

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

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

AP-20240000007157

AP-20240000007153

WĀHANGA
Under

Sections 19(1)(a), 19(1)(ba) and 238, Te Ture
Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Pukehina M Section 1B No.3

I WAENGA I A
Between

PIMARA BRENT NGAWHIKA
Te kaitono
Applicant

ME
And

JACOB NEPIA
Te Kaiurupare Tuatahi
First Respondent

ME
And

DESTANNE NGAWHIKA, JEFFREY
WIKIRIWHI, MAUREEN UA-MARSH,
MOANA-MAREE NGAWHIKA, MOIRIRANGI
WILLIAMS, ROCKY GALVIN AND YVETTE
MCCAUSLAND-DURIE AS TRUSTEES OF
THE HOANI NGAWHIKA AHU WHENUA
TRUST
Ngā Kaiurupare Tuarua
Second Respondents

Nohoanga:
Hearing

24 October 2024, 323 Waiāriki MB 28-70
(Heard at Rotorua)

Kanohi kitea:
Appearances

J Gear for Applicant
J Nepia in person
C Bidois for Second Respondents

Whakataunga:
Judgment date

3 June 2025

TE WHAKATAUNGA A KAIWHAKAWĀ T M WARA
Judgment of Judge T M Wara

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Hei tīmatanga kōrero*Introduction*

[1] This decision is about aroha and broken promises. It is a sad example of an informal agreement between whānau breaking down, and the hardship that has followed.

[2] Pimara Ngawhika applied for an injunction requiring that his nephew, Jacob Nepia, remove the house that he built on a part of Pukehina M Section 1 No.3 Block. While this application was heard on 24 October 2024, settlement discussions took place, and my final decision was reserved, on 20 January 2025. Sadly, by this time Pimara had passed. Me mihi ka tika ki a ia, i haere atu ra koe ki te whakahiapo o Hine-nui-te-pō.

[3] Counsel informed the Court that a decision is still required as it would affect Pimara's beneficiaries. Accordingly, this Court will determine whether a permanent injunction is required.

He aha te kaupapa o tēnei kēhi?*What is this case about?*

[4] Pukehina M Section 1 Block No.3 (the land) is 87.8977 hectares of Māori freehold land located near Pukehina. There are currently 70 beneficial owners who collectively hold 7 shares.

[5] The land is administered by the Hoani Ngawhika Ahu Whenua Trust (the Trust) and is vested in seven trustees. Hoani Ngawhika had seven children, and therefore there are seven whānau represented within the trust.

[6] In the early 2000s, the trustees planned a papakainga for the descendants of Hoani Ngawhika, ultimately surveying 70 sections on the land and allocating 10 to each of the seven whānau.

[7] The Hapeta Ngawhika whānau were allocated 10 surveyed sections, and in 2012 one of the sections was allocated to Pimara by the whānau. This section, identified as section 9, is 1215m². No occupation rights were formalised regarding this section.

[8] Pimara became aware that his nephew Jacob had a falling out with his mother, and that Jacob would be disinherited. Pimara decided, out of aroha, that he would gift Jacob some of his shares. On 20 June 2018 the Court granted orders under section 164 vesting 0.00389 shares of his shares in Jacob.¹ At the same time, an additional 0.00089 shares were gifted to Jacob by another whanaunga, Julieann Oriwia Ngawhika.²

[9] The night before the hearing, an agreement was reached between Jacob and Pimara and sealed with a handshake. Pimara agreed to Jacob building a dwelling on the land in exchange for accommodation. The nature of the accommodation is contested.

[10] On 1 September 2018, Jacob sent a letter to the trustees of the Trust, seeking approval to build a dwelling on the section designated to Pimara. He provided a plan for the proposed dwelling, being a two-bedroom dwelling of 84m². The plan identifies the owners as both Jacob and Pimara.

[11] Jacob, a qualified builder, commenced building in 2018. This 180m² house differed to the plans submitted to the trustees. At the end of 2019 Jacob and his family moved into the house, which was still under construction but liveable.

[12] Pimara returned to New Zealand from Australia, and on 3 September 2023 he moved into the house. Sadly, the relationship between Pimara and Jacob broke down, and on 12 February 2024, Jacob evicted Pimara from the house, removing his personal items.

Ngā take hei whakataunga

Issues for determination

[13] The fundamental issue for determination is whether the Court should grant a permanent injunction requiring the removal of the dwelling situated on section 9 from the land.

[14] In considering this issue, the following sub-issues arise:

- (a) Did Pimara have a right of possession capable of being enforced?

¹ 190 Waiariki MB 219-223.

² As above.

- (b) Was there an agreement between Pimara and Jacob, and if so, what are the terms?
- (c) Considering the overall justice of the case, should an injunction be granted?

Te Ture

The law

[15] I have jurisdiction to grant a permanent injunction per s 19(1)(a) of Te Ture Whenua Māori Act 1993 (the Act) to protect Māori freehold land, Māori reservations or wāhi tapu from actual or threatened trespass or other injury. An application may be advanced by a person claiming to have an interest in the matter.³

[16] The application before the Court pertains to both trespass and injury to land.

[17] In *Taueki v Horowhenua Sailing Club - Horowhenua 11 (Lake) Block* the Māori Appellate Court has discussed the legal elements for granting a permanent injunction in an action of trespass:⁴

[15] In applying for a permanent injunction, applicants must also fulfil the legal elements relating to the action of trespass before the Court will exercise its jurisdiction to grant the remedy. These elements are set out below:

The action for trespass to land is primarily intended to protect possessory rights, rather than rights of ownership. Accordingly, the person prima facie entitled to sue is the person who had possession of the land at the time of the trespass. Actual possession consists of two elements: the intention to possess the land and the exercise of control over it to the exclusion of other persons. Either element alone is not sufficient...

[16] Once the elements for the trespass action are made out, the Court then considers what remedy is appropriate. The prima facie rule is that a landowner is entitled to an injunction to restrain a trespass. However, the Court still has discretion as to whether to grant the injunction or not. Matters affecting the exercise of the discretion include the parties' conduct.
(footnotes omitted)

[18] In the recent Māori Appellate Court decision of *Meroiti v Meroiti*, the principles concerning the grant of a permanent injunction were summarised as follows:⁵

³ Te Ture Whenua Māori Act 1993, s 37.

⁴ *Taueki v Horowhenua Sailing Club - Horowhenua 11 (Lake) Block* [2014] Māori Appellate Court MB 60 (2014 APPEAL 60).

⁵ *Meroiti v Meroiti – Owkata No. 1J No. 2B* [2025] Māori Appellate Court MB 142 (2025 APPEAL 142) at [32].

- (a) The Court must be satisfied that the grant of the injunction would not cause disproportionate hardship.
 - (b) The Court must consider the overall justice of the case, and refrain from granting a permanent injunction that would cause injustice to the respondent. The test is oppression rather a balance of convenience.
 - (c) The general principle is that an injunction should ordinarily be granted in favour of an applicant whose rights have been affected, unless damages are a more appropriate remedy. This is referred to as the "*good working rule*".
 - (d) It would be oppressive to grant a permanent injunction where the "*good working rule*" applies.
 - (e) As the decision to grant a permanent injunction is discretionary, the Preamble and the general objections set out in s 17 of the Act are relevant to the exercise of discretion.
- (footnotes omitted)

Did Pimara have a right of possession capable of being enforced?

[19] Ordinarily, when land is vested in an ahu whenua trust, it is the trustees that apply to the Court. However, as confirmed by the Māori Appellate Court in *Taueki v Horowhenua Sailing Club*,⁶ any beneficiary has standing to apply to the court for an injunction under s 19 of the Act. However, in order to obtain that remedy, the applicant must show that there is an actual or threatened trespass against the land.

[20] Counsel for Pimara, Josh Gear, submits that his client is not an owner, rather he is a beneficial owner. As Jacob is also a beneficial owner in the land, it is submitted that the action is more akin to trespass by ouster. However, as accepted by counsel, trespass by ouster applies to owners in common where no administrative body exists over the land.

[21] Counsel submits that Pimara has an unwritten license to occupy section 9, and this is unchallenged. Counsel for the trustees, Curtis Bidois, agrees that Pimara has a right to occupy his section pursuant to an unwritten licence granted to his whānau by the trustees around 2012, by way of the agreed allocation of sections amongst the whānau mentioned previously. It follows that, at the time of the trespass arising, Pimara was in joint occupation of section 9 with Jacob.

⁶ *Taueki v Horowhenua Sailing Club - Horowhenua II (Lake) Block* [2014] Māori Appellate Court MB 60 (2014 APPEAL 60) at [15].

[22] I accept counsel's submission that Pimara was entitled to seek an injunction to restrain a trespass, however in departing from counsel's submission, this does not equate to an entitlement of an injunction. It is trite law that the court still has discretion as to whether or not an injunction ought to be granted.

Was there an agreement between Pimara and Jacob, and if so, what are the terms?

[23] Mr Gear submits that before shares were transferred from Pimara to Jacob, there was an agreement that the shares would be transferred in consideration of:

- (a) Jacob building and locating a removeable transportable house on the land allocated, for Pimara; and
- (b) Part of that dwelling would have an area dedicated to Pimara's personal use.

[24] While there was clearly an informal agreement between the parties, the evidence does not support the assertion that the gifting of shares was part of the agreement.

[25] When questioned by the Court, Pimara was unclear as to the timeline of discussions about the shares and the proposed build. He recalled Jacob showing him a plan for a dwelling in Australia but did not recall whether this took place before or after the hearing in April 2018. The timing of the plan presented to Pimara is important, but there is no evidence that the plan was presented before the hearing. There is also no evidence of Pimara endorsing any plans, which is an unfortunate reality of the informal transaction between the whānau. The only certain fact is that a plan was submitted to the trustees of the Ahu Whenua Trust in September 2018 – three months after the gifting of shares was determined.

[26] When Julieann Ngawhika gave evidence, she said that both herself and Pimara felt aroha for Jacob and decided to give him a little bit of land. Julieann advised that it was the night before the hearing in 2018, herself and Pimara returned from Australia and stayed with Jacob. She said that she witnessed an agreement being reached between them:⁷

I witnessed Jay saying to Pimara that they will build a house and share it and they would split it. You know, he had one half, and they had the other half. They shook hands on it. That was the night before our court.

⁷ 323 Waiariki MB 28-70 at 42.

[27] Jacob's evidence is consistent with Julieann's understanding of the agreement, and during the hearing he said: "The agreement was that I was going to build a place for both of us to share... I told Pimara he'll have a place to stay for the rest of his days."⁸

[28] Taking the evidence into account, I find that there was an agreement between the parties that agreement was not conditional on the gifting of shares. Rather, the agreement contained two simple terms:

- (a) Pimara consented to Jacob building a house on the land allocated to him; and
- (b) Jacob agreed to provide Pimara with accommodation within that house during his lifetime.

Considering the overall justice of the case, should an injunction be granted?

[29] There is no doubt that Pimara's rights were affected when he was trespassed from the house. He was promised accommodation for the rest of his days, and Jacob broke this promise to his uncle. This caused significant distress for Pimara and the wider whānau. However, Pimara's rights cannot be viewed in isolation, as this Court must also consider whether it is just to require vacant possession of the land, given that Pimara had agreed to Jacob building on the land.

[30] Counsel for the trustees submits that the doctrine of estoppel prevents Pimara from recovering vacant possession of his section. The doctrine of estoppel was applied in *Paraire v Paraire*,⁹ based on the formulation proposed by Richardson J in *Gillies v Keogh*:

[63] In the case of *Gillies v Keogh*, the Court of Appeal referred to what are known as the five probanda required to be shown by a party seeking to rely upon the doctrine of proprietary estoppel.

[64] Richardson J noted that there had been a trend away from the strict application of those five probanda to a more flexible test of unconscionability. Despite that he considered that there are three essential elements which need to be satisfied namely:

- (a) The creation or encouragement of a belief or expectation;
- (b) Reliance by the other party; and
- (c) Detriment suffered as a result of that reliance.

⁸ 323 Waiariki MB 28-70 at 48.

⁹ *Paraire v Paraire – Part Mangatawa 10 Block* (2015) 105 Waikato Maniapoto MB 67 at [63] - [64].

[31] In response, Mr Gear submits that the “belief or expectation” was conditional on the house being transportable and says that this condition was not satisfied. Both Pimara and Julieann gave evidence that the agreed house was to be a transportable home. In response, Jacob advised that the house is built on piles and is capable of being transported. Neither party offered a legal definition as to the meaning of a “transportable home” and the Building Act 2003 and the Building Code are silent on this matter. In taking a common-sense approach, a transportable home is simply a building that can be transported from one site to another while remaining structurally sound. In the absence of evidence to the contrary, I accept Jacob’s evidence as a Licenced Building Practitioner, that the house is transportable and therefore that condition was fulfilled.

[32] This then takes us to the second part of the agreement, being Jacob’s promise to Pimara for accommodation for the rest of his days. As to whether this Court ought to consider the issue of estoppel in relation to Jacob’s promise, I do not consider that this is required due to the post-hearing negotiations that occurred and were shared with the Court. On 13 November 2024, Jacob proposed a resolution, where he agreed to vacate the property to enable Pimara to live the rest of his days on certain terms and conditions to safeguard the house.

[33] On 25 November 2024 a counteroffer was put on behalf of Pimara to Jacob. It’s not apparent which terms or conditions were not acceptable to Pimara, rather he continued to seek the removal of Jacob’s house within 90-days. A further offer was put to Jacob on 12 December 2024, proposing a partial occupation by Jacob to the extent of shareholding, being 411m², in relation to the southern end of the section near the roadway. While not certain, evidence suggests that this would require the house to be relocated from the middle of the block to the front. In any event, no agreement was reached.

[34] Ultimately, the Court must consider the overall justice of the case, and refrain from granting a permanent injunction if it would be oppressive. In light of all the facts, I consider that an injunction would be oppressive for the following reasons:

- (a) Pimara agreed to Jacob building a house on the land in return for accommodation for the remainder of his life.

- (b) Both Pimara and Jacob are responsible for the loose agreement – and at any time either of them could have taken steps to ensure that there was certainty of terms.
- (c) Jacob built a house that provided accommodation for Pimara.
- (d) While Jacob was clearly wrong in trespassing Pimara from the house, I consider that wrong was rectified with his subsequent offer to vacate in favour of Pimara.
- (e) While there was no independent evidence as to the cost of relocating the house, it is common knowledge that such an exercise costs tens of thousands of dollars.

[35] Under these circumstances, I find that it would be oppressive to require Jacob to remove the house from the land.

[36] One further matter that is of note, is the fact that Jacob has no legal right of occupation for section 9. This is a matter that he will need to address to avoid further conflict with both the Hapeta Ngawhika whānau and the trustees of the Trust.

Whakataunga

Decision

[37] For the reasons that I have outlined above, the application is dismissed.

I whakapuaki i te 4.00 pm i Rotorua, tuatoru o ngā rā o Hune i te tau 2025.
Pronounced at 4:00 pm in Rotorua on this 3rd day of June 2025.

\$(signature)

T M Wara
KAIWHAKAWĀ