

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

AP-20250000008031
APPEAL 2025/14

WEHENG <i>Under</i>	Section 58, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Pakanae 2W1B
I WAENGA I A <i>Between</i>	ROBERT IEHU MOETARA Te Kaitono Pira <i>Appellant</i>
ME <i>And</i>	FIONA RAKETE AND KARL RICHARD EARL MOETARA, AS TRUSTEES OF THE NGĀ URI O IEHU MOETARA TRUST Ngā Kaiurupare pira <i>Respondents</i>

Nohoanga: <i>Hearing</i>	12 November 2025, 2025 Māori Appellate Court MB 572-598 (Heard at Whangārei)
Kooti: <i>Court</i>	Chief Judge C L Fox (Presiding) Judge M J Doogan Judge A H C Warren
Whakataunga: <i>Judgment date</i>	17 February 2026

TE WHAKATAUNGA A TE KOOTI
Reserved Judgment of the Court

Hei timatanga kōrero

Introduction

[1] Robert Moetara appeals an order made by the Māori Land Court per s 18(1)(a) of Te Ture Whenua Act 1993 (the Act) that a garage situated on land vested in the trustees of the Ngā Uri o Iehu Moetara Ahu Whenua Trust (the Trust) was owned by the Trust, for the benefit of all the beneficial owners of Pakanae 2W1B.¹ Robert says that his whānau own the garage. The lower court disagreed.

[2] On 12 November 2025 the appeal was heard in Whangārei (the Appellate Court hearing), together with an application for leave to file the appeal out of time.

[3] We now issue our decision upholding the appeal.

Kōrero whānui

Background

[4] Pakanae 2W1B (the block) is located along Waiotemarama Gorge Road. The block has been utilised by the Moetara whānau since 1979. The block is administered by the Trust, with 32 current beneficial owners. Three whānau affiliate to the Trust – ngā whānau o Hone Heremia Te Wake Iehu Moetara, Simon Iehu Moetara and Anahira Ruawhare née Moetara. Robert, the appellant, is a member of the Simon Iehu Moetara whānau. Their shares in the Trust are vested in the Ngā Uri o Simon Iehu Moetara Whānau trust (the whānau trust).

[5] The lower court determination relates to an ongoing debate between Robert and the Trust about the use and occupation of the garage. Robert currently lives in the garage and wanted a licence to occupy in the name of the whānau trust. The Trust was happy to grant a licence to occupy, in principle, but wanted it to be in Robert's name only.

[6] The lower court heard two competing s 18(1)(a) applications concerning ownership of the garage. One, filed by Robert, sought a determination of ownership in favour of the whānau trust, and the other, filed by the Trust, sought a determination of ownership in favour of its trustees.

¹ 290 Taitokerau MB 125-150 (290 TTK 125).

[7] The lower court summarised the undisputed facts about the origins of the garage as follows:²

Both sides agree that this garage was erected in around 1978, 1979. That it was initially erected by Ms Rakete's grandfather, Jack, but that the garage was then handed back to the wider whānau. Both sides also agree that the purpose of the garage is that it should be available for use by all of the descendants of Iehu Moetara.

[8] After hearing from both parties, the lower court determined that the Trust owned the garage, and its trustees would hold the garage for the benefit of ngā uri o Iehu Moetara. This determination was made on the following grounds, in summary:³

- (a) The facts accepted by both sides was that the purpose of the garage was that it would be available for use by all Iehu's descendants/the beneficial owners in the block. As they are beneficial owners in the land they should also be the beneficial owners of the garage.
- (b) As it is the Trust's role to administer the block on behalf of all the beneficial owners, they also have the overriding function as trustees to administer assets on behalf of those owners. The whānau trust only represent one whānau, not all of the owners. Therefore, the Trust are best placed to manage the use and occupation of the garage.

[9] The following orders were made because of those findings:⁴

- (a) section 18(1)(a), determining that the dwelling, also known as "the garage", situated on Pakanae 2W1B block is determined to be the sole and exclusive property of the Ngā uri o Iehu Moetara Trust in law and equity, to be administered for the benefit of all the beneficial owners.
- (b) section 37(3) and 244 varying the Trust order to include "The Garage" situated on Pakanae 2W1B as an asset of the Ahu Whenua trust and vest the assets of the trust in the responsible trustees of the Ngā uri o Iehu Moetara Trust, jointly, no survivorship

[10] As a result of the above orders Robert's application was dismissed.

² 290 Taitokerau MB 125-150 (290 TTK 125) at 143.

³ At 143-144.

⁴ At 150.

[11] Accompanying the notice of appeal was an application for leave to appeal out of time. The applications were filed by Robert on 18 June 2025. The lower court decision was issued on 10 March 2025.

Ngā whakaarotanga tuatahi
Preliminary matters

[12] Section 58(3) of the Act and rr 8.8 and 8.14 of the Māori Land Court Rules 2011 (the Rules) require a notice of appeal to be filed within two months of the date of the minute of the order appealed from unless the Court grants leave for late filing. Based on the facts the appeal needed to be filed by 10 May 2025. It was filed on 18 June 2025.

[13] In *Koroniadis v Bank of New Zealand* the Court of Appeal affirmed the relevant considerations in determining whether to grant an extension of time.⁵

- (a) The length of the delay and the reasons for it;
- (b) The parties' conduct;
- (c) The extent of prejudice caused by the delay;
- (d) The prospective merits of the appeal; and
- (e) Whether the appeal raises any issue of public importance.

[14] It is not disputed that Robert received the court minutes from the lower court hearing on 8 May 2025 and then filed his application one month and one week later, on 18 June 2025. Further, when the lower court issued its oral decision, the parties to this appeal were all present. At the end of that hearing Robert asked the presiding judge about his appeal rights, to which Robert was advised that he was able to challenge the s 18(1)(a) decision if he thinks it is wrong.⁶

⁵ *Koroniadis v Bank of New Zealand* [2014] NZCA 197 at [19].

⁶ 290 Taitokerau MB 125-150 (290 TTK 125) at 149.

[15] Robert agreed at the Appellate Court hearing that he did recall this conversation, but he thought he had to wait for the lower court minutes before he could challenge the decision. He said that he wanted to use the minutes to formulate his appeal. He also told us that court staff advised him that he had to file an appeal application before 10 July 2025. He says he relied on this advice.

[16] The respondents object to Robert's request to appeal out of time, as he was present for the hearing and could have filed his appeal earlier. They submit that he has had the time and resources to do so within the two-month time frame.

[17] In these circumstances we are prepared to give Robert the benefit of the doubt. There is no dispute that he only received the minutes of the lower court hearing and decision approximately two months after the oral decision was delivered. Whilst we only have Robert's assurances that he was advised by staff that he needed to file the appeal by 10 July 2025, we note that the appeal application was filed within one month after receiving the minutes. That combined with his indication at the hearing that he might look to challenge the outcome is evidence that Robert's conduct in progressing the appeal was tika and pono.

[18] The length of the delay is also not unreasonable. Perhaps the most significant ground in favour of granting leave to file out of time is the fact that there is merit to the appeal.

[19] For those reasons we grant leave to accept the appeal out of time and will now proceed to determine the appeal.

Te tono pira
The appeal application

[20] Robert filed the appeal on the following grounds:

That false information was presented verbally. Chair states contribution this is what my appeal is, I've produced some receipts but as I stated in court we got a discount by mates rates, Fiona said Nga Uri contributed [unfounded] as she has no paperwork'

[21] In advance of the hearing Robert filed specific submissions broadening the basis of his challenge to the lower court's decision. At the Appellate Court hearing these were elaborated on, including the issue around whether the garage was a fixture at law. This issue is one that we became interested in as the appeal hearing progressed.

[22] The broadening of the grounds for appeal, which is what the appellant effectively did, is a further preliminary issue we need to address. In most circumstances appellants must disclose all grounds of appeal when they file the appeal application or seek leave to amend or add to these before the hearing.⁷ This ensures that natural justice is adhered to by giving the respondents ample opportunity to respond.

[23] When lay litigants are involved, as was the case here, the court needs to balance natural justice with the reality that lay litigants will not always appreciate technicalities such as leave to amend notices of appeal and other documents. The critical issue here is whether the lower court made a finding of fact as to the status of the garage as a fixture or otherwise. In our view this is the only ground of appeal with merit. It is not uncommon for courts to find errors that are not pleaded as such.⁸ As long as all parties have a chance to address the court on those issues, then leave to advance these new matters may be given.

[24] Relevantly at the appeal hearing the respondents agreed that the lower court did not address the issue of whether the garage was a fixture or not.⁹ It seemed to us that both parties knew that this was a critical issue for the lower court. We are satisfied that the respondents were given an opportunity to address us on the issue and seemed to understand that it was a live and critical issue. On that basis we grant leave for this further ground of appeal to be advanced.

[25] We find no merit in any of the other arguments raised by the appellant. As the lower court had sufficient reliable evidence relating to the contributions to the garage and that the respondents were well within their rights to take a position on who they would grant a licence to occupy to and on what terms. There is no error on those issues.

[26] On the status of the garage issue the respondents argue that the garage was constructed on concrete pillars, partially concreted in, and improved over time, indicating permanence.¹⁰ They say it is a fixture, but concede that the lower court did not make an

⁷ Māori Land Court Rules 2011, r 8.21.

⁸ *Maika v Potae – Harataunga West 3B* (1982) 16 Waikato Maniapoto Appellate Court MB 356 (16 APWM 356) at 364.

⁹ 2025 Māori Appellate Court MB 572-598 (2025 APPEAL 572) at 593.

¹⁰ At 595.

explicit finding on that issue.¹¹ The question for us then, is whether that is right and if so, is that fatal to an order being made under s 18(1)(a) of the Act.

[27] For the reasons below we must uphold the appeal.

Kōrerorero *Discussion*

[28] Section 18(1)(a) of the Act confirms that the court may determine a claim of ownership of a dwelling. A determination under this section involves questions of fact and of law, including whether the structure is a fixture forming part of the land or a chattel.¹²

[29] This court has previously summarised the law relating to ownership of structures on Māori land as follows:¹³

- (a) The Court cannot create new ownership rights, only declare those that already exist at law or in equity.
- (b) It may be found that a building is not a part of the land and that the owners of the land are not the owners of a building; an owner in the land may separately own an improvement.
- (c) The starting point for the court is that a structure is a fixture and ownership runs with the land. On application of the test, the Court may find that the house is a chattel or that it is owned separately from the land it sits on.

[30] In *Nga Uri a Maata Ngapo Charitable Trust v McLeod* Judge Milroy set out the established case law on this point to be read against s 18(1)(a):¹⁴

[34] Case law makes it clear that the Court's jurisdiction is declaratory in nature – the Court may declare existing ownership rights at law or in equity but cannot create new ownership rights. It follows from the wording of the section that the Court may also determine that a building is not part of the land and that the beneficial owners of the land as a group are not the owners of the building.

[35] Although common law provides that the owners of the land own any fixtures, s 18(1)(a) enables the Court to recognise that one or more of the owners may separately own a particular improvement. In determining these matters the Court has equitable jurisdiction and may recognise constructive trusts.

¹¹ 2025 Māori Appellate Court MB 572-598 (2025 APPEAL 572) at 593.

¹² *Ratu v Marshall – Wangape Lot 65B Sec 2A* [2023] Māori Appellate Court MB 115 (2023 APPEAL 115) at [24].

¹³ *Tihi v Nuku — Ruatoki B Sections 23, 25, 26B, 27, 31, 32, 33B2C2, 38, 79* [2019] Māori Appellate Court MB 531 (2019 APPEAL 531) at [25]. Footnotes omitted.

¹⁴ *Nga Uri a Maata Ngapo Charitable Trust v McLeod – Harataunga West 2B2A1* (2012) 49 Waikato Maniapoto MB 223 (49 WMN 223).

[31] The following legal basis utilised for the lower court's decision was:

In terms of the legal principles that apply, generally, ownership of buildings or attachments to the land run with the ownership of the underlying land. For that reason, in most cases, a building on the land is owned by the beneficial owners according to their respective interests. However, under section 18(1)(a) of Te Ture Whenua Māori Act, I can recognise whether one or more beneficial owner has a claim in equity to the ownership of that dwelling. As a result, if I find that there is such an equitable claim I can grant a range of relief including determining sole ownership of the building in favour of one of the beneficial owners as opposed to all of the beneficial owners.

[32] It is settled law that a determination per s 18(1)(a) as to the status of a dwelling involves a two-stage test. Firstly, the court needs to make a finding of fact as to whether the structure is a fixture or not. If it is not a fixture, then it would be considered a chattel. The second test requires the court then to determine who owns the fixture or the chattel. The second assessment cannot be made until the first is determined. This is on the basis that if it is a fixture then the presumption of ownership of the structure sits with the legal owners of the land. The lower court judge identified this principle in his oral decision.¹⁵

[33] There was unfortunately no discussion in the court's judgment of the two-stage test, and more fundamentally no finding of fact on the first limb, determining whether the garage was a fixture or chattel. The discussion with the parties and the analysis in the decision was solely about ownership. The difficulty then is that it was not yet determined what was being owned. Was the garage a chattel or a fixture?

[34] Relevantly, at the lower court hearing the respondents raised that the garage had concrete flooring.¹⁶ Rather than exploring the construction of the garage the lower court focused its discussion on the original purpose of the garage, how the whānau utilise it and financial contributions that the beneficial owners and their whānau have made to the garage alongside the parties' awareness of improvements made over time.¹⁷

[35] Having read the oral decision of the lower court, no positive finding of fact determining the first stage of the two-stage test can be located. Two questions arise – is a

¹⁵ 290 Taitokerau MB 125-150 (290 TTK 125) at 142.

¹⁶ At 138.

¹⁷ At 141.

finding of fact necessary and, if it is, was the finding implicit in the decision given by the lower court?

[36] On the first question, we find that a specific finding is necessary. All authorities point to this fact. A finding as to the status of the garage must be made for the second question to be addressed properly.

[37] On the evidence before us and before the lower court it seems *prima facie* that the garage was a fixture. Be that as it may, we have grappled with whether it is our job on appeal to make findings of fact. Whilst our powers on appeal are broad and the appeal is by way of rehearing, making a critical determination of fact on appeal seems a step too far. Generally, appellate courts do not make findings of fact, but there are exceptions, such as drawing inferences from undisputed facts or where there are no credibility issues, and the evidence is documentary in nature.¹⁸

[38] The reality is that the focus of the evidence and questioning from the lower court was on contributions to the garage, its use and purposes. Little attention was given to its status as a fixture. That assessment is a critical one and it would be inappropriate for us to do it, given it does not fall into the uncontested evidence category. In fact, there needs to be clear evidence as a starting point. The weighing of evidence ought to be done by the lower court, not this court.

[39] Determining a fact by implication is problematic, especially when such a finding goes to the heart of a s 18(1)(a) determination. Finding such a critical fact by implication cannot be sustained, especially in light of the limited attention the construction of the garage was given at the lower court hearing.

[40] Unfortunately, we must conclude that the lower court was required to make the necessary finding of fact about the status of the garage explicitly and it did not. That was an error of law. There could have been a different answer to the ownership question, depending on whether it was a chattel or a fixture.

¹⁸ *Austin, Nichols and Co Inc v Stitching Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141 at [5].

Kupu whakataua
Decision

The lower court decision is therefore annulled per s 56(1)(b) of the Act. The lower court is required to rehear the matter in its entirety by fully applying the legal test as outlined in this decision.

I whakapuaki i te 4:00 pm i Whanganui-a-Tara, tekau ma whitu o ngā rā o Pēpuere i te tau 2026.

Pronounced at 4:00 pm in Wellington on this 17th day of February 2026.

C L Fox (Presiding)
CHIEF JUDGE

M J Doogan
JUDGE

A H C Warren
JUDGE