

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

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

AP-20240000014126

WĀHANGA <i>Under</i>	Section 18(1) (a), 19, and 20, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Tokaanu Township Section 2B – injunction against any person in respect of any actual threatened trespass or other injury to any Māori land or Māori reservation
I WAENGA I A <i>Between</i>	DAVID BARRY LIVINGSTONE Te kaitono <i>Applicant</i>
ME <i>And</i>	LILLIAN MAERE NEE RAWHITI Te kaiurupare <i>Respondent</i>

Nohoanga: 495 Aotea MB 115-118 dated 20 December 2024
Hearing (Heard at Tūrangi, 16 January 2025)

Whakataunga: 16 January 2025
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ M J DOOGAN
Judgment of Judge M J Doogan

[1] I am going to give a preliminary view on some issues, and at the end of it, I am going to issue some directions and give all parties a chance to respond to some matters. Because it is an oral, preliminary decision or determination, I will reserve that right to tidy it up when it gets typed back, to make sure that it is accurate on any of the matters of fact. I think it is important that I give the parties some guidance, which is why I want to do this now.

[2] This matter first came before me by way of an application for an interim injunction, filed by Mr David Livingstone in December 2024. By minute and orders dated the 20th of December, I issued an interim injunction at 495 Aotea MB 115-116. The injunction is in the following terms:

Pursuant to section 19 Te Ture Whenua Māori Act 1993, an interim injunction is granted until further order of the Court prohibiting Te Awhina Lillian Winsom Maere also known as Lillian (Poppit) Maere, her husband, partner, whānau agents, or assigns from damaging or attempting to damage the whare constructed by Mr Livingston adjacent to the whānau papakāinga whare situated at 121 Puanga Street Tokaanu in which she has been residing since 2020. Ms Maere together with her husband, whānau, agents, or assigns are also ordered to remedy any damage done to the whare and if necessary reinstate any structure or object removed from the Tokaanu Township section 2B land.¹

[3] I also, at that time, made directions and orders varying the application to include an application for determination of ownership of the structure built by Mr Livingstone, adjacent to the main whare situated at 121 Puanga Street, Tokaanu, pursuant to section 18.1(a). Also, to address possible recovery and possession of land under section 20 Te Ture Whenua Māori Act.

[4] I made various directions that have led to the setting down of the matter as a special hearing in Tūrangi today, the 16th of January 2025. I have had the opportunity today to hear from Mr Livingstone, and from the respondent, Lillian, and also from Lillian's sister, Kohine, and from a relation of all parties, Martha Tane Metaia. I have been assisted by the chance to hear from all parties, and also by the written statements filed by all parties.

¹ 495 Aotea MB 115 (495 AOT 115)

[5] The application relates to the Tokaanu Township Section 2B. There are 78 owners in this land, and it is an area of 1.6 hectares.

[6] I intend to issue this preliminary determination in the hope that it is of assistance to the parties. I do not traverse all of the background but want to highlight the following.

[7] The land and the structures on the land are of considerable significance to all of the owners. It is the site of the dwelling of the original homestead on the land which was the papakāinga of Takarea Te Heuheu, the first born daughter of Horonuku Tukino Te Heuheu the fourth and the home of her descendants for five generations.

[8] Prior to 2010 the old whare, built around 1880 or 1883 was in a state of disrepair. Attached to the evidence of Kohine, there is a photo showing three structures, and I understand of those three structures, only one of those buildings remain and that is the small whare at the end of the line of buildings.

[9] Around about 2010, Mr David Livingstone, with the support of the haukāinga of his parent's generation at that time, arranged for the demolition of two of the structures on the land and the moving on to the land of a building, formally a science block at the Tūrangi High School. The old homestead was one of the buildings demolished. Mr Livingstone organised the removal, transportation, and placing of that structure on the land. The idea of the owners, as I understand it, was that this building and over time further developments, would serve as something in the nature of a papakāinga for the owners when they returned to Tokaanu.

[10] Also on the land are other temporary structures, placed by the various owners over time. This includes at least three small cabins or structures placed there by Martha, and also including a caravan placed by Louise Paurini. I understand from Martha that the idea is that these would be available for her immediate whānau, also for wider whānau when she did not require them. This was part of the wider vision that the land be available for owners and returning whānau coming back to Tokaanu.

[11] There is no question of rent being paid for occupation of any of these structures from time to time. They are in the nature of a shared whānau asset, but subject to understandings

about the right of the person building or putting the structure on the land to have the use of their structures when they require it.

[12] In about 2017, Mr David Livingstone built an addition to the science block building, which is in the nature of a self-contained flat. There is a statement on file from Mr Graham Smallman, dated 5 December 2024, confirming that he built David and the late Faith Livingstone's flat or lean-to at their papakāinga homestead at 121 Puanga Street, Tokaanu. Mr Smallman says that:

David paid for all the materials and for his labour costs. He also had his cousin Whata Otimi labouring for him. David did all the electrical installation and paid for his own materials. He did all the plumbing and paid for the kitchen units, which I installed. He also built an indoor, outdoor area which David paid for as well. Faith and Dawn painted the inside, and Whata and David painted the outside. David paid for the paint and other incidentals.

[13] Once the addition or lean-to was complete, David, his late wife, Faith, and daughter, Dawn lived in the whare at Puanga Street until around February 2020. At that time, as COVID was developing, David and his whānau moved into Tūrangi, so as to have greater space from the wider whānau.

[14] At around the same time, just before the borders were closed, David's cousin, Lillian, and her husband returned from Australia where they had been living for approximately 32 years. Lillian said that her initial intention had been to reside at a dwelling in Tūrangi, but that her aunty, Louise Paurini, said that she should return to Tokaanu.

[15] There is some difference between the parties about the circumstances in which Lillian and her husband came to live at Mr Livingstone's whare in Puanga Street. Louise Paurini, in a statement, dated 12th December 2024, said:

When COVID happened, Lillian and her husband, Taui, came home from Australia the day the New Zealand borders shut. David and Faith decided to move to his mum and dad's property at 44 Gosling Grove, Tūrangi to isolate from whānau at our papakāinga in Tokaanu. Taui was recovering from a recent heart attack, so I allowed them to move into David, Faith, and Dawn's whare temporarily to give

them some privacy. I mentioned it to David, and he agreed but said this was only a temporary arrangement until Tauí got better.

[16] Lillian says that she did not move into David's whare with the approval of her aunty Louise but had gone back more with a view to assist with the care of the land. While there is some difference between the parties as to the exact circumstances in which Lillian and her husband moved into David's whare, I am satisfied that the arrangement was essentially an offer by Louise Paurini to Lillian and her husband, which she accepted to occupy the whare or lean-to built by David. This was so as to provide them with privacy and space whilst her husband recovered.

[17] I am also satisfied that at around about that time Mr Livingstone was made aware of this arrangement by his aunty Louise, and that while expressing some dissatisfaction, he agreed to it on the basis that his whanaunga could have a place while Tauí recovered.

[18] There has been some difference of view between the parties as to when Lillian was first asked by either Louise Paurini or Mr Livingstone to vacate the property. Mr Livingstone maintains that after COVID finished, he indicated to Lillian that he would like his place back. Lillian maintains that no such demand was made until matters came to a head in August 2024, at which time there was a conflict, which has led to Mr Livingstone facing criminal charges, which are still before the District Court.

[19] Lillian says that at this incident in August 2024, she did make a threat to burn the whare down and that this was the only time that she has made such a threat. There is conflicting evidence about this also, as there is other evidence before the Court that suggests that the threat had been made on more than one occasion to various whānau members. Not just to Mr Livingstone.

[20] I granted the interim injunction on the 20th of December because I was satisfied that, from the information then available, I should take that threat seriously. Whilst Lillian has today assured me that she made that threat in the heat of the moment, I think on balance that the interim injunction should remain in place, pending further steps in this proceeding. It will remain in place until further notice.

[21] Both Lillian and her sister Kohine express support for the idea of establishing a trust over the land, so that there could be a more structured process by which decisions could be made for future use and occupation of the land. Both Kohine and Lillian also were open to the possibility of the Court providing facilitation or mediation to assist with the forward progress of the issues that have brought the matter to Court, and the possibility of establishing a trust.

[22] Mr Livingstone, on the other hand, would like the Court to focus on his wish to regain possession of his extension or whare at Tokaanu. He does not believe it is fair that his cousin has had the use of that place for over four years.

[23] I raised with the parties, the wish to conduct a site visit, so that I can understand in more detail, the nature of the structure that Mr Livingstone has built. There are some restrictions, which we have addressed in Court today, arising from Mr Livingstone's bail conditions, and I understand that the matter will be, again, before the District Court shortly. I would ask Mr Livingstone to keep this Court updated on the progress of that matter and any relevant changes to bail conditions if they are still in place as the matter progresses. I will keep stet option open and make further directions as appropriate in relation to a site visit at the appropriate time. For today's purposes, I wish to give some preliminary indications of my response to the question of ownership of the structure built by Mr Livingstone, and the nature of Lillian's occupation right in that place.

[24] First, I believe there is sufficient evidence before the Court that would enable me to make a declaration under section 18(1)(a), Te Ture Whenua Māori Act, that Mr David Livingstone is the owner of the extension he built in 2017. As this is in the nature of a preliminary determination in order to give the parties guidance, I do not make an order at this stage. I am simply recording that I believe I have a proper, evidential base to make such an order.

[25] The second issue concerns and nature of Lillian's occupation of Mr Livingstone's whare. In the directions issuing the interim injunction, I indicated that on the evidence then available, it appeared that her right to occupy was in the nature of a bare license or occupation on a grace and favour basis. It remains my preliminary view that that appears to be the case. While there is a conflict in the evidence about when Lillian was first asked by David or

Louise to move out of Davids whare or lean-to it is clear that, certainly, by August 2024 there was clearly no longer any implied or express consent for her to remain at that place.

[26] I also have regard to the purpose recorded in the Preamble, section 2, and section 17 of Te Ture Whenua Māori Act. Those provisions collectively encourage the Court to try to, among other things, find practical solutions to the problems arising from the communal ownership of Māori land as taonga tuku iho.

[27] In particular, in section 2, I am conscious of the direction to the Court that the Act should be interpreted in a manner that best furthers the principles set out in the Preamble to the Act. The Preamble confirms the intention of Parliament that the discretions and powers available under the Act, be exercised as far as possible in a manner that facilitates and promotes the retention, use, development, and control Māori land as taonga tuku iho by Māori owners, their whānau, their hapū, their descendants, and that protects wāhi tapu.

[28] Further, in section 17, I note the direction to the Court, that in promoting the primary objective of assisting owners with the retention of Māori land and the effective use, management, and development of that land by the owners, the court should provide ways to determine or facilitate the settlement of disputes and other matters among owners. This includes protection of minority interests in any land against an oppressive majority, and to protection of majority interests against an unreasonable minority. Also to ensure fairness in dealings with the owners of any land in multiple ownership, and to promote practical solutions to problems arising in the use or management of any land.

[29] I have regard to those principles. I also have regard to the evidence I have available to me, as to the history of this particular whenua and the vision that owners have had in the past and have carried forward to the present, that this land be available to the owners in the nature of a papakāinga. With that in mind, the following seems to me, relevant in terms of how I should deal with the issues currently before me.

[30] First, it seems clear that Lillian and her husband were welcomed back on this whenua and that they were granted a right to occupy in accordance with the general whānau tikanga or understanding about this whenua. However, over time, that right to continued occupation, particularly of the extension built by Mr Livingstone, has come into question. For the

purpose of this decision, I do not need to determine precisely when Lillian was given notice that Mr Livingstone wished her to vacate the structure he built. But I am satisfied that, for some time now, Mr Livingstone wish to regain possession of that whare, or the right to control who occupies it has been clear to Lillian.

[31] I am conscious of the evidence provided by a number of parties to the proceeding that Lillian has done work that owners value in terms of looking after the whenua and also for attending to payment of rates and rates arrears. But there is also an issue of fairness in terms of Mr Livingstone's right to access the structure he has built. As I understand it the overall understanding amongst the whānau is that those owners who have placed structures on the land should have the right to occupy them. And also, that those owners would share these places with fellow owners, subject to agreement and notice.

[32] I also accept that there has never been a question of any commercial arrangements such as rent. But I am satisfied that the general understanding is that if an owner places a structure on this land, they should have the right to determine when they wish to occupy the structure they have placed there.

[33] I am also conscious that there remain, in the extension built by Mr Livingstone, a number of personal chattels and items that were there when they left. This fact also indicates that Mr Livingstone did not intend to permanently vacate the structure he had built. At a most fundamental level, I think there is an issue of fairness in relation to Lillian's ongoing occupation in the face of objection by Mr Livingstone. Lillian, in response to a question from me said that she did not think she would agree to move and that this is a matter that would need to be discussed amongst her wider whānau.

[34] As I have said, I believe I have sufficient evidence to make a finding that Mr Livingstone is the owner of the extension at 121 Puanga Street, Tokaanu. It follows from that, that, if necessary, the Court can also consider whether it is necessary to issue orders under section 20, in relation to recovery of possession of land. Because this is in the nature of a preliminary determination, I am not making final orders today. I am giving these indications to the parties so that they may consider their respective positions.

[35] I invite Lillian and her whānau to consider their ongoing occupation of Mr Livingstone's whare. In particular, I invite them to consider indicating to the Court what would be a reasonable period for them to vacate that place.

[36] I will also provide the parties with an opportunity to respond to the invitation I have made for provision of either an independent facilitator or a mediator to work with the parties over the issues that have brought this matter to the Court. Also, around the question of the establishment of a trust or administrative structure over the land for the future.

[37] I have asked the case manager to have this preliminary determination typed back as soon as possible and made available to the parties as soon as possible.

[38] There will be a direction that once the written decision is distributed, all parties will have two weeks, or 10 working days from the date of distribution, to provide a written response to the Court on the matters I have raised.

[39] Once again, I thank the parties for their assistance today. I will issue further directions once I have received responses from the parties. I may call a teleconference at that time if necessary. I will also consider, if need be, arrangements for a site visit once I have your responses to this preliminary determination.

[40] The matter is adjourned to chambers accordingly.

I whakapuaki i te wā 4:00pm i te rā 16 o Maramatahi i te tau 2025

M J Doogan

JUDGE