

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

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

AP-20230000028983

A20230005583

WĀHANGA
Under

Section 19(1)(a), Te Ture Whenua Maori Act 1993

MŌ TE TAKE
In the matter of

Kaitaia Marae Incorporated Society

I WAENGA I A
Between

ERIHA JOHN THOMAS on behalf of KAITAIA
MARAIE INCORPORATED SOCIETY
Te kaitono
Applicant

ME
And

THOMAS (TOM) ALLAN and PATRICK
(PADDY) HETA JR
Ngā kaiurupare
Respondents

Nohoanga:
Hearing

7 October 2024, 288 Taitokerau MB 113-125
(Heard at Kaitaia)

Kanohi kitea:
Appearances

S Davies-Colley for Applicant
T Allan in person
P Heta in person

Whakataunga:
Judgment date

19 November 2025

TE WHAKATAUNGA Ā KAIWHAKAWĀ M P ARMSTRONG
Judgment of Judge M P Armstrong

Hei tīmatanga kōrero*Introduction*

[1] Lot 1 Deposited Plan 64773 was set aside as a Māori reservation in 1975. This reservation is unusual as the land is owned by Kaitaia Marae Incorporated (KMI), which is an incorporated society. KMI is administered by a committee of management.

[2] In 2022, one of the committee members, Thomas (Tom) Allan, sought an injunction to:

- (a) Prevent new committee members from acting in that role; and
- (b) Remove Margaret Amani and Amani Amani from the reservation.

[3] I dismissed that application. A new application has now been filed on behalf of KMI seeking an injunction against Mr Allan and Patrick (Paddy) Heta Jr. The question in this case is whether I can, or should, grant that injunction.

Kōrero whānui*Background*

[4] KMI was incorporated on 12 September 1972. On 7 August 1975, a notice was issued in the *New Zealand Gazette* declaring that this land was set aside as a Māori reservation for the purpose of a marae for the common use and benefit of the Māori people and other residents of Kaitaia.

[5] On 23 July 2019, I granted an order changing the status of the land from General land to Māori freehold land.

[6] Although the land was set aside for the purpose of a marae, there is no marae on the land. The only building is an old kōhanga.

[7] On 17 July 2022, a special general meeting was held. At that meeting a vote of no confidence was passed seeking to remove Mr Allan and Mr Heta as members of the committee. New committee members were elected.

[8] On 7 April 2024, a further special general meeting was held. Resolutions were passed at that meeting by KMI members:

- (a) Revoking any access or occupation rights previously granted to Mr Heta;
- (b) Confirming that Mr Allan is no longer a committee member; and
- (c) Supporting an order being granted requiring Mr Heta to remove his buildings and chattels.

[9] Mr Allan argues that those meetings were not properly convened and so the resolutions passed were invalid.

Ko te hātepe ture o te tono nei

Procedural history

[10] I heard these applications on 7 October 2024 in Kaitaia. After hearing from the parties, I reserved my decision. The case manager, who had been managing the file, left the Court for alternative employment. Unfortunately, the file sat idle in her absence. The file was only referred back to me in chambers by the new case manager on 30 September 2025.

[11] On 23 November 2024, 27 October 2025 and 9 November 2025, one of the applicants, Margaret Amani, filed a number of further documents. She did this directly and not through her counsel who were acting at the hearing. This is new evidence. I did not grant leave for further evidence to be filed after the hearing. It is not appropriate to receive new evidence now. I disregard those additional documents and I direct the Registrar to remove those documents from the record.

He aha ngā mātāpono o te ture?

What legal principles apply?

[12] In order to obtain an injunction, the applicants must first demonstrate an action in trespass. If they do, I then have to consider whether to exercise my discretion to grant an injunction.¹

¹ *Taueki v Horowhenua Sailing Club - Horowhenua 11 (Lake) Block* [2014] Māori Appellate Court MB 60 (2014 APPEAL 60).

He aha tāku whakataunga i te tau 2022?*What did I decide in 2022?*

[13] In 2022, Mr Allan sought an injunction against other members of KMI. I found that:²

- (a) The land is owned by KMI;
- (b) Any injunction application has to be brought by KMI;
- (c) KMI is administered by the committee of management; and
- (d) To determine whether the injunction was supported by the committee would require resolving the dispute over whether a valid election had occurred. I had no jurisdiction to make that determination.

Ka whakaaetia e au i te tono rāhuitia?*Can I grant an injunction here?*

[14] Little has changed since I made my 2022 decision. A further special general meeting was held last year, but the resolutions passed at that meeting are, once again, in dispute. Neither side has gone to the High Court to seek a determination on who are the valid members of the committee.

[15] Mr Davies-Colley, for the applicant, says that is not necessary. He argues that:

- (a) Mr Allan has taken no steps to challenge the election in the High Court, and so this Court can now rely on the outcome of the special general meetings in 2022 and 2024; and
- (b) Even if this Court cannot determine whether the current committee members are valid, the general members of KMI have passed a resolution supporting this application and so reliance on the committee is not necessary.

[16] I don't agree. The onus is on the applicant to demonstrate an action in trespass. The applicant must demonstrate that they are entitled to possession of the land. In order to do

² *Allan v Thomas – Lot 1 Deposited Plan 64773* (2022) 255 Taitokerau MB 288 (255 TTK 288).

that, they must demonstrate that they are the legitimate committee of management who is entitled to administer this land on behalf of KMI. There is a dispute over the validity of the special general meetings in 2022 and 2024. Only the High Court can resolve that dispute. I cannot. I said that in my 2022 judgment. Instead of resolving that issue in the High Court, the applicant chose to file a further application in this Court when the underlying dispute, as to who are the legitimate members of the committee, has not been resolved.

[17] Mr Davies-Colley argues that Mr Allan has had an opportunity to challenge the 2022 and 2024 meetings in the High Court but failed to do so. He submits that this Court can now rely on the outcome of those meetings. That argument is misconceived. Neither side has taken the appropriate steps in the High Court. The dispute over the 2022 and 2024 meetings, and the resolutions passed at those meetings, remain. In the proceeding before me, that lack of resolution can only be addressed by applying the burden of proof. That burden falls on the applicant.

[18] Mr Davies-Colley referred me to the decision in *Firmin v Committee of Management of Atihau Whanganu Incorporation – Atihau Whanganui Incorporation*.³ He argues that *Firmin* demonstrates that it is not for this Court to look behind a resolution of the Incorporation and instead it should simply accept the resolution at face value. *Firmin* does not assist. That case involved a Māori incorporation established by this Court. It did not involve an incorporated society. In *Firmin*, the Court found that without an application by a shareholder it could not review the Incorporation's decision to issue a trespass notice.

[19] I am not seeking to review KMI's decision to seek an injunction against Mr Allan and Mr Heta. However, I cannot ignore the fact that there is a challenge to the legitimacy of the applicants as the committee of management. Only the High Court can resolve that.

[20] Finally, Mr Davies-Colley argues that even if the dispute over the committee cannot be resolved, at the 2024 meeting a resolution was passed by the members of KMI generally supporting this application and so there is no need to determine the position of the committee. Mr Davies-Colley offered no authority to support this argument.

³ *Firmin v Committee of Management of Atihau Incorporation – Atihau Whanganui Incorporation* (2016) 352 Aotea MB 233.

[21] Section 46 of the Incorporated Societies Act 2022 states that the operation and affairs of an incorporated society must be managed by or under the direction or supervision of its committee. This general approach under the legislation is supported by the rules for KMI. Rule 13(a) provides that the committee shall govern the affairs of the society and shall control the use of the society's assets. These provisions are clear that any injunction application must be brought by the committee, not the members generally. Even if this proceeding could be brought by the members, there is a dispute over the validity of the 2024 meeting where the resolutions were passed.

[22] Clearly the dispute over who has authority to administer KMI must be resolved. Given KMI's status as an incorporated society, that can only be resolved in the High Court. As that hasn't been resolved, this application cannot succeed.

[23] As I said in my 2022 decision, as an alternative to High Court proceedings, the parties could dissolve KMI and apply to this Court to appoint trustees to administer the reservation per s 338 of Te Ture Whenua Māori Act 1993. That would ensure any future issues would fall within the jurisdiction of this Court. However, the parties cannot continue to file the same or similar applications in this Court expecting a different result.

Whakataunga *Decision*

[24] This application is dismissed.

[25] The respondents did not have legal representation in this matter and so there is no issue as to costs.

I whakapuaki i te wā 4:00pm i Whangarei, 19th o ngā rā o Noema i te tau 2025.
Pronounced at 4:00pm in Whangarei on this 19th day of November 2025.

M P Armstrong
JUDGE