

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

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

**AP-20240000013810**

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| WEHENG<br><i>Under</i>                | Section 79, Te Ture Whenua Māori Act 1993                                                                                                                                                                 |
| MŌ TE TAKE<br><i>In the matter of</i> | Waotu South 17 and Lot 1 Deposited Plan 330544                                                                                                                                                            |
| I WAENGA I A<br><i>Between</i>        | DAWN PAYNE, DONNA LEE PAERIMATA<br>SMITH, PHILLIP (SCOOP) SIMMONDS, MARY<br>SIMMONDS, RAHERA (CONNIE) MITCHELL,<br>PENETI (BEN) BENNET SIMMONDS AND<br>MIKAERE HEIHEI<br>Ngā kaitono<br><i>Applicants</i> |
| ME<br><i>And</i>                      | HINE RAUWHERE, PHILLIP SAMUELS AND<br>RUTHANA BEGBIE AS TRUSTEES OF TE<br>RAPARAHĪ LANDS TRUST<br>Ngā kaiurupare<br><i>Respondents</i>                                                                    |

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| Kōtitanga:<br><i>Hearing</i>         | 8 April 2026, 370 Waiariki MB 27-33<br>(Heard at Rotorua)                                                     |
| Kanohi kitea:<br><i>Appearances</i>  | Ms T Baker and Mr H Richards-Coxhead for Applicants<br>Mr D Stoevelaar and Ms R Tamati-Parata for Respondents |
| Whakataunga:<br><i>Judgment date</i> | 28 August 2026                                                                                                |

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**TE WHAKATAUNGA Ā KAIWHAKAWĀ T M WARA MŌ TE UTU RŌĪA**  
*Judgment of Judge T M Wara as to Costs*

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**Hei tīmatanga kōrero***Introduction*

[1] On 8 April 2026, I dismissed an application filed by Dawn Pyne, Donna Lee Paerimata Smith, Phillip (Scoop) Simmonds, Mary Simmonds, Rahera (Connie) Mitchell, Peneti (Ben) Bennet Simmonds and Mikaere Heihei, seeking an interim injunction under s 19(1)(b) of Te Ture Whenua Māori Act 1993 (the Act) to prevent the trustees of the Te Raparahi Lands Trust from making significant financial and operation decisions until such time as their concerns have been adequately addressed.<sup>1</sup>

[2] As to the issue of costs, I invited parties to file submissions by 20 May 2026.

**Ngā kōrero a ngā Kaiurupare***Respondent's submissions*

[3] The trustees of the Te Raparahi Lands Trust submit that they were entirely successful, and the costs sought are 100% of costs that were actually or reasonable incurred.

[4] It is submitted that the relationship between the parties has entirely broken down, and there is no benefit in limiting costs as no harm has been established. Further, it is submitted that the applicants sought an interim injunction without proper cause, and that any legal research would have established that the application was baseless.

[5] Counsel for the trustees has provided an assessment of comparative costs using the High Court scale of \$31,070.00 – this appears to be on a 2C basis. This amount being similar to the projected actual costs. Counsel has provided invoices of \$22,400.68 and advised that a further invoice was to be rendered of approximately \$10,000.00. Indicating a total of \$32,400.68.

[6] Counsel for the trustees also invites the Court to meet costs through the Special Aid Fund on the basis that there is little to no prospect of recovering any funds from the applicants.

**Ngā kōrero a ngā Kaitono***Applicant's submissions*


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<sup>1</sup> 370 Waiariki MB 27-33 (370 WAR 27-33).

[7] The applicants' starting point is that costs should lie where they fall. However, should the Court consider that costs should be awarded, the applicants submit that an award should be at the lower end of the scale.

[8] In relation to the indemnity costs being sought by the trustees, the applicants submit that the threshold is high, and indemnity costs are reserved for cases where truly exceptional circumstances exist.

[9] Counsel for the applicants has undertaken an analysis of scale costs using the District Court 2B scale of \$9,200.00 – this is a similar figure to 30% of actual costs.

[10] As for Counsel for the trustees' suggestion that costs be met through the Special Aid Fund, this is not opposed by the applicants.

## **Te Ture**

### *The Law*

[11] Section 79(1) of the Act provides a broad jurisdiction to the Court to grant costs in any proceeding. In *Samuels v Matauri X Incorporation – Matauri X Incorporation*, the Court established a two-stage approach in relation to determining costs.<sup>2</sup> The first question is: should costs be awarded? If the answer is yes, then the Court moves to consider the quantum.<sup>3</sup>

[12] As to the award of costs, the established principles are as follows:<sup>4</sup>

- a. The Court has an absolute and unlimited discretion as to costs.
- b. Costs normally follow the event.
- c. A successful party should be awarded a reasonable contribution to the costs that were actually and reasonably incurred.
- d. The Māori Land Court has a role in facilitating amicable ongoing relationships between parties involved together in land ownership, which may sometimes make the award of costs inappropriate. However, where litigation has been conducted similarly to litigation in the ordinary courts, the same principles regarding costs will apply.
- e. There is certainly no basis for departure from the ordinary rules where the proceedings were difficult and hard fought, and where the applicants succeed in the face of serious and concerted opposition.

<sup>2</sup> *Samuels v Matauri X Incorporation – Matauri X Incorporation* (2009) 7 Taitokerau Appellate 216 (7 APWH 216).

<sup>3</sup> *Samuels v Matauri X Incorporation – Matauri X Incorporation* (2009) 7 Taitokerau Appellate 216 (7 APWH 216) at [9].

<sup>4</sup> *Samuels v Matauri X Incorporation – Matauri X Incorporation* (2009) 7 Taitokerau Appellate 216 (7 APWH 216) at [10]; recently upheld in *Tana v Mahanga – Pukahakaha East 5B* [2026] Māori Appellate Court MB 392 (2026 APPEAL 392).

[13] With regard to the level of costs, the principles have also been summarised in *Samuels* as follows:<sup>5</sup>

- a. The Court has a broad discretion;
- b. The Court should look to what is just in the circumstances and in doing so should have regard to the nature and course of the proceedings; the importance of the issues; the conduct of the parties and whether the proceedings were informal or akin to civil litigation;
- c. If a party has acted unreasonably – for instance by pursuing a wholly unmeritorious and hopeless claim or defence – a more liberal award may well be made in the discretion of the Judge, but there is no invariable practice;
- d. Where the unsuccessful party has not acted unreasonably. It should not be penalised by having to bear the full party and party costs of his/her adversary as well as their own solicitor and client costs;
- e. The Court's discretion as to the level of contribution is a broad one but a reasonable contribution will seldom be as little as 10% and a contribution as large as 80% or 90% will seldom be reasonable on an objective analysis;
- f. Where proceedings involve counsel and are comprehensively pursued and contested within a relatively formal framework in a similar manner to civil litigation then an award of costs should be made.

### **Kōrerorero**

#### *Discussion*

[14] The starting point is that the Court has an absolute and unlimited discretion as to costs, which normally follow the event. A successful party should be awarded a reasonable contribution to the costs, and I see no reason to depart from this principle.

[15] As to the level of costs, the first factor to consider is the nature and course of the proceedings. The applicants filed an application which was contentious, and they ought to have appreciated this, especially when seeking to prevent the trustees from making significant financial and operational decisions. This action cannot be characterised as an owner seeking information, rather this was litigation with the character of civil proceedings.

[16] Turning to whether the applicants acted reasonably or unreasonably, this requires a review of the applications filed and a consideration of my findings.

[17] From the outset I had raised issues with the applicant regarding the interim injunction being sought. In my directions issued on 12 December 2024, I confirmed the scope of trustee powers under clause 3(v) of the Trust Order and signalled that the issues raised were matters

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<sup>5</sup> *Samuels v Matauri X Incorporation – Matauri X Incorporation* (2009) 7 Taitokerau Appellate 216 (7 APWH 216) at [13].

for a review of trust. I invited the applicants to consider amending the proceedings to a review of trust, however the applicants wanted to proceed. By doing so they assumed the risk.

[18] Further, while I am cognisant that the applicants were not initially represented when they filed proceedings on 5 December 2024, they had instructed counsel who gave notice to the court on 28 February 2025, one week prior to the hearing. By the date of the hearing, counsel had prepared a substantive application, evidence in support, and legal submissions. However, it seems that counsel missed taking the opportunity to test the strengths of their client's case. The application was ultimately dismissed on the basis that there was no irreversible harm or prejudice that would justify immediate court intervention, which is akin to the application lacking merit.

[19] While the interim injunction lacked merit, there were clearly administrative issues within the trust and the trustees had accepted that they had failed to comply with clause 7 of the Trust Order. However, the administrative issues ultimately fall to the substantive application for review, and I find that there was an unreasonable approach to the interim injunction that was being sought.

[20] As to legal complexity, while the proceedings had the character of civil proceedings, they were not particularly complex. The law regarding interim injunctions is straight forward, and the application was only set down for a one-hour hearing.

[21] As for the indemnity costs being sought, *Nicholas v Official Assignee* is the leading authority.<sup>6</sup> When considering a claim for indemnity costs, I must be satisfied that the costs sought were actually and reasonably incurred, and an unsuccessful party is not required to pay costs at a 'Rolls Royce' standard.<sup>7</sup> Counsel for the trustees filed two tax invoices and a draft invoice. The invoices lack a breakdown of costs such as an hourly rate, and the time spent on each step. The second invoice relates to post proceeding matters including the preparation of submissions as to costs, which is not appropriate for the calculation of costs.<sup>8</sup> As to the "draft invoice" of \$10,0000, there is no proper basis for my consideration of this

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<sup>6</sup> *Nicholas v Official Assignee* (2021) Māori Appellate Court MB 312 (2021 APPEAL 312).

<sup>7</sup> *Nicholas v Official Assignee* (2021) Māori Appellate Court MB 312 (2021 APPEAL 312) at [19].

<sup>8</sup> *Gemmell v Gemmell – Ngatarawa 2A3B1B2 and Section 1 Survey Office Plan* (2023) 105 Tākitimu MB 199 (105 TKT 199) at [31].

document. For these reasons I agree with counsel for the applicants that the threshold for indemnity costs have not been met.

[22] Disregarding the second and draft invoices, my starting point is the first invoice of \$22,400.68. As the threshold for indemnity costs has not been met, I need to strike an appropriate balance between facilitating amicable relationships between the parties while acknowledging the relatively serious consequences of filing an injunction application in this court. I consider that 50% of my starting point is the appropriate balance.

[23] I therefore determine costs in favour of the trustees of \$11,200.34.

[24] As for the suggestion that these costs be met through the Māori Land Court Special Aid Fund because the applicants are unlikely to have the funds to pay, I am not going to entertain this submission. Enforcement is a matter for the parties to resolve.

### **Kupu Whakataua** *Decision*

[25] Per s 79 of the Act, I grant an order that the applicants, being Dawn Pyne, Donna Lee Paerimata Smith, Phillip (Scoop) Simmonds, Mary Simmonds, Rahera (Connie) Mitchell, Peneti (Ben) Bennet Simmonds and Mikaere Heihei are jointly and severally liable to the trustees of the Te Raparahi Lands Trust for costs in the amount of \$11,200.34.

I whakapuakina i te 3:30pm i Rotorua, i te tekau mā waru o ngā rā o Ākuhata i te tau 2026.  
*Pronounced at 3:30pm in Rotorua, this 28<sup>th</sup> day of August 2026.*

T M Wara  
**KAIWHAKAWĀ**