

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

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

AP-20240000003604

AP-20240000008082

WĀHANGA <i>Under</i>	Section 238, Te Ture Whenua Maori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Wharetoto 9 Part
I WAENGA I A <i>Between</i>	HARVEY KARAITIANA AND TOKOAHU RAU KARAITIANA Ngā kaitono <i>Applicants</i>
ME <i>And</i>	ANDREW KENNETH SEAGAR, DIANE JARRA KARAITIANA-BRYANT, LISA CARMEL SEAGAR AND MAKARENA MARGARETTA RANIMARIA BOSHER AS TRUSTEES OF THE WHARETOTO 9 BALANCE TRUST Ngā kaiurupare <i>Respondents</i>

Nohoanga: 9 December 2024, 494 Aotea MB 275-280
Hearing (on the papers)
6 May 2025
(Heard at Turangi)

Kanohi kitea: G Tootill for Respondents
Appearances

Whakataunga: 30 July 2025
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ A H C WARREN
Judgment of Judge A H C Warren

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“E noho e, kia raungāwari”

Hei tīmatanga

Introduction

[1] This decision determines whether a lease between the Wharetoto 9 Balance Trust (the Trust) and Tokoahu Karaitaina is valid. The Trust administers the Wharetoto 9 Part block (the Trust land),¹ and the lease agreement pertains to this land. I have addressed various applications relating to this trust and former trustee Harvey Karaitiana, and this decision is determined in the broader context of those applications, but the focal point here is the lease issue. It was Harvey who entered into the lease with Tokoahu (the lease) as the only living trustee at the time.

[2] Tokoahu is not a beneficiary of the Trust.

[3] The status of the lease came to the fore after I appointed replacement trustees at 483 Aotea MB 129-131 on 2 April 2024. Since that time, there has been ongoing debate about the lease. The newly appointed trustees, who are the respondents in this proceeding, knew nothing of its existence when they took office, including the Trust’s administrator, Whenua Kete Limited.² To provide clarity about the lease, I directed of my own motion, per s 238 of Te Ture Whenua Māori Act 1993 (the Act) that Harvey file a report explaining how the lease came to be and its terms.³ I received that report on 8 October 2024, (the Harvey report). The newly appointed trustees responded to the Harvey report on 23 October 2024. In the context of addressing other Trust applications, and several requests by Tokoahu and Harvey to adjourn proceedings, I finally set the matter down to hear from the parties about the status of the lease at Turangi on 6 May 2025 (the hearing). This hearing set down alongside the application to remove Harvey as a trustee.⁴ In advance of the hearing Tokoahu sought to have the hearing adjourned. I declined that request and issued the following response:

"The application by email dated 1 May 2025 for an adjournment of the hearing set down for 6 May 2025 is declined on the basis that there have been many requests for adjournments previously, and this is a very late request, i.e. two working days before the hearing. Further both issues - the lease and removal of Harvey Karaitiana have been outstanding for some time.

¹ The Trust was established at 59 Tokaanu MB 1-8.

² Merilyn Connolly is the principal of Whenua Kete Limited.

³ 491 Aotea MB 36-45.

⁴ AP-2025000001460.

Further, apart from two emails, I have seen no direct medical evidence that both Toko and Harvey cannot appear due to illness. If as Toko says he is in the middle of eye surgery, he must have known this fact when notice of the hearing was issued and has left his request significantly late.

I am also mindful that Toko has now sent multiple emails to the court complaining about these proceedings and decisions made to date and I get the strong impression, that these late requests continue to be a delay tactic and not fair and reasonable requests for adjournments.

I remind both Toko and Harvey that they may attend by zoom.”

[4] I had no requests for an adjournment from Harvey with respect to the lease issue or the application to remove him as a trustee.

[5] As it turned out, neither Harvey or Tokoahu attended the hearing and I only heard from Glen Tootill, counsel for the respondents.

[6] After the hearing I provided a further opportunity for Tokoahu to address me on the lease issue, before making this decision. The reasons for this were documented in a direction dated 4 June 2025. Because, Harvey did not seek an adjournment or asked to be excused from the hearing, I did not give him a further opportunity to be heard.

[7] After giving Tokoahu more time to address the court, he sent several emails, covering a range of issue, including another request to adjourn the determination of the lease issue. I summarise his responses below, but have excluded Tokoahu’s personal health information, as I do not think recording those in a public decision is tika. Save to say, that I have read all emails received.

10 June 2025

In response to Judge Warrens invitation 4 .6 .2025 I would gladly accept a court hearing but because of my health issues and lack of Counsel I will decline however I have sent you medical records to show you issues of my health....

I will accept Judge Warrens invitation to write or email but as I don't have Counsel I don't have any chance of a fair hearing as we have been shown in the previous hearings. When I fully recover I will seek legal advise and find away through this Miscarriage of Justice and Prejudice.

18 June 2025

I would like to apologise to you for the emails that I have been sending to you regarding the errors I have made in corresponding with you and your patience. It is not easy to correspond...I have stopped reaching out to Judge Warren as I know he is governed by time frames which seem to be more important to him, once again my

apologies for my email errors and thank you for being patient I do believe my health is getting better...

19 June 2025

I am now acting on my own on behalf of all 803 owners of Wharetoto No.1- 9 in relation to Wharetoto Balance No. 9 issues that have surfaced in the search for Justice with the Maori Land Court and conflict of interests with Whenua Kete's obligations towards sole surviving Trustee Harvey Karaitiana. These issues were sent to Paetukutuku Naiada Hika Whanganui MLC to let Judge Warren know myself and Harvey Karaitiana were wanting to send it to a Chief Judge for a Section 45 but since we had no real response from Judge Warren I have talked to Counsel and they have told me that may not be the way to go in saying that I still haven't confirmed a proper contract with Counsel because of health issues, lack of finance mainly because of the recession. I wish to ask the Moari Land Court to seek justice not only for Wharetoto No 9Balance 10 acre's also for what I have seen from

...I am reaching out to you to allow me to try and work through these issues within the next 3 to 6 months as my ongoing health issues are effecting my ability to achieve proper Counselling and Justice and Prejudice shown in four court cases,

1, Appointment of 4 non owners opposed to 4 owners submitted by Counsel.

2, Dismissal of Responsible Trustee Harvey Karaitiana an owner opposed to 1 trustee we are building a case on as shown to the MLC and 2, 1 being 92 and all are not owners.

3, Still in court the purported Lease which I will send after this draft.

4, Rehearing which was out of time which I would like to be contested. All of these issues are mainly concerned to Wharetoto 9B but in my search for justice Wharetoto No 1 has come to my attention so I will seek Counsel on those issues. I have addressed these issues to the Whanganui Maori Land Court to be seen by any Judge but Judge Warren as our interactions in the past have resulted in miscarriages of Justice and Prejudice and once I get a clean bill of health, work, good Counsel, I must say Judges are supposed to be fair not to take sides in this case he's favoured Whenua Kete and bulldozed myself and Harvey. Please confirm.

With the following email attached:

Harveys 30yrs as trustee was blemished by Whenua Kete not providing Admin, and Financial reports for 30yrs. (Please provide)

Harvey and Toko provided 4 owners as trustees but were overlooked for 5 non owners as trustees

Whenua Kete allocated 170 owners in 2023 Annual Reports when actual fact there is 803 owners (Please amend so we can call owners meeting)

Police report filed by Toko Karaitiana 240221/4053. Closed by Whenua Kete trustees without my authority (Please give reasons.Waiting for police report)

Keys for Lodge were not changed as told in 2023 Annual Reports. Evidence shows.

More theft from the Lodge Whenua Kete trustees saying it was vandalism I went back to investigate estimate \$20,000.00- \$30,000.00 damage and theft. Another Police report 250 303/4603.

Judge Warren indicated Marilyn Conelly had no right to call a meeting to add non owners as trustees. (Please provide minutes and owners attendance.)

[8] I once again decline Tokoahu's requests to adjourn the determination of the lease issue.⁵ Noting that I had previously agreed to find and/or pay for counsel for both Tokoahu and Harvey. This offer was rejected and therefore a claim that he could not attend a further hearing because he does not have a lawyer, is his own fault. The new trustees have waited long enough to have this issue determined and Tokoahu has had several opportunities to engage with the court and attend hearings, even remotely.

[9] At the hearing I invited Mr Tootill to provide me with written submissions on the issue of whether the lease was required to be in writing, as a matter of law. This was on the basis that the Harvey report confirmed that the lease was an oral arrangement, and nothing was committed to writing. Mr Tootill's submissions were received on 4 June 2025 and sent to Tokoahu for comment.

Ngā take *Issues*

[10] The central issue to determine is whether the oral lease between Harvey on behalf of the Trust and Tokoahu is valid as a matter of law. The two more specific issues I need to answer are:

- (a) Did Harvey have capacity to enter into a lease, given that he was the sole remaining living trustee?; and if he did, then
- (b) Is an oral lease legally valid?

⁵ It is fair to say that Tokoahu's participation in these proceedings has been very difficult to manage. Effectively he has sought multiple lengthy adjournments to all related applications and this one. There have been threats to occupy Trust land, and he has submitted invoices to the new trustees to reimburse him for work undertaken on the land. He has made several complaints to the Pae Tukutuku about my role in these proceedings, and submitted to the court that he cannot attend online hearings or judicial conferences due to health issues, yet can prepare at times lengthy emails to the court when it suits.

He aha te kaupapa o tēnei tono?*What is this application about?*

[11] Given how the lease issue arose, as noted above, I exercised my broad powers per s 238 of the Act. The Court of Appeal in *Clarke v Karaitiana* has confirmed this court's wide supervisory and enforcement powers under this section of the Act, which include the ability to enforce the obligations of trustees by way of injunction or otherwise.⁶ Here I am determining whether the new trustees have obligations arising from the agreements reached between Harvey on behalf of the Trust and Tokoahu.

Ngā meka*Facts*

[12] At the time Harvey negotiated the lease with Tokoahu, he was the only living trustee of the Trust. Harvey took no steps to remedy this position at the time he negotiated the lease.

[13] Harvey assessed that the Trust land required significant work, in terms of upkeep and that was the primary reason for engaging with Tokoahu to lease Trust land. To give effect to the agreement made between Tokoahu and Harvey, Harvey expected that the Trust would make an insurance claim to pay for the renovations and maintenance carried out by Tokoahu. It was also stipulated in the Harvey Report that Tokoahu would have access to all maintenance equipment and anything else owned by the Trust to fulfil his works.

[14] On 22 February 2024 Harvey and Tokoahu negotiated a verbal agreement. There is no written record of the terms, other than what is included in the Harvey report, which include the following terms:

- (a) For Tokoahu to take up a lease of the block.
- (b) The lease was for a term of 5 years pursuant to clause 11 of the Trusts terms of Trust.
- (c) As part of the lease, Tokoahu would:
 - (i) renovate all the buildings so that they could be rented/leased.

⁶ *Clarke v Karaitiana* [2011] NZCA 154 at [36].

- (ii) repair, reconnect and upgrade the water reticulation system.
 - (iii) repair and reinstate power to the Trust land.
 - (iv) maintain the buildings, grounds including the lawns.
 - (v) repair the front boundary fences.
- (d) Tokoahu was not to pay any rent or lease fee.
- (e) It was not certain whether Tokoahu was allowed to live on the Block as part of the lease terms.
- (f) There was to be no right of renewal, but rather a negotiation if Tokoahu had not completed the work above.
- (g) The Harvey report then states that the Trust would make an insurance claim to pay for all the necessary renovations and maintenance to be carried out by Tokoahu.

[15] Harvey advised that between February and April 2024 Tokoahu met with several tradespersons about the work to be done.

[16] For his part Tokoahu supports the facts in the Harvey report.

[17] Where the lease is concerned the respondents submit, in response to the Harvey report, that the lease being purely verbal is disappointing and it is appropriate to confirm the terms of the lease in a written document. This would avoid future disputes over the terms of the lease. The respondents submit a request that the Court direct Tokoahu to enter into a written lease, to be prepared by the Trust.

Did Harvey have capacity to enter into a lease?

[18] Mr Tootill concedes that, at the time, Harvey had the power to enter into a lease. However, he submits that this power was constrained by cl 11 of the terms of trust which required that:

- (a) The term of the lease not exceed 42 years; and

- (b) The term of the lease not exceed seven years, “unless a resolution to such effect has formally been passed by the beneficial owners at a meeting convened for such purposes.”

[19] That submission fails to consider the clauses in the terms of trust relating to trustee decisions at a meeting. Whilst there is no specific clause in the terms of trust stating the minimum or maximum number of trustees of the Trust, the decision-making clause at 20(f) makes it very clear that three trustees must agree in “every act of the trustees”. There would be little argument that entering into a five-year lease is considered an act of the trustees. Clause 20(f) states:

20 Meeting of Trustees

- (f) Questions arising at any meeting shall be decided by a majority of the members present, but three members at least shall concur in every act of the trustee. In the case of an equality of votes, the Chairman shall, in addition to his deliberative vote, have a casting vote.

[20] My interpretation of the terms of trust, including clause 20(f) is that there must be at least three active trustees in office in order for the trustees to act. If there were more, then the decisions are made by the majority, on the basis that at least three trustees supported the decision to act. Technically, there were five legally appointed trustees on the court record at the time the lease was entered into, but of course all but Harvey, were no longer alive. There is no doubt, based on my interpretation of the terms of trust, that the power to make a trustee decision must ensure at least three living trustees vote to support the decision, not a single trustee.

[21] In that sense, the decision by Harvey to enter into the lease was ultra vires the terms of trust. Harvey had the option of seeking directions of the court and/or to seek legal advice but chose not to.

[22] I therefore find that Harvey had no legal basis to negotiate and enter into a lease with Tokoahu as he could not act alone. The lease is invalid.

Is an oral lease legally valid in this instance?

[23] I do not need to address this issue, given my finding on the first question, but for completeness and if I am wrong in my interpretation of the terms of trust, I find that based

on the lease terms as confirmed by Harvey, there is a legal requirement for the lease to be in writing in order for it to be valid.

[24] Mr Tootill made the following submissions on this issue:⁷

6. The power to enter into a lease was further constrained by the law, specifically the Property Law Act 2007 (“the PLA”).
7. Section 24 of the PLA states:

“Contracts for disposition of land not enforceable unless in writing

 - (1) A contract for the disposition of land is not enforceable by action unless—
 - (a) the contract is in writing or its terms are recorded in writing; and
 - (b) the contract or written record is signed by the party against whom the contract is sought to be enforced.
 - (2) In this section, disposition does not include—
 - (a) a short-term lease; or
 - (b) a sale of land by order of a court or through the Registrar.
8. ‘Disposition’ is defined in section 4 of the PLA and includes, amongst other things, a lease.
9. Given the purported lease was not in writing, the lessee would need to rely on the purported lease being a short-term lease.
10. A short-term lease is defined in the PLA as follows:

“short-term lease means an unregistered lease—

 - (a) that has a term that commences not later than 20 working days after the date of the contract to lease; and
 - (b) that is—
 - (i) a lease for a term of 1 year or less; or
 - (ii) a periodic tenancy for periods of 1 year or less; or
 - (iii) a statutory tenancy”

...Based on the above, for the following reasons, I submit that a lease was not legally entered into:

⁷ Submissions on behalf of the Respondents, 13 May 2025.

- (a) In his evidence, Harvey indicated that the term of the purported oral lease was 5 years;
 - (b) However, at law, the maximum term of a lease, where the lease is not in writing (ie. an oral or short-term lease), is 1 year.
12. On this basis, given what was agreed to is at odds with the law, I submit that a lease was not entered into.
13. At best, if it was accepted that there was an oral lease for the maximum term of one year (this is inconsistent with Harvey's evidence), that lease would now have expired.

[25] I agree with Mr Tootill's articulation of the law and based on the facts, the lease does not meet the requirements of a short-term lease and therefore for it to have validity it was required to be in writing. It was not, and therefore it is invalid.

[26] There is no evidence that Harvey or Tokoahu took legal advice. That is on them.

Kupu whakataua

Decision

[27] Given my finding that the lease is invalid, there are no legal obligations owed by the current trustees to Tokoahu with respect to the arrangements negotiated between Harvey and Tokoahu. There is no basis to make any enforcement orders and the trustees owe nothing to Tokoahu.

[28] I am mindful that the new trustees did submit a request for a direction that Tokoahu enter into a written lease prepared by the Trust. That is a matter for the Trust and Tokoahu, I will take that no further. In all respects all issues relating to the lease, the role of Tokoahu and of Harvey are at an end. That means that the new trustees may proceed to conduct business in their role as trustees and if there are any further directions required, then I invite Mr Tootill to submit those as required.

I whakapuaki i te 10:00sm i Kirikiriroa i te rā 30 o Hōngongoi i te tau 2025.
Pronounced at 10:00am in Hamilton, 30 July 2025

A H C Warren
JUDGE