

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

In the Māori Land Court of New Zealand
Taitokerau District

AP-20230000032305

AP-20230000032310

WĀHANGA
Under

Sections 19 and 43, Te Ture Whenua Māori Act
1993

MŌ TE TAKE
In the matter of

Te Horo 3 No 1-31 Block

I WAENGA I A
Between

KENNETH JOHN LINSTEAD
Te kaitono
Applicant

ME
And

AMADEUS TOHU
Kaiurupare
Respondent

ME
And

TE OREWAI TE HORO TRUST
The Trust

Nohoanga:
Hearing 2 July 2024, 276 Taitokerau MB 220-272
(Heard at Whangārei)

Kanohi kitea:
Appearances R Clark for Applicant
R Park for Respondent
D Tuato'o for The Trust

Whakataunga:
Judgment date 5 September 2024

TE WHAKATAUNGA Ā KAIWHAKAWĀ TKTAR WILLIAMS
Judgment of Judge TKTAR Williams

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Hei tīmatanga*Introduction*

[1] Two applications were filed by Kenneth John Linstead (the applicant) on the 4th of September 2023, in respect of the Te Horo 3 No 1-31 block (the Block). The first seeks a rehearing of an injunction application filed by the Paora (Paul) Whānau Trust (the Paora Trust) against Mr Amadeus Tohu and Te Orewai Te Horo Trust (the Trust). The Court dismissed that injunction application on the 28th of July 2023.

[2] The second application seeks an urgent injunction pursuant to section 19(1)(b) of Te Ture Whenua Māori Act 1993 (the Act) preventing the occupation by Mr Tohu on part of Kaikou No 3 9B block, which is amalgamated within the Block.

[3] Neither of Mr Linsteads applications named the Trust as a party to the proceedings.

[4] On the 12th of September 2023, Mr Linstead filed additional applications to partition the Kaikou No 3 9B block out of the Block as well as an application to partially terminate the Trust (the Partition Applications).

[5] He then filed an amended application for Partition, Partial Termination of Trust and other Associated Orders on 28 May 2024 (the Amended Partition Application). This application seeks to amend the Partition Applications and to add an additional cause of action, equitable estoppel, as well as join the trustees of the Trust as a party to the proceedings.¹

[6] This decision does not address the Partition Applications or the Amended Partition Application for reasons I outline later in this decision.

Kōrero Whānui*Background*

[7] The Block is held by the Trust as an Ahu Whenua Trust. Orders were made by the Court creating the Trust in 1986.

¹ Amended Application for Partition, Partial Termination of Trust and Other Associated Orders, 28 May 2024, at [5].

[8] The list of owners in the land shows there are 22,327.2671 shares in the Block held by 1677 beneficial owners. It also shows that the Paora Trust holds 341.0737 shares in the the Block.

[9] Mr Linstead is a registered owner in the Block with 148.8920 shares.

[10] The schedule of current owners does not show Amadeus Tohu as a shareholder. However, Dick Tohu, the father of Amadeus Tohu, who has passed on, holds 25.1606 shares in the Block. Amadeus Tohu has applied to succeed to his father's shares in the Block.

[11] Dick Tohu previously held a licence to occupy an area on the Block. Dick Tohu's licence to occupy for 30 years was contained within a Tripartite agreement dated October 1991. This licence, which has expired, was registered with the Māori Land Court.

[12] On the 5th of July 2022, the Trust granted Amadeus Tohu and Awhina Wickens a licence to occupy an area on the Block (the Licence to Occupy). The Licence to Occupy and documents filed in support of the application depict the area that Amadeus Tohu intends to build on and occupy being the same area that Dick Tohu previously held a licence to occupy for.

[13] The Licence to Occupy granted to Amadeus Tohu and Awhina Wickens is for a term of 30 years from 5 July 2022 and has been provided to enable *“the licensee to have and live in a dwelling on the licence site, with permanent dwelling on the licence site, from the date of this licence.”*

[14] The Licence to Occupy provides a right of renewal as well as an exclusive right to use and occupy the licence area for the term of the licence.

[15] Amadeus Tohu has entered into contracts with Kāinga Ora to purchase a house to be located on the Block.

[16] The Paora Whanau Trust injunction application sought to restrain the Trust from granting Mr Tohu a Licence to occupy the Block which would also restrain Mr Tohu from giving effect to the contracts he had with Kāinga Ora. They say that the land within the

Licence to Occupy was formerly owned by their whānau prior to amalgamation and they sought to occupy it themselves.

[17] I heard and dismissed the Paora Trust injunction application on the 28th of July 2023. In that decision I found that the trustees were acting within their power in issuing a licence to occupy to Mr Tohu and that the process undertaken by Mr Tohu to seek a licence to occupy was appropriate. I found that there was no actual or threatened trespass to the land and there was not a tenable combination of resolution of issue of law and fact on which the injunction application could succeed.

[18] Mr Linstead's application asks the Court to rehear the Paora Whānau Trust injunction application on the grounds that he is an interested party, and he did not receive notice of the original injunction application hearing. Therefore, he was unable to participate in those proceedings.

[19] He also sought to provide evidence of his intention to partition out part of the lands within the Block.

[20] He says that the Trust have been discussing the de-amalgamation of the block for 20 years and that his partition application has been filed due to the inability of the Trust to complete that de-amalgamation.

Ngā take

The issues

[21] The rehearing and injunction application was filed on 4 September 2023. The application only names Matehaere Paul-Palmer and Amadeus Tohu as parties to the proceeding. The applicant did not name the Trust as a party to the proceeding.

[22] Mr Linstead seeks the opportunity to provide evidence to the Court about their intention to partition which he says was not available at the Paora Trust hearing. He says that he has sufficient support from the owners and descendants of the Kaikou No 3 9B2B block to seek a partition of the land.

[23] The applicant suggests that he will be significantly prejudiced, if the decision of the Court to dismiss the Paora Trust injunction remains. The parties accept that he is a person that has an interest in the matter.

[24] The applicant has also applied for an interim injunction pursuant to s 19(1)(b) of the Act in order to maintain the status quo and to clarify the situation for the benefit of both himself, and Mr Tohu so there is certainty going forward.

[25] The issues to be determined are:

1. Is the application defective?
2. Was an application for a rehearing sought within the appropriate statutory period?
3. If not, has the applicant satisfied the Court that it could not have reasonably been made sooner?
4. Are there natural justice issues that apply?
5. Is an interim injunction required in order to maintain the status quo until the partition and partial termination of trust applications have been heard?

The application process

[26] The applications were both filed on 4 September 2023. A joint affidavit in support of the applications was filed by Mr Kenneth Linstead and Ms Janeene Panoho dated 3 September 2023.

[27] Further evidence was filed by the applicant on the 12th of September in support of the Partition application. That evidence was sought to be relied upon for these applications.

[28] On 29 November 2023 the Court issued directions as to service of the applications. Those directions included service by the applicant on the Trust. No evidence was filed by the Trust. Mr Tohu filed affidavit evidence in response in May 2024.

[29] The Court held a judicial conference on the 4th of June 2024 and directed that only the rehearing and interim injunction application would be set down for hearing on the 2nd of July 2024. The Court also alerted counsel to the fact that the Trust had not been named as a party to the proceeding².

[30] The Court directed that if further evidence for the rehearing and injunction application needed to be filed, then the applicant must do so within 14 days of the hearing commencing and Mr Tohu and the Trust were to file any further evidence no later than five days prior to the hearing.

[31] No further evidence was filed by the applicant or the Trust. The only documentation filed by Mr Tohu was a sworn copy of his affidavit to replace the unsworn version filed with the Court in May 2024.

[32] A hearing was held on the 2nd of July 2024. The Court heard evidence from the applicant, Ms Panoho and Mr Tohu, and submissions from counsel for the applicant, respondent and the Trust.

[33] Having had that hearing the Court is in a position to issue this decision.

Te Ture *The Law*

[34] The Court's jurisdiction with regard to rehearings can be exercised if the following criteria are met:

1. Any person interested in any matter in respect of which the Court has made an order may file an application for the rehearing of an application;

² 274 Taitokerau MB 35

2. A rehearing is not to be granted on an application more than 20 days after the order, unless the judge is satisfied that the application could not be made sooner; and³
3. An affidavit in support should be filed, setting out the circumstances that have given rise to the rehearing. This should include details of the order for which the rehearing is sought.

[35] In addition, in *Henare v Māori Trustee* the Māori Appellate Court noted that a rehearing requires the balancing of two considerations:⁴

1. ensuring there is proper administration of justice; and
2. balancing that with the need for finality of court proceedings rather than allow an unsuccessful party another opportunity to argue their case without good reason.

[36] The Court in *Henare* also identified circumstances in which a rehearing may be justified which are:⁵

1. A judgment has been obtained by an unfair or improper practice of the successful, party to the prejudice of the opposite party; or
2. Material evidence has been discovered since the hearing which could not reasonably have been foreseen or known before the hearing; or
3. Any witness has been guilty of such misconduct as to affect the result of a hearing; or
4. A rehearing appears necessary in order to avoid possible injustice to the applicant and there is no injury or prejudice to the opposing party.

³ Te Ture Whenua Māori Act 1993, s 43(2).

⁴ *Henare v Māori Trustee – Parengarenga 3G* [2012] Māori Appellate Court MB 1 (2012 APPEAL 1).

⁵ At [19].

[37] However, the Court also stated that an application for rehearing will not be allowed merely for the purposes of repairing omissions in the presentation of an earlier case or for reshaping that case.⁶

[38] Further, even where it is established that there has been a miscarriage of justice such that a rehearing is justified, the justification is discretionary, and a Court may very occasionally consider it inappropriate to grant a rehearing.⁷

[39] In terms of an urgent injunction, s 19(1)(b) of the Act provides the court with the jurisdiction to issue an order by way of injunction prohibiting any person, where proceedings are pending, before the Court or the Chief Judge, from dealing with or doing any injury to any property that is the subject matter of the proceedings or that may be affected by any order that may be made in the proceedings.

Is the application defective?

[40] As indicated earlier, the application did not name the Trust as a party to the proceeding. This is surprising as the original application sought an injunction against the Trust and Mr Tohu. Secondly, the land which is the subject of the injunction application is held by the Trust.

[41] The Memorandum filed by Wackrow Panoho & Associates in conjunction with the application also names Matehaere Paul-Palmer as the first applicant and Mr Linstead as the second applicant. This is inconsistent with the Form 1 application which only names Mr Linstead as the applicant.

[42] Counsel for Mr Linstead advised the court that it was recognised that the Trust needed to be included in the proceedings and confirmed that they did not represent the first applicant, Ms Matehaere Paul-Palmer.⁸ In addition that there is only one applicant, Mr Linstead.⁹

[43] The applicant sought to address omitting the Trust from the application by filing an amended application on the 28th of May 2024. However, that amendment specifically states

⁶ At [20].

⁷ At [21].

⁸ 274 Taitokerau 36

⁹ Oral submissions of Counsel for Mr Linstead at hearing, 2 July 2024

that it is an amendment to the Partition Applications only. Therefore, the defect in not joining the Trust remains.

[44] That said, I note that the trustees of the Trust were listed as an affected party on the application. Rule 4.13 of the Māori Land Court Rules 2011 provides that:

- (1) The applicant must notify the application to every person named in the application as a party and any other person materially affected by service on that person.

[45] Counsel for the applicant advised that the application had been served on all parties including the Trust. Even if that were not the case, the Court directed that all parties, including the Trust, be served. Service on the Trust was effected.

[46] The Trust appeared at the hearing and contested the evidence presented and made submissions.

[47] Given the above, despite the defect in the original application, it is not determinative.

Was an application for a rehearing sought within the appropriate statutory period?

[48] The original injunction application sought by the Paora Whānau Trust was dismissed by the Court on the 28th of July 2023. Orders were made that day.

[49] Therefore, an application for a rehearing needed to be filed by the 25th of August 2023.

[50] The application for a rehearing was not filed until the 4th of September 2024 meaning that the application has been filed outside of the statutory timeframe.

[51] Therefore, I am restrained from granting a rehearing unless I can be persuaded that the application could not have reasonably been made before 4 September 2023.

If not, has the applicant satisfied the Court that it could not have reasonably been made sooner?

[52] In his joint affidavit dated 3 September 2023, the applicant acknowledged that he was aware that Mr Tohu was seeking to build on the land and that he was aware that something had been happening in the Māori Land Court involving that land.

[53] His evidence was that a whānau hui was called to discuss the issue on the 12th of August 2023 (the August Hui), and at that hui, the whānau resolved to partition the land on behalf of the Peeni whānau.

[54] Under cross-examination, Ms Panoho, a co-deponent with Mr Linstead, acknowledged that the injunction decision dismissing the application by Matehaere Paul-Palmer had been discussed at the August Hui. She also stated that they were aware and had discussed the decision dismissing the Paora whanau injunction application at that hui.

[55] Ms Panoho stated that on the 15th of August 2023, they engaged legal counsel to file a partition application. She also says that upon engaging a lawyer that they were advised that they would need to need to address the injunction application filed by Ms Paul-Palmer that had been declined, in addition to the partition application.¹⁰

[56] However, the rehearing application was not filed until 4 September 2023. The explanation proffered for filing it outside of the statutory timeframe was that the applicants wanted to meet with their whānau and file an application for partition.

[57] The whānau hui was held on 12 August 2023, 13 full days and nine working days prior to the filing date. The applicant also confirmed that they instructed counsel on the 15th of August. Therefore, from the date of instructing counsel, they had 10 days to file a rehearing application.

[58] The applicant says that they wanted to file a partition application and due to the complexities involved in that application, delay occurred in the filing of the rehearing and injunction application.

¹⁰ Joint Affidavit of Linstead and Panoho, 3 September 2023, para 7

[59] However, the applicant filed his partition application, separate to the rehearing application, and eight days later.

[60] The rehearing application filed was not complex or overly detailed. It comprised a general application form, a five-page memorandum of counsel, and a five-page joint affidavit. None of those documents provided any substantive detail about the partition application.

[61] There is nothing in the rehearing and injunction application that suggests that it could not have been filed within the statutory timeframe. The partition application should not have delayed the rehearing and injunction application.

[62] Therefore, I consider that the application could have and should have been made sooner. There is no reasonable or sufficient grounds to justify the late filing of the rehearing application.

Are there natural justice issues that apply?

[63] The relevant parties to the Paora Whānau Trust injunction application were the Paora whānau, the Trust and Amadeus Tohu.

[64] I note that prior to the injunction decision being issued on 28 July 2023, the Court held a judicial conference with the parties on 30 June 2023,¹¹ and directed (by consent) that a facilitated hui be held between the parties with the assistance of a legally trained facilitator paid for by the Court.¹² That hui was held with the independent legally trained facilitator and a report was filed by him on 15 July 2023¹³ indicating that there was no successful resolution.

[65] The Paora whanau then had a further hui of their own on 22 July 2023¹⁴ and following that, their decision continued to be to oppose Amadeus Tohu building on the land.

¹¹ 266 Taitokerau MB 217-228

¹² At 228

¹³ 262 Taitokerau MB 188

¹⁴ At 189

[66] The point here is that, prior to the Courts decision on 28 July 2023, there was ample time and opportunity for shareholders, who had an interest in the land, to be involved in the discussions around the Licence to Occupy that the Trust were proposing to provide to Amadeus Tohu. I see no procedural defect in this process.

[67] The applicant says that his whānau are asking for a rehearing so that they can present their own position and because they have instructed a lawyer to apply to partition out the Kaikou block. He says that they would be prejudiced if Mr Tohu was able to build on part of their land.¹⁵

[68] Counsel for the applicant submitted that as Mr Linstead was not notified of the injunction hearing that he would be denied a right to natural justice if he and his whānau were not heard now, as they too had grounds for opposing Amadeus Tohu's licence to occupy. She submitted that the applicant had further evidence which is relevant to the proceeding which was not available as part of the original proceedings.

[69] Service is a matter for the applicant. In accordance with rule 4.15 of the Māori Land Court Rules 2011, the applicants representing the Paora whānau, served the Trust and Mr Tohu with the application and supporting documents.

[70] In so doing, the obligation pursuant to rule 4.13(1) was satisfied. Mr Linstead suggests that as an owner in the land he should have been notified. Rule 4.13 does not require that to occur. There is no obligation to notify every shareholder in the block. The Trust represent all shareholders with respect to the administration and management of the land. Therefore, there was no obligation to notify Mr Linstead of the hearing.

[71] I also note that if Mr Linstead's position were to be accepted then he would also have had an obligation to serve his application for rehearing and injunction on all shareholders. He has not done that.

[72] Therefore, I find that there is no denial of his right to natural justice on the basis that he was not notified of the Paora whānau injunction hearing.

¹⁵ Joint Affidavit of Linstead and Panoho, 3 September 2023, at para 9.

[73] In terms of the additional evidence, the question is, has this evidence been discovered since the hearing which could not reasonably have been foreseen or known before the hearing.

[74] Mr Linstead says that in the early 2000s the Trust offered live buying of shares in the land to whānau as part of a de-amalgamation process that the Trust sought to implement. He says that through that de-amalgamation process, the Trust made representations to him and others that the Kaikou 3 Lot B9B2 block would be returned to their whānau ownership and control.¹⁶

[75] This de-amalgamation process has been known for over 23 years. It cannot therefore be said that this was evidence discovered subsequent to the hearing.

[76] To allow its production now for the purpose of a rehearing would be permitting the presentation of material that had earlier been omitted.

[77] I do not consider that it is appropriate to do that.

Kōrerorero

Discussion

[78] There can be no debate that the application was filed late. Ms Clark submitted that I should start the clock running in terms of the 20 working day time-frame from the 12th of August 2023. I did not accept that submission at the hearing and I do not accept it now.

[79] As to whether there is a reasonable justification for the delay the only reasons advanced were the need to have a whānau hui and the partition application.

[80] Having found that a whānau hui had been held on 12 August 2023 and the partition application filed eight days after the rehearing application, I see no reasonable basis for the delay due to the need for a whānau hui.

[81] I also do not consider that the lack of notice to Mr Linstead of the injunction hearing is a ground for rehearing. There is no procedural defect there.

¹⁶ Joint Affidavit of Linstead and Panoho, 3 September 2023, para 10.

[82] I also do not accept the proposition that evidence around the de-amalgamation process and partition was not discoverable or available prior to the hearing. It clearly was. It cannot be said to be new evidence and it should have been reasonably foreseen or known about prior to the hearing.

[83] I consider that in the interest of the proper administration of justice, balanced with the need for finality of court proceedings, it is not appropriate to grant the applicant another opportunity to argue this case.

[84] I also consider that a rehearing would cause injustice, injury and prejudice to Amadeus Tohu and the Trust. I do not consider any of the other circumstances outlined in the *Henare* decision justify a rehearing in this situation.

[85] Therefore, I dismiss the application for rehearing.

Tono whakatāpu mō tētahi wā
Interim injunction application

[86] Counsel for the applicant maintains that the granting of an interim injunction is appropriate as it maintains a status quo until the respective interests in the lands can be determined.

[87] The applicant has filed an injunction pursuant to s 19(1)(b) of the Act.

[88] In determining whether to grant an interim injunction I must decide whether there is a serious question to be tried in the application. In making that determination I must consider the applicable law and associated facts, ascertain where the issues lie, and whether there is a tenable combination of resolution of the issues of the law and fact on which the application could succeed.

[89] I must consider all relevant factors and decide where the balance of convenience lies. Overall, I must consider the overall justice of the case in light of the kaupapa and principles of the Act.

Serious question to be tried?

[90] As I previously determined in my original injunction decision the Trust has the power to determine the use of trust property by beneficial owners. The applicant and Ms Panoho both acknowledge and accept that the Trust is legally entitled to grant occupation licences over all the blocks it owns.¹⁷

[91] Mr Tohu has appropriately sought the consent of the Trust to build on and occupy the land. He has applied to succeed to his father's shares in the land. Mr Tohu under cross-examination confirmed that he sought to occupy the land and place a house on the particular site that his father had originally resided upon and he believed that the Licence to Occupy that he has sought from the Trust was in that location.

[92] The Trust have granted Mr Tohu and Ms Wickens a licence to occupy an area of land. Mr Tohu did not, nor was he required to provide a survey plan of the land in respect of which he sought a licence to occupy. He did provide a site plan for the house in conjunction with his application to the Trust and that is attached to the licence to occupy.

[93] Rule 4.6 of the Māori Land Court Rules 2011 provides that a plan must be filed in certain cases. One such case is where an occupation order is sought under s 328 of the Act. Mr Tohu has not sought an occupation order pursuant to s 328 of the Act and as such a plan was not required from him.

[94] There was no suggestion that the Trust were acting ultra vires of their trust deed or powers. All parties acknowledged that Mr Tohu has spent in excess of \$74,000.00 to erect a building on the land and for various infrastructure matters.

[95] Counsel for Mr Tohu submits that it is clear from the record that Dick Tohu had a house on the site and had been granted a licence to occupy that area of land. The licence to occupy is recorded in the memorial schedule which is publicly available.

¹⁷ Joint affidavit of Linstead and Panoho, 3 September 2023, para 10.

[96] Therefore, she says it cannot be said that the applicants were unaware or did not have the capacity for it to be known that Dick Tohu had a licence to occupy this land and it seems this particular site.

[97] The applicant, Mr Linstead holds undivided shares in the Block. The granting of a licence to occupy to Mr Tohu does not change that position.

Equitable Estoppel

[98] The applicant suggests that an interim injunction is required so that his whānau's interests in the land can be properly recognised through the partition application, and to dismiss the interim injunction application and allow the licence to occupy to proceed is prejudicial to their application. He has relied on an equitable estoppel argument to support this proposition.

[99] This proposition was pleaded as an amendment to the Partition Applications. It was not pleaded as an amendment to the rehearing and interim injunction applications. I was minded to dismiss this ground because of that omission.

[100] However, counsel for the applicant, and respondent made submissions addressing this issue, therefore I propose to deal with it.

[101] Mr Linstead says that the Trust by their words and/or conduct created a belief or expectation that his whānau would be able to partition out the Kaikou 3 Lot B9B2 and they have relied on that representation from the trustees.

[102] He says it is unconscionable for the Trust to now depart from those representations and he has suffered a detriment through expenditure of funds which has not yielded the promises made by the Trust in 2000.¹⁸

[103] Counsel for the Respondent submit that the evidence shows that as part of that de-amalgamation process not only were live share purchases required, but there were a number

¹⁸ Joint affidavit of Linstead and Panoho, 3 September 2023.

of pre-requisites to the de-amalgamation process which needed to be satisfied before applications for partition to the Māori Land Court could be made.

[104] Those matters included things such as the selection of the blocks to be dealt with, identification of individuals or whānau that would receive control of the individual or whānau blocks, the walking of boundaries to mark boundary lines which were to be agreed through the signing of a boundary agreement form in conjunction with the trustees, and boundary fences were to be erected and paid for by owners and neighbours.

[105] The document which records these conditions also says that not only must shares be purchased but those conditions must be completed before the de-amalgamation process application would be conducted. Until then, the document goes on to say:¹⁹

12. However, at this stage individuals or whānau utilising their blocks of land must accept one of the two following conditions:
 - (a) Remain under the Te Orewai Te Horo Trust and be apportioned a percentage of the yearly rates in proportion to the area being utilised.
 - (b) Partition out from Te Orewai Te Horo Trust and be rated accordingly by your local District Council.

[106] Under cross-examination, Mr Linstead acknowledged that not all the pre-requisites set out in the de-amalgamation document to get the land back into the ownership and control of former owners had been completed. There was no agreement reached with neighbours around boundaries, no surveyors appointed to survey the boundary, and no fencing had been erected.

[107] He also acknowledged that if the de-amalgamation process hadn't been completed, then there could be no expectation of the Trust making an application on the owners' behalf to partition the land. The Court also notes that in the Chairmans report for the 2001 AGM, he states²⁰;

“As soon as the requirements as set out in the “De-amalgamation Process” guidelines have been met and the boundary fences have been put in place an application from the trust shall be submitted to the Court on your behalf”

¹⁹ ‘Te Orewai Te Horo Trust – Deamalgamation Process’, included as attachment 1K to the Joint Affidavit of Kenneth John Linstead and Janeene Tutu Panoho dated 12 September 2023.

²⁰ Joint Affidavit of Linstead and Panoho, 12 September 2023, appendices, page 33,

[108] Counsel for Mr Tohu also asserts that Mr Linstead and other owners had the opportunity to partition out their lands in accordance with 12B of the de-amalgamation process. However, he has not done so until now.

[109] She submits that Mr Linstead purchased his shares in 2001 and has waited over 22 years before applying for a partition order. In so doing he now seeks to rely on a de-amalgamation process that was suggested over 20 years ago that has not been completed. She submits that after 23 years with no progress, one would have expected Mr Linstead to be proactive in finding out what is happening.²¹

[110] She submits that the applicant and his whānau have not performed their obligations under the de-amalgamation process. They have not obtained boundary agreements with neighbours; they have not selected owners or spokespeople for those owners in relation to the blocks and therefore have not completed important stages of the de-amalgamation process.

[111] Ms Park specifically submitted:²²

It is not reasonable for him to suggest that the Trust would finish the partition process, in circumstances where he hadn't completed the de-amalgamation process himself.

And:²³

... Mr Linstead didn't finish that process, he didn't go along with that process, and his evidence this morning is that even in 2021, on his behalf and from his whānau, there was no definitive proposal to partition out their shares. So, I don't know how there could have been an expectation back in 2001 that their shares would be partitioned out and given to him.

[112] She goes on to say:²⁴

... by 2021 there was still at that stage no definitive proposal to go ahead with that process and it was only at the hui on the 12th of August 2023 that the whānau made a resolution that they were going to pursue a partition of their shares.

[113] The point counsel makes is that if the applicants seek equity, then they must do equity. They must come with clean hands. If they have not completed the pre-requisites to give

²¹ Submissions of Counsel for the Respondent, 31 May 2024, para 24(b).

²² Oral submissions of Counsel for the Respondent.

²³ Oral submissions of Counsel for the Respondent.

²⁴ Oral submissions of Counsel for the Respondent.

effect to the de-amalgamation process, then they cannot now rely upon that same self-induced incomplete process to seek an enforcement of obligations against the Trust.

[114] I agree with that proposition. As such I reject the argument that equitable estoppel should apply here to maintain the status quo.

Damages and appropriate remedies

[115] In this matter counsel have said damages are not an appropriate remedy. As there has been no breach of obligations by either the Trust or Mr Tohu. I also consider that damages are not an appropriate remedy.

Where does the balance of convenience lie?

[116] In addition to the fact that I consider that there has been no breach of obligations by either the Trust or Amadeus Tohu, counsel for the respondent suggests that there are few matters which are relevant to this consideration:

1. The conduct of Mr Tohu in this matter can hardly be criticised. He has approached the Trust for licence. They are the owners of the land. He is not required to seek the consent of shareholders or prior land owners.
2. He did not obtain a survey plan because one was not required. He approached the Trust to occupy the land on the basis that he understood it was where his father previously occupied.
3. The Trust then considered his application and granted it on the same understanding, that the area was where his father formerly resided and had held a previously registered licence to occupy.
4. He has had to deal with an earlier injunction application filed on this matter and now a rehearing and second injunction application seeking to restrain him from living on and dealing with the land that he has committed considerable resources to.

[117] I consider that the balance of convenience lays in favour of the Trust and Amadeus Tohu. I see no reason to question the conduct of either of them.

[118] Counsel for the applicant submits that to fail to grant an injunction application would render the partition application nugatory. I do not agree.

[119] The granting of an occupation licence in favour of Mr Tohu does not restrain the partition application proceeding.

[120] Therefore, when considering the overall justice of the case and in light of the kaupapa and the principles of the Act, it is this Court's determination that the application for injunction shall also fail and this application should be dismissed.

Whakataunga
Decision

[121] The application seeking a rehearing and urgent injunction is dismissed pursuant to Rule 6.28 of the Māori Land Court Rules 2011 and orders are to issue accordingly.

I whakapuaki i te 4:00pm i Whangārei, 5th o ngā rā o Mahuru i te tau 2024.

Pronounced at 4:00pm in Whangārei on Wednesday this 5th day of September 2024.

TKTAR Williams
JUDGE