

I TE KOOTI PĪRA MĀORI O AOTEAROA
I TE ROHE O TE WAIARIKI
*In the Māori Appellate Court of New Zealand
Waiariki District*

AP-20240000010796
Appeal 2024/10

WĀHANGA <i>Under</i>	Section 58, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Te Karaka 1B2B1
I WAENGA I A <i>Between</i>	GRACE RIRIA MALCOLM AND ANGELA RITOHOU MALCOLM Ngā Kaitono Pira <i>Appellants</i>
ME <i>And</i>	MARGARET MAKARITA HAHIPENE AND EVA RANGIKAHIWA MOKE AS TRUSTEES OF TE HANA TRUST Ngā Kaiurupare Pira <i>Respondents</i>

Nohoanga: <i>Hearing</i>	12 February 2025, 2025 Māori Appellate Court MB 103-141 (Heard at Rotorua)
Kooti: <i>Court</i>	Judge M J Doogan (Presiding) Judge D H Stone Judge A M Thomas
Kanohi kitea: <i>Appearances</i>	J Koning for Appellants J McDougall and S Blythe-Nepia for Respondents
Whakataunga: <i>Judgment date</i>	8 December 2025

TE WHAKATAUNGA A TE KOOTI
Reserved Judgment of the Court

Copies to:
J Koning, Commerce Lane Chambers, 253 Te Okuroa Drive, Papamoa 3118, (021) 575 529, john@clc.nz
J McDougall, Holland Beckett, Private Bag 12011, Tauranga 3143, (07) 578 2199,
james.mcdougall@hobec.co.nz

Hei tīmatanga kōrero

[1] I te tau 1996, nā te Kooti Whenua Māori i panoni te tūnga taitara o te poraka Te Karaka 1B2B1 (“te poraka”) mai i te whenua Tianara ki te whenua Māori herekore. Tata ki te 26 tau whai muri, i noho rēhita kore tēnei ōta tūnga ki te taitara tae atu ki te tau 2022. Nō reira, i tēnei wā roa rawa atu, i mea atu ngā rekoatatanga o te Kooti Whenua Māori he whenua Māori herekore tēnei poraka engari hei tā Land Information New Zealand he whenua Tianara kē te poraka.

[2] Ki te kore tētahi i tuku i tēnei poraka i roto i aua tau 26, kāhore tētahi aha ka puta. Engari wairuatoa, kua tukua ia. I te tau 2006, nā Joseph Poroa Malcolm¹ rāua ko Grace Ritohau Malcolm, nā ngā kaupupuri whenua, i tuku te whenua ki te Taratī o Te Hana² hei wāhanga o ā rāua mahi whakarite rawa whaiaro. Ko rāua tahi me ā rāua tamāhine, Grace Riria Malcolm,³ ngā tarahitī o te Taratī o Te Hana. Inā hoki, i mea atu te rikoata taitara o tēnei poraka, he whenua Tianara, kāhore te whakawhitinga i whai i tētahi whakawhitinga mō ngā whenua Māori herekore. Nā konā, kāhore i

Introduction

[1] In 1996, the Māori Land Court changed the status of the Te Karaka 1B2B1 block (“the block”) from General land to Māori freehold land. Inexplicably, this status order was not registered on the title for the block until 2022, some 26 years later. Thus, during this extraordinarily lengthy period, the Māori Land Court records indicated that the block was Māori freehold land but the Land Information New Zealand records indicated that the block was General land.

[2] If the block had not been transferred during this 26-year period, no harm would have been done. Unfortunately, it was transferred. In 2006, the owners of the block, Joseph Poroa Malcolm¹ and Grace Ritohau Malcolm, transferred it to the Te Hana Trust² as part of their estate planning. They were the trustees of the Te Hana Trust along with their daughter Grace Riria Malcolm.³ Because the record of title for the block recorded it as General land, the transfer was not treated as a transfer of Māori freehold land. Accordingly, the statutory

¹ Joseph Poroa Malcolm was commonly known as “Te Poroa”. We use this name for him in this decision.

² References to the Te Hana Trust are necessarily references to the trustees of that trust.

³ Grace Riria Malcolm is the daughter of Grace Ritohau Malcolm. Because they have the same first name, we refer to Grace Riria Malcolm as “Grace Riria” and Grace Ritohau Malcolm as simply “Grace”.

whakatutukihia ngā tikanga ā-ture mō tētahi whakawhitinga whenua Māori herekore.

[3] Hei whakatikahia, i 2023, i inoi mai a Margaret Hahipene rāua ko Eva Moke, ngā tarahitī o te Taratī o Te Hana (ngā kaiurupare o tēnei pīra), kia whakaūngia e te Kooti Whenua Māori te whakawhitinga 2006 o te poraka ki te Taratī o Te Hana. Nā ngā kaitono o tēnei pīra, ko Grace Riria rāua Angela Ritohau Malcolm, i whakahē taua huarahi me te inoi kē kia whakapuakihia e te Kooti Whenua Māori, i te pūpuri a Te Poroa rāua ko Grace te taitara ā-mōtika whai pānga o te poraka tae atu ki ō rāua matenga, waihoki, kei a Grace Riria te taitara ā-ture inā hoki ko ia te kaipupuri kua rēhitatia, e ora tonu nei. I whakahē te Kooti Whenua Māori i te tono kia whakaūngia te whakawhitinga 2006, i te tono hoki kia whakamanahia te tūranga o Grace Riria hei kaipupuri whenua.⁴ Māna, i mea atu te Kooti Whenua Māori mai i a 2006, ko ngā tarahitī o te Taratī o Te Hana ngā kaipupuri whenua. E pīra ana ngā kaitono i taua whakataunga.

Kōrero whānui

[4] I te 16 o Maehe 1962, nā tētahi ōta wāwāhanga tēnei poraka i whakatū. I tukuna te poraka hou, tōna rahinga

requirements for the transfer of Māori freehold land were not satisfied.

[3] To remedy this situation, in 2023 Margaret Hahipene and Eva Moke, the trustees of the Te Hana Trust, (who are the respondents in this appeal), asked the Māori Land Court to confirm the 2006 transfer of the block to the Te Hana Trust. The appellants in this appeal, Grace Riria and Angela Ritohau Malcolm, opposed this step and instead sought orders from the Māori Land Court declaring that Te Poroa and Grace held the equitable title to the block until they died, and Grace Riria holds the legal title as the surviving registered proprietor. The Māori Land Court declined to confirm the 2006 transfer, but also declined to declare that Grace Riria owns the block.⁴ Instead, the Māori Land Court made orders confirming that, since 2006, the block has been owned by the trustees of the Te Hana Trust. The appellants appeal that decision.

Background

[4] The block was created by partition order on 16 March 1962. The newly created block, consisting of 2,023 m², was

⁴ *Malcolm v Hahipene – Te Karaka 1B2B1* [2024] 318 Waiariki MB 24.

2,023m², ki a Te Poroa rāua ko Grace hei kairēti ngātahi. Nā te māmā o Te Poroa te poraka i tuku kia whai wāhi ai ia me Grace ki te hanga whare ki reira.

[5] I te Tīhema 1970, i rēhitatia tētahi ōta tūnga ki te taitara e panoni nei i te tūnga o te poraka kia tū hei whenua Tianara.

[6] I ngā tau tīmata o te 1990, i tū ētahi take ture mō te aukatinga o ngā wāhanga o te rori Manaitutu, ko te hua ka puta, ko te tuku i te 488m² anō ki te rahinga o te poraka.

[7] Hei whakamōhio noa mō ā tātou take, i te 16 Oketopa 1996, i whakamanatia e te Kooti Whenua Māori tētahi ōta e mea ana, ko te poraka e meinga nei he 2,511m² te rahinga, he whenua Māori herekore. Hei toai noa, kāhore i rēhitatia tērā panonitanga o te tūnga ki te taitara tae atu ki te 17 Akuhata 2022.

[8] Nā, i te Apereira 2006, i whakatūria te Taratī o Te Hana me te kōpou i ngā tarahitī ko Te Poroa rātou ko Grace, ko Grace Riria; ā rāua tamāhine. He taratī tūmataiti tēnei. I te 6 Hepetema 2006, i whakaae atu a Te Poroa rāua ko Grace kia whakawhitihia te poraka ki te Taratī o Te Hana me ētahi atu o ngā whare i puritia ai e rāua hei whare rēti pūtea penapena. I hainatia tētahi whakaaetanga hoko whare e

vested in Te Poroa and Grace as joint tenants. The block had been gifted to Te Poroa by his mother so that he and Grace could build their family home there.

[5] In December 1970, a status order was registered against the title changing the status of the block to General land.

[6] In the early 1990's, there was litigation over the closure of parts of Manaitutu Road, the outcome of which was the vesting of an additional 488m² in the block.

[7] Importantly for our purposes, on 16 October 1996, the Māori Land Court made an order declaring the block, now comprising 2,511m², as Māori freehold land. As noted, that change of status was not registered against the title until 17 August 2022.

[8] Meanwhile in April 2006, the Te Hana Trust was constituted and Te Poroa, Grace, and their daughter Grace Riria were appointed trustees. This is a private trust. On 6 September 2006, Te Poroa and Grace agreed to transfer the block to the Te Hana Trust, along with a number of other properties they held as rental investments. An agreement for sale and purchase of the block was signed by Te Poroa and Grace

Te Poroa rāua ko Grace (hei kaiwhakawhiti), me Te Poroa rātou ko Grace, ko Grace Riria hei tarahitī o te Taratī o Te Hana (hei kaiwhakawhiwhi anō hoki). I te Pēpuere 2007, i rēhitatia te whakawhitinga o te poraka ki a Te Poroa rātou ko Grace, ko Grace Riria (hei tarahitī o te Taratī o Te Hana), ki runga i te tiwhikete taitara.

[9] E tika ai tētahi whakawhitinga whenua Māori herekore, me whakamana ia e te Kooti Whenua Māori. I mua i tā te whakawhitinga rēhitatanga i te tau 2007, kāhore i tonoa kia pērā mō te whakawhitinga o te poraka. Ko te āhua nei, i whakawhitihia te poraka, i rēhitatia hoki te whakawhitinga ki runga i te taitara nā runga i te pōhēhē he whenua Tianara te poraka. Kāhore i tukua tētahi tono ki te Kooti Whenua Māori e kimi nei i tētahi whakamanatanga o te whakawhitinga e ai ki w 151 o Te Ture Whenua Māori Act 1993 ("te Ture").

[10] I te tau 2018, e 11 tau whai muri mai, i mate a Grace Ritohau Malcom. I mate a Te Poroa i te tau whai muri mai. Ko Maragret Hahipene rāua ko Eva Moke ngā tarahitī, ngā kaiwhakahaere hoki o tā Te Poroa wira. I kopou rāua i a rāua anō hei tarahitī o te Tarati o Te Hana kia noho tahi ki a Grace Riria. Mai i te tau 2021, kāhore

(as transferors), and Te Poroa, Grace and Grace Riria as trustees of Te Hana Trust (as transferees). In February 2007, the transfer of the block to Te Poroa, Grace, and Grace Riria (as trustees of the Te Hana Trust) was registered against its certificate of title.

[9] A transfer of Māori freehold land requires confirmation by the Māori Land Court. No such application was made in respect of the transfer of the block before the transfer was registered in 2007. It appears that the transfer of the block and subsequent registration of the transfer on the title took place on the assumption that the block was General land. No application was made to the Māori Land Court to seek confirmation of the transfer as required by s 151 of the Te Ture Whenua Māori Act 1993 ("the Act").

[10] 11 years later in 2018, Grace Ritohau Malcolm died. Te Poroa died the following year. Margaret Hahipene and Eva Moke are the trustees and executors of Te Poroa's will. They appointed themselves trustees of the Te Hana Trust, alongside Grace Riria. From 2021, Grace Riria was no longer a trustee of the Te Hana

a Grace Riria i tū hei tarahitī o te Taratī o Te Hana. E mea atu ana te tiwhikete taitara o te poraka, ko Grace rātou ko Joseph, ko Grace Riria tonu ngā kaupupuri whenua.⁵

[11] I te tau 2022, i rēhitatia te ōta tūnga 16 Oketopa 1996 e meinga ana he whenua Māori herekore te poraka, ki runga i te taitara. I whakaae atu ngā tarahitī o te Taratī o Te Hana, i whakawhitihia te poraka i te tau 200-2007 nā runga i te mōhio he whenua Tianara te poraka, ka mutu, kāhore i whakamanatia e te Kooti Whenua Māori. I tono mai rātou kia whakamanatia e te Kooti te whakawhitinga 2006-2007. I whakakorehia te Kooti te tono kia whakamanatia. Whai muri i tērā, nā Grace i tuku tono mai kia tukuna e te Kooti tētahi ōta kia whakamanatia tana tūranga hei kaupupuri whenua mā te tuku ihotanga; nā runga i tā te Kooti Whenua Māori arokore ki te whakawhitinga 2006-2007 me te kī ake he mana kore. I whakakorehia hoki e te Kooti Whenua Māori taua tono ōta. Ko te ara kē i whāia ai e te Kooti ko te tuku ōta e whakamanatia ana te tūranga o te Taratī o Te Hana hei kaupupuri whenua mai i te whakawhitinga o te poraka i te tau 2006-2007.

[12] E pīra ana ngā kaitono pīra i te whakatau a te Kooti Whenua Māori e mea

Trust. The certificate of title for the block still records Grace, Joseph and Grace Riria as the registered owners.⁵

[11] In 2022, the 16 October 1996 status order, declaring the block to be Māori freehold land, was finally registered against the title. The trustees of the Te Hana Trust recognised that the 2006-2007 transfer of the block had occurred on the basis that the block was General land and, as such, it had not been confirmed by the Māori Land Court. They applied to the Court to seek confirmation of the 2006-2007 transfer. The Court declined to confirm this transfer. Meanwhile, Grace Riria had applied to the Court for an order confirming that, because the 2006-2007 transfer was not approved by the Māori Land Court and was therefore void, she owned the block by way of survivorship. As noted, the Māori Land Court declined to grant that order too. Instead, the Court granted orders confirming that, since the 2006-2007 transfer of the block, it has been owned by the Te Hana Trust.

[12] The appellants appeal the Māori Land Court decision determining that the

⁵ Record of Title SA 12C/26 Te Karaka 1B2B1.

ana ko te Taratī o Te Hana te kaupupuri whenua i roto i ngā tau, inaiānei hoki. Kāhore tētahi i tuku tono anō mō tā te Kooti Whenua Māori whakatau e whakakāhoretia nei te tono kia whakamanatia te whakawhitinga o te poraka i te tau 2006-2007.

[13] Hei ākuanei mātou tahuri ai ki ngā taipitopito ake o ō ngā hunga tūranga. Engari hei whakarāpopoto ake, e mea ana ngā kaitono me tuku te whenua ki te Taratī o Te Hana, koia ko te taratī ā-whānau i whakatūria ai e ai ki te wira a Te Poroa kia puritia ana pānga mā āna piki tūranga. I mea atu rātou, i te tau 2006, kāhore te Taratī o Te Hana i whiwhi tūturu i te puritanga whenua o te poraka. I mea atu ngā kaiurupare, i tika te whakawhitianga o te poraka i te tau 2006, ko te Taratī o Te Hana tonu te kaupupuri whenua.

[14] I tū tēnei pīra i te 12 o Pēpuere 2025. Whai muri i te Kōtitanga, i whakaae tahi ngā hunga kia hui takawaenga rātou ki te whakatau i ngā take pīra, nā konā, i whakatārewahia te tono pīra. Kāhore i whai hua te hui takawaenga.⁶

[15] Hei tāpiri noa, i ngā rā tīmata o Akuhata 2025, i puta ki mua i a mātou tētahi whakataunga a te Kooti Whenua

block has been and is currently owned by the Te Hana Trust. No cross-appeal has been filed in relation to the Māori Land Court decision to decline to confirm the 2006-2007 transfer of the block.

[13] We deal with the detail of the parties' arguments later. In summary, the appellants argue that the land should be vested in the Ngā Ōhāki Whānau Trust, which is the whānau trust constituted pursuant to Te Poroa's will to hold his interests for his successors. They argue that in 2006 the Te Hana Trust never gained full ownership of the block. The respondents argue that the block was properly transferred in 2006 and is still owned by the Te Hana Trust.

[14] We heard this appeal on 12 February 2025. After the hearing, the parties agreed to enter into mediation to resolve the issues on appeal, so the appeal was adjourned. Mediation was unsuccessful.⁶

[15] Further, in early August 2025, a decision of the Māori Land Court approving the final terms of the Nga Ōhāki

⁶ We were advised that mediation was unsuccessful on 19 July 2025.

Māori e whakaae nei ki te ōta taratī mō te Nga Ohaki Whanau Trust, nō reira i te 8 o Akuhata 2025, i whakaputa kupu whakahau mātou kia tukuna mai ngā rōia ētahi tāpaetanga tāpiri mō ngā take i puta ake. I te 27 Akuhata 2025, i tuku mai ngā rōia i aua tāpaetanga tāpiri.⁷

Whānau Trust came to our attention and we issued directions on 8 August 2025 directing counsel to file supplementary submissions on any matters arising. Counsel compiled and filed further submissions on 27 August 2025.⁷

Ngā take

Issues

[16] Anei ngā take i puta ake ai:

[16] The following issues arise:

- (a) I te tau 1996, i te tukunga o te ōta kia panoni te tūnga, kua whenua Māori herekore te tūnga o te whenua? Me whai rēhitatanga rānei kia mana ai te panonitanga o te tūnga?
- (b) I te tau 1996, i te tukunga o te ōta kia panoni te tūnga, kua whenua Māori herekore te tūnga o te whenua? Me whai rēhitatanga rānei kia mana ai te panonitanga o te tūnga?
- (c) Mena he whenua Māori herekore te poraka i te tau 2006-2007:
 - (i) He aha ngā āhuatanga ka puta i te kore whiwhi i tētahi whakamana whakareretanga mō tā

- (a) Did the land become Māori freehold land when the status order was made in 1996 or was registration of the order necessary to give effect to the change of status?
- (b) Did the land become Māori freehold land when the status order was made in 1996 or was registration of the order necessary to give effect to the change of status?
- (c) If the status of the block in 2006-2007 was Māori freehold land:
 - (i) What is the effect of the failure to obtain confirmation of alienation when the

⁷ *Moke - Succession to Te Poroa Joseph Malcolm* (2025) 339 Waiariki MB 182 (339 WAR 182); 2025 Māori Appellate Court MB 312-313 (2025 APPEAL 312-313).

te poraka
whakawhitinga ki te
Taratī o Te Hana i te tau
2006?

block was transferred
to the Te Hana Trust in
2006?

(ii) He aha ngā āhuatanga
ka puta i te rēhitatanga
o te whakawhitinga o te
poraka ki ngā tarahitī o
te Taratī o Te Hana ki te
taitara, i te Pēpuere
2007?

(ii) What is the effect of
registration on the title
for the block of the
transfer to the trustees
of the Te Hana Trust in
February 2007?

Ngā hunga me ō rātou tūranga

[17] Ki te taha o ngā kaitono, i mea atu a Mr Koning, ahakoa kāhore i whāia tētahi rēhitatanga tae atu ki te 2022, kua whai mana tonu te ōta 1996 e panoni nei i te tūnga o te poraka mai i te whenua Tianara ki te whenua Māori herekore, nā konā, i te tau 2006, te wā i whakaae a Grace rāua ko te Poroa kia whakawhitihia te poraka ki te Taratī o Te Hana, e tika ana me whai whakamanatanga mō taua whakarerenga. Ko te pānga o tā te whakawhitinga rēhita ki te taitara, ko te whakawhiti noa i te rawa ā-ture o te pānga angiangi mai i a Te Poroa rāua ko Grace ki a Te Poroa rātou ko Grace, ko Grace Riria. Mō te taitara ā-mōtika whai pānga, kāhore te whakawhitinga i panoni i tērā, he whenua Māori herekore tonu te tūnga.

The parties and their positions

[17] For the appellants, Mr Koning argues that although not registered until 2022, the 1996 status order changing the status of the block from General land to Māori freehold land was operative and consequently confirmation of alienation was required in 2006 when Grace and Te Poroa entered into an agreement to transfer the block to the Te Hana Trust. The fact that the transfer was subsequently registered on the title had effect only to transfer the legal estate in fee simple from Te Poroa and Grace to Te Poroa, Grace, and Grace Riria Malcolm. The transfer did not affect the equitable title, the status of which remained Māori freehold land.

[18] I te tahuri te rōia ki w 123(5) o te Ture me tana ki ake:

[18] Counsel points to s 123(5) of the Act, which provides:

Until registration has been effected, an order of the court in respect of land subject to the Land Transfer Act 1952 shall affect only the equitable title to the land.

[19] Kua herea te poraka ki te Land Transfer Act 1952 mai i te whakaputanga o te taitara SAPR 269/67 i te 2 o Tīhema 1970. I mea atu a Mr Koning, ko te pānga pūtahi o ēnei wāhanga, ko te tikanga e mea ana me whai tētahi whakareretanga o te taitara ā-mōtika whai pānga i tētahi ōta o te Kooti Whenua Māori e ai ki Wāhanga 8 o te Ture (Confirmation of Alienation).

[19] The block had been subject to the Land Transfer Act 1952 since the issue of the title SAPR 269/67 on 2 December 1970. Mr Koning argues the combined effect of these provisions means that any disposition of the equitable title required an order of the Māori Land Court under Part 8 of the Act (Confirmation of Alienation).

[20] E mea ana ia, nā te korenga a tā te Kooti whakamana i te whakaaetanga 2006, e whai take tonu ana a w 156(1) o te Ture:

[20] He says that, because the 2006 agreement was not confirmed by the Court, s 156(1) of the Act applies:

156 Effect of confirmation

- (1) No instrument of alienation that is required to be confirmed under this Part shall have any force or effect until it is confirmed by the court under this Part.
- (2) Subject to subsection (3), on confirmation being granted, an instrument of alienation shall (if otherwise valid) take effect according to its terms, subject to the requirements (if any) of registration under the Land Transfer Act 2017, as from the date on which it would have taken effect had confirmation not been required.

[21] I mea atu a Mr Koning, nā tēnei kore i whai i a w 151 o te Ture, me te whai take mai o w 156 o te Ture, i noho mana kore ai te whakawhitinga 2006 ki te Taratī o Te Hana, nō reira ka noho tonu te taitara ā-mōtika whai pānga o te poraka ki a Te

[21] Mr Koning argues that this failure to comply with s 151 of the Act, combined with the operation of s 156 of the Act, means that the 2006 transfer to the Te Hana Trust has no force or effect and therefore the equitable title of the block remains

Poroa rāua ko Grace hei kaipupuri whenua tuatahi, hei kairēti ngātahi anō hoki.

[22] I tana whakamārama mai, i mea atu a Mr Koning, e wātea ana te ara ki te Kooti kia whakatauhia, e puritia ana e Grace Riria te poraka i raro i tētahi taratī ā-pānga rawa mō ōna mātua, mō Te Poroa rāua ko Grace. Nā konā, e wātea tonu ana te ara ki te Kooti kia whakamanahia tētahi anō ōta e tuku nei i te whenua ki te Ngā Ohāki Whānau Trust. I tū marika tēnei tarati i te Hune 2025.⁸ Ka herea taua ōta e tētahi whakaaetanga o Grace Riria hei kaipupuri kua rēhitatia, e ai ki a w 156(3) o te Ture.

[23] I mea atu a Mr McDougall, te rōia mō te kaiurupare, inā hoki kāhore te ōta tūnga i whai rēhitatanga tae atu ki te 2022, kāhore he take o tā Te Poroa rāua ko Grace kimi whakamanatanga mō te whakawhitinga 2006, mai i te Kooti Whenua Māori. I ki atu ia, ko te whakamāramatanga tika o ww 140 me 142, ka whai mana te ōta panoni tūnga i te wā tonu o te rēhitatanga. Mena kāhore tērā e tika ana, i ki atu ia nā runga i ngā ture kua whai mana, i whiwhi te Taratī o Te Hana i te taitara tūturu i te wā i rēhitatia te whakawhitinga i te Pēpuere 2007. I tāhuri a Mr McDougall ki ngā kēhi i te Kōti Teitei, a *Warin* me *Housing Corporation of*

vested in Te Poroa and Grace as the original owners and joint tenants.

[22] Mr Koning reasons that it is therefore open to this Court to determine that Grace Riria now holds the block on constructive trust for her parents, Te Poroa and Grace. It would then be open to the Court to make a further order vesting the land in the Ngā Ohāki Whānau Trust. This trust was formally constituted in June 2025.⁸ Such an order would be subject to the consent of Grace Riria as registered proprietor, pursuant to s 156(3) of the Act.

[23] Mr McDougall, as counsel for the respondents, argues that because the 1996 status order was not registered until 2022, it was not necessary for Te Poroa and Grace to seek confirmation from the Māori Land Court of the 2006 transfer. He argues that the clear meaning of ss 140 and 142 is that it is only upon registration that a change of status takes effect. In the alternative, he argues that it is settled law that the trustees of the Te Hana Trust obtained indefeasible title upon registration of the transfer in February 2007. Mr McDougall points to the High Court authorities in *Warin*, *Housing Corporation of New Zealand* and *Edwards*, which he says definitively

⁸ *Moke – Succession to Te Poroa Joseph Malcolm*, above n 7.

New Zealand me *Edwards*, me tā rātou whakaū i te mātapono o te taitara tūturu me tana noho mātamua ake i ngā wāhanga o te Ture. E tohea mai ana, ahakoa kāhore tētahi tuhinga whakawhiti i whai i te Ture, nā kona he mana kore ia; hei te wā ka rēhitatia taua tuhinga whakawhiti e kore tētahi pānga e puta kia aukatihia te taitara tūturu.

confirm the principle of indefeasibility overrides the provisions of the Act. It is argued that the fact that an instrument may be void due to lack of compliance with the Act has no retrospective effect to diminish the immediate indefeasibility once that instrument has been registered.⁹

[24] I mea atu a Mr McDougall, kua whakaae kē atu te Kooti Pīra Māori i tēnei take ki *Muraahi v Phillips*:¹⁰

[24] Mr McDougall submits that this point has been accepted by the Māori Appellate Court in *Muraahi v Phillips*:¹⁰

The *Warin* decision measures the relationship between the LTA and Māori land legislation, and traverses well-known precedent relating to indefeasibility of title...

...The clear conclusion to be drawn from *Warin* is that where Māori freehold land is transferred without compliance with the provisions of [the Act] and none of the exceptions to indefeasibility apply the transferee obtains indefeasible title.

[25] I te wā o te rēhitatanga, i whiwhi ngā tarahitī o te Taratī o Te Hana i te taitara tūturu o te poraka. I mea atu te rōia, ko te huarahi anahe e wātea ana hei whai mā ngā kaitono kia tohea te taitara, ko te āweretanga tinihanga ki te taitara tūturu, engari echara te whakawhitinga i te mahi tinihanga. Māna, he hēnga e pono ana. I whakaotihia te whakawhitinga nā runga anō i ngā kupu tohutohu ā-ture, ka mutu, nā te korenga o te rēhitatia o te ōta tūnga, kāhore e mōhiohia nei i reira tētahi anō

[25] Upon registration, the trustees of the Te Hana Trust acquired an indefeasible title to the block. Counsel argued that the fraud exception to indefeasibility remains the sole avenue for the appellants to contest the title, however, the transfer was not fraudulent. Instead, it was based on an honest mistake. The transfer was completed in reliance on legal advice and the failure to register the status order meant there was no knowledge of an adverse right that could be impugned, nor was there any

⁹ *Warin v Registrar-General of Land* [2008] 10 NZCPR 73; *Housing Corporation of New Zealand v Māori Trustee* [1988] 2 NZLR 662, at 672-673; *Edwards v Māori Land Court of New Zealand*, HC Wellington CP78/01, 11 December 2001, at [126].

¹⁰ *Muraahi v Phillips - Rangitoto Tuhua 55B1B and 55B1A2 (Manu Ariki Marae)* [2013] Māori Appellate Court 528 (2013 APPEAL 528) at [69].

mōtika, tērā pea ka tohea; waihoki, kāhore he hiahia kia turakina ō tētahi hunga whai take mōtika kāhore anō kia rēhitatia. Nā konā, ko ngā tarahitī o te Taratī o Te Hana tonu ngā kaupupuri o te taitara tūturu o te poraka.

[26] Hei tāpiri noa i tā Mr McDougall tohe ai, kāhore e tika ana te tāpae a Mr Koning e mea ana kei a Grace Riria te puritanga ā-mōtika whai pānga nā runga i te mōhio ko ia anahe te kaupupuri whenua e ora tonu nei, inā hoki e taupatupatu ana ngā whakaaro e rua. Tuatahi ake, i whiwhi a Grace me ōna mātua, hei tarahitī, i te taitara tūturu o te rawa i te tau 2006. Tuarua, ahakao i rihaina a Grace Riria i tana tūranga tarahitī, kei a ia tonu te puritanga ā-mōtika whai pānga nā runga i te mōhio ko ia anahe te kaupupuri whenua e ora tonu nei.

[27] E whakawhirinaki atu ana a Mr McDougall ki ngā whakaaro o Judge Wara i te whakataunga e pīratia nei me te ki rongonui ake, kāhore e taea ana e tētahi kaupupuri e pupuri nei i tētahi whenua nā runga i te āhua o te taratī, te whakawhirinaki atu ki ngā ture o te taitara tūturu hei turakina te taratī.¹¹

intention to defeat the unregistered right of any third party. On this basis, the trustees of the Te Hana Trust remain the holders of an indefeasible title to the block.

[26] Mr McDougall further argues that Mr Koning's submission that Grace Riria holds equitable ownership by virtue of being the sole surviving registered owner must be rejected because it is an attempt to reconcile two conflicting ideas. The first being that Grace Riria, along with her parents, acquired an indefeasible registered title to the property in 2006 as trustees. The second being that despite Grace Riria's resignation as a trustee, she continues to have equitable ownership by virtue of being the sole surviving registered owner.

[27] Mr McDougall relies on the reasoning of Judge Wara in the decision under appeal that it is well settled that a registered proprietor who has undertaken to hold the land on trust cannot rely on indefeasibility to defeat the trust.¹¹

¹¹ *Malcolm v Hahipene – Te Karaka 1B2B1*, above n 4, at [39].

[28] I ki hoki a Mr McDougall, mō ngā hunga e tae mana tika mai ana, me tae hara kore mai hoki rātou. I tāpae hoki ia, ki te whakaaetia te 'practical' huarahi i tukuna ai e Mr Koning, he huarahi e arokore ana ki te āhua o tō Grace Riria tūranga hei tarahitī e hē ana, ki tana korenga hoki i whakatika i te hara i puta i te whakawhitinga 2006 me ngā tau nō muri. Nā runga i tērā, kāhore e mana tika ana kia whakatauhia ko Grace Riria te kaipupuri ā-ture nā te tuku ihotanga, ahakoa nā runga i te āhua o te taratī.

[29] I te mutunga iho, e mea ana a Mr McDougall, ko ngā tarahitī o te Taratī o Te Hana ngā kaipupuri whenua ā-ture, ā-mōtika whai pānga anō hoki ki te poraka. Ehara ngā wāhanga whakarerenga o te ture i te āweretanga ki ngā mātāpono o te taitara tūturu ki roto i tēnei horopaki.

Take 1 – I te tau 1996, i te tukunga o te ōta kia panoni te tūnga, kua whenua Māori herekore te tūnga o te whenua? Me whai rēhitatanga rānei kia mana ai te panonitanga o te tūnga?

[30] Ko te take tuatahi, he take taumata ā-ture. Mena he whenua Tianara te tūnga o te poraka i te tau 2006, kāhore e puta te ihu o tēnei pīra. Mena he whenua Māori herekore te tūranga o te poraka i te tau

[28] Mr McDougall further points out that those who come to equity must come with clean hands. He submits that to accept the 'practical' solution proposed by Mr Koning would be to ignore the fact that Grace Riria should not benefit from her mistake and failure as a party to the 2006 transfer to correct the error in the subsequent years. It would not be equitable, on this basis, to find that Grace Riria is the legal owner by survivorship, albeit on trust for her parents.

[29] Ultimately, Mr McDougall says that the current trustees of the Te Hana Trust maintain that they are the legal and equitable owners of the block. The alienation provisions in the Act are not exceptions to the principle of indefeasibility in this case.

Issue 1 - Did the land become Māori freehold land when the status order was made in 1996 or was registration of the order necessary to give effect to the change of status?

[30] The first issue is a threshold one. If the status of the block in 2006 was General land, then the appeal fails. If, however, the status of the block in 2006 was Māori freehold land, then the remaining issues will need to be determined.

2006, e tika ana me whakatau ngā take e toe ana.

[31] E tika ana me mātua tahuri ki tēnei mea te ōta tūnga. E mea ana a w 130 o te Ture:

[31] It is necessary to begin by considering what a status order is. Section 130 of the Act relevantly provides that:

130 Certain status not to change except in limited circumstances

No land shall acquire or lose the status of Māori customary land or Māori freehold land otherwise than in accordance with this Act, or as expressly provided in any other Act.

[32] E ai ki a w 131(1) me 131(3) o te Ture:

[32] Section 131(1) and 131(3) of the Act provides:

131 Court may determine status of land

- (1) The Maori Land Court shall have jurisdiction to determine and declare, by a status order, the particular status of any parcel of land, whether or not that matter may involve a question of law.
- (3) Nothing in subsection (1) shall limit or affect the jurisdiction of the High Court to determine any question relating to the particular status of any land.

[33] Mā w 133 o te Ture e tuku te mana kia pānonitia te tūnga taitara mai i te whenua Tianara, whenua Tianara e puritia nei e tētahi Māori rānei, ki te whenua Māori herekore, mā tētahi ōta tūnga. Koia tēnei ko te wāhanga i whāia rā kia panonitia te whenua mai i te whenua Tianara ki te whenua Māori herekore i te tau 1996.¹²

[33] Section 133 of the Act provides jurisdiction for a change of status from General land or General land owned by Māori to Māori freehold land by way of a status order. This was the provision under which the status of the block was changed from General land to Māori land in 1996.¹²

[34] E ai ki a w 142 o te Ture:

[34] Section 142 of the Act provides:

¹² 244 Rotorua MB 402 (244 ROT 402).

142 Effect of status orders upon registration

Every status order made under this Part shall, upon registration, or upon noting under section 124, have the effect of giving to the land the particular status specified in the order.

[35] E ai ki a w 123 o te Ture:

[35] Section 123 of the Act provides:

123 Orders affecting title to Maori freehold land to be registered

...

- (5) Until registration has been effected, an order of the court in respect of land subject to the Land Transfer Act 2017 shall affect only the equitable title to the land.

[36] E ai ki a w 41 o te Ture:

[36] Section 41 of the Act provides:

41 Orders to be pronounced in open court, and minute recorded

- (1) The substance of every final order of the court shall be pronounced orally in open court.
- (2) Subject to section 42, every such order shall take effect according to its tenor as from the commencement of the day on which it is so pronounced.

[37] Ehara i te mea he māma te whai i te noho ngātahitanga o ēnei wāhanga.

[37] These provisions are not easily reconciled.

[38] I *Muraahi*, i tahuri te Kooti Pira Māori ki a w 142 o te Ture mō ngā horopaki e whai take nei ki te rēhitatanga o tētahi ōta tūnga, whāia ko te whakaoti i tētahi whakawhitinga, nā i rēhitatia hētia nā te kore i whai i tētahi whakaūnga.¹³ I mea atu te Kooti, tae atu ki tōna rēhitatanga, kāhore he rerekētanga i puta i tētahi ōta tūnga ki runga i tōna taitara ā-ture. Me tana ki, hei te wā ka rēhitatia tētahi ōta tūnga, ka pūmau tonu taua tūnga

[38] In *Muraahi* the Māori Appellate Court considered s 142 of the Act in circumstances where a status order had been registered, and subsequently a transfer was completed and then wrongly registered without confirmation.¹³ The Court commented that a status order does not affect the legal title until registration. It stated that once a status order is registered, the status applies until another status is registered. It further held that *Edwards*

¹³ *Muraahi v Phillips - Rangitoto Tuhua 55B1B and 55B1A2 (Manu Ariki Marae)*, above n 10, at [69].

tae atu ki te wā ka rēhita mai tētahi anō tūnga. I whakaae atu ia ki a *Edwards* me te whakaū atu, ka tiakina ngā whakawhitinga e tukuna nei nā runga i te whakawhirinaki atu ki te tūnga kua rēhitatia.¹⁴

confirms that transactions made in reliance on the registered status will be protected.¹⁴

[39] Engari kāhore aua kēhi, a *Muraahi* me *Edwards*, i mate ki te whakaarohia ngā āhuatanga pēnei i ngā mea i tēnei kēhi, arā ko te tū mai i tētahi whakawhitinga nō muri i te whakapuaki i te ōta tūnga engari mō muri i tana rēhitatanga.

[39] However, neither *Muraahi* nor *Edwards* were faced with the circumstances of the present case where a transfer was made after a status order was pronounced, but before it was registered.

[40] Ka mate mātou ki te tahuri ki ngā kupu, ki te aronga me te horopaki kia whakatau ai ngā whakamāramatanga o ēnei wāhanga.¹⁵

[40] We are required to determine the meaning of these provisions by reference to the text and in light of its purpose and context.¹⁵

[41] I te horopaki o te Ture, e tika ana me whai mātou i tētahi whakamāramatanga e hāpai nei i ngā mātāpono ki roto i te Whakatakinga, e pēnei nei:

[41] In the context of the Act, we are required to interpret the Act in a manner that best furthers the principles set out in the Preamble, which states:

...ā, nā te mea e tika ana kia mārama ko te whenua he taonga tuku iho e tino whakaaro nuitia ana e te iwi Māori, ā, nā tērā he whakahau kia mau tonu taua whenua ki te iwi nōna, ki ō rātou whānau, hapū hoki...

...And whereas it is desirable to recognise that land is a taonga tuku iho of special significance to Maori people and, for that reason, to promote the retention of that land in the hands of its owners, their whanau, and their hapu...

[42] Me whai whakaaro mātou ki w 2 o te Ture me tana tuku i te hiahia o Paremata e mea ana me noho tahi ngā

[42] We must also have regard to s 2 of the Act, which makes clear that it was the intention of Parliament that the provisions

¹⁴ *Edwards v Māori Land Court*, above n 9.

¹⁵ Legislation Act 2019, s 10(1).

whakamāramatanga i puta i ngā wāhanga o te Ture ki ngā mātāpono i roto i te Whakatakinga, arā:¹⁶

of the Act be interpreted in a manner that best furthers the principles set out in the Preamble, and in particular:¹⁶

that powers, duties and discretions conferred by the Act are to be exercised as far as possible in a manner that facilitates and promotes the retention, use, development and control of Māori land as taonga tuku iho by Māori owners.

[43] Me whai whakaaro hoki mātou ki ngā aronga whānui ki roto i a w 17 o te Ture e tuku kupu arahi nei mō te āhua o te whakamahi i te mana ā-ture kia:¹⁷

[43] We must also have regard to the general objectives set out in s 17 of the Act, which provides more particular guidance as to the exercise of jurisdiction in order to:¹⁷

...promote and assist in:

- (c) the retention of Māori land and General land owned by Māori in the hands of the owners and
- (d) the effective use, management and development by or on behalf of the owners of Māori land and General land owned by Māori.

[44] He hirahira ngā wāhanga e noho nei ki raro i a Wāhanga 6 e pā ana ki te tūnga o te whenua ki te aronga whānui o te Ture. E mea ana a w 129 o te Ture, mō te take o te Ture, ka noho ngā whenua katoa o Aotearoa ki raro i tētahi o ngā tūnga e ono. E mārāma ana te kite i w 130, mō ngā whenua Māori tuku iho me ngā whenua Māori herekore, mā te whai i ngā wāhanga o te Ture anahe, mā tētahi whakapuakitanga motuhake rānei i tētahi anō ture, e panoni ōna tūnga. Kei a te Kooti Whenua Māori te mana ā-ture ake ki te whakatau, ki te whakapuaki anō hoki i te

[44] The Part 6 provisions relating to status of land are pivotal in the overall scheme of the Act. Section 129 of the Act provides that, for the purposes of the Act, all land in New Zealand shall have one of six specified statuses. Section 130 of the Act makes it clear that, with respect to Māori customary land or Māori freehold land, its status shall not change otherwise than in accordance with the provisions of the Act or as expressly provided in any other Act. The Māori Land Court is given a specific jurisdiction to determine and declare by status order the particular status

¹⁶ Section 2(2).

¹⁷ Section 17(1).

tūnga mārika o tētahi wāhi whenua, mā tētahi ōta tūnga (s 131(1)). Kei a te Kooti teitei tonu tētahi mana ā-ture e ōrite ana (s 131(3)). I tā te tirohanga whānui, ka tukuna e ngā wāhanga tūnga o Wāhanga 6 tētahi kaupapa here ā-ture kia tautiakihia te whenua Māori mai i ngā whakarerenga tērā pea ka puta. E teitei ana te taumata ā-ture mō te panoni i ngā tūnga o te whenua Māori, o te whenua Māori tuku iho hoki ki te whenua Tianara, ka mutu, e herea ana e ngā ngā paearu whāiti (ww 135-137).

[45] E mea ana a w 140 of te Ture, e ai ki hoki a te Land Transfer Act 2017, me rēhita ia ōta tūnga ka tukuna atu e ai ki a Wāhanga 6 o te Ture.

[46] I te horopaki o tēnei kēhi, e mea ana mātou he hirahira a w 142 o te Ture. Hei ko tāna, i te wā o te rēhitatanga ko ia ōta tūnga ka “have the effect of giving to the land the particular status specified in the order.” Ko te whakamāramatanga māori o ēnei kupu e kīa nei, mā te rēhitatanga anahe e mana ai te ōta panoni tūnga.

[47] Ki te tirohia tahitia tēnei whakamāramatanga māori me te kaupapa, te aronga anō hoki o te Ture, e mārāma ana te kite, mā te rēhitatanga anahe o tētahi ōta tūnga e panoni ai te tūnga. Ki te tahuri ki ngā wahanga e whai take nei:

of any parcel of land (s 131(1)). The High Court retains a concurrent jurisdiction (s 131(3)). Read as a whole, the Part 6 status provisions demonstrate a clear legislative policy to protect Māori land from potential alienation. The thresholds for changing the status of Māori land or Māori customary land to General land are relatively high and subject to detailed criteria (ss 135-137).

[45] Section 140 of the Act requires every status order made under Part 6 of the Act to be registered under the Land Transfer Act 2017.

[46] In the circumstances of this case, we see s 142 of the Act as pivotal. It provides that every status order shall, upon registration, “have the effect of giving to the land the particular status specified in the order.” The ordinary meaning of these words is that it is only upon registration that the change of status is given effect.

[47] When this ordinary meaning is cross-checked against the scheme and purpose of the Act, it is clear that land can only change status upon registration of a status order. Stepping through the relevant provisions:

- (a) E whakaaro ana a w 123(5) o te Ture, i te wā tatari kia rēhitatia, ka whai pānga ngā ōta Kooti ki te taitara ā-mōtika whai pānga anahe, kaua ki te taitara ā-ture. Kei a Wāhanga 5 o te Ture tēnei wāhanga me tana whainga matua, ko te rikoata i te puritanga whenua. Engari kē ko Wāhanga 6 o te Ture e whai tūturu ana ki te tūnga o te whenua. E mārama ana te kite i w 130, mō ngā whenua Māori tuku iho me ngā whenua Māori herekore, mā te whai i ngā wāhanga o te Ture anahe, mā tētahi whakapuakitanga motuhake rānei i tētahi anō ture, e whakahou, e whakakore rānei tōna tūnga. I tēnei kēhi, ka noho mātāmua ngā wāhanga o Wāhanga 6 i a Wāhanga 5. Ko te wāhanga mātua, ko w 142 e ki mārama nei, mā te rēhitatanga anahe e tuku ai te tūnga nō roto i te ōta tūnga, ki te whenua.
- (a) While s 123(5) of the Act contemplates that, pending registration, Court orders only affect the equitable title, this provision is in Part 5 of the Act which is primarily concerned with the recording of ownership. Part 6 of the Act, on the other hand, deals specifically with the status of land. Section 130 makes clear that no land shall acquire or lose the status of Māori customary land or Māori freehold land otherwise than in accordance with the Act, or as expressly provided in any other Act. In the present context, the provisions of Part 6 prevail over the provisions of Part 5. The key provision is s 142 which provides in clear terms that it is only upon registration that land acquires the status set out in a status order.
- (b) Ko ngā wāhanga o Wāhanga 5 o te Ture, arā ko ww 122, 123 me 140, e tuku nei i ngā tikanga e mea ana me rēhita ētahi ōta Kooti ki runga i te tiwhikete taitara. Ka kōrero rātou katoa mō te *tikanga*
- (b) The provisions of Part 5 of the Act, particularly ss 122, 123 and 140, impose requirements to register certain Court orders on the certificates of title. They all speak to the *requirement* to register Court

me rēhita ngā ōta Kooti, kaua mō te pānga i puta i taua rēhitatanga. Ka kōreo hoki a w 123(5) o te Ture, e mea ana tae atu ki te rēhitatanga, ka whai pānga ngā ōta Kooti ki te taitara ā-mōtika whai pānga anahe, ki te pānga i puta i tētahi ōta *i te wā tatari* o tētahi rēhitatanga, kaua ko te pānga i puta i te rēhitatanga pū nei. Tērā pea ka puta tētahi rerekētanga i ngā wāhanga e whai take nei mō ō rātou āhua, āra, he tohutohu (e mea ana me rēhita ētahi momo ōta), he whakapuaki rānei (e whakapuaki ana i te pānga ka puta i te rēhitatanga). Ko te ngako ia, ka noho a ww 122, 123 me 140 o te Ture ki raro i te mea tuatahi (he wāhanga tohutohu rātou katoa), kaua ko te mea tuarua (ehara rātou i te wāhanga whakapuaki).

- (c) E mea ana a w 123(8) o te Ture, kāhore tētahi mea i w 123 o te Ture i te whakakore, i te whakarerekē hoki i ētahi “special provisions made elsewhere in this Act” mō te rēhita i tētahi ōta. He wāhanga motuhake a w 142 o te Ture e whai take tōtika nei ki te rēhitatanga o ngā ōta tūnga me te pānga ka puta i te rēhitatanga. Nā

orders, not the *effect* of such registration. Even s 123(5) of the Act, which confirms that until registration is effected a Court order only affects the equitable title to land, speaks to the effect of an order *pending* registration, not the effect of registration itself. A distinction can be drawn between the relevant provisions based on whether they are directive (that is, directing that certain orders must be registered) or declaratory (that is, declaring the effect of registration). The point here is that ss 122, 123 and 140 of the Act fall into the former category (they are all directive provisions) and not the latter (they are not declaratory provisions).

- (c) Section 123(8) of the Act says nothing in s 123 of the Act limits or affects any “special provisions made elsewhere in this Act” for the registration of an order. Section 142 of the Act is a special provision that deals specifically with the registration of status orders and the effect of registration. As such, it prevails over s 123(5) (pending

konā, ka noho mātāmua ia i a w 123(5) (ka whai pānga ngā ōta e tatari ana kia rēhita ki te taitara ā-mōtika whai pānga anahe). Waihoki, he wāhanga whakapuaki a w 142 o te Ture (ehara i te tohutohu). Ka whakapuaki ia i te pānga o tētahi ōta tūnga me tana whakaū ka whai mana ia ”i te wā o te rēhitatanga.” Me te aha, ka panoni te tūnga o te whenua hei tana rēhitatanga, kaua hei tētahi wā i mua.

(d) E whai ana tēnei whakamāramatanga ki tētahi whakaaro kaupapa here e tika ana. Ahakoa i kitea kētia e te Kooti te rerekētanga o te taitara ā-ture, ā-mōtika whai pānga rānei mō ngā kēhi e pā ana ki te taitara tūturu; te nuinga o te wā, ka whai take aua kēhi ki ngā whakawhitinga kaua ki ngā ōta tūnga. Kāhore mātou i te mōhio ki tētahi whakataunga e whakawehe nei, mā tētahi ōta tūnga, te taitara ā-ture i te taitara ā-mōtika whai panga. He uaua te kimi i te āheitanga o tētahi poraka kia puritia ngā tūnga e rua e rerekē ana i te wā kōtahi. Mā w 142 tāua āheinga e whakakore. I a te Kooti Whenua Māori tuku i tēnei mana

registration orders affect only the equitable title). Further, s 142 of the Act is a declaratory (rather than a directive) provision. It declares the effect of a status order and confirms that it takes effect “upon registration.” The result is that land status only changes upon registration and not earlier.

(d) This interpretation makes practical policy sense. While the Court has previously recognised the distinction between the legal and equitable title in cases concerning indefeasibility of title, these cases are usually concerned with transfers, not status orders. We are not aware of any decision that separates the legal and equitable title based on a status order. As a matter of principle, it is difficult to conceive of how a block of land can have two different statuses at the same time. Section 142 of the Act ensures that never happens. When the Māori Land Court exercises this jurisdiction, it issues a determination at law as to the status

ā-ture, i tuku hoki ia i tētahi whakapuakitanga ā-ture mō te tūnga o te poraka. Nā konā, ehara i te mea he 'rawa, he pānga' o te whenua rānei te tūnga o tētahi wāhi whenua. Kāhore hoki mātou i whakaae he māmā te ki ake he rawa, he pānga ā-mōtika whai pānga rānei tētahi ōta tūnga e whakapuaki nei he whenua Māori herekore tētahi poraka whenua. He whakapuakitanga ia ki tana tūnga i te ao ture.

of the land. Seen in this way, the status of a particular piece of land is not an 'estate or interest' in the land in the conventional sense. Neither do we think that a status order declaring a particular block of land to be Māori freehold land can be easily characterised as an equitable estate or interest. It is a declaration as to its status in law.

[48] Nō reira, e ai ki a w 142 o te Ture, kāhore te poraka i whiwhi i te tūnga o te whenua Māori herekore tae atu ki te rēhitatanga o te ōta tūnga 1996, i te tau 2022. Me te aha, nō te whakawhitinga atu o te whenua ki te Taratī o Te Hana i te tau 2006, kāhore anō kia whakatutukihia te panonitanga o te tūnga kia noho hei whenua Māori herekore, nā konā, kāhore i whai take ngā tikanga mō te whakaū i ngā whakarereanga.

[48] Therefore, per s 142 of the Act, the block did not acquire the status of Māori freehold land until the 1996 status order was registered in 2022. It follows from this conclusion that when the land was transferred to the Te Hana Trust in 2006, the change of status to Māori land had not yet been perfected and therefore the requirements for confirmation of alienation were not triggered.

Ngā take e toe ana

The remaining issues

[49] Nā runga anō i tā mātou whakatau i te take o te taumata ā-ture (arā, he whenua Tianara te poraka i tana whakawhitinga ki te Taratī o Te Hana i te tau 2006), kāhore he take o tā mātou tahuri ki ngā take e toe ana.

[49] Given our conclusion on the threshold issue (that the block was General land when it was transferred to the Te Hana Trust in 2006), we need not address the remaining issues.

Whakataunga

[50] I te tau 2006, i tana whakawhitinga ki te Taratī o Te Hana, he whenua Tianara a Te Karaka 1B2B1. Mai i taua wā, ko te Taratī o Te Hana tōna kaipupuri whenua. E tika ana ngā ōta a te Kooti Whenua Māori e whakaū nei i taua whakatau.

[51] Ka whakakorehia te pira.

[52] I kōrerotia e Mr Koning tētahi take mō te tuhinga tikanga a te Taratī o Te Hana me tana whakaae kia noho mai hei kaiwhaipānga ngā tāngata kei waho atu i te hunga e pai ana ki te whiwhi. I mea atu a Mr McDougall, e whakaae ana ana kiritaki kia whakatikahia tērā mena he take kia pērā. Inā hoki kua kīa e mātou, kāhore te whenua i whiwhi i te tūnga whenua Māori herekore tae atu ki te 2022, kāhore tērā take i puta mai i mua i taua taima rā. Ki tō mātou titiro, e tika ana ināianei kia tonoa e ngā tarahitī o te Taratī o Te Hana kia whakarerekēhia te ōta taratī (mena kei reira tonu te take i puta mai ai ki mua i a mātou).

[53] Ko ō mātou whakaaro tōmua, me kaua tētahi e whiwhi utu whakahaere. Ki te hiahia ngā kaiurupare kia whāia ngā utu whakahaere, me tuku mai te rōia i tētahi manatu i mua i te paunga o te 5 rā mahi,

Decision

[50] The Te Karaka 1B2B1 block was General land when it was transferred in 2006 to the Te Hana Trust. The Te Hana Trust has owned it since. The Māori Land Court orders confirming this are correct.

[51] The appeal is dismissed.

[52] Mr Koning raised an issue with respect to the trust deed of the Te Hana Trust including, as beneficiaries, individuals outside the preferred class of alienee. Mr McDougall indicated that his clients were open to correcting this issue if need be. As we have found the land did not acquire the status of Māori freehold land until registered in 2022, the issue did not therefore arise until that point. We record that it would now be appropriate for the trustees of the Te Hana Trust to apply to amend the trust order (assuming the issue remains as argued before us).

[53] It is our preliminary view that costs should lie where they fall. If the respondents wish to seek costs, counsel should file a memorandum within 5 working days, with any submissions in

me te tuku mai i ngā tāpaetanga whakahoki response to be filed within 5 working days
i mua i te paunga o te 5 rā mahi whai muri. thereafter.

I whakapuakina i te 12.00pm i Waiariki, i te tuawaru o ngā rā o Tihema i te tau 2025.

Pronounced at 12.00pm in Rotorua, on this 8th day of December 2025.

M J Doogan
JUDGE (Presiding)

D H Stone
JUDGE

A M Thomas
JUDGE