

I TE KOOTI PĪRA MĀORI O AOTEAROA
I TE ROHE O TE WAIARIKI

In the Māori Appellate Court of New Zealand
Waiariki District

AP-20240000014211

CJ 2024/16

WĀHANGA
Under

Section 58, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Waioeka Papakāinga 25

I WAENGA I A
Between

GEORGE TAKAMORE, PAEONE GOONAN,
AMBER RAKURAKU-ROSIEUR, ROBYN
HATA-GAGE AND CARLO GAGE
Ngā kaitono pīra
Appellants

ME
And

MICAH TAWHARA, RENAY JONES AND
VICTORIA UPWARD-NGAIKA
Kaiurupare pīra
Respondents

Nohoanga:
Hearing

13 May 2025, 2025 Māori Appellate Court MB 323-360
(Heard at Rotorua)

Kooti:
Court

Deputy Chief Judge C T Coxhead (Presiding)
Judge A H C Warren
Judge A M Thomas

Kanohi kitea:
Appearances

A Sykes and M Te Hira for Appellants
J Koning for Respondents

Whakataunga:
Judgment date

18 September 2025

TE WHAKATAUNGA Ā TE KOOTI
Reserved Judgment of the Court

Kōrero tīmatanga*Introduction*

[1] This appeal arises in a context where the court was asked to make orders appointing and replacing trustees of the Waioeka Papakāinga 25 (Marae) Māori Reservation (“the Trust”). In most circumstances this is a straightforward proceeding. Here, however, the appointment and replacement of trustee orders per s 239 of Te Ture Whenua Māori Act 1993 (“the Act”) were made by Judge Wara in circumstances where there had been a request by the appellants that she recuse herself, to adjourn the hearing and with objections lodged by the appellants against some of the trustees she appointed.

[2] The appellants now appeal, arguing in simple terms that Judge Wara should not have heard the application and even if she was right to hear it, there was a clear basis to adjourn the application and she failed to do so, breaching principles of natural justice and failing to adhere to tikanga.

[3] The appeal relates to the Waioeka Papakāinga 25 (Marae) Māori Reservation which was set apart over Waioeka Papakāinga 25 (Marae) block for the purpose of a meeting place for the common use and benefit of the Whakatōhea tribe and Māori of the area. Its beneficiaries include all Ngāti Ira hapū and their whānau.

[4] Following general meetings held on 4 December 2022 and 4 November 2024, Micah Tawhara filed the s 239 application to replace trustees of the Trust (“the appointment application”). At the time the appointment application was filed the trustees were: Amber Leah Aramoana, Carlo Hemoana Gage, George Takamore, Hau Rewiri, Micah Tawhara, Paeone Goonan, Paul Kurei, Paula Kurei, Robyn Hata-Gage, Sarah Kurei, Terehita Pio and Te Ataahua Amanda May Kingi.

[5] The appointment application sought to appoint Renay Jones, Victoria Upward-Ngaika, Natasha Koroua and Rangimarie Biddle to replace Paul Kurei, Sarah Kurei, Terehita Pio and Hau Rewiti.

[6] Within this context, the appellants distilled their grounds of appeal into three questions:¹

- (a) Did the judge err in failing to recuse herself?
- (b) Did the judge err in failing to adjourn the hearing?
- (c) Did the judge err in her appointment of trustees that were opposed by the appellants?

[7] The first two questions are what were described as procedural grounds of appeal and give rise to a jurisdictional issue that we deal with first.

Jurisdiction

Mana ā-ture

[8] The issue here is whether the adjournment and recusal decisions of the Lower Court are subject to appeal per s 58 of the Act? This question arises because the respondents argue that these decisions were interlocutory and/or preliminary decisions and there is no basis to appeal an interlocutory decision, and to appeal a preliminary decision the appeal must be lodged under s 59 of the Act. An appeal under this provision requires leave of the lower court. The appeal here was filed under s 58 of the Act.

[9] The Māori Appellate Court can hear appeals that are brought under two circumstances. First per s 58 of the Act where there has been a final order:

58 Appeals from Maori Land Court

- (1) Except as expressly provided to the contrary in this Act or any other enactment, the Maori Appellate Court shall have jurisdiction to hear and determine appeals from any final order of the Maori Land Court, whether made under this Act or otherwise.
- (2) Any such appeal may be brought by or on behalf of any party to the proceedings in which the order is made, or any other person bound by the order or materially affected by it.
- (3) Every such appeal shall be commenced by notice of appeal given in the form and manner prescribed by the rules of court within 2 months after the date of the minute of the order appealed from or within such further period as the Maori Appellate Court may allow.

¹ Submissions on appeal, Annette Sykes and Maia Te Hira, Annette Sykes & Co, 29 April 2025 at [4].

[10] Secondly under s 59 of the Act where there has been a provisional or preliminary determination of the Māori Land Court:

59 Appeals from provisional determinations

(1) By leave of the Maori Land Court, but not otherwise, an appeal shall lie to the Maori Appellate Court from any provisional or preliminary determination of the Maori Land Court made in the course of any proceedings.

(2) Any such appeal may be brought by or on behalf of any person who is materially affected by the determination appealed from, or who would be bound by an order made in pursuance of it.

(3) The Maori Land Court may decline leave where it is satisfied that the interests of justice and of the parties would best be served by completing the proceedings before any appeal is made to the Maori Appellate Court.

(4) When leave to appeal is so given, the Maori Land Court may either stay further proceedings in the matter or continue the same, but no final order shall be made until the appeal has been finally disposed of or dismissed.

(5) When any such appeal has been determined by the Maori Appellate Court, no further appeal shall lie at the suit of any person from any final order made in those proceedings by the Maori Land Court, so far as the order conforms to the determination of the Maori Appellate Court.

(6) Where no leave to appeal is sought against any provisional or preliminary determination by the Maori Land Court in any proceedings, the Maori Appellate Court may decline to hear any appeal against the final order of the Maori Land Court made in those proceedings if it is satisfied that the appellant had a reasonable opportunity to appeal against the provisional or preliminary determination and that the point that would be in issue on the appeal is substantially the same as that to which the provisional or preliminary determination related.

[11] The Act does not define “provisional or preliminary determination”. However there have been several decisions that have helpfully dealt with the meaning of provisional and preliminary determinations. In short, the authorities demonstrate that appeals cannot be made against interlocutory orders and directions. There must be a final order that disposes with the substantive proceedings for s 58 of the Act to apply; or a provisional or preliminary determination that is made for the purpose of disposing with the substantive proceeding for s 59 of the Act to apply.²

[12] Counsel for the respondents suggests that we do not have the jurisdiction to hear this appeal. He submits that the recusal decision is a provisional or preliminary determination

² *Ward-Williams - Ngāti Tānewai 6A Section 5* (2003) 123 Aotea MB 159 (123 AOT 159) at 165; *Davis – Torere Reserves Trust* (2013) 82 Waiariki MB 267 (82 WAR 267) at [11].

and leave was required to be sought per s 59(1) of the Act, and it was not. With respect to the decision not to adjourn the hearing, counsel applies *Davis – Torere Reserves Trust* and *Ward-Williams – Ngāti Tānewai 6A Section 5* and submits that this was an interlocutory direction and not subject to appeal.³

[13] While we agree with the commentary provided in those decisions, the distinction we have found here is that the Court was dealing with appeals that had been filed pursuant to s 59 of the Act against specific interlocutory directions, they were not considering an appeal of a final order as we are here.

[14] Similarities can be found in *Rudd*, where the Māori Appellate Court sought clarification from counsel on the Court's jurisdiction given the issue that was subject to appeal seemed, on the face of it, to be a provisional or preliminary determination.⁴ The case concerned the matter of recusal and whether or not the Judge ought to have recused himself due to a conflict of interest with one of the parties. In that case, counsel for the appellant argued that it was not the decision refusing to recuse himself that was the subject of appeal but rather the final orders that were made. The grounds relied upon however, included his failure to recuse himself. The Court found that it was a final order that was being appealed and therefore they had jurisdiction to hear the appeal pursuant to s 58 of the Act.

[15] We have a similar fact scenario here. The appellants have not filed a notice per s 59 of the Act appealing preliminary or provisional determinations. The appeal has been filed pursuant to s 58 of the Act against the final orders made by the Court. The grounds relied upon include the Judge's decision not to recuse herself and refusal to adjourn proceedings.

[16] We therefore find that we have jurisdiction to hear the appeal per s 58 of the Act on the basis that we are dealing with final s 239 orders. We now turn to assessing the grounds of appeal.

³ As above.

⁴ *Rudd v Hurunui – Horowhenua II Part Reservation* [2018] Māori Appellate Court MB 123 (2018 APPEAL 123) at [12].

Was Judge Wara wrong in not adjourning the hearing?

I hē tā Kaiwhakawā Wara whakakore i te tono kia hīkina te kōtitanga?

[17] The decision not to adjourn the hearing was an exercise of discretion. Therefore, the correct approach, is not whether we would make a different decision from that made, but rather we must be satisfied that one of the following has been proved:⁵

- (a) There was an error of law or principle;
- (b) The Court took into account an irrelevant consideration;
- (c) The Court failed to take into account a relevant consideration; or
- (d) The decision is plainly wrong.

[18] Tritely appellate courts must tread carefully when looking to overturn a decision that involves an exercise of discretion.

[19] The appellants argue that the failure to adjourn the hearing was a breach of the principles of natural justice as codified in section 27(1) of the Bill of Rights Act 1990 (“the BORA”) and was not observed by the Court because:

- (a) the appellants were not given the opportunity to adequately provide the Court with further information that was material to the matters being considered;
- (b) they should have had the chance to present their case, provide evidence, and respond to arguments against them. They did not get this opportunity;
- (c) the Judge considered further material provided by Ms Tawhara at the hearing which led to a change of her initial determination. They say the further submissions raised by opposing counsel at the hearing could not be responded to by the appellants as they were not in attendance and could not provide instructions to their counsel.

⁵ *Flight v Fletcher – Waipapa 1D 2B 3B* [2017] Māori Appellate Court MB 96 (2017 APPEAL 96) at [19]-[21].

[20] Firstly, we must be clear as to the relevant facts.

[21] There is no question that the appellants had notice of the hearing.⁶ That is, they had been afforded the right to attend the hearing and be heard. Upon learning that it was Judge Wara presiding over the application, the appellants requested that she recuse herself by email dated 4 December 2024. On the same date the appellants sent a letter of objection to the trustee appointments of Renay Jones and Victoria Upward-Ngaika.

[22] In response the case manager advised by email dated 5 December 2024 that she would be referring the above matters to the Judge for direction. In that communication she advised that the appointment application may not proceed but made it clear that this was not a direction.

[23] By email direction dated 6 December 2024, Judge Wara declined to recuse herself and directed that the letter of objection be served on those affected. In fulfilling this last direction, the case manager advised all parties by email on the same day that the matter would proceed to hearing on 11 December 2024 at 12pm.

[24] By email dated 8 December 2024, three days before the hearing, Amber Rakuraku-Rosieur, one of the appellants, sought to defer the 11 December 2024 hearing, on the basis that several of the trustees had sought legal advice and required time to compile and present further information for consideration, and they are unable to attend the hearing due to work commitments. In a reply email dated 9 December 2024, the case manager advised that the file was under judicial review and because it was so close to the hearing, those in opposition to the application will need to be prepared to make a submission at the hearing, including what information is not currently before the court that requires more time. The case manager also advised that due to the lateness of the request someone will need to be prepared to seek the adjournment at the hearing. Within minutes of sending that email, Ms Te Hira advised the case manager by email, that she was instructed as counsel for the appellants and asked

⁶ Notices were sent by letter dated 19 November 2024 and by email dated 20 November 2024.

for details of the date and time of the hearing. The case manager sent Ms Te Hira the notice of the hearing and the zoom link.

[25] The case manager issued a further court direction by email on 9 December 2024 about the request for an adjournment, where Judge Wara asked if the applicant for the adjournment had liaised with Ms Tawhara as the applicant and the trustee elects as to whether they consented to the adjournment. Ms Rakuraku-Rosieur replied on 10 December 2024 confirming that she had not liaised with the applicant about the adjournment, but that they were copied into the relevant email.

[26] On 10 December 2024 the individual appellants emailed the court advising that they could not attend the hearing. Various reasons were provided including work commitments and the inability to take leave, graduation attendance at AUT in Auckland, sickness, the removal of an online option to attend the hearing, the inability to travel to the hearing and whānau bereavement.

[27] By email late on 10 December 2024, Ms Te Hira advised the case manager that she would attend the hearing by zoom.

[28] By email dated 11 December 2024, the case manager advised that the presence of parties was not compulsory and that because a lawyer had been engaged, they would have been made aware of this fact.

[29] At 11.39am on 11 December 2024, Ms Te Hira filed by email a comprehensive memorandum with the court, addressing the request for an adjournment and the recusal decision. When the hearing commenced Judge Wara had not seen the memorandum, nor had Ms Tawhara.⁷

[30] At the hearing, there was no formal discussion about the adjournment per se, rather the Judge initially advised that she was going to make some of the trustee appointments, but not the ones that were opposed by the appellants:⁸

⁷ 329 Waiariki MB 44-65 (329 WAR 44-65) at 47-48.

⁸ Above n 7, at 57.

The Court: What I am going to do today is I am going to grant orders in part. So I am going to appoint those trustees who are not opposed for the opposition that is being advanced against two of the proposed trustees. I am going to provide an opportunity for the opposition to be put in writing and an opportunity for those proposed trustees who are affected by the opposition to respond to that.

So I am going to provide those in opposition with three weeks from the date of today to detail their opposition in writing beyond that which is set out in the letter to the Court dated the 4th of December. Those that are affected by the opposition, Renay Jones and Victoria Upward, will then have three weeks to respond and we will have a hearing into that issue at the end of January.

[31] That said, right at the end of the decision Judge Wara mentions that there was an application to adjourn the appointment application, but clearly chose not to adjourn the matter, instead making the trustee appointment orders.⁹

[32] Ms Tawhara objected to the courts proposal to grant orders in part and provided submissions as to why appointing all trustees was preferred.¹⁰ In reply, Ms Te Hira indicated that further evidence needed to be filed to assist the court in its decision making on the issues raised by Ms Tawhara.¹¹

[33] Judge Wara then decided to appoint all trustees.

Did Judge Wara breach natural justice when she decided to make orders and not adjourn the application?

[34] This court has addressed the requirements of natural justice in *Tana v Gilbert*:¹²

Natural justice means that every person who appears before the Māori Land Court is entitled to a fair hearing and decisions must be made using fair processes. Natural justice includes the doctrine of *audi alteram partem*, meaning “listen to the other side.” It is the principle that no person should be judged without an opportunity to be heard and respond to the evidence against them.

⁹ Above n 7, at 64.

¹⁰ Above n 7, at 57-61 and 63.

¹¹ Above n 7, at 63.

¹² *Tana v Gilbert – Pukahakaha East 5B4* [2023] Māori Appellate Court MB 206 (2023 APPEAL 206) at [10].

[35] The appointment application is a common application in the Māori Land Court, which may be dealt with by a judge or, if simple and uncontested, by a registrar.

[36] There is no dispute that the appellants knew about the appointment application and that there would be a hearing, evidenced by the simple fact that they filed their objections to certain appointments in advance and thus had opportunity to speak to their objections, via counsel, if as they say, they could not attend the hearing. They received notice of the hearing almost a month prior and the fact that their lawyer was engaged late, was not the fault of the court, by giving late notice for example.

[37] Further, the appellants were on notice that the hearing could proceed, despite their late request for an adjournment and that their request for an adjournment if revived at the hearing may again be refused. They ran that risk, and we assume counsel would have advised them of that risk. Unfortunately, that risk materialised. We find that natural justice was met with respect to notice and the right to be heard.

[38] We accept that the Judge changed her mind during the hearing, from suggesting that she would not appoint those persons who were objected to by the appellants at the commencement of the hearing, to deciding to appoint them at the end of the hearing. This change of mind was not an error of law or a breach of natural justice. It is common for judges to formulate a preliminary view as to the outcome of a matter before them, only to be convinced after hearing submissions on the initial view and deciding on a different outcome. If the Court refused to hear any submissions about the initial proposal, then that could have been a breach of natural justice, but the Judge gave counsel every opportunity to make their arguments. The fact that counsel for the appellants could not respond to some of the matters raised by Ms Tawhara, is not the fault of the Judge, unfortunately it is the fault of the appellants, by not being present.

[39] For completeness, we make the point that the matters raised by Ms Tawhara did not directly relate to the objections lodged by the appellants, but rather other matters of a general kind, i.e. the fact that the marae has no insurance.

[40] There is an obligation for those who have filed an objection to a s 239 application to be present in court, unless of course directed by the judge. Further, there are many instances

where the trustees to be appointed are excused from attending court when their appointment is being considered. This advice was conveyed to the appellants in very clear terms by the case manager in advance of the hearing. Given that attendance was a choice, it would be difficult to argue that by choosing not to attend, that somehow the judge must adjourn the hearing until the appellants were able to attend. That argument gets that much harder when a lawyer did appear on behalf of the appellants.

[41] The Court appropriately considered the objections when deciding to appoint the trustees who were opposed, as well as running the s 222 ruler over those appointed and was satisfied that she could make them, despite the objections.¹³ If the objections were not considered, then yes there may be a natural justice issue, but the decision of the judge was explicit in this respect.¹⁴

The Court: ...Look, ultimately I am going to consider the application that is before me and I am not going to be issuing any directions that are beyond that application. Ms Te Hira, one of the matters that you have raised is the fact that you act for people who have been elected by the beneficiaries of the marae. The application before me is the appointment of people who have been elected by the beneficiaries of the marae.

It strikes me that there have been procedural delays in progressing applications which have fuelled the situation that is now before the Court. I have received the letter of objection from your clients dated 4th of December and it strikes me that the matters that they are objecting to are matters that ultimately need to be worked through amongst the trustees as to the issues of governance that you have raised. There are issues in relation to the way in which tikanga is considered, the roles of pou tikanga and kaumātua within the marae. Your clients are asserting that Renay and Victoria should not be appointed for those reasons.

But ultimately, those are take that need to be taken to the hapū itself and the beneficiaries of the marae itself. I understand that there is a charter that has been accepted by the Court. Ms Tawhara's submission today was that that charter needs to return to the beneficiaries of the marae, that there was general acceptance for the charter, but needs to return to the beneficiaries for final consideration. It is likely that there will be sufficient time before that application is heard by the Court for the charter to return and be considered, as well as the way in which the inclusion of tikanga is considered within the marae.

There are assertions around failing to work collaboratively. This is one of the issues that arises when trustee elects have been elected by the beneficiaries and then there is a delay as to the appointment of trustees, working through and managing how you manage the role of trustee and trustee elect when appointment has not been finalised.

¹³ Section 222 of the Act requires that the Court must consider the ability, experience and knowledge of the individual, the individual must be broadly acceptable to the beneficiaries and the individual must consent to the appointment. See also *Clarke v Karaitiana* [2011] NZCA 154 at [35]-[37] and *Mahoney v Trustees of the Nicholas George Te Paa Whanau Trust – Okahu 1 and other blocks* [2015] Māori Appellate Court MB 417 (2015 APPEAL 417) at 14.

¹⁴ Above n 7 at 63-64.

This is not unique to Waiōeka. This is a matter that affects numerous trustees and numerous trusts.

There are assertions as to failing to work collaboratively with the trustees while awaiting Court appointment. Again, that falls within the category of the difficulties that arise in that period between election and appointment. It is certainly the Court's hope because one of the matters raised, Ms Te Hira, in your clients' objection is that the appointment of two new trustees will result in the trust becoming dysfunctional. From what I have heard today, the trust is already dysfunctional.

There needs to be work for the trustees to work through that dysfunction and simply make good decisions for the marae. Probably starting with insurance, particularly where there are new buildings that have been constructed and are now exposed should there be any damage. I have had an opportunity to consider and review all four trustee consent forms that have been put before me, including that of Natasha, Rangimarie, who has joined us online, Renay, Victoria and Carlton.

I am satisfied having considered the knowledge and skills of the trustee elects that they have the requisite skill and knowledge to take office. I am also satisfied that the process leading to their appointments at the AGMs that were held in both 2022 and 2023 substantiates that there is a sufficient level of support from the beneficiaries of the marae for these appointments to take place.

While I have received and considered the letter of objection that has been put forward by five of the current trustees, Carlo Gage, Paeone Goonan, George Takamore, Amber Rakuraku and Robyn Hata-Gage, I am not satisfied that the matters that they raised undermine the credibility of those who have been put forward and elected by the hapū to make decisions on their behalf. Ultimately, there are decisions that need to be made and new trustees coming on board will assist with the decision-making process.

While an adjournment has been sought, the objections to the appointment of two proposed trustees are clear. But ultimately, in my view I place more weight on the views of the beneficiaries who have elected the proposed trustees to take office. For those reason, I am going to grant orders today.

[42] For those reasons, we find that Judge Wara's decision to proceed to make orders, as opposed to adjourning the appointment application did not breach natural justice and the orders were appropriately made. There was no error of law or principle. The Court did not take into account any irrelevant consideration or fail to take into account a relevant consideration. Finally, the decision was not plainly wrong within the context we have described. The fact that we or another judge may have come to a different view is irrelevant.

[43] The appeal based on these grounds fail.

Did the Court fail to observe tikanga when it decided to make its orders and not adjourn the application?

[44] The appellants argue that if the court had provided an adjournment to the beginning of 2025 as requested, the mana and manaakitanga offered to all parties would have been better observed. They say Judge Wara’s decision to grant orders failed to treat the appellants with manaakitanga and undermined their mana as argued by Ms Te Hira.¹⁵

...She agrees to the appointment of the trustees who are not opposed by the appellants in this case, and goes on to provide an additional period of time for evidence to be presented to the Court and then for another hearing on whether Ms Jones and Ms Upward should be appointed which, in my submission, would have better given effect to the tikanga of manaakitanga....

...Because in our submission, had that initial ruling that Judge Wara makes stood and become the final decision or the final order then – yes, the natural justice principles would have been observed and the tikanga of manaakitanga would have also been better observed.

We submit that there was already a breach of manaakitanga in the Judge’s failure to recuse herself and that was compounded by her Honour’s failure to then not provide that opportunity for further evidence to be presented before the Court, change her mind during the hearing and then make a final order that, in our submission, was not the appropriate order that should have been made.

[45] Arguing that a judge breached or failed to adhere to tikanga is a significant allegation. But like state law, judges can and do fail on this front, so we find that such a ground of appeal is clearly justiciable, especially in a court where tikanga lives and breathes, not only through the people it serves, but also through our governing legislation.¹⁶ This was not specifically challenged by the respondents.¹⁷ That said, one must tread with care to ensure there is a proper basis to sustain such an allegation.

[46] We take little issue with the proposition that a judge of this court must respect the mana of any person who appears before it. Further, the linked concept of manaakitanga, i.e. the acts that increase the mana of others and the mana of the giver of the acts, would in general terms apply to the way in which a judge in this context acts, and engages with parties

¹⁵ 2025 Māori Appellate Court MB 323 (2025 APPEAL 323) at 331.

¹⁶ Te Ture Whenua Māori Act 1993, Preamble.

¹⁷ At the hearing at 2025 Māori Appellate Court MB 348-349, counsel for the respondents submitted as follows:

The lower Court’s decision to proceed with the hearing was not a breach of tikanga. Now, I accept that tikanga can be applied by the Court under section 66, but it is also subject to sections 66(3). The appellants did not rely on tikanga when requesting the adjournment, and the appellants sought the adjournment to instruct counsel...

who appear before it. That is not controversial. However, whether principles of manaakitanga or mana play a role in the exercise of a discretion under the Act is a different proposition, as it goes to the reasons, as opposed to the behaviour, of a judge. Whether they apply to the substance of a decision, will be determined by the context and the specific power being exercised. We must naturally be careful to assume that these principles, however one chooses to define them, are blanket principles of general application in every context. Given that it is context that determines how these principles bite, the same context that we used with respect to the general law position relating to the adjournment applies to the grounds based in tikanga.

[47] We can address this aspect of the appeal in short order. We find that Judge Wara respected the mana of all parties before her. The clue there is that Judge Wara is required to uphold the mana of **all** parties, not just those seeking the adjournment. Therefore, in weighing the different options as to whether to adjourn or proceed, she rightly considered the mana of all, including those beneficiaries not before the court. One might even argue that tikanga required the appellants to front the hearing, but by their own choice and unavailability they sent their lawyer to court to argue their position at very short notice. There is no evidence that the Judge did not allow Ms Te Hira an opportunity to make the case for the appellants in their stead. In allowing counsel ample opportunity to address the court and make her case, was in effect an exercise of manaakitanga and in turn respecting the mana of the appellants and their voice. The fact that Judge Wara did not agree with Ms Te Hira in the final analysis is a different issue. Tikanga also allows for decisions to be made.

[48] We must also recall the fact that Ms Te Hira only filed her memorandum minutes before the matter was due to be heard. That is not a criticism of counsel because it was a late instruction, but it is contextually vital, when seeking to argue that mana and manaakitanga is breached. The mana of the court is also a factor when assessing these tikanga values in a connected manner as we must do. Tikanga principles assessed in isolation should be resisted including by judges being asked to determine a breach of them.¹⁸ In assessing mana and manaakitanga in this connected way further cements our view that in deciding to proceed to make orders, there was no breach of tikanga.

¹⁸ *Julian v Inia – Succession to Moehuarahi Te Ruuri* (2024) 309 Waiariki MB 197 (309 WAI 197) at [47]-[54].

[49] We find that Judge Wara did not breach tikanga in deciding not to adjourn the application as sought by the appellants.

Was Judge Wara wrong in declining to recuse herself?

I hē tā Kaiwhakawā Wara whakakore i te tono kia whakawāteahia tana noho?

[50] The Māori Land Court Recusal Guidelines (“the guidelines”) state that:

A judge should recuse him or herself if, in the circumstances, a fair-minded, fully informed observer would have a reasonable apprehension that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide.

The standard for recusal is one of “real and not remote possibility”, rather than probability.

[51] The guidelines refer to the test as set out by the Supreme Court in *Saxmere*.¹⁹ The Judge must consider:

1. First, what it is that might possibly lead to a reasonable apprehension by a fully informed observer that the judge might decide the case other than on its merits; and
2. Second, whether there is a “logical and sufficient connection” between those circumstances and that apprehension.

[52] The appellants say Judge Wara erred in failing to recuse herself. They say that she ought to have recused herself based on the personal relationships she has with Ms Tawhara, a close friend, and Jason Pou, her partner. The appellants raise issues of bias with respect to these two relationships and provide the following reasons:

- (a) Ms Tawhara has a longstanding friendship with Judge Wara and was employed by her at Judge Wara’s former law firm. Ms Tawhara has been involved in other proceedings against the Trustees.
- (b) Mr Pou was a negotiator for the Whakatōhea Pre-Settlement Claims Trust and acted for them in a number of proceedings which were brought by Ngāti Ira descendants on behalf of the hapū. He was also an advisor to the Whakatōhea Post-Settlement Governance Entity - Te Tāwharau o Te Whakatōhea. Judge Wara was present at, and acted as a witness to, the signing of the Whakatōhea

¹⁹ *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2009] NZSC 72, [2010] 1 NZLR 35; *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2)* [2009] NZSC 122.

Deed of Settlement, which was objected to by a number of Ngāti Ira descendants.

[53] The appellants argue that these relationships give rise to apparent bias and that Judge Wara would not bring an impartial mind to the application.

[54] In issuing her decision, the Judge correctly noted that, “the general principle is that a judge has an obligation to sit on any case allocated to them unless grounds for recusal exist”.²⁰ Judge Wara turned her mind to the arguments of the appellants with respect to her relationship with Ms Tawhara and found that she did not have any personal knowledge of the application before her because of that relationship. With respect to the argument concerning her relationship with her partner, Mr Pou, Judge Wara found there to be no “logical and sufficient connection between the litigation, through the matters that my partner has been involved in, and the case before the Court”.²¹

[55] While we agree with the appellant that this is a case where the Judge has a close personal relationship with both Ms Tawhara and Mr Pou, we also agree with the approach adopted in Judge Wara’s decision. She correctly identified the circumstances that might lead her to decide a case other than on its merits and articulated that she did not consider there to be a logical connection between the appointment application before her and the feared deviation from the course of deciding the case on its merits.

[56] This is not a situation where the Judge has personal knowledge of disputed facts, or a personal view concerning a party or witnesses of disputed fact. We are dealing with a replacement trustee application where two of the proposed trustees are opposed by the appellants. This was not an application that had a direct connection to the Whakatōhea Settlement issues, and neither was this a matter that would have any connection with Ms Tawhara’s former employment at Judge Wara’s previous law firm.

[57] With respect to Ms Tawhara being a friend of Judge Wara, the guidelines are clear:

3. A judge is not required to recuse him or herself merely because the issues involved in a case are in some indirect way related to the judge’s personal experience or that the judge has previously dealt with the case.

²⁰ Above n 7, at 51.

²¹ Above n 7, at 52.

[58] We also note that it is incorrect to refer to Ms Tawhara as opposing counsel on this application. Ms Tawhara was the applicant in the proceeding and filed the application on behalf of the Trust and in her capacity as trustee. She was not representing the Trust as counsel.

[59] While, Mr Pou is Judge Wara's partner he is not involved in the appointment application. He was not at the hearing, has not given evidence and is not legally advising any parties to these proceedings. While Mr Pou may be involved in other hapū and iwi matters that involve some of the parties to this application as members of Te Whakatōhea, none of those issues were before Judge Wara in the appointment application.

[59] We find that Judge Wara was correct in her decision. The standard for recusal is one of real and not remote possibility. We do not believe that the facts in this case give rise to a real possibility of bias.

[60] Finally, we note the appellants' concerns that the Judge failed to adhere to natural justice by not hearing from parties prior to indicating that she had made a decision. While this might not have been ideal and is a matter of good process, the reality is the Judge provided the opportunity for Ms Te Hira to address her on the recusal issue at the hearing prior to her providing her decision in court.

[61] For those reasons, we find that Judge Wara's decision declining to recuse herself was appropriately made. We consider that the fair-minded fully informed observer test is not met in this case. The relationships Judge Wara has with Ms Tawhara and Mr Pou without any real connection to the current application would only (if at all) give rise to a remote possibility that Judge Wara might not bring an impartial mind to the appointment application, and not a real possibility.

[62] The appeal based on these grounds fail.

Whakataunga

Decision

[63] The appeal is dismissed pursuant to section 56(1)(g) of Te Ture Whenua Māori Act 1993.

I whakapuaki i te 3.00 pm i Te Whanganui a Tara, te tekau mā waru o ngā rā o Hepetema i te tau 2025.

Pronounced at 3:00pm in Wellington on Thursday this 18th day of September 2025.

C T Coxhead (Presiding)
DEPUTY CHIEF JUDGE

A H Warren
JUDGE

A M Thomas
JUDGE