

**I TE KOOTI PĪRA MĀORI O AOTEAROA
I TE ROHE O AOTEA**

*In the Māori Appellate Court of New Zealand
Aotea District*

AP-20230000031107

APPEAL 2023/7

WEHENG
Under

Section 58, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

ŌURI 1A3

I WAENGA I A
Between

DONNA POKERE PHILLIPS
Te Kaitono Pira
Appellant

ME
And

CAROLINE TAPUONE SCOTT, GERALDINE
WAIARI HUNTINGTON, JUSTINE
MARGARET MARSHALL-OWENS, MEEGAN
TE MOANA SORENSON, MOETU AGNES
TONGA, AND ROINA GRAHAM AS
TRUSTEES OF TE HANATAUA AHU
WHENUA TRUST
Ngā Kaiurupare Pira
Respondent

Kōtitanga:
Hearing

On the papers

Kooti:
Court

Chief Judge C L Fox (Presiding)
Judge S F Reeves
Judge M P Armstrong

Kanohi kitea:
Appearances

D Pokere-Phillips in person
S Hughes KC for Respondents

Whakataunga:
Judgment date

6 March 2026

TE WHAKATAUNGA A TE KOOTI
Reserved Judgment of the Court

Hei tīmatanga kōrero*Introduction*

[1] On 14 May 2024, we dismissed this appeal. Ms Hughes KC, for the respondents, sought costs. We directed both parties to file submissions on costs. Ms Hughes filed submissions as directed. Ms Pokere-Phillips did not. Instead, she filed an appeal against our decision with the Court of Appeal. We adjourned the question of costs pending the outcome of that appeal.

[2] The Court of Appeal dismissed Ms Pokere-Phillips' appeal. We then directed Ms Pokere-Phillips to respond on costs. She has now done so.

[3] In this judgment, we first decide whether to award costs. If we do, we then consider how much to award.

Me tonono e mātou he utu?*Should we award costs?*

[4] When deciding whether to award costs, the following principles apply:¹

- (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 Court has a role facilitating amicable ongoing relationships between parties involved together in land ownership. Sometimes this may make an 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 no basis to depart from the ordinary rules where the proceedings were difficult and hard fought, and where one party succeeded in the face of serious and concerted opposition.

¹ *Manuoirangi v Paraninihi Ki Waitotara Inc – Paraninihi Ki Waitotara* (2002) 15 Aotea Appellate MB 64 (15 WGAP 64).

[5] Although Mrs Pokere-Phillips engaged counsel for the appeal, she has responded on costs in person. She invites us to consider whether it is appropriate to award costs in this case. We consider that costs should be awarded.

[6] Ms Pokere-Phillips, and the trustees, have an ongoing relationship concerning this land. However, this litigation was conducted in a similar manner to that in the mainstream courts. Ms Pokere-Phillips engaged counsel and raised a number of legal arguments as grounds for the appeal. That included an allegation that the lower Court was conflicted, and that the exercise of the discretion to award costs in the lower Court was unreasonable and unlawful. Ms Pokere-Phillips maintained those arguments in the face of serious and concerted opposition from the trustees.

[7] There is no basis to depart from the ordinary approach that costs follow the event.

He aha rā ngā utu e tika ana kia tonoa?

What amount of costs should be awarded?

[8] When deciding quantum, the following principles apply:²

- (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:
 - (i) the nature and course of the proceedings;
 - (ii) the importance of the issues;
 - (iii) the conduct of the parties; and
 - (iv) 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 be made at the discretion of the Judge, but there is no invariable practice.

² *Manuirirangi*, above n 1.

- (d) Where the unsuccessful party has not acted unreasonably, they should not be penalised by having to bear the full party and party costs of their adversary as well as their own solicitor and client costs.
- (e) The Court's discretion regarding the level of contribution is broad but a reasonable contribution will seldom be as little as 10 percent and a contribution as large as 80 percent or 90 percent will seldom be reasonable on an objective analysis.

[9] Ms Hughes argues that scale costs in the High Court Rules provides an award of \$9,864.00 for an appeal of this nature. However, her actual costs amount to \$2,600.20. Ms Hughes submits that an award of \$2,600.20 is appropriate in this case.

[10] Ms Pokere-Phillips does not specify an amount she says is reasonable. She submits that any award should be confined to a modest scale-based assessment.

[11] As Ms Hughes has pointed out, scale costs in this case greatly exceed actual costs. We cannot award costs that exceed actual costs and so the scale in the High Court Rules provide little assistance here. Those scale costs do demonstrate how modest, and reasonable, Ms Hughes actual costs are.

[12] We also consider that Ms Pokere-Phillips' conduct during the appeal is relevant to quantum. As we set out in our 2024 judgment, the appeal only challenged Judge Warren's decision of 6 June 2023. Despite that, Ms Pokere-Phillips, through her counsel, attempted to raise issues outside the scope of the appeal. She also sought to introduce new evidence even though she had not applied to do so pursuant to the Māori Land Court Rules. It was not open to her to do either. Doing so required Ms Hughes to respond to additional issues that were not properly raised on appeal. The issues Ms Pokere-Phillips did raise in the notice of appeal had little merit. All of her arguments were wholly unsuccessful.

[13] Generally, a party should be awarded a reasonable contribution to the costs that were actually and reasonably incurred. An award of 90 percent will seldom be reasonable on an objective analysis. Despite that, we consider a 90 percent contribution is reasonable here

given Ms Pokere-Phillips' conduct, the lack of merit to the appeal, and the modest amount of costs actually incurred.

Whakataunga

Decision

[14] Per s 79 of Te Ture Whenua Maori Act 1993, we order Donna Pokere-Phillips to pay costs to the trustees of Te Hanataua Ahu Whenua Trust in the amount of \$2,340.18.

I whakapuakina i te 4.00pm i Te Whanganui-a-Tara i te tuaono o ngā rā o Maehe i te tau 2026.

C L Fox (Presiding)
CHIEF JUDGE

S F Reeves
JUDGE
JUDGE

M P Armstrong