

I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TE TAITOKERAU
In the Māori Land Court of New Zealand
Taitokerau District

AP-20240000001871
AP-20230000028102

WĀHANGA <i>Under</i>	Section 43, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Motatau 2 Section 31C
I WAENGA I A <i>Between</i>	TE RINA PATRICIA TIPENE Te kaitono <i>Applicant</i>
ME <i>And</i>	TOHE ASHBY, CYRIL BELK, HURU TIPENE, KATERINA KOPA AND SONNY POI PAKEHA TIPENE AS TRUSTEES OF THE TE PENE RATA AND PAKI HONE KOPA TIPENE WHANAU TRUST Ngā kaiurupare <i>Respondents</i>

Nohoanga: 17 February 2025, 286 Taitokerau MB 10-13
Hearing (Heard at Kaikohe)

Kanohi kitea: R Park for the Applicant
Appearances

Whakataunga: 25 June 2025
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ W W ISAAC
Judgment of Judge W W Isaac

Hei tīmatanga kōrero*Introduction*

[1] On 20 February 2024, Judge Armstrong made orders:¹

- (a) determining that the dwelling on Motatau 2 Section 31C was the sole and exclusive property of the Te Pene Rata and Paki Hone Kopa Tipene Whanau Trust in law and equity; and
- (b) dismissing an application to enforce the obligations of the Trust.

[2] On 26 February 2024, the applicant, Te Rina Tipene (“the applicant”), applied for a rehearing of Judge Armstrong’s decisions.

[3] This application first came before me on 17 February 2025 and I adjourned it to give the respondents time to consider the applicant’s submissions. In April, the parties mutually agreed to have the application dealt with on the papers.

Ngā kōrero a Te Rina*What does Te Rina say?*

[4] The applicant submits that a rehearing should be granted on the following grounds:

- (a) At the hearing of this case, submissions and judicial questions focused on the ownership of the house on the land, without oral submissions on the aspects applicant's case relating to the enforcement of obligations of trust, which she submits were "dismissed without any discussion or evidence at all".
- (b) The applicant was unrepresented and did not fully understand the significance of the questions Judge Armstrong asked her about her interests in the home, so she did not give fulsome answers that would have provided a full picture of the circumstances.

¹ 277 Taitokerau MB 43-53 (277 TTK 43-53).

- (c) The respondents' evidence was given in Māori, which the applicant did not understand all of and so was not able to respond, including to express her opposition to some of the matters raised.

[5] The applicant submits that where omissions in the presentation of a case arise as a result of insufficient legal advice and representation, a failure to understand evidence because of a language barrier, and an application to enforce trust obligations being dismissed without being discussed at the hearing, the circumstances in their totality amount to a miscarriage of justice that justifies a rehearing.

[6] The applicant further submits that the applicant has a right to occupy the house through the principle of proprietary estoppel. The applicant also made submissions on the need for the Court to enforce the obligations of the Trust. The applicant alleges that the Trustees have not fulfilled their obligations of the Trust. In particular, she alleges:

- (a) They have not kept minutes and financial records of the Trust's business (contrary to clause 22 of the Trust deed);
- (b) They have not provided information or reported back to the beneficiaries about the Trust's business (because they have not called annual general meetings, contrary to clause 23 of the Trust deed); and
- (c) Some of the trustees are not suitable to be trustees because of previous convictions and their past dealings with the applicant.

Ngā kōrero a ngā tarahiti

What do the trustees say?

[7] The trustees submit that a miscarriage of justice has not occurred and the grounds set out in the submissions of the applicant do not justify a rehearing.

[8] The trustees accept that the administration of the Trust needs to be reviewed and updated, but argue that the obligations raised by the applicant are not relevant to the issue of her eviction from the house. The trustees also disagreed with the applicant's view relating to the enforcement of obligations of the Trust.

[9] The trustees submit that the fact the applicant was not legally represented did not result in an injustice warranting a rehearing. They submit that the Judge made a concerted effort to explain the legal test to the applicant, the applicant accepts the explanation was clear, and she is not seeking to change her answers. The trustees argue that the applicant is only seeking to reshape her case, which is not sufficient to justify a rehearing.

[10] The trustees submit that the applicant did not provide any specific examples of misconceptions or assertions by Tohe Ashby that, if she had had the opportunity to rebut at the time, would have had a material impact on the decision made by the Court.

[11] The trustees made further submissions on the issue of proprietary estoppel and the applicant's lack of equitable interest in the house.

Te Ture *Law*

[12] Section 43 of Te Ture Whenua Māori Act 1993 (the Act) provides:

43 Rehearings

- (1) Subject to subsection (2), on an application made in accordance with the rules of court by any person interested in any matter in respect of which the court has made an order, the Judge by whom the order was made or any other Judge may order a rehearing upon such terms as the Judge thinks reasonable, and in the meantime may stay the proceedings.
- (2) A rehearing under this section shall not be granted on an application made more than 20 working days after the order, unless the Judge is satisfied that the application could not reasonably have been made sooner.
- (3) An application under this section shall not operate as a stay of proceedings unless the Judge so orders.
- (4) The rehearing need not take place before the Judge by whom the proceedings were originally heard.
- (5) On any rehearing, the court may affirm its former determination, or may vary or annul that determination, and may exercise any jurisdiction that it could have exercised on the original hearing.
- (6) When a rehearing has been granted, the period allowed for an appeal to the Maori Appellate Court shall not commence to run until the rehearing has been disposed of by a final order of the court.

[13] Section 43 contemplates a two-step approach. First, the applicant must have made the application within the time limit in the Act, or I must be satisfied that the application could not reasonably have been made sooner.

[14] Second, I must consider whether a rehearing should be granted. The following principles apply:²

- (a) The Court has a discretion to grant a rehearing in circumstances which might otherwise give rise to a miscarriage of justice.
- (b) The circumstances in which a rehearing may be granted are many and varied, including (relevantly) where:
 - (i) material evidence has been discovered since the hearing which could not reasonably have been foreseen or known before the hearing; and
 - (ii) a rehearing appears necessary in order to avoid possible injustice to the applicant and there is no injury or prejudice to the opposing party.
- (c) A rehearing will not be granted merely for the purposes of repairing omissions in the presentation of the case or to reshape it.
- (d) While a rehearing will normally be granted where there are procedural defects denying natural justice and in instances where further evidence becomes available, these are not the only grounds for a rehearing.
- (e) Even where it is established that there has been a miscarriage of justice, a Court may very occasionally consider it inappropriate to grant a rehearing.
- (f) The ultimate question is whether the applicant has established circumstances which, in their totality, amount to a miscarriage of justice that justifies a rehearing. The onus to establish those circumstances is on the applicant.

[15] A rehearing requires the balancing of two considerations. On one hand, it is important to ensure that there is a proper administration of justice. This is balanced against the need

² *Yuile v Smith - Tuahu 6* (2022) 113 Tairawhiti MB 198 (113 TRW 198) at [14], citing *Henare v Māori Trustee – Parengarenga 3G* [2012] Māori Appellate Court MB 1 (2012 APPEAL 1)

for finality of Court proceedings, rather than allowing an unsuccessful party another opportunity to argue their case without good reason.³

Kōrerorero

Discussion

[16] Section 43 relating to rehearings sets out the discretionary nature of the jurisdiction. Further, the case of *Yulie v Smith* referred to above sets out the principles applying to the grant of a rehearing.

[17] In this case, the applicant maintains that she was unrepresented and did not fully understand the significance of the Judge's questions concerning the house and so did not give full answers to the questions.

[18] The Trustees say that the fact the applicant was not legally represented did not result in an injustice that warrants a rehearing as the Judge made a concerted effort to explain the legal issues involved.

[19] I agree with the Trustees and a reading of the transcript demonstrates the lengths Judge Armstrong went to, to explain the issues before the Court.

[20] In that explanation the Judge had this to say:

... I know you don't have a lawyer with you but because you have made an application to determine ownership of the house there are some legal principles that apply. So I will just go through those with you so you can have an opportunity to comment on them if you would like.

[21] The Judge then proceeded to explain the legal principles involved and asked questions in relation to the ownership of the house. All the questions were answered, and the Judge confirmed the applicant had nothing further to add. After the Trustees presented their case, the applicant was also given the opportunity to respond but did not do so.

³ *Henare v Māori Trustee — Parengarenga 3G* [2012] Māori Appellate Court MB 1 (2012 APPEAL 1) at [14].

[22] One can therefore see from the transcript that the applicant had the legal position relating to the application explained fully to her and was given every opportunity to present her case to the Court.

[23] It should also be noted that as with the applicant, the Trustees were not legally represented. During the hearing, the Judge used his inquisitorial jurisdiction to level the playing field by asking the questions of each side that a lawyer might have asked. This meant that neither party was at a disadvantage.

[24] As a result, I find it difficult to accept that legal representation would have altered the applicant's understanding of the case as the legal issues were fully canvassed by the Judge.

[25] Next, the applicant maintains that the failure to understand the evidence of the Trustees because of the language barrier meant she was not able to respond and express her opposition.

[26] In regard to this ground, I note from the transcript that Judge Armstrong essentially asked questions of the trustees in English. This approach provided an understanding for the applicant of the essence of the discussion.

[27] Furthermore, the applicant raised no objection at any stage during the hearing to the evidence being given in Māori. Nor did she say, when asked if she wished to reply to the evidence, that she had not understood what was said.

[28] It should also be noted that the Trustees did respond to aspects of the application as it related to the enforcement of the obligations of the trust. This was both in their written response and the oral evidence given. This evidence is on the Court file and the applicant had the opportunity to respond to it at the hearing.

[29] Therefore, based on the above discussion, I consider that the applicant had every opportunity to put her case to the Court. She has provided no new evidence which was not available at the hearing complained of, and it appears that she is seeking a rehearing to

present her case to the Court in another manner and to repair omissions in the presentation of the case. That is not the purpose of a rehearing.

Whakataunga

Decision

[30] In my view when one looks at the circumstances of this case as a whole, I do not consider that a miscarriage of justice has taken place. I therefore dismiss the application for the rehearing.

[31] A copy of this decision is to go to all parties.

I whakapuaki i te 4.00 pm i Gisborne, Wednesday 25 o ngā rā o Hune i te tau 2025.

Pronounced at 4.00 pm in Gisborne on Wednesday this 25th day of June 2025.