Rakautatahi 1B2B1A* concerned an application to exchange land, including some land held in a family trust established by trust deed.³ To determine whether the land was General land owned by Māori, Judge Stone discussed who the beneficial owners of the land were. He said:

[22] It is well established that discretionary beneficiaries do not have interests in a trust.⁶ Accordingly, the house block is not beneficially owned by the discretionary beneficiaries of the Tuala-Warren Family Trust, and to determine whether the house block is General land owned by Māori I must instead consider the position of the residual beneficiaries.

...

[26] I consider that the residual beneficiaries of the Tuala-Warren Family Trust are the beneficial owners of the house block.

[19] This approach was endorsed in *Hemi v Ritchie - Whaanga 1D1D Roadway*.⁴

[20] Lyonel, Pahnia and their children are among the discretionary beneficiaries of the Trust.⁵ I must look to the final beneficiaries. The Trust Deed states that they are the grandchildren of Lyonel and Pahnia. At the expiration or termination of the Trust, the assets

² *Moke v The trustees of the Ngāti Tārawhai Iwi Trust* (2019) Māori Appellate Court MB 265 (2019 APPEAL 265).

³ (2022) 97 Takitimu MB 232 (97 TKT 232).

⁴ (2025) 282 Waikato Maniapoto MB 9 (282 WMN 9) at [82]-[86].

⁵ Waiohewa Trust Deed, annexed to Affidavit of Andre Lyonel Orient Grant dated 5 June 2025.

shall be distributed to the final beneficiaries.⁶ Because Lyonel and Pahnia are both Māori, any future grandchildren will be Māori. I am satisfied that the land which the Trust is constituted in respect of is beneficially owned by Māori. The trust was constituted for the benefit of Pahnia, Lyonel and their descendants, which is consistent with the overall scheme of the Act.

[21] For these reasons, I find that this Court does have jurisdiction to hear and determine the application.

Me tango ahau i a Pahnia hei tarahiti?

Should I remove Pahnia as a trustee?

[22] Lyonel seeks Pahnia's removal as a trustee for her failure to act as a trustee and on the basis she is no longer suitable to be a trustee.

[23] Section 240 of the Act 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.

[24] The Court of Appeal in *Henderson v Brooking* set out what should be taken into account when considering removal of a trustee under s 240 as follows:⁷

[94] The test for removal under s 240(1)(b) is a two-step process.⁷⁰

[95] First, the court must assess whether one of the prescriptive grounds in s 240(1)(b) has been met, ...

[96] Secondly, the court must determine whether removal, in terms of the opening words of s 240(1)(b) is “desirable for the proper execution of the trust”. Unlike the

⁶ Clause 11 of the Trust Deed.

⁷ *Henderson v Brooking* [2025] NZCA 368.

first step, this does involve an exercise of discretion. Broader considerations can be taken into account at this point including, in this case, the mitigating factor of Apirana Henderson's hard work and the exacerbating factor of his apparently close relationship with three of the remaining five trustees.

[97] Also, it does not follow that if a trustee is in breach, they should be removed. Although breach of duty will likely be the key focus under s 240(1)(b), the provision is neither governed by, nor limited to breach of duty. In addition, “suitability” is not limited by the examples in the subsection, as argued by Mr Kahukiwa. These are clearly non-exhaustive.

[98] In terms of the second limb, as the Māori Appellate Court emphasised, the question is whether removal is “desirable” not whether it is necessary.⁷¹ The inquiry can be wide-ranging and may extend beyond Apirana Henderson's own actions. In many respects the two limbs may overlap.

[99] We also agree with the Courts below that the question of whether to remove, and the Court's discretion, should still be guided, as those Courts identified, by broader principles set by this Court and the Māori Appellate Court under the previous s 240, including:⁷²

“(a) removal is a serious step and is not undertaken lightly;

(b) 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 a serious loss or malfeasance; and

(c) generally, the court must be satisfied that there is evidence of real abuse, failure, or malfeasance and the absence of any tenable defence.”

[100] However, these are guidelines only.

[25] Lyonel says that Pahnia has repeatedly refused to act as a trustee and preserve the assets of the Waiohewa Trust. He has provided evidence of communications between the parties, including correspondence to Pahnia from his lawyer from November 2024 seeking to resolve the mortgage arrears. The correspondence shows that concerns were raised in December 2024 as to the bank instigating a mortgagee sale, however the arrears increased from approximately \$60,000.00 in December to \$105,000.00 in June 2025. Lyonel asserts that Pahnia’s refusal to engage has made it impossible to put a plan in place with ANZ and that unless something changes, at least one of the properties will be lost to a mortgagee sale.

[26] He further says that Pahnia is no longer suitable to be a trustee. He has provided evidence of caveats registered against the trust properties in favour of a lending company, and says they are evidence Pahnia used the trust property as security for personal borrowing. I was provided only limited information about this.

[27] In her evidence to the court, Pahnia raised issues as to the formation of the trust, the

initial lending with ANZ, the role of the independent trustee Andrew Seton (of Floyd Trustee Services) who retired in 2021, and accusations of misconduct regarding the independent trustee. She says that she has worked tirelessly to address the issues of misconduct and resolve a parallel dispute with ANZ as to lending. She acknowledges that there is a debt owed to ANZ, however she says that she has reached out to the bank. Pahnia says that she made an earlier attempt to resolve matters with Lyonel in 2021, without success. Fundamentally she says that there are issues of privacy, and it seems that for this reason that Pahnia has not disclosed verification evidence that might support her position.

[28] Unfortunately, the lack of verification evidence is to Pahnia's detriment. She has not provided any evidence regarding the actions that she has taken as a trustee to resolve the mortgage arrears concerning the Waiohewa Trust. What is evident is that the arrears have increased from December 2024 to June 2025, and that the assets are at risk. Certainly, the letter of final request for payment, dated 3 June 2025, is evidence of that risk.

[29] For this reason, I find that Pahnia's removal is desirable for her repeated failure to act as a trustee and preserve the assets of the trust.

[30] Pahnia, Lyonel and the parties' children continue to be discretionary beneficiaries of the trust, and the obligation for preserving those assets now falls on Lyonel as the sole trustee.

Whakataunga *Decision*

[31] The Court grants an order pursuant to s 240 of Te Ture Whenua Māori Act 1993 to remove Sally Jane Pahnia Skinner as a trustee of the Waiohewa Trust for her repeated failure to act as a trustee and preserve the assets of the trust.

[32] The Registrar is directed to take available steps with regard to effecting this determination on the certificate of title, as a matter of urgency.

I whakapuaki i te 2:00pm i Rotorua, rua tekau mā whitu o ngā rā o Ākuhata i te tau 2025.
Pronounced at 2:00pm in Rotorua on Wednesday this 27th day of August 2025.

T M Wara
KAIWHAKAWĀ