I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O AOTEA
In the Māori Land Court of New Zealand
Aotea District

AP-20240000013666

WEHENGA *Under*	Sections 236, 237, 238 and 240 of Te Ture Whenua Māori Act 1993
MŌ TE TAKE *In the matter of*	Ngāti Tāwhirikura Hapū Charitable Trust
I WAENGA I A *Between*	TARINA MACDONALD, GLEN SKIPPER, AND RANGI KIPA AS TRUSTEES OF THE NGĀTI TĀWHIRIKURA HAPŪ CHARITABLE TRUST Ngā Kaitono Tuatahi *First Applicants*
ME *And*	BEVERLY GIBSON, SAM WILLIAMS, AND SHARRON WIPITI AS TRUSTEES OF THE NGĀTI TĀWHIRIKURA HAPŪ CHARITABLE TRUST Ngā Kaiurupare Tuatahi *First Respondents*

Kōtitanga: *Hearing*	14 July 2025, 510 Aotea MB 237-298 15 July 2025, 511 Aotea MB 1-94 16 July 2025, 511 Aotea MB 114-240 17 July 2025, 511 Aotea MB 241-327 (Heard at Whaitara) 8 September 2025, 521 Aotea MB 171-213 (Heard at Whanganui via Zoom) 26 March 2026, 535 Aotea MB 102-153 5 June 2026, 537 Aotea MB 1-18 (Heard at Whanganui)
Kanohi kitea: *Appearances*	C Hockly for the First Applicants M Tukapua for the First Respondents
Whakataunga: *Judgment date*	24 June 2026

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

(Ka haere tonu ngā taipitopito kēhi ki te whārangi kei raro)
(Proceedings continued overleaf)

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Ngā taipitopito kēhi e toe ana)
(Proceedings continued)

AP-20250000006035

WEHENGA *Under*	Sections 237, 238 and 240 of Te Ture Whenua Māori Act 1993
MŌ TE TAKE *In the matter of*	Ngāti Tāwhirikura Hapū Charitable Trust
I WAENGA I A *Between*	BEVERLY GIBSON, SAM WILLIAMS AND SHARRON WIPITI AS TRUSTEES OF THE NGĀTI TĀWHIRIKURA HAPŪ CHARITABLE TRUST Ngā Kaitono Tuarua *Second Applicants*
ME *And*	TARINA MACDONALD, GLEN SKIPPER AND RANGI KIPA AS TRUSTEES OF THE NGĀTI TĀWHIRIKURA HAPŪ CHARITABLE TRUST Ngā Kaiurupare Tuarua *Second Respondents*

Whītiki te tangata, marama te kitea

Hei tīmatanga kōrero
Introduction

[1] This is the third substantive judgment dealing with the internal trustee dysfunction of the Ngāti Tāwhirikura Hapū Charitable Trust (the Trust). In an earlier decision dated 5 June 2026, I determined the question of remedies arising from the liability findings between two factions of trustees (Remedy decision). I imposed stand-down periods, but reserved my decision on the balance of remedies including:[1]

(a) Indemnity;

(b) Repayment of remuneration and honoraria;

(c) Orders relating to Te Rewarewa; and

(d) Costs generally.

[2] This decision addresses those matters.

He puretumu
Indemnity

[3] Both factions have applied to be indemnified for the breaches I have found. In short, they say that they should not be required to be personally liable for any losses, including legal costs. Here we have a situation where there is a specific indemnity clause in the Ngāti Tāwhirikura Charitable Trust Deed (the Trust Deed),[2] which in simple terms provides

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1 *Macdonald v Gibson – Ngāti Tāwhirikura Hapū Charitable Trust* (2026) 537 Aotea MB 1-18 (537 AOT 1).

2 Ngāti Tāwhirikura Hapū Charitable Trust Deed, cl 26 states:

26.1 To the extent permitted by law, no Trustee will be liable for any loss suffered or incurred by the Trust unless the loss arises directly from the Trustee's own dishonesty, wilful misconduct or gross negligence.

26.2 No Trustee will be bound to take any proceedings against a co-Trustee for any breach of trust by that co-Trustee.

26.3 A Trustee will be indemnified by and out of the Trust Assets (whether as to the capital or the income) for and in respect of any loss or liability incurred by the carrying out or omission of any function duty or power of the Trustees under this Deed unless that loss or liability is attributable to that Trustee's dishonestly, wilful misconduct or gross negligence.

indemnity to trustees for liabilities incurred in the execution of their duties, subject to an exception where liability arises from dishonesty, wilful conduct or gross negligence.

[4] The obvious identifiable loss relevant to indemnification relates to the issue of legal costs, which includes the Special Aid grant ordered by the Court in favour of both factions. There is also the fact that the Trust has incurred considerable costs by needing to appoint an independent chairperson pending determination of the claims before me. That cost has depleted Trust funds and is directly attributable to the internal trustee dysfunction.

[5] This issue engages the interplay between the Trust Deed indemnity clause and s 131 of the Trusts Act 2019.[3] Both perform distinct but complementary functions. The Trust Deed governs the trustee's entitlement to indemnification from the trust property, subject to any exclusions. Section 131 operates as a separate statutory discretion enabling the Court to relieve a trustee from personal liability for breach where the statutory criteria are met. The existence of an indemnity does not displace the Court's jurisdiction under s 131, although in practice it may reduce the need to invoke it.

[6] Section 131 of the Trusts Act 2019 gives the Court the power to relieve a trustee from personal liability for breach of trust if the trustee has acted honestly, reasonably, and ought fairly to be excused. The requirements are conjunctive, and the jurisdiction is discretionary.[4]

[7] The analysis proceeds in two steps. First, the court must consider whether there is a breach of trust giving rise to liability. If not, the inquiry ends. However, if a breach is established, the second consideration is whether relief should be granted. Honesty and reasonableness are distinct. Honesty is assessed both subjectively and objectively. Reasonableness requires the conduct of a prudent trustee. Honesty alone is insufficient. The final question is whether the trustee ought fairly to be excused. This requires an evaluative

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[3] Trusts Act 2019, s 131.

> **131 Court may relieve trustee from personal liability**
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> (1) The court may relieve a trustee who is or may be personally liable for any breach of trust from personal liability for the breach if it appears to the court that—
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> (a) the trustee has acted honestly and reasonably; and
>
> (b) the trustee ought fairly to be excused for the breach of trust.
>
> (2) The court may relieve the trustee in whole or in part.

[4] *Deputy Registrar v Moeahu – Lot 1 DP 17494 Part Section 2345 New Plymouth (Old Railway Station)* (2021) 437 Aotea MB 3 (437 AOT 3) at [97]-[98].

assessment of all the circumstances, including the seriousness of the breach, the absence of personal benefit, the existence of loss, and the context in which decisions were made.[5]

[8] The jurisdiction is not punitive. It is directed to achieving a just and proportionate outcome. In the context of Māori land trusts, that assessment ought to also be informed by tikanga concepts such as *utu* and *ea*. Relief may be granted in full or in part. The onus rests with the trustees throughout.

[9] Turning firstly then to the assessment arising from the Trust Deed indemnity clause, although I did not make an express finding of dishonesty or gross negligence against any trustee or faction, it is arguable that the conduct of some trustees involved elements of wilful misconduct. For example Rangi and Glen know they participated in conflicted decisions and failed to regulate personal use of the Trust's associated resources. The same could also be said of Beverly and her supporters who they were not following proper trustee process in their day-to-day decision making by excluding the applicants. In my assessment that conduct, viewed collectively, is sufficiently serious to engage the wilful misconduct exception to indemnity in part, albeit at differing levels of culpability, consistent with my liability and remedies decisions.

[10] Considering my finding that there will not be complete indemnity under the Trust Deed, the question now is whether relief ought to be granted under s 131 of the Trusts Act 2019. I am not satisfied, on the evidence, that the trustees always acted honestly in respect of all findings of breach. Some decisions were made in good faith, with others made in bad faith, especially those made by Rangi and Glen. There is no suggestion of personal gain concerning Beverly's faction, but there was a degree of concealment in relation to key Trust decisions. Rangi and Glen did of course gain from the Te Rewarewa situation.

[11] Whilst I accept the context and frustration experienced by all trustees, in a global sense I am not satisfied that, viewed in context, their conduct was reasonable. While some decisions exposed the Trust to risk, the risks never materialised. This is relevant to the level of indemnification.

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5 *Deputy Registrar v Moeahu – Lot 1 DP 17494 Part Section 2345 New Plymouth (Old Railway Station)* (2023) 468 Aotea MB 117 (468 AOT 117) at [32]-[39].

[12] The remaining question is whether the trustees ought fairly to be excused. The breaches were not trivial, but I have found already that many were technical and mitigated to some extent. I find that in these circumstances *utu* and *ea* require some personal responsibility for the situation that these trustees have created. A stand-down period creates some balance, but I find that it must come with a degree of personal responsibility to further improve the imbalance they created. I consider that this is an appropriate case for partial relief.

[13] The trustees are relieved from personal liability on all breaches except for the Special Aid costs and the costs incurred by the appointment of Glenn Tootill. Further, Rangi and Glen are partially relieved from liability with respect to Te Rewarewa an issue I address below.

Te Rewarewa

[14] The issue relating to Te Rewarewa includes whether any removal of buildings or compensation orders should be made as requested by the respondents and what remedy is appropriate having regard to the findings of breach.

Factual and legal context

[15] I previously found that Glen Skipper and Rangi Kipa derived personal benefit from their use of Te Rewarewa and failed to properly manage conflicts of interest relating to that use.[6] Those breaches were among the more serious identified in the proceedings, particularly given their fiduciary nature.

[16] The evidence establishes that Te Rewarewa is reserve land administered by the New Plymouth District Council under a co-management framework. The Trust has use and involvement in the management of that land. There are several structures that have been placed on the land over time including buildings, containers and other facilities. It is also apparent that some of those structures were introduced in connection with hapū initiatives

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6 *MacDonald v Gibson – Ngāti Tāwhirikura Hapū Charitable Trust* (2025) 521 Aotea MB 240 (521 AOT 240).

and projects, whereas others are associated more directly with the actions of individual trustees, namely Rangi and Glen.

[17] The respondents seek a declaration that certain buildings are unauthorised, and in the absence of an agreement between the parties, an order requiring their removal at the cost of Rangi is sought.

[18] In response, the applicants contend that the buildings form part of the hapū asset base, and that their presence has been accepted in practice and decisions about their future should rest with the Trust and the relevant co-governance bodies.

Approach to remedies in respect of Te Rewarewa

[19] In essence, the Court's remedial task is not to punish but to respond proportionately to establish breaches considering the nature of the duties breached, the consequences of the conduct, and the wider interests of the Trust, and in this context, the hapū. Consistent with my earlier Remedy decision, I also adopt a tikanga framework including principles of *utu* and *ea* in determining what remedies I should impose in respect of Te Rewarewa.

[20] In my assessment, three considerations are central to this issue. Firstly, there is no finding that the conduct of Rangi and Glen with respect to Te Rewarewa resulted in measurable financial loss to the Trust. Secondly, the buildings and structures appear to exist within a hybrid context. That is, they partly arise from hapū initiatives and are partly connected to individual use. They are also subject to external regulatory and ownership constraints. Thirdly and fundamentally, the land in question is not owned outright by the Trust and is subject to statutory regulation and the co-management framework involving the council and a joint committee.

[21] For those reasons, I decline to make a formal declaration that the buildings are unauthorised in absolute terms. That characterisation does not reflect the mixed factual context and risks over-simplifying arrangements that have evolved through both formal and informal processes. However, I do find that the placement and use of certain structures occurred without proper trustee approval or formalisation, and that this contributed to the breaches of duty identified in the Liability decision.

[22] The respondents also seek an order that buildings be removed if there is no agreement between the parties. I decline to make such an order at this stage. In my view, removal would constitute a remedy that risks undermining hapū development initiatives associated with the land and intrude into areas that are properly subject to external management arrangements that I may not have jurisdiction to make such orders. This was a point well made by Mr Hockly. In circumstances where no regulatory authority has required removal and the fact that the buildings are currently in use, such a remedy would be disproportionate to the breaches identified.

[23] While removal is not appropriate, the current situation remains unsatisfactory. The use of Te Rewarewa must be transparent, authorised, and consistent with both Trust obligations and the applicable statutory framework. Accordingly, consistent with my supervisory role and the directions I have already given in respect of the directed 2026 annual general meeting (the AGM) I will invite this issue to be discussed at the AGM and by the new trustees in due course.

[24] The final issue to determine is whether Glen and Rangi should compensate the Trust for past use of Te Rewarewa. I accept that their use created a situation of personal benefit, and that their conflicts were not properly managed. However, the extent of any benefit has not been clearly quantified, and the use occurred in a context where there was broader hapū engagement with the land. In those circumstances I find that a strict accounting exercise is unlikely to produce a workable outcome.

[25] Further, consistent with principles of *utu* and *ea*, I consider a restorative response more appropriate. Accordingly, in line with my partial relief of liability finding, Rangi and Glen are to make a reasonable contribution, by way of koha, to the Trust. The quantum or type of koha (i.e. it may be non-monetary) is to be determined by agreement with the newly constituted Trust, or failing agreement, by formal order of the Court.

[26] In summary:

(a) There will be no declaration of unauthorised status of the buildings;

(b) Aspects of the use and placement of structures were undertaken without proper trustee consideration and approval, but there will be no order for the removal of buildings;

(c) The Trust is to regularise all use and occupation of Te Rewarewa following the 2026 AGM; and

(d) Rangi and Glen are to make a koha to the Trust for past use, with the terms to be agreed with the new trustees or determined by the Court in the absence of agreement.

[27] My final observation is that the issues relating to Te Rewarewa sit at the intersection of legal responsibility and hapū development. The Court's role is not to dismantle that development, but to ensure that it proceeds on a proper footing and in line with the charitable purposes of the Trust. The future of Te Rewarewa is best determined by a properly functioning trustee body acting in accordance with their duties, and with the mandate of the hapū.

Te whakahokinga ā te hōnore utu
Repayment of Honoraria

[28] I now turn to the question of whether any trustees should be required to repay or forgive remuneration or honoraria received during the relevant period. The respondents seek repayment of honoraria received by certain applicant trustees on the basis that those payments were received during a period in which they were in breach of their duties. In his submissions, Mr Hockly also seeks the same remedy against the respondents.

[29] Honoraria are typically paid as recognition of services rendered as trustees, not as entitlement to profit, but to compensate for time and contribution. The question here is whether the breaches justify requiring a trustee to repay monies already received, having regard to the nature and the seriousness of the breach, whether the payment was properly authorised, and whether retention of the payment would be unjust. The issue for consideration is whether the breach is of such a character that a trustee ought not to retain the benefit of fees received.

[30] This issue is not unfamiliar to the Court. In previous Māori Land Court decisions, similar matters have been considered, and the law is well established that a trustee must not profit from their office, whether directly or indirectly. Any profit, regardless of whether it is made honestly or dishonestly, constitutes a breach of fiduciary duty. As fiduciaries, trustees must not allow any conflict to arise between their personal interests and their obligations to beneficiaries. Where trustees do profit from their position, they are required to account to the trust for any unauthorised gains derived from trust property.[7]

[31] With respect to the quantum of honoraria, the evidence establishes that Mr Kipa received approximately $5,500.00, Ms Macdonald received approximately $3,750.00, and Mr Skipper declined to receive an honoraria. I have received no evidence as to the amounts received by the respondents.

[32] Further, the evidence confirms that the above payments were approved at the time by the Trust, consistent with prior practice and not shown to have been improperly authorised. There was no evidence that a different position existed in respect of any honoraria received by the respondents, and I proceed on that assumption.

[33] Relevantly, I found that both sets of trustees breached duties to various degrees. I found that the more serious breaches related to the applicants. Of course, I also found overall that the governance environment was one of dysfunction and mutual breakdown. I also found that several breaches were contextual, reactive or mitigated, and importantly there was no finding of material financial loss to the Trust. That said I was adamant that there would have been indirect loss given the level of dysfunction and breakdown.

[34] The respondents argue that honoraria should be repaid by the applicants because their conduct fell below the acceptable standard. That submission has force in principle, a trustee should not retain remuneration referable to conduct that is fundamentally inconsistent with their obligations. However, repayment is not automatic. It must be proportionate and consistent with my overall findings. This is not a case where trustees acted dishonestly or fraudulently, or trust funds were misappropriated. Rather this is a case of wider dysfunction, mutual breaches and a failure of collective governance in many respects. All trustees contributed to the dysfunction within the Trust.

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7 *Rātima v Sullivan – Tataraakina C* (2017) 64 Tākitimu MB 121 (64 TKT 121).

[35] It is also relevant that honoraria were paid for general trustee service and that breaches, although serious in some respects, were not co-extensive with the entirety of the trustee service. In simple terms, trustee business was still being done, mostly by Beverly and her team, given the choice of the applicants to not attend certain meetings.

[36] While non-attendance at meetings and poor conduct diminishes entitlement, it does not follow that all renumeration becomes recoverable. In my earlier decision, I emphasised principles of *utu* and *ea.* A full repayment order against the applicants would operate punitively and risk exacerbating division. It would also be at odds with the shared responsibility identified in this case, particularly when considered alongside the primary remedy of a substantial stand down period especially for the applicants. That said, there will need to be some personal responsibility as it relates to each faction, and I propose to deal with that in the context of my decision about how I treat the Special Aid funding disbursed to each faction.

[37] Having reflected on all my decisions to this point, I decline to order any repayment of honoraria by either party. Such an order in my view will be disproportionate given the mixed findings of breach, the absence of dishonesty or material loss, the collective responsibility for the dysfunction and the severity of my stand down orders.

Ngā utu me te Tāhua Āwhina Motuhake
Costs and Special Aid

[38] I have decided not to make a separate costs award in favour of any party. Firstly, there was no clear-cut winner, with success and failure on both sides. To my knowledge, no party, including the Trust, has incurred out-of-pocket costs in terms of legal fees because of these proceedings. Therefore, I propose to seek the repayment of Special Aid in part by all trustees, to reflect my partial relief findings. This will be by payment in their personal capacity not from the Trust fund.

[39] The Special Aid funding enabled the hearing of this matter without the need for Trust funds to be utilised, or for considerable personal funds to be expended. There was of course

no specific application to the Court to make an order on the use of Trust funds, despite raising this issue early in the proceedings.[8]

[40] Special Aid funding enabled both factions to be legally represented, which was necessary given the complexity and number of claims both ways. The question in this context is whether I should make an order seeking repayment of the special aid funding, which was an issue that I flagged from the outset in my orders of appointment.[9]

[41] Special Aid is not ordinarily recoverable as a matter of course, albeit the Court may issue a charging order, and receipt of Special Aid does not prevent the Court from making an order of costs. Special Aid exists to facilitate access to justice where proceedings raise issues of public or collective importance, where not having access to a lawyer may prevent these important issues to be properly advanced. Repayment may be appropriate where a party has acted unreasonably in bringing or defending proceedings, or litigation is pursued in bad faith.[10] Further, as is relevant here, the Court knowing that the Trust did have resources, may assist with Special Aid on the expectation that there will be a repayment, either from the Trust's fund, or personally, if justified.

[42] This proceeding arose out of entrenched dysfunction within the trustee body, mutual breaches of duties, and a complete breakdown in working relationships. Responsibility for that dysfunction lies with all trustees, albeit to differing degrees. While elements of the applicants' conduct were more serious, the proceeding served a legitimate purpose in clarifying governance failures. It resulted in substantive findings that benefit the Trust. Accordingly, it cannot be characterised as unnecessary or abusive. In effect, all attempts to resolve the matter prior to the applicants filing proceedings were unsuccessful. In my view, a court decision was the only way to resolve the impasse.

[43] In light of the above factors, and my decisions not to require the repayment of honoraria, coupled with the fact that I will not be making a separate costs award, I will be requiring the reimbursement of Special Aid funding in part. The amounts to be repaid will

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8 497 Aotea MB 113-140 (497 AOT 140) at 136-137.
9 507 Aotea MB 145-162 (507 AOT 145).
10 *Taueki – Horowhenua 11 (Lake) Māori Reservation Trust* [2019] Māori Appellate Court MB 652 (2019 APPEAL 652).

also consider the funds disbursed by the Trust to pay for the services of Mr Tootill, but the total payment will not exceed the final special aid grants.

[44] A final decision of the amounts to be repaid will be issued once all final invoices have been received and the timing of those payments and to whom they are to be paid. I do not require any further submissions as to the quantum.

Ngā Ota me ngā Kupu Whakahau
Orders and Directions

[45] All trustees in these proceedings are granted relief against liability per s131 of the Trust Act 2019 for the findings I have made against them in these proceedings, save for the specific orders relating to Te Rewarewa and Special Aid costs. These specific orders will be made in due course as follows.

[46] No further Special Aid will be granted after final invoices, which I direct to be filed once counsel have advised their respective clients on this decision. Any future costs are to be borne by the parties personally. At that point I will make a final order as to amount each trustee will be required to repay.

[47] Rangi and Glen are directed to make a reasonable contribution, by way of koha, to the Trust with respect to Te Rewarewa. The amount is to be determined by agreement with the newly constituted Trust. Once I get confirmation that agreement has been reached, I will make a further order to confirm compliance. If no agreement is reached, I will issue a further separate order as to the koha, which will be a monetary figure if the Court is required to make the order.

[48] I direct that Mr Tootill places the issue of the use of Te Rewarewa on the agenda for the AGM and that following the reconstitution of trustees, the new trustees must take steps to regularise all use and occupation of Te Rewarewa. That process must include:

(i) Identification of all structures and uses;

(ii) Engagement with the relevant co-management body and council;

(iii) The determination of appropriate legal arrangements, if required; and

(iv) Formal trustee approval of any on-going use.

[49] The current applications are not to be dismissed until I address the above matters.

[50] It is likely that I will call a final judicial conference once the AGM results are to hand, to close out any final matters and to determine any transitional arrangements that are required, including the final stand down date for Mr Tootill.

I whakapuaki i te 10am i Kirikiriroa i te rā 24 o Hune i te tau 2026.
Pronounced at 10am in Hamilton on this 24th day of June 2026.

Mauri ora

A H C Warren
KAIWHAKAWĀ
JUDGE