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

AP-20230000028335
A20190010670

WEHENGA *Under*	Section 19, Te Ture Whenua Māori Act 1993
MŌ TE TAKE *In the matter of*	Te Komiti 2A1A
I WAENGA I A *Between*	MIKAERA MIRU Kaitono *Applicant*
ME *And*	GEORGINA TE AWA, JOSEPH MIRU, NATHAN TANA AND KEREAMA TE AWA Ngā Kaiurupare *Respondents*

Nohoanga: *Hearing*	20 March 2020, 211 Taitokerau MB 156-168 18 December 2025, 307 Taitokerau MB 1-29 (Heard at Whangārei)
Whakataunga: *Judgment date*	9 March 2026

TE WHAKATAUNGA A KAIWHAKAWĀ T K T A R WILLIAMS
Judgment of Judge T K T A R Williams

Hei tīmatanga kōrero
Introduction

[1] This is an application filed by Mikaera Miru, trustee of the Te Komiti 2A1A Māori Reservation also known as Waiotea Aotea Marae (the Trust) against co-trustees Georgina Te Awa, Joseph Miru, and Nathan Tana and non-trustee, Kereama Te Awa.

[2] The applicant seeks an order for the return of $20,000.00 that was alleged to have been paid by Ms Te Awa, Mr Miru and Mr Tana out of marae reservation funds to Kereama Te Awa who is Georgina Te Awa's brother, to support Mr Te Awa's private business.

[3] The applicant says that the marae reservations funds are not meant to be used to help individuals with their personal business affairs, that payment was never appropriately authorised, and that payment should never have been made. It was further submitted that the marae is unlikely to recoup those funds from Mr Te Awa.

[4] He seeks orders requiring the three named trustees and/or Mr Te Awa to reimburse the Trust the $20,000.

Kōrero whānui
Background

[5] The Te Komiti 2A1A Māori Reservation was constituted in July 1981. The land was gazetted in June 1997 for the following purpose:

> For the purpose of the Marae and meeting place for the common use and benefit of the descendants of Kehaia Waiti, Manuka Netana Miru & Mikaere Miru as Waiotea Marae

[6] The current trustees of the Trust were appointed in 2007 they are Ben Allen, Georgina Te Awa, Joseph Miru, Mikaera Miru and Nathan Tana.[1]

[7] This application was originally in front of Judge Wara who issued directions in 2019 requiring the trustees to file a report with the Court outlining the following:

(a) A response to the applicant's allegations;

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1 118 Whangarei MB 54-55 (118 WH 54).

(b) Financial statements for the last two years;

(c) Bank statements for the last two years;

(d) File minutes of AGMs and trustee meetings held in the last two years; and

(e) File a copy of the marae charter.

[8] On the 20th of March 2020 Judge Wara heard the application and stated:

> The funds have already passed. So there is no injunction that can call back the money. However, I am concerned about the fact that the marae is making advances which – for one of the descendants of one of the beneficiaries of the marae and whether or not such a transaction is actually in the interest of the marae.[2]
>
> I am not going to issue an injunction today. The reality is the funds have been dispersed and the bank accounts are currently frozen. But what I am concerned about is the fact that the payment was made in the first place and that the trustees have formed a view that that is consistent with their financial obligations to the marae. I have got an understanding of parties' positions today and I did receive a copy of the promissory note/minutes of the meeting from the 16th of November. I am going to provide everybody an opportunity to provide further information to the Court and I have put this application down for a rehearing.[3]

[9] She then adjourned the application to a rehearing in order for the Court to inquire into the authorisation and payment of funds from the Trust.[4] The matter has since been referred to me as Judge Wara no longer presides in Whangārei.

[10] In response to those directions, no report was filed by the Trust. Mr Joseph Miru has filed a copy of a promissory note between the three trustees, purportedly on behalf of the Trust and Mr Te Awa as well as references to the Trusts Act 2019. There is no charter for the Trust.

[11] On the 18th of March 2020, Mikaera Miru filed the following documents;

A. Notice of Trustees and Marae Committee Meeting – 20 April 2013

B. Notice of Trustees and Marae Committee Meeting – 19 May 2013

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2 211 Taitokerau MB 156-168(211 TTK 156) at 164.
3 As above.
4 211 Taitokerau MB 156-168 (211 TTK 156) at 167.

C. Notice of Working Bee held 18 May 2013

D. Notes from meeting held 19 May 2013

E. Notice of Trustees and Marae Committee Meeting – 16 June 2013

F. Notice of Working Bee held 15 June 2013

G. Notice of Trustee and Marae Committee Meeting – 18 May 2019

H. Minutes of Trustees Meeting held 18 May 2019

H1 Treasures' Report dated 18 May 2019

I. Secretary's Report dated 18 October 2012

J. Minutes of Meeting held 20 April 2019

K. Notice of Meeting for 20 April 2019

L. Notice of Meeting for 16 March 2019

M. Whanau Plan

N. Account Statement

O. Account Statements 20/10/201-3/01/2020

P. Account Statements from 20/10/2017-3/01/2020

Q. Account Withdrawal

R. Email from BNZ to the Trustees

[12] On the 20th of May 2025 Mikaera Miru also filed submissions on what has happened since March 2020 when the application was last heard.

[13] On the 18th of December 2025 the Court convened a hearing into the application at which I indicated that I would issue a reserved decision.[5]

[14] The following sets out my determination.

Te Ture
The Law

[15] This matter commenced as an application pursuant to s 19 of Te Ture Whenua Māori Act 1993 (the Act). As Judge Wara indicated previously, the funds have already been disbursed from the trust account. However, s 18 of the Act provides the following:

18 General jurisdiction of Court

[5] 307 Taitokerau MB 1-29 (307 TTK 1).

> (1) In addition to any jurisdiction specifically conferred on the court otherwise than by this section, the court shall have the following jurisdiction:
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> (a) to hear and determine any claim, whether at law or equity, to the ownership or possession of Māori freehold land, or to any right, title, estate, or interest in any such land or in the proceeds of the alienation of any such right, title, estate or interest

[16] I consider that this application concerns a claim involving a financial interest in the marae reservation land and therefore we have jurisdiction to deal with it.

[17] Even if that were not the case, s 238 provides as follows:

> **238 Enforcement of obligations of trustees**
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> (1) The court may at any time require any trustee of a trust to file in the court a written report, and to appear before the Court for questioning on the report, or on any matter relating to the administration of the trust or the performance of his or her duties as a trustee.
>
> (2) The court may at any time, in respect of any trustee of a trust to which this section applies, enforce the obligations of his or her trust (whether by way of injunction or otherwise).

[18] In *Paki v Maori Land Court* the High Court confirmed that the Māori Land Court has a duty to look to the enforcement of obligations of the trust even in the absence of an application.[6]

[19] Whilst no formal application pursuant to s 18 or s 238 has been made, I consider that the application filed by Mr Miru, requires the Court to review what has occurred and make orders, if necessary, in order to enforce the obligations of the Trust. Therefore I have proceeded on that basis.

The Applicants Position

[20] The applicant's position is that funding has been received and saved by the Trust over several years from several sources. Those funds were to be dedicated to Waiotea Marae, which has a wharekai but no wharenui, long-drop for toilets, fires and gas for cooking and a water tank that needs replacing. He says that because of the isolation of the marae and its

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6 [1999] 3 NZLR 700.

infrequent use, the marae does not have large overheads, but marae grants have been received and were to be put into a marae account.

[21] In 2012 a plan had been developed to build an eco-friendly and solar powered marae to be located above the current marae and funds were targeted to go towards this purpose.

[22] However, he says that when some of these funds were received, they were not deposited into the bank account for the Waiotea Marae. Funds were deposited into an account for a different trust for Te Kowhai Marae instead. The respondents are executive members of the Te Kowhai Marae Trust.

[23] He says that in April and May of 2019, he attempted to hold the Mikaera Manuka Miru Whanau hui to discuss the dysfunction of the Trust and suggest that new trustees should be elected. Both meetings were attended by four trustees. However, the meeting minutes appear to record that the purpose of those meetings were undermined and the intent to elect new trustees on the marae reservation trust did not eventuate.

[24] Then, he says that in early 2019 he received a phone call from Kereama Te Awa who advised him that all the other trustees had agreed to him receiving $10,000.00 with a possible further payment of $10,000.00 for his firewood business.

[25] Mikaera submits that he refused to agree to this payment because all the marae beneficiaries have been saving for years to build a new environmentally friendly and alternatively powered marae complex. He says Mr Te Awa sought an urgent marae meeting so he could get consent from the marae trustees.

[26] Mr Miru says he disagreed with the proposal and he refused to send a pānui out to whānau and trustees. He received further calls from Mr Te Awa seeking approval for him to receive the money he had previously asked for, which Mr Miru says he again refused because the money had never been for private commercial ventures. Mr Miru then suggested that Mr Te Awa sell his motorbike instead, which was purportedly worth $30,000.00.

[27] He then says that he subsequently found out that Kereama Te Awa had received the $20,000, from the trust which was used to purchase an excavator.

[28] Mr Miru provided a bank statement for the Waiotea Marae, account number 02-03640059695-025 which showed that on the 6th of November 2019 a withdrawal was made in the amount of $20,000.00.

[29] He also filed a copy of a cheque signed on the 6th of November 2019[7], made out to cash, in the sum of $20,000.00 that had been signed by Georgina Te Awa and Nathan Tana from the Waiotea Marae bank account.

[30] He says that this payment was not properly authorised by the trustees and should never have been paid. His position is that despite the cheque being made out for cash, it was paid to Kereama Te Awa. It was further submitted that this payment was not for marae specific business but was going to Kereama Te Awa for his own business interests and expenditure.

[31] He also supplied an email from the Bank of New Zealand dated the 28th of January 2020[8] in which the bank advises that they had been notified of a dispute about the operation of the account, as such, they ordered the account be suspended to protect both the bank and all parties.

[32] Therefore, no further transactions were to be permitted from the account and any outstanding cheques presented will be returned and payments stopped. That would continue to be the position until written advice is received signed by all parties instructing the bank as to how or if the account is to continue. The email goes on to say that once an account is frozen or an account stop is loaded, to remove the stop, the bank requires signed written instructions from all parties agreeing with the activity.

[33] Mr Miru says that there are no valid or lawful resolutions authorising the payment of $20,000.00 by the Trust to Mr Kereama Te Awa. Further that even if there was a valid resolution authorising payment, which is denied, that to authorise the payment is contrary to the Māori Reservation Regulations 1994, the Trust Act 2019 and is in breach of their trustee obligations.

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[7] Document Q.
[8] Document R.

[34] He says the whānau member who received the $20,000.00 is a gang member and that getting the money back is a serious risk. He says that marae funds have been deliberately accumulated for years for the construction of a marae complex and that the unauthorised withdrawal of the $20,000.00 has completely undermined the purpose of these marae funds.

[35] He goes on to say this particular incident highlights the ongoing dysfunction within the trust and has serious consequences for their social, cultural and economic development as Māori.

[36] He says the last thing the marae needs is the financial capacity that has been accumulated for years being stripped away by trustees breaching their legal obligation to all the beneficiaries of the marae, especially their tamariki and mokopuna.

Respondents' position

[37] The respondents position seemed to be solely reliant upon the promissory note filed by Joseph Miru and the attached references to the Trust Act 2019.

Hearing on 18 December 2025

[38] At the hearing Mikaera Miru emphasized that he sought reimbursement of the $20,000 that he says has been paid inappropriately to Kereama Te Awa. He maintained the position that the payment was invalid and unauthorised.

[39] Mr Tana commenced by stating that the Court had no jurisdiction to deal with the application or the Trust funds.

[40] His and the other respondents' position was that they considered that they were entitled to use the funds in the marae reservation bank account as they saw fit. Mr Joseph Miru also sought to persuade the Court that funds that were held in the Marae Reservation account are able to be utilised if the Miru family say so, for matters other than running the marae reservation.

[41] Their collective view was that if members of the Miru whānau are in need of money and there is money in the marae account to help their people then they can and should provide it to them, regardless of whether those funds are for marae purposes or not.

[42] Ms Te Awa confirmed that Kereama Te Awa approached the trustees for financial assistance for his business.

[43] Mr Te Awa, who was in attendance at the hearing, confirmed that the business was his own business, it was owned solely by him and was not part of the trust. He confirmed that it was a firewood business in his own name only and set up for his sole benefit.

[44] Ms Te Awa and Mr Tana stated that the provision of funding could have been discussed and approved at a properly convened hui but Mr Miru refused to call a hui for that purpose. They say that because Mikaera Miru continued to deny or oppose the opportunity to hold a hui, that it is his fault that matters occurred in the way that they did.

[45] Ms Te Awa sought to persuade the Court that Kereama Te Awa wanted to repay the funds. However, when the Court questioned him, he advised that he had no money to repay the funds. Further, that he cannot provide any guarantees about repaying the funds, and he had no timeframe in respect of which he can repay the funds. He was also unable to say if he would be able to repay the funds by instalment payments. His evidence was that he has no present ability to do so.

[46] None of the three trustees denied paying the sum of $20,000 to Kereama Te Awa. In fact, to the contrary, they attempted to persuade the Court that they had every right to do so.

Korerorero
Discussion

[47] The liabilities of trustees are considerable. If a trustee has made any mistakes, they may have to pay in full for them, even if these mistakes were made with good intentions or under the advice of counsel learned in the law.[9]

9 Lindsay Breach *Nevills Law of Trusts, Wills and Administration* (14th ed, LexisNexis, Wellington, 2023) at 369.

[48] A trustee is liable only if they deviate from the terms of trust, by doing that which is forbidden, by doing more than is permitted or by omitting or neglecting to do that which is directed; or if they concur or acquiesce in the commission of a breach of trust by a co-trustee, and then only if a loss actually results to the trust property.[10]

[49] There is no ability under the Māori Reservation Regulations 1994 or the Trusts Act 2019 for trustees to pay out funds that are dedicated and intended for the marae and marae reservation to an individual beneficiary for the progression of a private business.

[50] It is also clear to the Court that the actions of the three trustees to pay funds that were held in the name of the Waiotea Marae for the purpose of the Māori Reservation were disbursed to Kereama Te Awa inappropriately and in breach of trust.

[51] Those funds were for Waiotea Marae for the sole purpose of advancing the marae and meeting place for the common use and benefit of the descendants of Kehaia Waiti, Manuka Netana Miru & Mikaere Miru as gazetted in 1997.

[52] Mr Te Awa's business does not fall within that definition.

The Promissory Note

[53] I also reviewed the promissory note. The document has at the top, a reference to it being *"*recorded minutes of whanau request for financial help with business*"*. In attendance were Nathan Tana, Georgina Te Awa and Joseph Miru.

[54] The document purports to refer to a hui being held lawfully through the Waiotea Marae Trust and that a quorum had been met given that three of the five trustees were present. The document goes on to say that "The Waiotia Marae Trust Funds have a multiple use factor and are not restricted to the erection of a communal house only" and the business of the day concerned a beneficiary of the Waiotea Marae Trust, namely Kereama Te Awa.

[55] It then refers to the fact that he has requested recoverable advances of $10,000.00 to pay off a loan on his digger and $10,000.00 for operational costs.

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[10] As above at 366.

[56] In addition it says that the advances were to be recovered over a 12-month period ending 6 November 2020. It states that the general consensus of those trustees present was to agree to grant recoverable advances based on the collateral security of a Komatsu PN100 excavator and the profit of 20 milled totara stump logs.

[57] It then refers to the fact that the chairperson surveyed the logging and firewood venture and assessed the collateral shown in the minutes.

[58] Finally, the document says "the option of the Quorum was taken as an executive decision as an operational functional and lawful binding act."

[59] Despite references to this promissory note being *lawful* and *binding* it is neither. The marae funds do not have a multiple use factor as suggested and cannot be used for the personal benefit of individual beneficiaries. Nor do the trustees have the power to loan or promise marae reservations funds to an individual beneficiary to support their commercial enterprise.

[60] Secondly, the Trust does not have the power to make recoverable advances for beneficiaries to pay off loans or to support beneficiaries operational costs.

[61] Further, it the document does not contain specific loan terms, which you might find in a standard loan document, other than suggesting it is to be repaid in 12 months. It also suggests that security has been provided for the payment of funds by reference to a Komatsu excavator. There was no security document that one would customarily find for the Komatsu excavator nor evidence that Mr Te Awa owned this item.

[62] Additionally, Ms Georgina Te Awa advised that Kereama Te Awa is her brother and as such Georgina Te Awa was in a position of conflict. She should not have been involved or exercised any decisions that would or could have benefitted her brother personally. Therefore, there was no quorum of the Trust that could validly authorise such a payment.

[63] Even if the marae reservation trustees had the authority to grant the payment of these funds to individuals from marae funds, which they do not, Georgina Te Awa's position of

conflict meant that she could not participate in any decision to grant those funds to Kereama Te Awa.

[64] With no validly constituted quorum to make any such resolution, the decision to grant those funds would fail on that basis as well.

[65] I note that s 132 of the Trusts Act 2019 provides as follows;

> **132 Court may make a beneficiary indemnify trustee for breach of trust**
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> This section applies if a trustee commits a breach of trust at the instigation or request or with the written consent of a beneficiary.

[66] I therefore consider that I have the jurisdiction to issue an order against Kereama Te Awa who is a beneficiary of the Trust and has made a request of the trustees that caused them to make a decision in breach of trust and the Trust has suffered a loss as a result.

[67] There is some doubt, given the evidence of Kereama Te Awa, about his ability to repay the debt. It does not help that Kereama Te Awa has taken no steps whatsoever to repay the debt. The respondents suggested that as the accounts have been frozen, that he could not make repayments. This is clearly not the case. The account was frozen to restrict payments going out of the account, not payments going in. The freezing of the accounts is no justification for non-payment.

[68] Mr Mikaera Miru has advised that Mr Te Awa owns a motorbike worth $30,000.00 that could be sold in order to repay the debt. That was not denied by Mr Te Awa.

[69] Whether that is true or not, I determine that Kereama is to repay the debt to the Trust without any further delay.

What if Mr Te Awa cannot repay?

[70] The payment to Mr Te Awa was inappropriately authorised by three of the current trustees. Trustees are personally liable for trust assets. Normally the liability of a trustee for breach of trust is a civil one, to restore the trust property.[11] Therefore, a debt is incurred by

[11] Lindsay Breach *Nevills Law of Trusts, Wills and Administration* (14th ed, LexisNexis, Wellington, 2023) at 369.

the trustee(s) to the Trust when they have acted in breach of trust. The liability of trustees is joint and several even if all are not equally blameworthy.[12]

[71] However, section 131 of the Trusts Act 2019 provides as follows;

> **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
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> (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.

[72] Therefore, I determine that Georgina Te Awa, Nathan Tana and Joseph Miru are severally and jointly liable for this debt.

[73] I also determine pursuant to s 131 of the Trusts Act 2019 that Mikaera Miru and Ben Allen are relieved from liability for this debt.

[74] I further determine that Georgina Te Awa, Nathan Tana and Joseph Miru are jointly and severely liable to repay the sum of $20,000.00 to the Trust if Kereama Te Awa does not do so.

[75] The Court is also concerned, that given the conduct of these three trustees in making a decision to give Mr Te Awa these funds in breach of trust, presenting to the Court that their actions were appropriate and their conduct in court, which included verbal abuse of the Court, that Georgina Te Awa, Nathan Tana and Joseph Miru are not appropriate trustees to continue to act in their capacity as trustees for this marae reservation trust.

[76] The Court proposes to remove these three trustees pursuant to s 240, on its own volition. However, the Court will take submissions from all trustees on that proposal before making a final determination.

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12 Lindsay Breach *Nevills Law of Trusts, Wills and Administration* (14th ed, LexisNexis, Wellington, 2023) at 369.

Kupu whakatau
Decision

[77] I determine that Georgina Te Awa, Nathan Tana and Joesph Miru have acted in breach of trust and disbursed funds from the marae reservation bank account in breach of their trustee obligations.

[78] That they disbursed those funds to Kereama Te Awa who was not entitled to receive the sum of $20,000 from funds held in the Waiotea marae reservation bank account.

[79] I make orders pursuant to s 132 of the Trusts Act 2019 requiring Kereama Te Awa to repay the amount of $20,000.00 to the Te Komiti 2A1A Māori Reservation also known as Waiotea Marae within 31 days.

[80] If Kereama Te Awa is unable to repay the debt within that time frame, then Georgina Te Awa, Nathan Tana and Joseph Miru are jointly and severally liable to pay the amount of $20,000.00 to the Waiotea Marae bank account within 21 days of the above order expiring.

[81] Pursuant to s 131 of the Trusts Act 2019, Mikaera Miru and Mr Ben Allan are relieved of any liability to repay any of the $20,000.00 to the Trust.

[82] The parties have 14 days to file submission with the court on the proposal to remove Georgina Te Awa, Nathan Tana and Joseph Miru as trustees of the Trust, following which the Court will issue a decision on the papers.

I whakapuakina i te 11:00am i Whangārei, i te tuaiwa o ngā rā o Maehe i te tau 2026.
Pronounced at 11:00am in Whangarei, on this 9th day of March 2026.

T K T A R Williams
JUDGE