

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

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

AP-20250000010501

WĀHANGA <i>Under</i>	Section 19(1)(b), 238, and 240, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	3167 State Highway 2, Ngatirangi Street, Nuhaka and others
I WAENGA I A <i>Between</i>	KATARENA SMITH, ELDON PAEA AND TE IWI O RAKAIPAAKA INCORPORATED Ngā kaitono <i>Applicants</i>
ME <i>And</i>	PAULINE SYMES, GRAEME SYMES, JAYELL SMITH AND SHANAN SYMES Ngā kaiurupare <i>Respondents</i>

Nohoanga: 12 September 2025, 135 Tairāwhiti MB 59-72
Hearing (Heard at Gisborne)

Kanohi kitea: M Mahuika, M Tahere, and T Ahu for Applicant
Appearances T Barker for Respondent

Whakataunga: 3 October 2025
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ W W ISAAC
Judgment of Judge W W Isaac

Hei tīmatanga kōrero*Introduction*

[1] On 15 August 2025, the Court received three applications filed by Eldon Paea and Katarena Smith (two of six trustees of Te Iwi o Rakaipaaka Trust (TIORT)) and Te Iwi o Rakaipaaka Incorporated (TIORI), a beneficiary of TIORT. The applications are filed against Pauline Symes, Graeme Symes, Jayell Smith, and Shanan Symes, who are the remaining trustees of TIORT.

[2] The applicants seek Court orders:

- (a) under s 240 of Te Ture Whenua Māori Act 1993 (the Act) removing the respondents as trustees of TIORT; or
- (b) under s 238 of the Act for the enforcement of obligations of trust.

[3] Concurrently, the applicants seek an interim injunction pursuant to ss 19(1)(b) and 237 of the Act and r 9.5 of the Māori Land Court Rules 2011 (the Rules):

- (a) restricting the respondents from making payments from TIORT funds, except where required to meet the day-to-day costs of the trust, until the substantive applications (at [2] above) are determined or until further order of the Court; and
- (b) appointing an independent person to oversee and manage the upcoming TIORT election process should this take place before the substantive applications are determined.

[4] The applicants sought the interim injunction on an urgent basis without notice in the Pānui, in accordance with rr 4.19 and 9.6 of the Rules.

[5] Notwithstanding the request that the interim injunction be dealt with without notice in the Pānui, both the interim injunction and the substantive applications were heard on notice on 12 September 2025.

Whaimana
Jurisdiction

Te Iwi o Rakaipaaka Trust

[6] Section 237(1) provides that this Court may exercise the same powers of the High Court with respect to the trusts of the kind noted at s 236(1). Having regard to the Supreme Court’s decision in *Nikora v Kruger* and the landholdings and purposes of TIORT, I am satisfied that TIORT is a “trust constituted in respect of any General land owned by Māori”, thus falling within this Court’s supervisory jurisdiction.¹

[7] I note that there was no disagreement by the parties that the Court had jurisdiction to hear the applications before it.

Interim injunction

[8] The applicants seek an interim injunction pursuant to s 19(1)(b) of the Act. An interim injunction is brought under this section when there are proceedings pending before the Court and the injunction will maintain the status quo until these proceedings are concluded.

[9] In *Roseneath Holdings Ltd v Grieve*, it was stated that an interim injunction would “protect the plaintiff from harm occasioned by any breach of rights, that is the subject of current litigation”.²

[10] In this case, the interim injunction is sought to protect trust assets and prevent further possible breaches of trust duties by the respondents. Therefore, they were brought to maintain the status quo and to protect the trust until the substantive applications are determined.

[11] As stated above, both the applications for the interim injunction and the substantive application were heard on notice on 12 September 2025. As this is the case and decisions can be made on all the applications, I propose to determine the substantive applications in the first instance, and then consider the application for the interim injunction.

¹ Te Ture Whenua Māori Act 1993, s 236(1)(c); and *Nikora v Kruger* [2024] NZSC 130 at [34]–[37].

² *Roseneath Holdings Ltd v Grieve* [2004] 2 NZLR 168 at [35].

Ngā tāpaetanga e pā ana ki ngā tononga hei whakakore i ngā tarahitī hei whakauruhi i ngā takohanga

Submissions regarding applications for removal of trustees and enforcement of obligations

Case for the applicants

[12] The case for the applicants is based on allegations of breaches of trustee duties and tikanga. Specifically, the applicants allege that the respondents have:

- (a) Intentionally withheld information, acted without authority of the trustees, and failed to disclose and otherwise manage conflicts of interest in relation to employment matters. This specifically relates to the resignation and re-hiring of the TIORT General Manager Johnina Symes (who is the sister-in-law of the Chairperson), and the hiring of the interim General Manager Rosie Symes (who is the daughter of the General Manager). The applicants allege that Chairperson Pauline Symes breached her duties by unilaterally granting authority to the General Manager to bid on a property at an auction without the support of the trustees and failing to properly and appropriately manage numerous conflicts of interest.
- (b) Failed to manage conflicts of interest appropriately in the management of TIORT payments. The applicants note that the signatories to the trust's bank account hold close familial relationships with other trustees and trust staff, giving rise to conflicts that have not been appropriately managed.
- (c) Committed substantial trust funds to purchase a property at 3167 State Highway 2, Nūhaka (the Nūhaka property) without the knowledge of all trustees or the authority of trustees and intentionally excluded the applicants from decision-making.
- (d) Failed to take appropriate action to investigate allegations of dishonesty and misconduct in relation to trustee Graeme Symes. The applicants allege that Graeme Symes engaged in misconduct and breached his trustee duties by issuing an invoice of \$10,000 to TIORI on 24 May 2024 and authorised payment to himself without declaring a conflict of interest. They also allege

that Graeme Symes attempted to mislead Rakaipaaka beneficiaries by amending the invoice after payment had already been made. The applicants further allege that the Chairperson breached her duties by failing to act and take appropriation action with respect to the invoice.

- (e) Failed to exercise trustee powers in good faith and proper purpose by removing Ms Jones as TIORT representative on TIORI and as Deputy Chairperson of TIORT on the basis of unproven and false allegations.

[13] To support these assertions, the applicants filed affidavits of Eva Jones, Eldon Paea, and George Rarere.

[14] The applicants also submit that the respondents have acted in breach of the tikanga of Rakaipaaka by acting in the manner set out above. In their submission, the respondents also breached tikanga by failing to resign despite multiple motions of no confidence from the beneficiaries of TIORT calling for their resignations and a commitment by the respondents to honour the wishes of the beneficiaries at one of those meetings.

[15] The applicants submit that the respondents have failed to comply with their duties and the tikanga of Rakaipaaka, and have put TIORT's assets at risk. Accordingly, they seek the respondents' removal as trustees. They argue that it is in the best interest of TIORT that they be removed from office.

[16] In the alternative, the applicants seek orders for obligations of trust to be enforced. They submit that there is a need to address the mistrust and division within the trust that has arisen from the respondents' actions. They also say the respondents' actions have undermined confidence in the trust and its ability to act as an effective representative of Rakaipaaka. This lack of confidence is evidenced by the no-confidence votes that have been passed at hui-a-iwi.

Case for the respondents

[17] The respondents submit that they have acted appropriately within the parameters of the TIORT trust deed. They say they have informed the applicants of trust matters through

trustee communications and meetings. They maintain that they have acted in their roles as trustees with the aim of serving their Rakaipaaka whānau and of progressing the interests of TIORT and its beneficiaries.

[18] In response to the applicants' allegations, the respondents filed affidavits of Pauline Symes, Graeme Symes, and Shanan Symes. They submit:

- (a) Decisions relating to the appointment of the interim general manager, leave for the general manager, removal of Ms Jones as the TIORT representative for TIORI and completion of policies were consistent with the trust deed.
- (b) Close familial relationships among the trustees are not unusual in the context of this trust and similar iwi organisations. While the respondents acknowledge the conflict matters could have been more clearly recorded and that improvements can be made, they refute the claims of a breach of their duties arising from a mismanagement of these conflicts.
- (c) The invoice relevant to the work of Graeme Symes was submitted for work carried out in his personal capacity, as an individual engaged to provide TIORI with whakapapa, pūrakau, tikanga and cultural advice. TIORT was not a party to the transaction, therefore clause 7 of the trust deed did not apply nor was he required to disclose the invoice to TIORT. The respondents say this is consistent with the legal advice obtained by the trust.
- (d) The trust has robust financial processes in place, and all creditor and wage payments require dual-authorisation, accountant's verification, and Chairperson oversight. Further, all payments are subsequently ratified at each trustee meeting.
- (e) The decision to purchase the Nūhaka properties was made by all trustees with due diligence and all trustees agreed to establish the company prior to the settlement of the purchase. The respondents maintain that all trustees were aware of preliminary discussions and plans for purchase, which was

ultimately approved by all trustees. In any event, per sch 5 cl 6 of the trust deed, decisions can be made by a majority of trustees.

- (f) The respondents believe the opportunity to purchase the property has been beneficial for the trust. The respondents note that the applicants do not seek to unwind the purchase or argue a loss as a result of the purchase.
- (g) The motion of no confidence at the meeting on 31 May 2025 did not have the effect of removing the trustees, as removal can only occur in accordance with sch 1 of the trust deed. The respondents received legal advice to this effect. Further, the respondents say that if they had resigned it would have left the trust in a precarious position with an inquorate trust, impacting on the business of the trust. Instead, the respondents have chosen to be involved in organising the election process, sending pānui to beneficiaries. The respondents all intend to stand down and not put themselves forward for re-election at the upcoming election.
- (h) Clauses 5 and 6 to Schedule 2 of the trust deed provide the trustees with the power to appoint persons as employees and officers of the trust on such terms and conditions as they think fit. The respondents maintain that all trustees attended trustee hui where the decisions regarding the appointment and management of the General Manager position were discussed.
- (i) The removal of Ms Jones as a representative on TIORI was made in accordance with the trust deed, following repeated issues where she undermined the trust credibility and funder relationships. The respondents say that Ms Jones had an opportunity to participate in that process and ultimately it was a collective decision recorded in the trust records.

[19] The respondents acknowledge that improvements could be made to internal processes but submit that the allegations of the applicants do not demonstrate any clear breaches of trust or risk to the assets of the trust. The respondents submit that any issues with processes represent technical breaches that do not reach the level sufficient to remove the

respondents as trustees. Rather, in their submission, the circumstances raised by the applicants are more in the nature of internal governance disputes.

[20] The respondents say that their removal is not desirable and would not be to the advantage of the trust for the following reasons:

- (a) The trust deed states that there must be a minimum of five trustees at any time. If the respondents are removed, this will leave the trust with less than five trustees. Accordingly, until new trustees are elected, all decisions of the trust will be inquorate.
- (b) The respondents are developing a transition plan, including preparing a report to ensure a smooth handover for the incoming trustees following an election. If they were removed, this would impact the effectiveness of the transition plan and create difficulty for the incoming trustees.
- (c) An election management company, Electionz, have been engaged as an independent body to oversee the upcoming election. All trustees can work with Electionz to ensure the upcoming election is carried out properly.
- (d) The respondents submit that there is no evidence of any loss or risk to the assets of the trust.
- (e) Given the respondents have committed to resigning at the upcoming election, there is no clear advantage for the management of the Trust in removing them.

[21] The respondents say the applicants have not particularised the application for the enforcement of the obligations of the trust, as they have not identified the obligations they are seeking to enforce. The respondents suggest that the applicants seek to enforce the obligations of the trust by way of the interim injunction sought.

[22] The respondents submit that all applications are not warranted and seek their dismissal.

He whakakore i ngā tarahiti*Removal of trustees**The law*

[23] Section 240 of the Act empowers the Court to remove trustees for cause. It provides:

240 Removal of trustee

(1) The court may at any time, in respect of any trustee of a trust to which this Part applies, make an order for the removal of the trustee, if it is satisfied that—

- (a) the trustee has lost the capacity to perform the functions of a trustee; or
- (b) **the removal is desirable for the proper execution of the trust, and 1 or more of the following grounds for removal are met:**
 - (i) **the trustee repeatedly refuses or fails to act as trustee:**
 - (ii) the trustee becomes an undischarged bankrupt:
 - (iii) the trustee is a corporate trustee that is subject to an insolvency event:
 - (iv) **the trustee is no longer suitable to hold office as trustee because of the trustee's conduct or circumstances.**

...

(3) A person may no longer be suitable to hold office as trustee, for example, because of the following conduct or circumstances:

- (a) the trustee is convicted of an offence involving dishonesty:
- (b) it is not known where the trustee is and the trustee cannot be contacted:
- (c) the trustee is prohibited from being a director or promoter of, or being concerned or taking part in the management of,—
 - (i) a company under the Companies Act 1993; or
 - (ii) an incorporated or unincorporated body under the Financial Markets Conduct Act 2013 or the Takeovers Act 1993.

(emphasis added)

[24] The current application engages ss 240(1)(b)(i) and 240(1)(b)(vi).

[25] The Court of Appeal in *Henderson v Brooking* confirmed that the test for removal under s 240(1)(b) involves two steps:³

- (a) First, the Court must be satisfied that one of the prescriptive grounds under s 240(1)(b) are met.
- (b) Secondly, the Court must determine whether removal is “desirable for the proper execution of the trust”.

[26] Despite amendments to s 240 in 2020, earlier principles concerning the removal of trustees continue to apply, including:⁴

- (a) removal is a serious step and is not undertaken lightly;
- (b) the trustee(s) at risk must be properly notified in advance;
- (c) technical breaches of trust and governance instruments may not lead to removal unless the trust assets have been put at risk or there has been serious loss or malfeasance; and
- (d) generally, the Court must be satisfied that there is evidence of real abuse, failure or malfeasance and the absence of any tenable defence.

Discussion

First limb: Have the grounds under ss 240(1)(b)(i) or 240(1)(b)(iv) been satisfied?

[27] The first limb of the test involves an assessment of relevant trustee conduct or circumstances. In relation to the ground per s 240(1)(b)(iv) (whether the trustees are no longer suitable to hold office because of conduct or circumstance), the Māori Appellate Court in *Henderson v Brooking* has stated:⁵

³ *Henderson v Brooking* [2025] NZCA 368 at [94], citing *Wynyard v Waata – Manawakore C1 and D* (2022) 247 Taitokerau MB 4 (247 TTK 4) at [19] and *Gray v Paikea – Otara 5D2* (2022) 252 Taitokerau MB 210 (252 TTK 210) at [21].

⁴ *Henderson v Brooking – Wharekahika A47* [2023] Māori Appellate Court MB 17 (2023) at [28], affirmed by the Court of Appeal in *Henderson v Brooking*, above n 3.

⁵ *Henderson v Brooking – Wharekahika A47*, above n 4, at [28]; *Henderson v Brooking*, above n 3, at [97].

...

- (b) ... This ground is wide in scope and ambit. This wide-ranging ambit is necessary to allow the Court to consider the range of conduct or circumstances that may result in a trustee being unsuitable to hold office.
- (c) Section 240(3) sets out examples of conduct or circumstances that mean a person may no longer be suitable to hold office as a trustee. These examples are a guide and do not form an exhaustive list.

...

[28] The applicants allege material information regarding the resignation and re-hiring of the General Manager were withheld by the respondents, and that hiring decisions were made unilaterally. The applicants also submit that conflicts of interest were not appropriately managed given the interim General Manager’s familial connections to the General Manager. It is submitted that such conduct warrants removal from office.

[29] However, the evidence shows that the decision to re-hire the General Manager on 7 November 2023 was not made without discussion between the trustees, as it is recorded in meeting minutes of 21 September 2023 and, according to the respondents, was further discussed on 26 October 2023. Notwithstanding these discussions, sch 5 cls 6 of the trust deed provides for decisions to be made by the majority of trustees. It should also be noted in relation to their appointment that although Mr Paea maintains they (the minority trustees) were not involved in the discussion, he “supported bringing Rose” in as interim General Manager.

[30] Regarding the purchase of the Nūhaka property, the applicants claim that the respondents withheld material information from them, and that the decision to purchase was made without the authorisation of trustees. However, evidence shows that plans to purchase the property were discussed by trustees at a meeting on 10 March 2024. Minutes to this meeting show that the trustees discussed their intentions to purchase the property and to attend the auction set down for 15 March 2024. Pauline Symes and Shanan Symes were delegated authority to undertake work for the purchase, which they had done as authorised. Pauline Symes (as Chairperson) also delegated authority to Johnina Symes to attend and bid at the auction, who did so accordingly. The evidence therefore shows that the trustees were made aware of the plans to purchase, and that actions in progressing this were conducted as authorised. Again, in any event, the trustees have the power to make resolutions by majority.

[31] The applicants claim that the purchase of the Nūhaka property has incurred a loss for the trust because there was no business plan in relation to the purchase of the property as to how it would be paid off. However, the applicants have not provided sufficient evidence to demonstrate any real loss or risk to the trust's assets arising from the purchase.

[32] In relation to the invoice issued by Graeme Symes, the applicants allege that he had authorised his own invoice payment without declaring a conflict of interest or advising the TIORI Board. The applicants also allege that the General Manager (Graeme's wife) had altered the invoice after payment had been made.

[33] As noted above, generally the Court must be satisfied that there is evidence of real abuse, failure or malfeasance and the absence of any tenable defence in order to remove a trustee from a trust. The evidence before the Court shows that there is a robust process in place for authorising trust payments to prevent self-dealing, including a dual-authorisation process requiring the verification of external parties such as the accountant and accounts manager, to prevent self-dealing. Further, evidence provided by George Rarere that purported to corroborate allegations of self-dealing or malfeasance is not determinative, and the allegations were addressed to and answered by Graeme Symes. In short, he substantiated his position by stating that the invoice was for work carried out by him with TIORI. TIORT was not a party to this transaction, and it was not TIORT who was invoiced and paid him.

[34] The applicants allege that the trustees have breached their duties by failing to resign. However, their decision not to resign is not a breach of trust duty and is in accordance with the trust deed which, in schedule 2, stipulates the specific process for the removal of trustees. This was also consistent with legal advice provided to the respondents.

[35] With regard to the removal of Ms Jones, the evidence shows that the process followed by the respondents was in line with cl 16.3 of the trust deed. Ms Jones was provided notice and opportunities to respond prior to the decision for removal being made. Further, I note that Mr Paea and Ms Smith both abstained from voting on Ms Jones's removal (rather than voting against it).

[36] Having considered all evidence regarding the respondents' conduct and relevant circumstances, I am not satisfied that the respondents have demonstrated repeated refusal or

failure to act as trustees nor that they are no longer suitable to hold office as trustees. I therefore find that the first limb of the test is not met.

Second limb: Is it desirable to remove the respondents as trustees?

[37] Unlike the first limb of the test, the second limb involves an exercise of discretion, with regard to broader considerations and the kaupapa of the Act as set out in its Preamble and ss 2 and 17.⁶

[38] This limb of the test involves an inquiry as to whether removal is “desirable”, not whether it is necessary.⁷ In considering the meaning of the term “desirable”, the Māori Appellate Court in *Henderson* said:⁸

The courts have historically assessed applications for removal of a trustee on the basis of whether that course of action would be to the advantage, advisable, prudent or expedient for the proper execution of the trust and the beneficiaries as a whole. We see no reason to depart from this approach.

[39] The Court in *Nepata v Karaitiana* considered the guidance provided by the Appellate Court in the case and made orders for the removal of two trustees on the basis that their removal was desirable for the proper execution of the trust. His Honour Judge Coxhead held that:⁹

Part of the role of being a trustee is to work with the other trustees. This does not mean you are required to agree with all the other trustees, but for a trust to administer land effectively the trustees do need to work together. When a trustee is no longer willing to work with the other trustees or is acting as a trustee independent of the other trustees, this situation could lead to the trust becoming dysfunctional and the trustee no longer having the capacity to perform the functions of a trustee.

[40] In this case, three of the four respondent trustees have been trustees since 2019, shortly following the inception of the trust in that year. The respondents maintain that they have always acted in the best interest of the trust and Rakaipaaka.

⁶ *Henderson v Brooking – Wharekahika A47*, above n 4, at [28](d); and *Henderson v Brooking*, above n 3, at [93] & [96], citing *Austin, Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141 at [4]–[5] and [16].

⁷ *Henderson v Brooking*, above n 3, at [98]; *Henderson v Brooking – Wharekahika A47*, above n 4, at [38].

⁸ *Henderson v Brooking – Wharekahika A47*, above n 4, at [39].

⁹ *Nepata v Karaitiana – Runanga 2D Block* (2023) 299 Waiariki MB 8 (299 WAR 8) at [23].

[41] For the reasons set out by the respondents at paragraph [20] above, and with regard to the evidence and relevant circumstances, I am not satisfied that the removal of the respondent trustees from office would be desirable for the proper execution of the trust.

Conclusion

[42] As a result, I find that the respondents should not be removed from office.

He whakauruhi i ngā takohanga tarahitī

Enforcement of trust obligations

[43] As to the enforcement of obligations of trust, s 238 provides:

238 Enforcement of obligations of trust

- (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).

[44] Section 238 is complementary to s 237, which grants to this Court all powers of the High Court in relation to trusts to which its jurisdiction applies.¹⁰ The Court's supervisory and enforcement powers under s 238 are wide.¹¹

[45] It appears that the applicants' position with respect to enforcement of obligations rely on their submissions regarding the basis upon which they seek the removal of the respondent trustees. As noted by the respondents, the applicants have not particularised the application for the enforcement of the obligations of the trust nor have they specified the obligations they are seeking to enforce.

[46] Having considered the evidence and the respondents' conduct, and in light of my findings on the removal application, I consider that there have been no breaches of trust

¹⁰ Te Ture Whenua Māori Act 1993, s 237.

¹¹ *Clarke v Karaitiana* [2011] NZCA 154 at [36].

obligations by the respondents. There is therefore no need to make enforcement orders sought by the applicants.

Whakatāpu mō tētahi wā

Interim injunction

[47] Given that the substantive applications have been determined, there is no longer any pending substantive proceeding before the Court warranting an interim injunction as required by s 19(1)(b). Accordingly, the interim injunction application is dismissed.

Whakataunga

Decision

[48] All applications are dismissed.

I whakapuaki i te 5.00pm i Gisborne, Friday 3 o ngā rā o Oketopa i te tau 2025.

Pronounced at 5.00pm in Gisborne on this 3rd day of October 2025.

W W Isaac
JUDGE