

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

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

AP-20250000015298

WEHENG
Under

Section 19, 238 and 240 of Te Ture Whenua Māori
Act 1993

MŌ TE TAKE
In the matter of

Oakura A2C Residue Block

I WAENGA I A
Between

PHILLIP WEE TE WAIMARAMA KAKA
Te Kaitono
Applicant

ME
And

HENARE APERAHAMA WHAREMATE
WHANAU TRUST
Ngā Kaiurupare
Respondents

Kōtitanga:
Hearing

29 July 2026, 320 Taitokerau MB 110-130
21 April 2026, 315 Taitokerau MB 274-312
30 January 2026, 308 Taitokerau MB 19-64
(Heard at Whangarei)

Kanohi kitea:
Appearances

S Davies-Colley for Applicant

Whakataunga:
Judgment date

7 September 2026

TE WHAKATAUNGA A KAIWHAKAWĀ TKTAR WILLIAMS
Judgment of Judge TKTAR Williams

Hei tīmatanga kōrero*Introduction*

[1] On 29 July 2026, the Court issued a reserved decision dealing with several applications in relation to the Henare Aperahama Wharemate Whānau Trust (the Trust) involving the Oakura A2C Residue block.¹

[2] In that decision the Court indicated that despite there being no formal application, it was considering whether to remove the trustees for improper conduct, and in particular trustees Kim Alves, Nicola Sadler and Patricia Sadler. The Court has jurisdiction to make those orders even in the absence of a formal application.²

[3] However, prior to making a determination about whether the trustees should be removed or not, the Court provided all parties with 21 working days to file submissions in response to the proposal that trustees be removed, following which it would issue or make orders on the papers.

[4] On 28 August 2026, counsel for the applicant filed a memorandum on behalf of the applicants supporting the removal of Kim Alves, Nicola Sadler and Patricia Sadler. He also filed affidavits on behalf of Sheryl Ann Lynds seeking retention as a trustee and Daryl Martin Sadler and Kelleigh Anne Embers who both seek appointment as replacement trustees.

[5] No response to the proposed removal determination has been filed by the other trustees of the Trust or counsel for the respondent.

[6] Having provided all parties with the opportunity to make submissions on the issue, I therefore propose to proceed to determine this issue on the papers.

¹ *Kaka v Kaka – Succession to Karen Angela Kaka* (2026) 320 Taitokerau MB 110 (320 TTK 110).

² *Paki v Māori Land Court* [1999] 3 NZLR 700.

Te Ture*The law**Removal of trustee*

[7] Section 240 of Te Ture Whenua Māori Act 1993 (the Act) empowers the Court to remove trustees for cause. It provides:

240 Removal of trustee

- (1) 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 functions 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 trustee:
 - (ii) the trustee becomes an 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.
- ...
- (3) A person may no longer be suitable to hold office as trustee, for example, because of the following conduct or circumstances:
- (a) the trustee is convicted of an offence involving dishonesty:
 - (b) it is not known where the trustee is and the trustee cannot be contacted:
 - (c) the trustee is prohibited from being a director or promoter of, or being concerned or taking part in the management of,—
 - (i) a company under the Companies Act 1993; or
 - (ii) an incorporated or unincorporated body under the Financial Markets Conduct Act 2013 or the Takeovers Act 1993.

[8] The Court of Appeal in *Henderson v Brooking* confirmed that the test for removal under s 240(1)(b) involves two steps:³

³ *Henderson v Brooking* [2025] NZCA 368 at [94], citing *Wynyard v Waata – Manawakore C1 and D* (2022)

- (a) First, the Court must be satisfied that one of the prescriptive grounds under s 240(1)(b) are met.
- (b) Secondly, the Court must determine whether removal is “desirable for the proper execution of the trust”.

[9] Despite amendments to s 240 in 2020, earlier principles concerning the removal of trustees continue to apply, including:⁴

- (a) removal is a serious step and is not undertaken lightly;
- (b) the trustee(s) at risk must be properly notified in advance;
- (c) 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
- (d) generally, the Court must be satisfied that there is evidence of real abuse, failure or malfeasance and the absence of any tenable defence.

Enforcement of obligations of trust

[10] In addition, s 238 of the Act provides as follows:

238 Enforcement of obligations of trust

- (1) The court may at any time require any trustee of a trust to file in the court a written report, and to appear before the court for questioning on the report, or on any matter relating to the administration of the trust or the performance of his or her duties as a trustee.
- (2) **The court may at any time, in respect of any trustee of a trust to which this section applies, enforce the obligations of his or her trust (whether by way of injunction or otherwise).**

(Emphasis added)

247 Taitokerau MB 4 (247 TTK 4) at [19] and *Gray v Paikea – Otara* 5D2 (2022) 252 Taitokerau MB 210 (252 TTK 210) at [21].

⁴ *Henderson v Brooking – Wharekahika* A47 [2023] Māori Appellate Court MB 17 (2023 APPEAL 17) at [28], affirmed by the Court of Appeal in *Henderson v Brooking*, above n 2 at [99].

[11] While there has been no formal application pursuant to s 240, I consider that I have a duty to look at the enforcement of the obligations of the trust, which includes consideration as to whether or not these trustees should be removed for acting in breach of trust.

[12] As such I have reviewed what has occurred and will make orders that are required in order to enforce the obligations of the trust.

Kōrerorero

Discussion

[13] The objects of the Trust are set out as follows;

“Subject to any express restrictions set out in this order, the objects of the trust shall be to administer and preserve the interests of the whanau and to use the income derived from those interests to be applied for the purposes of promoting health, social, cultural and economic welfare, education and vocational training and general advancement in the life of the descendants of Karen Kaka, Kim Alves, Nicola Sadler, Patricia Sadler, Sheryl Lynds, Arri Sadler Murray, Daryl Sadler and Henry Robert Sproul Sadler and their descendants”

[14] Counsel for the applicants has invited the Court to make orders that Kim Alves, Nicola Sadler and Patricia Sadler be removed as trustees leaving Sheryl Lynds as the remaining trustee.

[15] Ms Lynds has sought to be retained as a trustee on the Trust and filed a statement dated 14 August 2026 confirming that she wishes to be retained as a trustee on the Trust.

[16] In the Court’s substantive decision of the 29th of July 2026 the Court saw no issue with the actions of Sheryl Lynds as a trustee as there was no concern about her conduct. Therefore, Sheryl Lynds is to remain a trustee on the trust.

[17] The issue is whether I should remove Kim Sadler, Nicola Sadler and Patricia Sadler on the grounds that one of the conditions outlined in s 240(1)(b) have been met, and whether their removal, or not, is desirable for the proper execution of the trust.

[18] As has been identified in the earlier decision, the actions and conduct of those three trustees was highly inappropriate and can be summarised as follows:

- (a) verbal abuse by them towards the applicants Kelleigh Embers, Tammy Kaka, Ricky Kaka and Nicola Kaka (the children) who are beneficiaries of the Trust and nieces and nephews of the trustees;
- (b) directed threats and homophobic comments at the children and incited physical violence towards some of them in order to force them off the occupation order area on the property;
- (c) sought to deny the whakapapa of Karen Kaka, who is their sister and co-trustee, the mother of the children, in order to deny them access to the land and rights associated with the Trust and the occupation order area;
- (d) illegally and inappropriately attempting to seize control of assets that belonged to the Karen Kaka and her husband that the children are entitled to succeed to and deprive them of those assets; and
- (e) purported to make decisions on behalf of the Trust whilst excluding Sheryl Lynds as a trustee in those decisions involving the Trust property and the occupation order area.

[19] Taken collectively and individually these actions are not mere technical breaches and contravene the objects of the trust which are outlined above.

[20] I have provided the three trustees with the opportunity to respond to the proposal to remove them as trustees. They have failed to do so.

[21] Nothing has been filed to persuade me that they should not be removed. I have therefore taken into account the evidence provided in the substantive hearing and their lack of response to the proposal to remove them, to determine whether or not it is desirable for these trustees to be removed.

[22] It is clear to me that their actions and conduct illustrate that they have not and are incapable of acting appropriately as trustees of the trust. I have been satisfied that there is evidence of real abuse, failure or malfeasance and an absence of any tenable defence.

[23] Therefore, I consider that Kim Alves, Nicola Sadler and Patricia Sadler are no longer suitable to hold office as trustees due to their failure to adhere to the objects of the trust, their inappropriate conduct and the circumstances surrounding their conduct.

[24] I consider it is both necessary and desirable to remove them as trustees.

Ngā mahi kei mua i te aro

Next steps

[25] With the removal of these trustees that would leave Sheryl Lynds as the sole trustee of the Trust. That is unacceptable.

[26] Counsel for the applicants submit that the Court should appoint two new trustees pursuant to s 222 of the Act. He proposes that those trustees should be Daryl Sadler and Kelleigh Embers who have also filed documents in support of their proposed appointment.

[27] I do not consider it appropriate to simply appoint new trustees without an opportunity for beneficiaries to have a hui to discuss the appointment of new trustees. Therefore, I decline to appoint Daryl Sadler and Kelleigh Embers as replacement trustees.

[28] Instead, I propose to appoint a facilitator to convene a meeting of the beneficiaries in order to consider the appointment of new and replacement trustees. The facilitator will be someone who has legal training and experience in facilitating these kind of hui who will notify the parties of a special general meeting to be called for the sole purpose of electing new trustees to the trust.

[29] Part of those instructions will include the fact that none of the three removed trustees are eligible to seek appointment as trustee. In addition, given the actions and conduct of Tina Sadler and Henare Sadler Jnr who were both either verbally and physically violent towards the applicants, they also will not be permitted to apply to become trustees.

[30] Once appointed the facilitator will make contact with the parties in order to conduct a hui to appoint new trustees.

I whakapuakina i te 3:00pm i Whangārei, i te tuawhitu o ngā rā o Hepetema i te tau 2026.

Pronounced at 3:00pm in Whangarei, on this 7th day of September 2026.

T K T A R Williams
JUDGE