

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

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

AP-20230000026803

WEHENG <i>Under</i>	Sections 18(1)(a) and 238, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Waipaoa 5A2
I WAENGA I A <i>Between</i>	KEVIN (TIM) SMITH, ULRIC SMITH, AND ROLAND SMITH AS EXECUTORS OF THE ESTATE OF FRANCIS GUTHRIE SMITH Ngā kaitono <i>Applicants</i>
ME <i>And</i>	WAYNE THOMPSON, RAWITI COTTER AND MERE KOKIRI-TAMANUI AS TRUSTEES OF WAIPAOA 5A2 TRUST Ngā kaiurupare <i>Respondents</i>

Kōtitanga: 10 November 2025, 125 Tākitimu MB 294-336
Hearing (Heard at Napier)

Kanohi kitea: L Watson for Applicants
Appearances C Bennett for Respondents

Whakataunga: 12 December 2025
Judgment date

TE WHAKATAUNGA A KAIWHAKAWĀ M J DOOGAN
Reserved Judgment of Judge M J Doogan

Hei tīmatanga kōrero*Introduction*

[1] This decision concerns the ownership of a house and farm buildings placed upon Māori freehold land by a majority owner who had been leasing the land for a long time. The lease said there would be no compensation for improvements. His estate now seeks orders recognising ownership or an equitable interest in the buildings.

[2] Francis Guthrie Smith (Francis) began farming the land in the early 1950s (under lease from the Māori Trustee). The land (Waipaoa 5A2) is part of a larger sheep and cattle station known as Ruatawhiri Station (1760 ha).

[3] When Francis and his wife Sarah moved onto the land in 1951, they occupied a 2-bedroom house that had been built by the previous lessee. Francis and Sarah lived in this house until 1962 when they moved into a new and larger house they built to accommodate their growing family. Francis died in 1997 and Sarah continued to occupy until the house was destroyed by fire in 1999. A new house, paid for by insurance proceeds and a contribution of approximately \$30,000 from Sarah, was erected on the land in 2001.

[4] Francis and Sarah also constructed and paid for a woolshed and shearer's quarters. These are both now dilapidated. The woolshed is located on road reserve owned by the council and is therefore outside the jurisdiction of this Court.

[5] Initially, Francis had a relatively small shareholding which he progressively increased by a series of purchases in the 1960s and 70s. Francis died in 1997 and his estate is the major shareholder in Waipaoa 5A2 with just under 60% of the shares.

Te orokohanga whīwhiwhi o te tono*The complex procedural history of this application*

[6] The issue of who owns the house and farm buildings was first raised as part of a challenge by one of Francis' sons, Bruce Smith, to a decision of the Māori Trustee in 2014 not to grant a new lease to the company Bruce had formed to hold the estate assets (Digga-Bygum Ltd).

[7] This initial challenge led to a complex series of interrelated issues coming before the Court, including an application by the Māori Trustee for an injunction and recovery of possession of the land (from Bruce Smith and his whānau), and applications against Bruce Smith by four of his brothers concerning his administration of the estate. These issues and the relevant context are traversed in 2 decisions, the first issued on 18 October 2016 and the second on 17 November 2017.¹

[8] In my 2016 decision, I adjourned the application made by Bruce Smith for an order varying the trust to determine that the woolshed, shearer's quarters, and homestead belong to the estate, or in the alternative, an order declaring a resulting or constructive trust in relation to those assets. The Māori Trustee was the responsible trustee at that time and its counsel Mr Shaw filed submissions in opposition which have been adopted by counsel for the respondent trustees in this proceeding.

[9] The administration of Waipaoa 5A2 has since shifted from the Māori Trustee to the Waipaoa 5A2 Trust, an ahu whenua trust. The trustees of that trust are comprised of three trustees nominated by the estate of Francis Guthrie Smith, two trustees nominated by the other owners in the land (who hold the remaining 40% of shares) and a fifth trustee nominated by all owners.

[10] Disagreement amongst these trustees, in particular over the issue of ownership of the buildings and other residual concerns arising from the period during which Bruce Smith had control over the land, has been a factor in the delay bringing these issues back to Court.

[11] Mr Watson represents Kevin (Tim) Smith, Roland Smith, and Ulric (Rick) Smith as trustees appointed by the estate of Francis Guthrie Smith to the Waipaoa 5A2 Trust. He also represents Kevin (Tim) Smith in his capacity as director of Digga-Bygum Ltd.

[12] Ms Bennett represents trustees Mere Kokiri-Tamanui and Ra Cotter, who were elected by owners who hold 40% of the shares in Waipaoa 5A2, and Wayne Thompson, appointed by the beneficial owners collectively.

¹ *The Māori Trustee v Smith - Waipaoa 5A2* (2016) 62 Tairawhiti MB 122 (62 TRW 122); and *The Māori Trustee v Smith - Waipaoa 5A2* (2017) 72 Tairāwhiti MB 57 (72 TRW 57).

Ngā take*The issues*

[13] It is common ground that the buildings are fixtures on the land. Mr Watson provided a useful summary of issues which I have largely adopted:

6.2 Can the presumption that fixtures are owned by the multiple owners of the land be rebutted, such that equitable principles are applied to find that the Smith whanau have an equitable interest in the buildings;

a. What are the legal implications of the leases of Waipaoa 5A2 land as those leases related to improvements, namely the 1954 lease and the 1994 lease?;

b. What are the legal implications of the insurance policy that applied to the original homestead constructed in 1961-1962 and was activated at the time of the 1999 fire?

6.3 If the Waipaoa 5A2 Ahu Whenua Trust hold the buildings on trust for the Smith whanau, is a section 18(1)(a) order appropriate to give effect to an equitable interest?

6.4 What, if any, other relief is appropriate?

[14] I first set out the factual background in more detail, then address the issues as follows:

(a) What do the leases provide on the issue of compensation for improvements?

(i) How are cls 19 and 22 of the 1954 lease to be reconciled?

(b) Do the 'no compensation for improvements' clauses cover the issue of ownership, or is that a separate assessment?

(c) What is the legal implication of the insurance policy?

(d) Does the applicant have an equitable interest in the buildings?

- (i) Principles of constructive trust
- (ii) Principles of unjust enrichment

Ngā whare me ngā rīhi

The houses and the leases

Mr Lane lease

[15] Mr Lane built the original dwelling on the land and he remained in possession until 1951. The lease to Mr Lane, dating from 1925, provided that the lessee was entitled to compensation for “all substantial improvements of a permanent character...which are put upon the land during the continuance of the term.” In 1951 Mr Lane assigned his lease to Francis (Guthrie Smith) and his brother Francis Charles Smith. When Francis and his wife Sarah moved onto the land in 1951, they occupied the 2-bedroom house that Mr Lane had built.

1954 lease to Smith whānau

[16] On 17 February 1955, the Court confirmed a resolution from a meeting of assembled owners approving a new lease to Francis (Guthrie Smith) and Francis Charles Smith. The term was to be 21 years from 1 September 1954 with a right of renewal for a further 21 years. Rental was to be set at 5% of the government capital value less the improvements effected by the lessee. There was to be no right to compensation for improvements. The Court required that rights of occupation and compensation under the previous lease be surrendered and a clause be inserted in the new lease, giving the lessees the right to have any improvements made by them recorded by the Māori Trustee.

[17] The lease, executed on 31 August 1955, included the following clauses:

- 19) That no compensation whatever shall be payable to the lessee in respect of any improvements effected by them upon said lands during the term of this lease.
- 21) It is hereby declared that the value of improvements belonging to the lessors at the commencement of this lease is £5360 being for dwelling, £535 other buildings, £300 fencing, £820 clearing, £1950 grassing, £1675 and other improvements £80.

22) If and as often as the lessee proposes to make any improvements on the land hereby demised, they shall be entitled on application to the Māori Trustee to have a record made by the Māori Trustee of particulars of the nature of those improvements and of the state and condition of the land before the making of any such improvements, recorded by the Māori Trustee in manner prescribed by section 249(4) of the Māori Affairs Act 1953.

[18] Clause 9 of the lease required the lessee to insure, in the name of the Board or in the joint names of the Board and the lessee, the amount of the full insurable value thereof.²

Homestead built

[19] In 1961/1962, Francis and Sarah built a new house on the land to accommodate their growing family. They moved into that house in 1962.

[20] In 1965, Francis Charles Smith transferred his share of the lease to Francis Guthrie Smith who then became the sole tenant. Francis purchased the back part of the station, a 970 ha block of general land known as Ngapakira, from the Crown in 1977. Access to that land is through Waipaoa 5A2.

1995 lease to Smith whānau

[21] In 1992, Francis applied to the Court for a meeting of owners to be called to consider a new lease. He proposed a term of 20 years plus a right of renewal for a further 20 years.

[22] The resolution proposed by Francis included the following:

When assessing the rental, the improvements effected by the lessee are not to be taken into account.

[23] Between June 1993 and September 1994 this proposal was discussed in Court on a number of occasions.

[24] The concern raised by the Court was succinctly stated by Judge Marumarū:

² “Board” means the Tairāwhiti District Māori Land Board.

Essentially, the lessee's improvements should not be excluded when assessing the rental. In effect, he is being in a roundabout way paid, compensation for improvements which the existing lease said he was not entitled to.³

[25] When the matter came back before Judge Marumaru on 14 September 1994, counsel for Francis advised the Court that the higher rental (inclusive of improvements) was accepted. At that hearing, the following exchange took place between counsel for Francis and the Court:⁴

Mr Johnston: Sir, I make one further point in relation to... I understand that Mr Smith's intention is to perhaps make an application for ownership of the dwelling in the future and if so, whether the Court could also indicate whether in any future lease or rental payments, that if the Court does in fact make an Order determining the ownership of the house and dwelling in favour of Mr Smith, that the rent be amended accordingly, any future rent, to exclude any such application.

Court: Normally, where a dwelling or other improvement that, with the support of a Court Order is vested in the lessee, then the rental is rebated appropriately.

[26] The lease was signed on 1 May 1995 with an initial rental of \$18,000 per annum. The lease was varied on 8 August 1996 with the rent being reduced to \$14,400 per annum. The reasons for this reduction are not clear on the record. The lease was for ten years with a right of renewal for a further 10 years. The Court declined Francis' application to vary the terms of trust to allow for a lease with a 20-year term with a right of renewal for another 20 years.⁵

[27] Clause 9 of the 1995 lease relevantly provided:

9. That the lessee(s) will insure and keep insured for replacement value all buildings of an insurable nature for the time being erected upon the said land in the name of the Lessors (the policy for such insurance to be held in the custody of the Māori Trustee) and in the event of the said buildings or any of them being destroyed or damaged by fire (but subject always to the prior rights of any mortgagee of the said land) all moneys received by the Lessors under and by virtue of any such insurances shall (unless the Māori Trustee

³ 136 Gisborne MB 258-268 (136 GIS 258-268)

⁴ 137 Gisborne MB 24-30 (137 GIS 24-30).

⁵ 137 Gisborne MB 32-34 (137 GIS 32-34), dated 17 October 1994.

and the Lessee(s) shall otherwise determine) forthwith be expended by the Lessors in reinstating or repairing the building or buildings so destroyed or damaged....

[28] Clause 38 of the lease provided:

38. That no compensation shall be payable to the lessee(s) in respect of any improvements effected by the lessee(s) upon the said land during the said term.

[29] Clause 46 of the lease provided:

46. The lessee(s) will not be required to pay rent on improvements effected by him.

Homestead destroyed and replaced

[30] The homestead built by Francis and Sarah in 1962 was destroyed by fire in May 1999. The homestead was insured, but contrary to cl 9 of the lease, the policy was in the name of Francis Smith (at that time his estate).

[31] In September 1999, the Māori Trustee wrote to State Insurance notifying them of its interest in the insurance and advising that the house is owned by all owners in the Waipaoa 5A2 land. A copy of the letter was sent to the Smith Estate solicitors.

[32] In October 1999, the Māori Trustee again wrote to the Smith Estate confirming its position that the former house had belonged to all of the owners and that the insurance also belongs to all of the owners as would the new house to be built with the insurance proceeds “until such time as the ownership of the house is determined otherwise through the court.”

[33] Also in October 1999, solicitors for the Smith Estate wrote to the estate trustees noting that an application for ownership would need to be filed with the Court as “it appears that the dwelling and improvements on the block have been treated as having been owned by the lessor.”

[34] In May 2000, the Smith Estate and the Māori Trustee discussed plans for the rebuild of the homestead. Bruce Smith advised that the total costs would be \$194,000 with Sarah Smith agreeing to contribute approximately \$30,000. In June 2000, the Māori Trustee confirmed agreement to reinstatement of the homestead for \$194,000, noting Sarah’s

contribution but stating that “neither the Māori Trustee or owners will give any concession to the estate for their cash input into the reinstatement of the dwelling.”

[35] When the contract for the new house was entered into in July 2000, the Māori Trustee appointed an agent to certify the work on the basis that all of the owners have an interest in the house and the Māori Trustee was responsible for ensuring that those interests are protected.

[36] The new house was completed in early 2001 and in February of that year, the Māori Trustee wrote to the Smith Estate requiring that the new dwelling and any other dwellings be insured in the name of the Māori Trustee as per cl 9 of the lease.

[37] In March 2001, solicitors for the Smith Estate wrote to the Māori Trustee asking that a meeting of owners be called. Owners would be asked to approve a resolution that the woolshed, shearer’s quarters, and homestead are owned by the Smith Estate.

[38] In July 2001, the Māori Trustee responded agreeing to call the meeting on payment of the administration fee but not agreeing to the proposed resolution. The Māori Trustee also made it clear that the report to owners should not be on the Māori Trustee letterhead and the Māori Trustee would not endorse the report and reserved the right to oppose any application filed with the Court. Reference was also made to cl 21 of the 1954 lease, where it is stated that the house and other buildings are the property of the lessors, and the Māori Trustee noted that they would draw this to the attention of the owners.

[39] In 2003/2004, the Smith Estate assets were transferred to a company named Digga-Bygum Ltd. The sole director and majority shareholder was Bruce Smith and the minority shareholder was the late Phillip Smith. The assets transferred to Digga-Bygum Ltd included the lease of Waipaoa 5A2 and ownership of the General land known as Ngapakira, which forms the back part of Ruatawhiri Station.

[40] At around the time this transfer of assets took place, the Smith Estate also sold its stock on the station and began subleasing both Waipaoa 5A2 and the Ngapakira land. The first sublease was to Brownrigg Agriculture Ltd and commenced in July 2003 for an initial one-year term with the right to extend for a further period to November 2014. Clause 13 of

the lease agreement provided that the owner (the Smith Estate trustees) would at its own cost provide a new woolshed, upgrade the cattle and sheep yards, and provide accommodation for a Sheppard. The homestead was to be available during the term and any renewal for occupancy by Brownrigg's farm manager but would revert to the owner if the owner at its expense provided a new dwelling for the manager to occupy. The sublease included both the Waipaoa 5A land and the Ngapakira general land. The annual rental was \$82,500 with the Smith Estate paying \$18,000 for the lease of the 5A land.

[41] In March 2010, the Brownrigg's sublease ended and a new sublease with neighbouring farmer Gregg McKinnon was entered into until the expiry of the headlease in November 2014. This arrangement also involved both the Waipaoa 5A land and Ngapakira land. The annual rental was \$103,400 with the Smith Estate paying \$18,000 for the Waipaoa 5A lease.

Ngā tāpaetanga a te hunga whai take

Submissions of the parties

[42] Mr Watson argues that notwithstanding a 'no compensation for improvements' clause in the operative lease documents, the correct interpretation of the original lease and the conduct of the parties over time point clearly to ownership of the structures (particularly the homestead) lying with the Smith Estate. Ms Bennett, on the other hand, says that the terms of the lease are clear and the evidence does not otherwise rebut the presumption that fixtures run with the land. Ownership of the structures therefore resides in all of the owners and there is no proper basis for equitable relief.

What do the leases provide on the issue of compensation for improvements?

[43] Both the 1954 lease, under which the 1962 homestead was built, and the 1995 lease, under which the replacement homestead was built, contain 'no compensation for improvements' clauses. The plain meaning of these is that the lessee is not entitled to any form of compensation for improvements they make to the land. That includes buildings constructed on the land.

[44] The 1954 lease, following direction from the Court, specifically included a provision to provide for the recording of any improvements Francis may make in accordance with section 249(4) of the Māori Affairs Act 1953.

[45] Section 249(4) provides:

Where the lessee under a farm lease makes, or proposes to make, any improvements in respect of which he will be entitled to compensation, he shall be entitled, on application to the Māori Trustee, to have a record made by the Māori Trustee of particulars of the nature of those improvements and of the state and condition of the land before the making of the improvements. Every such record shall be made at the cost in all things of the lessee.

[46] Section 249 is in Part 20 of the Māori Affairs Act 1953 (Leases of Māori Land).

[47] There are definitions at s 234 of both ‘farm lease’ and ‘improvements effected by a lessee.’ Sections 241-251 deal with compensation for improvements effected by lessees.

[48] Section 243(1) of the Māori Affairs Act in effect makes it mandatory for the Court to ensure that there is a clause making clear whether or not the lessee is entitled to compensation for improvements on expiry of the lease before the Court can confirm a resolution of owners or a new lease (s 243(1)). Sections 244-245 deal with valuation of improvements and ss 246-248 deal with processes for the payment of any compensation that may be due.

[49] Section 242 requires that every farm lease granted after the commencement of the Act, must contain a provision that the lessee shall on the expiry of the lease be entitled to compensation for improvements effected by him or that the lessee shall not be entitled to compensation for improvements effected by him (s 242(1)). In this case the 1954 lease said there would be no compensation for improvements.

[50] Section 249(1) provides that on the grant of a farm lease conferring a right of compensation for improvements, the Māori Trustee is required to record and state the condition of the land, any existing improvements and obtain a valuation in accordance with s 249(2).

[51] This is the context within which s 249(4) confers on a lessee who was entitled to seek compensation for improvements the right to require the Māori Trustee to make a record of the improvements made or proposed to be made.

[52] It is therefore difficult to reconcile the inclusion of cl 22 in the 1954 lease with cl 19 (no compensation whatever in respect of improvements). Clause 22 is premised upon giving notice with respect to ‘improvements’ for which the lessee would be entitled to compensation.

[53] I believe the best available explanation for this apparent inconsistency can be found by considering the resolution of assembled owners confirmed by the Court on 17 February 1955:⁶

That the said block be leased to Francis Guthrie Smith and Francis Charles Murray Smith, both of Ruakituri, farmers, for a term of 21 years from the 1st of September 1954 at an annual rental equal to 5% of the present Government Capital Value with the right of renewal for a further term of 21 years at an annual rental equal to 5% of the then Government Capital Value less the improvements effected by the lessees during the first term but not less than the rental for the first 21 years. Provided the said Francis Guthrie Smith and Francis Charles Murray Smith surrender their right to occupation of the said block: as from the 1st of September 1954. No rights to compensation.

[54] The Court confirmed that resolution subject to the following modifications:⁷

Resolution confirmed subject to the Commissioner of Crown Lands having no objection. No compensation for improvements and the rental be paid to the Māori Trustee plus 6% commission; rent to be £353.10. Od. Right of occupation as to compensation under previous lease to be surrendered. A clause to be inserted in the lease enabling the lessees to have right to any improvements made by them recorded by the Māori Trustee.

⁶ Māori Land Court Confirmation of Resolution passed by Assembled Owners, 17 February 1955 at Wairoa.

⁷ Māori Land Court Confirmation of Resolution passed by Assembled Owners, above n 6.

[55] Both the Resolution of the Assembled Owners from November 1954 and the modification added by the Court make reference to ‘no compensation for improvements.’ The rental for the second 21-year term was to be equal to 5% of the then Government Capital Value ‘less the improvements effected by the lessee during the first term.’ It seems probable that the Court required a clause enabling the lessee to have improvements recorded in order to assist in the setting of rental for the second term.

[56] The Court does not actually refer to s 249(4) of the Māori Affairs Act; that reference appears to have been added by the Māori Trustee when preparing the lease for execution.

[57] To the extent it is necessary to decide the issue for the purposes of this decision, I am of the view that the reference in the 1954 lease to s 249(4) of the Māori Affairs Act 1953 does not displace the operation of cl 19 (no compensation for improvements). The intent appears to be that there would be a mechanism by which lessee improvements could be recorded so that they could be taken into account in setting the rental for the second 21-year term, but that on the expiry of the lease, the lessee would not be entitled to compensation for improvements.

[58] It is not in dispute that during the 40-year term of his original lease, Francis did not give notice to the Māori Trustee requiring establishment of a record of the improvements he had carried out. Mr Watson argues that the notice and recording requirements pursuant to s 249(4) of the Māori Affairs Act are not mandatory, and that the position of Francis and his whānau with respect to ownership of the improvements has been clear throughout.

[59] Where a farm lease confers on the lessee a right to compensation for improvements, there is in fact a mandatory duty on the Māori Trustee to make a record of the state and condition of the land and any improvements existing on the land and to obtain a valuation. No such record was ever made, consistent with the clear terms of the lease which provided that there would be no compensation for improvements. Section 249(4) simply confers upon a lessee who is entitled to compensation for improvements a right to require the Māori Trustee to create a record of the improvements made. While it is clear that the Court required that a clause be added enabling the lessee to have improvements recorded, it appears the reference in cl 22 of the lease to s 249(4) was in error.

[60] In conclusion, both leases provide that there is to be no compensation for improvements. The building of the house in 1962 and the shearer's quarters in 1971 by the Smith whānau are improvements covered by cl 19 of the 1954 lease. The construction of the replacement homestead in 2001 is also an improvement covered by cl 38 of the 1995 lease. Therefore, Francis' estate is not entitled to compensation in relation to these buildings.

[61] Mr Watson argues that the Māori Trustee made a mistake of fact by its continued reliance on cl 21 of the 1954 lease. That clause refers to buildings which existed prior to the Smith whānau moving onto the land, as opposed to any buildings which the Smith whānau claim ownership of. It seems the mistake originated from a legal opinion by Ieuan Hyslop in 2001 which was referred to and recorded in the minutes of a meeting between the Māori Trustee and advisory trustees in September 2014.

[62] It is true that this clause confirms ownership of the original cottage built by Mr Lane, and Mr Hyslop was in error in assuming that it referred to the homestead built by Francis in 1962. However, I do not see any material ambiguity arising from the fact that legal advice obtained by the Māori Trustee in 2001 (Mr Hyslop) relies in error on cl 21 of the 1954 lease. This does not alter the plain meaning of cl 19 of the 1954 lease which provides that no compensation whatever shall be payable to the lessee for improvements made during the terms of the lease.

Do the 'no compensation for improvements' clauses cover the issue of ownership, or is that a separate assessment?

[63] Mr Watson argues that the Māori Trustee's analysis of the lease terms conflates two very different issues. He says provisions in the leases which deal with compensation (or not) for improvements on the land address a very different situation to the provisions which deal with the ownership of improvements on the land.

[64] Mr Watson argues that the relatively standard 'no compensation for improvements' clauses are designed to ensure that a lessor is not entitled to more rent based on revaluation of the land that includes the value of improvements. Similarly, at the termination of a lease such a clause operates to make clear that the lessee would not be entitled to claim from the lessor a monetary sum as compensation for improvements that are left on the land. In

addition, leases may stipulate what improvements are on the land at the commencement of the lease and whether they are owned by the lessor or the lessee. The 1954 lease had provisions addressing both circumstances. Clause 19 did not allow compensation for improvements, but that clause did not resolve the question of who owns the improvements. That was addressed in part by cl 21 which stipulated that the existing cottage and other buildings belonged to the lessor. The specified improvements were those constructed by the previous lessee Mr Lane not those subsequently put on the land by Francis and his whānau.

[65] Mr Watson notes that cl 22 of the 1954 lease provides for the lessee to have their improvements recorded by the Māori Trustee but this he says is a permissive not an obligatory requirement. Failure to have those improvements recorded does not negate a claim for ownership.

[66] Ms Bennett argues that the relevant lease terms are clear and the facts do not support the introduction of equitable principles in order to adjust the operation of clear contractual terms. Ms Bennett adopted the submissions on behalf of the Māori Trustee filed in 2016 when this matter first came before the Court. The position is clearly set out in the following parts of Mr Shaw's submissions:⁸

134. The Māori Trustee submits that there are several factors and matters in this case which strongly go against the applicants being able to establish good reasons for an order declaring the Estate to be the absolute owner of the replacement dwelling and shearers' quarters.

a. The 1960s dwelling and shearers' quarters were built on Waipaoa 5A2 while Francis Guthrie Smith was farming the land under lease. The buildings were therefore erected subject to an existing lessor-lessee relationship.

b. The 1955 lease did not identify any lessee-owned improvements. It did however identify lessor-owned improvements including the original homestead built by Lane.

⁸ Submissions of the Māori Trustee dated 30 March 2016.

c. The lease did not state that the lessee would own improvements affixed to the land during the term of the lease or provide for ownership of improvements to be transferred to the lessee at lease expiry.

d. When a new lease was entered into in 1995, that lease did not state that the lessee would own buildings affixed to the land under the previous lease or identify any lessee-owned improvements.

e. The 1995 lease did not provide for ownership of improvements made during the term of that lease to be transferred to the lessee at lease expiry.

f. The lease provided for buildings to be insured in the name of the lessor at the lessee's costs. Thus insurance proceeds available on an insurable event belonged to the lessor, consistently with ownership of the buildings themselves.

g. Prior to building the new dwelling the Estate and its lawyers were on notice regarding the Māori Trustee's position as to ownership of the old dwelling, the ownership of the new dwelling and the other improvements.

h. The evidence was that the Māori Trustee approved the proposed dwelling plans, the budget, builder, and building contract: monitored building works, and its contractor approved the release of builder and subcontractor payments. The Māori Trustee ensured that the insurance proceeds were correctly applied to rebuild an asset owned by all owners.

i. The new dwelling (completed in 2001) and shearers' quarters were occupied by the Estate as lessee until 2003 when possession and occupation of those improvements was interrupted by the Brownrigg sublease. The new dwelling has not been used as a principal residence, at least since 2003. Because the McKinnons have not needed the dwelling the Smith whānau have from time to time used the dwelling since [the] subleasing.

j. There have been no proposals put to minority owners by the Estate concerning ownership of these improvements and/or variation of the trust order.

k. The evidence confirmed that in 1994 Francis Guthrie Smith's lawyers had advised the Court that he may consider pursuing an application for ownership.

Similarly, in 2001 Bruce Smith and the Estate's lawyers also raised this possibility. Neither took any steps until these current proceedings.

[67] On this issue, I agree with the submissions of Ms Bennett.

[68] The learned authors of *New Zealand Land Law* succinctly state the relevant principles as follows:⁹

Where a lessee brings on to the premises items that become fixtures (part of the realty), the lessee is not entitled to remove these at all, unless they are 'tenant's fixtures' or, there is an express provision in the lease permitting their removal. The general rule is that fixtures are part of the realty and remain to enhance the lessor's reversion.

[69] The learned authors of that text also note that s 266 of the Property Law Act 2007 has codified the common law with respect to a lessee's rights to remove any trade, ornamental or agricultural fixture.¹⁰ That provision confirms that a lessee may remove trade, ornamental or agricultural fixtures other than a lessor's fixture. A 'lessor's fixture' is defined as a chattel that has been affixed to the premises (for example, a fence erected on the land) in such a manner that it becomes part of the structure of a building or otherwise becomes integrated to the land, by the lessee or a former lessee whose leasehold estate was acquired by the lessee or by a sublessee whose right to remove the structure has expired.

[70] The application of these principles is illustrated in the following passage from a decision of this Court, *Te Paa – Ahipara A33*:¹¹

[17] I had assumed during the hearings that Eparaima had built the homestead during the term of the lease and that its ownership was therefore subject to the lease. In fact, Eparaima built the homestead prior to the lease as a landowner. Accordingly, his ownership of the homestead predated the lease and was not dependent on it. Therefore, the ownership of the homestead did not change upon the termination of the lease and remains in Eparaima's name.

⁹ Elizabeth Toomey (ed) and others *New Zealand Land Law* (3rd ed, Thompson Reuters, Wellington, 2017) at [8.12.01].

¹⁰ At [8.12.01].

¹¹ [2012] 47 Taitokerau MB 3.

[18] The situation with the main house is different. David built the main house in the 1980s while he was lessee. Its ownership is governed by the lease. In accordance with the lease, the ownership of improvements including the main house reverted to the owners of the land on the termination of the lease, subject to the compensation provision.

[71] There is no express term in the lease permitting the removal of the buildings Francis and his whānau have placed on the land. To the contrary there is an express provision that he is not entitled to compensation for those improvements. In terms of the Property Law Act, the homestead and other farm buildings are clearly lessor's fixtures and have become over time a part of the farm infrastructure.

What is the legal implication of the insurance policy?

[72] In terms of the legal implications of the insurance policy, I agree with the submissions of Ms Bennett. The lease documents provided for the buildings to be insured in the name of the lessor at the lessee's cost. The insurance proceeds available in the event of a claim belonged to the lessor consistent with ownership of the buildings. Following the 1999 fire and prior to the building of the new homestead, the Māori Trustee made clear its position as to ownership of the replacement dwelling to be built from the insurance proceeds and the contribution from Sarah Smith. Insistence by the Māori Trustee that the new building be insured in its name is also consistent with the relevant lease requirement that the lessee, at its cost, insure the building in the name of the lessor. There is nothing in these contractual arrangements that states or implies that the 1962 homestead or its replacement was owned by Francis or his estate.

[73] The result of applying these principles and the provisions of the lease is that at the end of the 1954 lease, the homestead built in 1962 and shearer's quarters built in 1971 (being fixtures) reverted to the lessor. The lessor continued to own those buildings once the 1995 lease commenced. The replacement homestead was built using insurance proceeds and a contribution of approximately \$30,000 from Sarah. Although the insurance policy was in Francis' name, the proceeds belonged to the lessor. To the extent that the Smith whānau contributed to the building of the replacement homestead, it was an improvement covered

by cl 38 of the 1995 lease. At the end of that lease, ownership of the building reverted to the lessor.

[74] Looking at the totality of the evidence, the inference I draw is that Francis understood that on the clear terms of the lease he was not entitled to compensation for improvement when the lease came to an end. His objective since commencing farming on the land in 1951 was to establish himself on the land and provide a long-term future there for his wife and whānau. He progressively purchased shares and became the major shareholder and was also able to purchase the General land block (Ngapakira) previously leased from the Crown. When he sought a new lease in 1993, his focus was not upon confirming ownership of the homestead and other improvements. His focus was upon securing another long-term lease (20 years and a renewal term of 20 years) and on having rent calculated on a land value that did not take into account the improvements he had placed on the land.

[75] He was largely successful in achieving these objectives, which I believe goes some way to explaining why, in his lifetime, Francis did not seek a recording or a declaration of ownership of the improvements.

[76] It is also relevant to note that Francis would have known that he would face opposition from a number of owners in the land to any application for ownership of the improvements. When a meeting of assembled owners was convened on 27 October 1993 to consider Francis' proposal for a new lease, 5 owners constituting 60% of the shareholding voted in favour but 35 voted against (constituting 9.2% of the shareholding). The minutes record Ra Cotter noting that there were many proxies given to him because there was dissent amongst some of the shareholders. I understand from the surrounding evidence that there were significant concerns amongst owners about the milling of native timber on the land by Francis and his whānau, and that this was a factor in opposition to his proposal for a new lease.¹²

[77] Ra Cotter provided an undated statement of evidence. He is one of the current trustees of Waipaoa 5A2 Trust and prior to that had been an advisory trustee for a considerable period while the Māori Trustee was the responsible trustee. Mr Cotter was also an owner in Waipaoa 5A2.

¹² See for example 137 Gisborne MB 24-30 (137 GIS 24-30).

[78] Mr Cotter says that he has a clear recollection that the Māori Trustee repeatedly made it known that the house belongs to all of the owners of the land and that any house rebuilt by the Smith whānau after the fire in 1999 would also belong to all of the owners. Mr Cotter says that it is also his belief that the homestead built by the Smith whānau in 1961/1962 was built using proceeds of timber that the Smith whānau logged off the land and sold. He concludes noting that the Smith whānau were advised that if they considered they could make a legal claim for ownership, they should do so and that they said they would in 2001 but never took any steps. That was the end of the matter until the Smith whānau did not get the new lease in 2014.

Does the applicant have an equitable interest in the buildings?

[79] Having determined that the legal effect of the lease and insurance documentation is that improvements on the Waipaoa 5A2 land belong to all of the owners, the next issue to consider is whether there are nonetheless grounds to find that those assets are held subject to a constructive trust in favour of the Smith Estate. Ms Bennett helpfully summarises the relevant legal principles as follows:¹³

52. The case of *Lankow v Rose* provides a legal test for the finding of a constructive trust, in which the claimant must show:

- (a) Contributions, direct or indirect, to the property in question;
- (b) The expectation of an interest therein;
- (c) That such expectation is a reasonable one;
- (d) That the defendant would reasonably expect to yield the claimant an interest.

53. The *Lankow v Rose* principles have been further considered by the Courts. To succeed, a claimant must establish:

¹³ Respondent submissions dated 13 October 2025, citing [Lankow v Rose \[1995\] 1 NZLR 277 \(CA\)](#).

- (a) More than a minor contribution was made to the acquisition, preservation or enhancement of the defendant's assets:
- (b) In all of the circumstances, both the parties must be taken to reasonably have expected the claimant would share in the assets as a result;
- (c) Contributions need not be monetary in nature, but there must be a causal relationship between the contributions and the acquisition, preservation or enhancement of the defendant's assets; and
- (d) The contributions must manifestly exceed any benefits that the claimant derives from the arrangement.

[80] I do not consider that the circumstances of this case warrant the imposition of a constructive trust. The reasons largely follow from the consideration of the history of the occupation of the land by the Smith whānau, set against the lease terms.

Contribution

[81] In terms of the *Lankow v Rose* principles, there is no question that Francis and his estate have, over time, made substantial contributions and improvements to the land, Waipaoa 5A2.

Expectation of an interest

[82] I can also accept and understand that over time Francis and Sarah and their children had become deeply attached to the home they had built and the land they occupied. Francis and Sarah moved onto the land in 1951 as a young married couple and subsequently raised a large family on the land. Many (if not all) of their children and other relatives lived on the station at various times and helped with the running of the farm.

[83] Sarah's brother, James Edwards, provided a statement of evidence dated April 2025. James recalls that he was 14 years old when Francis and Sarah (who he calls Winnie) began to prepare the land for the new house they built in 1961/1962. James says that trees were located on the Ngapakira boundary that were suitable to build and this native timber was sent to Gisborne for milling. James says that the house was completed and paid for by Francis

in 1961/1962 and that he levelled the ground around the house with a bulldozer. James says that he has no doubt that Francis and Winnie would have paid premiums on the insurance as they were careful about these matters; that he could not imagine that Francis would have wanted other owners in Waipaoa 5A2 to contribute to insuring the homestead that he built; and that it was his to own. He was therefore disappointed and surprised that the Māori Trustee tried to claim the insurance payout on behalf of all of the Waipaoa 5A2 owners.

[84] James says that when the homestead was destroyed by fire in 1999, the family were devastated at the loss of a beautiful home with all their irreplaceable belongings and family heirlooms. James says that his nephew Bruce managed the insurance claim and replacement of the Smith homestead with the one on the land there today. He is also aware that his sister Winnie put money into the construction from her own funds. As far as his family is concerned, the house and land belonged to Francis and Winnie and everyone in the valley knew this. He says that if the family had known at the time the house was being built that it would need to be determined by the Māori Land Court as the property of Francis and Winnie, then they would have done that at that time. He says he never thought it would come into dispute many years later.

[85] However, the conclusion I have reached is that when Francis obtained the original lease in 1955, and then a further lease in 1995, he understood that he was not entitled to compensation for the homestead and other structures he had put on the land, if and when the lease expired. What he fought for and was able to achieve was long-term leases with rent calculated on the basis that the value of his improvements would not be factored into the rental. He had also progressively acquired majority shareholding and ownership of the Ngapakira land. This, combined with the long-term leases, secured for Francis and his whānau a long-term future on the land. While the possibility that a declaration of ownership might be required was raised by solicitors acting for Francis and the estate in the early 1990s and again around 2001, neither Francis nor the estate took any steps to proceed with this. The inferences I draw are that this is because it was not considered necessary given the security of the long-term lease, and secondly because Francis and the estate were aware of likely opposition from the other owners, and with it the prospect that an application may be unsuccessful. I have also noted that during the first lease, Francis did not require the Māori Trustee to keep a record of his improvements. This tells against an expectation of a right to compensation for such improvements upon the expiry of the lease. As Mr Cotter has noted,

it was only upon expiry of the lease and the prospect that there would not be a renewal that this claim to ownership or an equitable interest has been asserted.

Reasonableness

[86] The evidence points against Francis having an expectation of an ownership interest. However, for completeness, I address this element.

[87] I acknowledge that James Edwards and other members of the Smith whānau sincerely believe that they ‘own’ the homestead. It is only their whānau that have lived in and occupied the homestead built in the early 1960s and the replacement homestead built in 2001. While I understand and can respect this that is a sincerely held view, I must be satisfied that the expectation the Smith whānau own the homestead (and other buildings) is reasonable and one that other owners should yield to.

[88] As discussed, both leases contained ‘no compensation for improvements’ clauses. Before the 1995 lease commenced, there was discussion about the ownership of the buildings, with the Māori Trustee making its position clear that ownership of the buildings lies with the landowners. The 1995 lease initially had rent calculated on the basis that the lessors owned the homestead built in 1962 (inclusive of those improvements). When the replacement homestead was built, the Māori Trustee again made their position clear by asserting its interest in the insurance proceeds and monitoring the building of the replacement homestead. The Māori Trustee also made clear its position in relation to Sarah’s contribution, stating that there would be no concessions as to ownership of the homestead arising from this.

[89] Although the Māori Trustee monitored the building of the replacement homestead, they did not wish to be a party to the building contract. I note from Mr Watson’s submissions that the Māori Trustee’s property manager, Brae Watkins, said in Court in 2016 that the reason for this was “on its legal advice understanding that that improvement was a lessee’s improvement to the land and as such, was theirs and that any interference in that may cause an issue.”¹⁴ This is not inconsistent with ownership of the buildings reverting to the lessors at the end of the lease.

¹⁴ 55 Tairawhiti MB 283-386 (55 TRW 283-386) at 328.

[90] Looking at the evidence as a whole, I think it was clear to Francis and his whānau that during their leasing of the land, any expectation of ownership of the buildings was not a shared understanding with the lessor. At the time a new lease was being sought in the early 1990s, Francis was represented by legal counsel and solicitors were again acting for his estate when the new homestead was being built. At these critical times, the legal position would have been clear to Francis and to his whānau.

[91] This tells against the reasonableness of their expectation.

Other factors

[92] I also see the following as relevant in the assessment of the nature of the contributions made by the Smith whānau and any expectations arising:

- a) After Francis died, the character of occupation changed from one where the whānau lived and worked on the land, to a situation where the stock were sold and the station was subleased (at a profit). When the subleasing commenced in 2003/2004, the homestead was made available to the sublessee. It was no longer occupied fulltime by a member of the Smith whānau and it was used intermittently by Bruce Smith and his immediate whānau.
- b) Waipaoa 5A2 is a working farm in a remote location. Leasing arrangements since the original lease to Mr Lane in 1925 reflect the fact that this remote land was to be developed over time for the benefit of the owners. The standard lease terms from the time of the first Smith lease in 1954 contained clear provisions as to how improvements made by the lessee were to be treated. In broad terms, the objectives of the leases are to provide sufficient security to the lessee with respect to rights to occupy and farm the land, and in so doing to improve the land for the benefit of the owners. Francis and his whānau over time became the major shareholder in Waipaoa 5A2 and as such, they also benefitted from the long-term farming operation Francis established and the improvements he and his whānau made on the land. The arrangements by which they occupied the land did not however confer a right or a clear expectation of perpetual occupation and ownership of improvements.

- c) In this context, it is also relevant to note that a homestead on a remote station such as this is an important part of the farm infrastructure. Aside from the period of subleasing since 2003, the homestead on Waipaoa 5A2 has been occupied by those working the land and this is also an important consideration in terms of the future use of the land. The history of occupation and the arrangements under which Francis and his whānau came to occupy Waipaoa 5A2, do not support a finding that they own it nor have the right to occupy indefinitely, notwithstanding the end of their lease of the land.

[93] With these points in mind, I agree with the following points made by Ms Bennett in her written submissions:¹⁵

73. The Applicants were required to pay a rent that did not take into account the improvements on the land. This reflects the fact that all of the owners in the land would be the owners of those improvements. The Applicants had the unrestricted use of the land (including the ability to sublease and derive significant revenue well over the lease payment they were required to make). They were not required to pay a market rental due to the improvements. It is inequitable for them to now seek ownership of those structures having had the benefit of the sole use and the "reduced" rental. In the meantime, the remaining owners in Waipaoa 5A2 have derived no benefit from the use of the land and received a lower rental. They are now faced with a claim over those structures. This prejudice outweighs any "loss" that the Applicants might allege they have suffered.

Unjust enrichment

[94] I do not accept Mr Watson's submission that a failure to declare ownership or provide for an equitable interest in the homestead and other buildings for the Smith Estate would give rise to unjust enrichment for the remaining owners. It is in the very nature of a long-term agricultural lease that the owner or owners will benefit from development of the land and associated infrastructure. This of course includes the Smith whānau as a majority owner. It is also relevant that since 2003, the homestead was only intermittently used by Bruce Smith and his whānau while the land was subleased. Since Bruce Smith was evicted from the land, his brother Tim Smith has been in occupation.

¹⁵ Respondent submissions dated 13 October 2025.

How would an equitable interest be provided for?

[95] Mr Watson seeks vesting orders in relation to the buildings and argues that an order to remove them or monetary compensation would not meet the particular circumstances of the case. This is because the Smith whānau regard their home as a taonga tuku iho, they are owners in the land and have occupied the land for generations. Therefore, the Smith whānau seek an opportunity to engage with other owners and the trustees of the Ahu Whenua Trust about options which may include:

39.1 A licence to occupy, which the trustees would be estopped from revoking;

39.2 An occupation order with appropriate curtilage, and access arrangements from the bridge, to allow quiet and peaceful enjoyment;

39.3 Partitioning of land around the buildings to be held solely by the Smith Estate.

[96] Mr Watson acknowledges that these options may have some impact on the viability of the future long-term leasing of the land, and therefore it is important that engagement occur with a full understanding of options for future land use, and clarity as to the equitable ownership of the homestead and other buildings.

[97] I do not accept that the foundations have been laid for relief of this nature. In addition, the proposed relief highlights the potential for ongoing division and unfairness as between the majority and minority ownership in the land. For as long as Waipaoa 5A2 is best utilised as a working farm, the infrastructure, including the homestead and related farm buildings, need to be available to whoever is responsible for farming the land. In that way, all owners stand to benefit from the land being put to optimum use.

[98] For reasons already traversed, I infer that Francis understood this and worked to secure his place on the land through incrementally increasing his shareholding and through long-term leases. While he was not able to obtain a 20-year lease with a right of renewal for a further 20 years in 1994, he did secure 10 years with a right of renewal for a further 10 years and it was only upon the expiration of that lease that his estate made an application for ownership of the buildings.

[99] As a majority owner, the Smith Estate obviously also benefits from the buildings and other infrastructure placed on the land during the time Francis and his whānau were in occupation and stand to benefit in the future as and when the land is either worked or leased as an operating farm. I understand the current situation has been essentially a holding over of a short-term grazing lease, which is not the optimum use of the land nor in the long-term interest of the owners.

[100] While I acknowledge that Mr Watson's clients have suffered prejudice by reason of the actions of their brother, Bruce Smith, there are in effect ongoing consequences that are prejudicial to all owners arising out of the period when Bruce Smith and his whānau had control of the estate, and the subleasing arrangements on Waipaoa 5A2.

[101] The relevant context is set out in the following extracts from my 2017 decision granting an injunction to remove Bruce Smith and his whānau from the land:¹⁶

28. Whilst resolution of issues of ownership of the homestead and other buildings is important it is not a necessary precondition to arranging a lease. The homestead is not the primary house of Bruce Smith or his whānau. The interests of the estate can be preserved whilst the land is leased to a third party and (if necessary) the homestead is occupied by a lessee. It is clear from the recent update provided by Counsel for the Maori Trustee that Bruce Smith's ongoing association with the land has proved an impediment to arranging a short to medium term lease. I am also concerned at Bruce Smith's failure to cooperate with his fellow trustees and grant them access to the land...

[69] Bruce Smith and his whānau have a strongly held view that they are the rightful custodians of Ruatawhiri Station. I have no doubt that they will regard an injunction requiring them to leave as unjust. But that perspective arises from what appears to be a mistaken assumption that the station and other estate assets are essentially their own personal property to do with as they see fit. As the background to the litigation recorded in this decision shows, notwithstanding clear direction from the Court, Bruce Smith continues to resist any and all attempts to allow others (including fellow

¹⁶ *The Māori Trustee v Smith - Waipaoa 5A2* (2017), above n 1, citing 69 Tairāwhiti MB 131-155 (69 TRW 131-155).

trustees and estate beneficiaries) onto the land or to have any involvement in estate administration. This is untenable and cannot continue. I acknowledge that Bruce Smith and his whānau have a strong attachment to the homestead and the land, and that they have applied energy and resources towards maintenance and improvement of the land over a considerable period.

[70] However, I am satisfied that to grant an injunction would not be oppressive because:

a) The homestead on Waipaoa 5A2 is not the primary place of residence of Bruce Smith and his whanau. The land has been farmed under a sublease arrangement since 2004. Following the death of Bruce Smith's mother, the homestead has been occupied only periodically by members of Bruce Smith and his immediate whanau.

b) While there is evidence that Bruce Smith has undertaken work on the station it appears that he and his immediate whanau have received considerable income from the subleasing arrangement and by way of payment for development work (from the sub-lessee).

[71] In terms of the conduct of the parties and general balance of convenience considerations, I largely accept the submission of Mr Shaw that to the extent a degree of hardship may arise from the granting of the injunction, a good deal of that comes about as a consequence of Bruce Smith's own actions. Mr Shaw submits:

24. Bruce Smith and his immediate family have repeatedly defied the Court's orders and have acted to make it impossible for the Maori Trustee's staff to safely carry out the Court's directions.

25. Further trespass notices; installing a new padlocked gate across the Ngapakira bridge after the Wairoa District Council removed the previous gate; making complaints of "breaking and entering" to the Police; advising they have carried out their own process for use of the land resulting in self-management; bringing stock onto the land; incidents of intimidating and harassing behaviour towards Maori Trustee staff and others etc

[72] Mr Shaw submits that these are strong factors in favour of the exercise of discretion to grant an injunction. I agree.

[102] I see this as additional relevant context that weighs against the exercise of discretion to grant equitable relief to the Smith Estate.

[103] For all of these reasons, the application is dismissed. The homestead and other buildings on Waipaoa 5A2 are the property of all of the owners.

I whakapuakina i te 3:30pm i Te Whanganui-a-Tara, i te tekau mā rua o ngā rā o Tīhema i te tau 2025.

Pronounced at 3:30pm in Wellington on this 12th day of December 2025.

M J Doogan

JUDGE