

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

WEHENG <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 RITOHAI MALCOLM Ngā kaitono pīra <i>Appellants</i>
ME <i>And</i>	MARGARET MAKARITA HAHIPENE AND EVA RANGIKAHIWA MOKE AS TRUSTEES OF TE HANA TRUST Ngā kaiurupare pīra <i>Respondents</i>

Kōtitanga: <i>Hearing</i>	Nā runga i ngā pepa On the papers
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>	25 February 2026

TE WHAKATAUNGA A TE KOOTI HĀNGAI KI TE UTU RŌIA
Reserved Judgment of the Court as to Costs

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[1] In our reserved decision dated 8 December 2025, we recorded a preliminary view that costs should lie where they fall. We reserved leave to the respondents to file a memorandum should they wish to seek costs within 5 working days and for the appellant to respond 5 working days thereafter.¹

[2] In accordance with those directions, memoranda were filed by counsel for the respondents on the 15th of December 2025, and by counsel for the appellants on the 22nd of December 2025.

[3] We thank counsel for their considered submissions.

[4] Mr McDougall and Ms Blythe-Nepia for the respondents seek costs in the sum of \$33,040 (including GST). This represents 80% of actual costs incurred on the appeal (\$35,600 excluding GST).

[5] The respondents seek payment of these costs either from the Court's Special Aid Fund or alternatively that they be paid by the appellants Grace Riria Malcolm and Angela Ritohau Malcolm.

[6] Counsel note that in accordance with rule 16.6 of the Māori Land Court Rules 2011, an application for Special Aid may be made after the proceedings have been concluded. Counsel also point out that the genesis of these proceedings was the failure of the Māori Land Court to register a status order determining Te Karaka 1B2B1 as Māori land. This failure enabled the block to be transferred to the Te Hana Trust as General land. Counsel's submissions cite the following passage from our reserved decision:²

[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.

¹ *Malcolm v Hahipene - Te Karaka 1B2B1* [2025] Māori Appellate Court MB 603 (2025 APPEAL 603) at [53].

² *Malcom v Hahipene*, above n 1, at [1]-[2].

[2] If the block had not been transferred during this 26-year period, no harm would have been done. Unfortunately, it was transferred...

...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.

[7] Counsel for the respondent note that there is case law supporting the proposition that it is appropriate to make an award of legal costs from the Special Aid Fund in circumstances where it is established that there is a mistake or omission on the part of the Court.³ Ordinarily, we expect parties to seek assistance from the Court's Special Aid Fund in advance of a hearing. The respondents did not make an application. The appellants did and were in receipt of Special Aid for legal representation in the appeal.

[8] Mr Koning, counsel for the appellants, argues that costs should lie where they fall. His clients will abide any decision to award costs from the Court's Special Aid Fund but oppose an order that costs should be paid by his clients. This is primarily because the close whakapapa connections between the parties make an award of costs inappropriate, particularly where an ongoing relationship will be fundamental to the future administration of both the Te Hana Trust and the Ngā Ōhāki Whānau Trust.

[9] Mr Koning further argues that his clients acted reasonably at all times. They did not cause unnecessary delays to the hearing or determination of the appeal and the ultimate issue on appeal concerned the intersection between ss 41 and 142 of Te Ture Whenua Māori Act 1993, matters which had not previously been before the Appellate Court. The issue arising is of fundamental importance to the permanent record of the Māori Land Court and the register maintained by LINZ.

[10] Mr Koning also points out that the factual and legal complexity arising was solely attributable to the failure of the Court to register the status order as required by ss 140 and 123(2) of Te Ture Whenua Māori Act 1993.

³ *Mokomoko - Part Hiwarau C* (2001) 10 Waiariki Appeal MB 32 at 39; and *Campbell – Succession to Maria Mary Magrath* [2009] Chief Judge's MB 349 (2009 CJ 349) at [16].

[11] Both counsel helpfully refer to relevant case authority concerning the nature of the Court's discretion in relation to costs and the range of factors that have a bearing on the exercise of discretion.

[12] Mr McDougall and Ms Blythe-Nepia argue that although the appeal did not lack merit, it was relatively weak, and by refusing to take part in mediation the appellants unnecessarily delayed the outcome of the appeal and caused the trustees to unnecessarily incur (modest) costs.

[13] On balance, we prefer Mr Koning's submissions as to liability for costs as between the parties. We confirm our preliminary view that, as between the parties, costs should lie where they fall. We acknowledge that issues of some novelty and complexity did arise because of the failure of the Court to register the 1996 status order and we do not consider the conduct of the appellants was such that it should result in a costs award against them. We also give some weight to the point made by Mr Koning, that given the close whakapapa links between the parties, and their shared interests in the future administration of the two trusts, an award of costs against the appellants is not appropriate because it is likely to further fracture relationships already under strain.

[14] We do however think there is merit in submissions by counsel for the respondents that some payment towards the respondents' costs should be made from the Court's Special Aid Fund. Counsel seeks 80% of actual costs, which is at the high end of a costs award. Counsel indicates that the total amount incurred reflects the fact that the hourly rates applied are greater than what might ordinarily receive Special Aid approval. Invoices detailing a breakdown in the costs have not been provided. We also note that Mr McDougall appeared before us with junior counsel and we assume costs claimed include those for junior counsel.

[15] Mr McDougall and Ms Blythe-Nepia have indicated that they can (if required) file an application for Special Aid. In the circumstances we do not consider this necessary or appropriate. As we indicated, ordinarily parties make an application for Special Aid in advance of a proceeding and by that process, the Court is able to approve in advance what it considers to be reasonable costs – if Special Aid is granted.

[16] Taking all these matters into account, we award costs in the sum of \$16,000 (plus GST) to the respondents. This is to be paid out of the Court's Special Aid Fund. This is broadly in line with Special Aid granted to the appellants in this appeal, and we believe is also an appropriate recognition of the fact that these proceedings have come about by reason of mistake or omission on the part of the Court.

Te ōta

Order

[17] Pursuant to s 98(3) of Te Ture Whenua Māori Act 1993, legal costs of \$16,000 (plus GST) are awarded to Holland Beckett Law, in respect of the costs of this appeal.

I whakapuaki i te wā 3:00pm i Te Whanganui-a-Tara, i te 25th o ngā rā o Huitanguru i te tau 2026.

Pronounced at 3:00pm in Wellington, on this 25th day of February 2026.

M J Doogan
JUDGE (Presiding)

D H Stone
JUDGE

A M Thomas
JUDGE