

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

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

AP-20230000020306

A20220015884

WĀHANGA
Under

Section 240, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Awarua A25

I WAENGA I A
Between

TE RINA MANA-TUKAHA
Te kaitono
Applicant

ME
And

JANET LOWRY
Te kaiurupare
Respondent

Nohoanga: 21 May 2024
Hearing (Heard at Kaikohe)

Whakataunga: 7 June 2024
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ M P ARMSTRONG
Judgment of Judge M P Armstrong

Hei tīmatanga kōrero*Introduction*

[1] Awarua A25 is a large block of Māori freehold land 1,512 hectares in size. It is administered by the trustees of the Awarua A25 Ahu Whenua Trust. Most of the land is used for farming with some areas occupied by owners.

[2] In 2020, one of the owners, William Wihongi, buried his son on the land. Mr Wihongi did not get consent from the trustees. That area had not been set apart as a Māori reservation for the purposes of an urupā.

[3] One of the trustees, Janet Lowry, attended the burial. She also participated in a meeting of owners held on 10 September 2022 where the burial was discussed. Te Rina Mana-Tukaha now applies to remove Ms Lowry as a trustee because of her involvement in the burial and subsequent meeting.

[4] In this judgment, I determine whether Ms Lowry should be removed as a trustee.

He aha ngā mātāpono o te ture?*What legal principles apply?*

[5] I can remove a trustee for cause per s 240 of Te Ture Whenua Māori Act 1993 (“the Act”). Section 240(1)(b) provides that I can do so if it is desirable for the proper execution of the trust and one or more of the prescribed grounds for removal are met. That includes where the trustee is no longer suitable to hold office because of his or her conduct or circumstances.

[6] I first consider Ms Lowry’s conduct and whether that falls within one of the grounds for removal listed in s 240(1)(b). If it does, I then consider whether it is desirable to remove her for the proper execution of the trust. That involves an exercise of discretion. As is the case when exercising any discretion in this Court, I also take into account the kaupapa of the Act as set out in the Preamble, ss 2 and 17.¹

¹ See *Henderson v Brooking – Wharekahika A47* [2023] 2023 Māori Appellate Court MB 17 (2023 APPEAL 17).

Me whakakorehia Ms Lowry hei te tatahihi?*Should Ms Lowry be removed as a trustee?*

[7] Ms Mana-Tukaha argues that Ms Lowry is no longer suitable to hold office because she actively participated in an illegal burial on trust land. She also alleges that Ms Lowry failed to inform the other trustees of the illegal burial that took place.

[8] Ms Lowry states she was not an active participant in the burial. She says that she attended the burial as the deceased, Atawhai Wihongi, was her cousin. She assumed that the burial was taking place at a nearby urupā. Ms Lowry states she only learned that the tūpāpaku was being buried on trust land when she arrived. She says she was shocked to discover this. Ms Lowry accepts that she did not inform the other trustees about the burial but says this was because she did not know about this in advance. Harry Wihongi advised the former chairperson, Shane Wihongi, of what had occurred and so the trustees were made aware, though not through Ms Lowry.

[9] I accept Ms Lowry's evidence. Ms Mana-Tukaha did not challenge this evidence nor did she present her own evidence to demonstrate that Ms Lowry was actively involved in the burial. I accept Ms Lowry's explanation that she thought the burial was taking place in a nearby urupā and only discovered at the ceremony that the tūpāpaku was being buried on trust land.

[10] The fact that Ms Lowry attended the burial does not mean that she is no longer suitable to hold office as a trustee. It may have been different if she actively arranged or supported the burial when the area had not been set aside as a an urupā. That is not the case.

[11] On 10 September 2022, an owners' meeting was held at Te Huruhi Marae. Ms Mana-Tukaha claims that Ms Lowry called this hui, and she participated in a vote on whether the tūpāpaku should be exhumed from the land, when she had already attended the burial. Ms Mana-Tukaha argues that Ms Lowry failed to avoid a conflict of interest by participating in the vote.

[12] In response, Ms Lowry says she did not call this hui. She states the meeting was called by the trustees collectively and she only placed the notice for the meeting as she was the trust secretary. Ms Lowry accepts that she voted against removing the tūpāpaku from

the land. Ms Lowry produced a letter from a kaumātua which warned her against removing the tūpāpaku. She says she relied on this advice when voting against the resolution.

[13] It is settled law that trustees must not place themselves in a position where their duties as trustee, and their personal interests, conflict. Where this arises, a trustee must declare his or her interest and leave the room so the other trustees can deliberate and decide in the conflicted trustee's absence. This is to ensure that the conflicted trustee does not influence the outcome.²

[14] In this case, I accept Ms Lowry's evidence that she did not call this meeting. The meeting was called by the trustees. She simply placed notice for the meeting as the trust secretary. That notice also shows that the burial was not an item on the agenda. The agenda included the following:

- (a) Workshop: draft trust strategic direction document;
- (b) Update on the trustee structure and portfolios; and
- (c) Q & A open floor / whanaungatanga.

[15] The meeting was not called specifically to consider the burial. It appears that this was raised on the day during the Q & A open floor session.

[16] Ms Lowry was not conflicted at the meeting. She did not actively arrange or support the burial. She simply attended and was surprised by what took place on the day. Ms Lowry did not have a personal interest in the burial which conflicted with her obligations as a trustee.

[17] Finally, the vote that took place at this meeting was a shareholders' vote. Ms Lowry was not voting in her capacity as a trustee. She was voting as an owner. She was entitled to do so.

² *Fenwick v Naera* [2015] NZSC 68, [2016] 1 NZLR 354 at [69]-[81].

[18] I also note that the outcome of this vote was not binding on the trustees. Ultimately, the trustees determined by a majority to exhume the tūpāpaku. They obtained a certificate from the Ministry of Health to do so. The last update I received the trustees were negotiating with the Wihongi whānau over disinterring the tūpāpaku. There is no evidence to demonstrate that Ms Lowry has interfered with or prevented the trustees from carrying out that decision.

[19] Ms Lowry's involvement in the owners meeting does not mean that she is no longer suitable to hold office as a trustee.

[20] Ms Lowry's conduct does not come within one of the grounds for removal in s 240(1)(b) of the Act. It is not necessary to consider whether it is desirable to remove her as a trustee for the proper execution of the trust.

Kupu whakataunga

Decision

[21] This application is dismissed.

I whakapuaki i te 1:00pm ki Te Taitokerau, 7th o ngā ra Hune i te tau 2024.
Pronounced at 1:00pm in Te Taitokerau, 7th day of June 2024.

M P Armstrong
JUDGE