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

AP-202500000012412

WĀHANGA *Under*	Section 19, Te Ture Whenua Māori Act 1993
MŌ TE TAKE *In the matter of*	Wharerangi 5B1 and 6B2 Lot A and Lot B
I WAENGA I A *Between*	MARINA TOATOA Te kaitono *Applicant*
ME *And*	GREGORY TOATOA, DIANE PAKAI-TOATOA, PETER RAIKES AND CAROLINE RAIKES Ngā kaiurupare *Respondents*

Nohoanga: *Hearing*	23 October 2025, 125 Tākitimu MB 7-35 (Heard at Hastings)
Kanohi kitea: *Appearances*	B Lyall, for Respondents
Whakataunga: *Judgment date*	31 October 2025

TE WHAKATAUNGA Ā KAIWHAKAWĀ D H STONE
Judgment of Judge D H Stone

Kōrero tīmatanga
Introduction

[1] Gregory Toatoa and Diane Toatoa-Pakai, as two of 12 owners in the Wharerangi 5B1 and 6B2 Lot A and Lot B blocks ("the blocks"), signed a lease for the blocks on 15 March 2025 with the PC & CL Raikes Partnership ("the partnership").[1] On 29 September 2025, Marina Toatoa filed an application on behalf of the other owners of the blocks to seek a permanent injunction per s 19(1)(a) of Te Ture Whenua Māori Act 1993 ("the Act") against the partnership for trespass, on the basis that the lease is invalid.

[2] The injunction application was referred to me on the day it was filed. I issued directions for the applicant to file an appropriate application if she sought a determination on the validity of the lease. This application, per s 18(1)(a) of the Act, was duly filed on 1 October 2025. I directed the respondents to file evidence by 13 October 2025 and for the applicant to file reply evidence on 20 October 2025. The applications were then heard on 23 October 2025.[2]

Whakarāpopototanga
Summary

[3] The lease is invalid.

[4] An injunction is granted against the partnership and its partners to prevent them and their invitees from trespassing on the blocks.

[5] A formal claim for damages against the partnership will need to be made.

I ahatia?
What has happened?

[6] The relevant facts are not in dispute:

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1 Each of the blocks has 11 owners. There are 10 common owners that hold shares in both blocks. Myda Matthews holds shares in the Wharerangi 5B1 block only. Te Reo Matthews holds shares in the Wharerangi 6B2 block only.

2 125 Tākitimu MB 7-35 (125 TKT 7-35).

(a) The blocks consist of two separate blocks of Māori freehold land. Each of the blocks has 11 owners in common, made up of a mixture of whānau trusts and individuals.[3]

(b) There are 12 owners in total when the blocks are viewed together, and 1200 shares in total.

(c) Gregory Toatoa and Diane Toatoa-Pakai together hold approximately 7.14% of the total shares in the blocks.

(d) They signed a five-year lease with the partnership on or about 15 March 2025, purporting to lease the whole of both of the blocks, inclusive of a sole right to use of the water bore on the blocks.

(e) The partnership was aware of tensions between the owners of the blocks prior to signing the lease. The partnership was told of these tensions by the previous lessee of the blocks.

(f) Not all owners consented to the lease.

(g) The partnership continued to occupy and make use of the blocks, including through cultivation, irrigation, and use of the water bore, knowing that not all owners consented to the lease.

Ngā take
The issues

[7] I must determine:

(a) Whether the lease between Gregory Toatoa, Diane Toatoa-Pakai and the partnership is valid.

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3 Per s 345 of the Act, the owners of the blocks hold their interests as tenants in common and not as joint tenants.

(b) Whether I should grant a permanent injunction per s 19(1)(a) of the Act against the partnership and its partners in respect of any actual or threatened trespass over the blocks.

(c) If there has been a trespass, whether I should grant damages in favour of the applicant and her supporters.

He whaimana tō te rīhi?
Is the lease valid?

[8] The issue regarding the validity of the lease must be addressed first. As properly acknowledged by counsel for the applicant, if the lease is valid, there are no grounds for a permanent injunction.

The law

[9] The relevant provisions of the Act are as follows:

(a) A lease of Māori freehold land for more than three years is an alienation.[4]

(b) Māori freehold land cannot be alienated otherwise than in accordance with the Act.[5]

(c) Owners in common can alienate land by way of lease (that is not a long-term lease) only if all of the owners consent or they pass a resolution to this effect at a meeting of assembled owners per Part 9 of the Act.[6]

(d) Owners in common who execute a lease of Māori freehold land for a term of more than three years must get that lease confirmed and noted by the Registrar.[7]

(e) A lease of this nature is of no force or effect until it is confirmed.[8]

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4 Te Ture Whenua Māori Act 1993, s 4.
5 Te Ture Whenua Māori Act 1993, s 146.
6 Te Ture Whenua Māori Act 1993, s 150C(1)(c).
7 Te Ture Whenua Māori Act 1993, s 150C(3)b).
8 Te Ture Whenua Māori Act 1993, s 160(2).

(f) The Registrar can only confirm a lease like this if the Registrar is satisfied that, among other things, the lease does not contravene any provisions of the Act.[9]

(g) The Court can determine any claim, whether at law or in equity, to any right, title, estate, or interest in Māori freehold land.[10] This jurisdiction is declaratory in nature. The Court cannot create new rights under this provision.

Discussion

[10] The relevant facts can be simply stated. The blocks are owned by owners in common. The lease is for five years. Not all owners agreed to the lease. The lease was not confirmed by the Registrar.

[11] The lease is an alienation because its term exceeds three years. Because the blocks are owned in common, they can only be alienated by agreement of all the owners or pursuant to a resolution carried at a meeting of assembled owners held under and in accordance with Part 9 of the Act. Neither of those scenarios apply here. An alienation of this nature requires confirmation by the Registrar. That confirmation has not been obtained. Section 160(2) of the Act declares the lease to be of no force or effect unless it is confirmed. The lease would not have been confirmed anyway because it contravened s 150C(1)(c). Accordingly, the lease is invalid.

[12] The partnership made submissions questioning the applicant's authority or mandate to bring these proceedings and the level of support among the owners for them. The partnership also asserted that because Gregory Toatoa is a recognised kaumatua, his approval of the lease was sufficient as a matter of tikanga. Section 150C(1)(c) clearly requires that all the owners had to agree to the lease, unless an assembled owners meeting authorised it. There was no such assembled owners meeting, so the only way the lease could have been entered into lawfully was if all owners agreed to it. Therefore, questions of mandate or relative support, as well as the standing of Gregory Toatoa from a tikanga perspective, are

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9 Te Ture Whenua Māori Act 1993, s 160(3)(c)(i).
10 Te Ture Whenua Māori Act 1993, s 18(1)(a).

irrelevant. The law provides that only one owner need disagree with the lease for it to be invalid.

[13] The partnership further submitted that it entered into the lease in good faith with a genuine intent to improve the quality of the blocks. The partnership also indicated that it was assured by Gregory Toatoa that the owners of the block agreed to the lease and it relied on that assurance. This may all be true. However, the law here is clear. It provides two pathways to lease Māori freehold land owned in common. Neither of those pathways were followed. Ignorance of the law is no excuse for not following it.

Conclusion

[14] The lease is invalid.

Me whakamana te ōta tāria?
Should an injunction be granted?

[15] Having determined that the lease is invalid, I now need to decide whether to grant a permanent injunction against the partnership and its partners in respect of the blocks.

The law

[16] Section 19(1)(a) of the Act allows the Court to grant a permanent injunction for actual or threatened trespass. The law relating to permanent injunctions has been summarised by the Māori Appellate Court in this way:[11]

> (a) First, an applicant must prove the legal elements of trespass. Second, once the elements of trespass are made out, the court must consider whether to exercise its discretion to grant an injunction.
>
> (b) In determining whether to exercise the discretion to grant an injunction, the following principles apply:

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11 *Peihopa v Peihopa - Kaikou H* [2021] Māori Appellate Court MB 180 (2021 APPEAL 180) at [3]-[4].

(i) The starting point is that a landowner is entitled to an injunction to prevent a continuing trespass.[12]

(ii) There is a "good working rule" to determine whether damages should be awarded, rather than an injunction.[13] Damages may be awarded if the injury to the applicant is small, it can be compensated by a small monetary payment, and it will be oppressive to the respondent to grant an injunction.[14]

(iii) Injunctions are an equitable remedy, so equitable principles are to be considered, balanced against the statutory objectives set out in ss 2 and 17 of the Act.[15]

(iv) There is no exhaustive list of factors that will be relevant to the exercise of the discretion.[16] Examples include whether the intrusion on the land is minimal, the degree of hardship if an injunction is granted, the balance of convenience, whether it will be oppressive to the respondent if the injunction is granted, whether an alternative remedy such as damages may be appropriate, and the conduct of the parties.

(c) The court must also assess whether an injunction will cause disproportionate hardship to a respondent.[17] The test is one of oppression, rather than on the balance of convenience.[18]

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12 *Taueki v Horowhenua Sailing Club - Horowhenua 11 (Lake) Block* [2014] Māori Appellate Court MB 60 (2014 APPEAL 60) at [16].

13 *Shelfer v City of London Electric Lightening Co* [1895] 1 Ch 287, [1891-4] ALL ER REP 838.

14 For an example of the application of this good working rule, see *Dawson v Young - Maungaturoto D1B* (2018) 174 Taitokerau MB 89 (174 TTK 89) at [13] – [18].

15 *O'Malley v Wyborn – Orokawa 3C2B* [2010] Māori Appellate Court MB 494 (2010 APPEAL 494).

16 *Taueki v Horowhenua Sailing Club* above n 11, at [29]. 468 Aotea MB 99.

17 *Flight v Fletcher - Waipapa 1D 2B 3B* [2017] Māori Appellate Court MB 96 (2017 APPEAL 96) at [27], referring to Alistair Hudson *Equity of Trusts* (7th ed, Routledge Cavendish, Abingdon, 2013) at 1186-1187.

18 *O'Malley v Wyborn* above n 14, at [29].

Discussion

[17] Because the lease is invalid, the partnership has no lawful authority to enter the blocks. A trespass is therefore occurring. I must therefore decide whether to exercise my discretion to grant a permanent injunction. I am required to start from the position that the owners who support this application are entitled to an injunction.

[18] In considering whether damages should be awarded, rather than an injunction, I take into account the following points:

(a) The injury to the blocks is not small. The owners who support this application are excluded from the entire blocks. Nor can the injury be compensated by a small monetary payment. To award damages will be to endorse the continuation of the lease, which I have already determined is invalid because it breaches the Act.

(b) An injunction will likely create hardship for the partnership. All parties appear to accept that the partnership has undertaken works on the blocks already, and an injunction will prevent the partnership from continuing to undertake those works or reap the benefits of them. However, no specific evidence was filed by the partnership to demonstrate the nature and extent of that hardship. This burden of proof lies with the partnership. In the absence of that evidence, it is difficult to properly assess the degree of hardship to the partnership if the injunction is granted.

(c) An injunction could also be oppressive towards the partnership. The partnership has a crop of peas planted on the blocks (which appears to be by way of sub-lease to another third party) and will receive payment for that crop as well as the use of pea hay for its livestock business. An injunction will prevent the partnership from realising those benefits.

[19] I accept on the evidence before me that the granting of a permanent injunction may be oppressive for the partnership. Counsel for the applicant argued that any such oppression is of the partnership's own making. This is because the partnership was aware that there

were disagreements between the owners of the blocks before it entered into the lease, having been informed of them by the previous lessee of the blocks. Further, the partnership decided to enter into a lease with only two of the 12 owners of the blocks, so it took the risk that the lease may be opposed or invalid. The partnership also failed to take legal advice when entering into the lease – counsel for the applicant argues that such advice would have surely informed the partnership that the proposed lease could not be entered into by only some of the associated owners. Finally, counsel for the applicant points to the repeated requests from the applicant, on behalf of the owners who do not agree to the lease, for the partnership to properly address their concerns. It is argued that the partnership chose not to address those concerns, instead relying on its view that the lease was valid.

[20] The evidence indicates that the partnership chose to continue to rely on the lease even after it was on notice that the lease was not agreed to by all owners in the blocks. The partnership acknowledges that owners or their representatives raised issues at a meeting on 21 March 2025, less than a week after the lease was signed. Although there is a factual dispute as to what was said at that meeting, I am satisfied that the partnership was made aware then (if not earlier) that not all of the owners agreed with the lease. Indeed, the partnership was always aware that the lease did not enjoy the agreement of all owners of the blocks, because it did not obtain those agreements itself. Instead, it relied on an assurance from Gregory Toatoa to this effect. For the reasons already stated, it does not matter whether some of the owners, even ones that the partnership considered more important than others, had agreed to the lease. All owners needed to agree to it and the partnership did not have that level of agreement at any stage of the process.

[21] Moreover, on becoming aware of the dissent among the owners of the blocks, the partnership continued to rely on the lease. In fact, the partnership preferred to question the mandate of the applicant to represent the owners of the blocks and to rely solely on the approval of Gregory Toatoa. After a meeting between the partnership and some owners on 13 September 2025, the applicant proposed a new lease to the partnership. This was proposed on 16 September 2025. It was considered by the applicant and her supporters to be a "fair and practical arrangement that recognises both the whenua and the mahi invested to date". It was open for discussion. On 18 September 2025 and after consulting with Gregory Toatoa, the partnership replied. Peter Raikes, on behalf of the partnership, said:

> It is my considered position that it would not be appropriate for you to act as the representative in matters relating to the land on behalf of the Whānau. Mr Greg Toatoa has expressed his deep concerns in this regard and has requested that all further communications be directed through him. Given his status as an elder and Kaumātua, and his long-standing involvement with the land, I consider his request to be reasonable and appropriate.

[22] The partnership therefore made a conscious choice to rely on the validity of the lease to continue to undertake activities on the blocks. It also made the conscious choice to rely on the authority of one owner only. These choices were erroneous. The lease was never valid. It was never appropriate to prefer one owner of the blocks over the others, because the law requires that all owners agree to the lease. Any hardship that arises from these erroneous choices cannot be taken into account in assessing whether an injunction would be oppressive to the partnership. Otherwise, the partnership would benefit from its own errors.

[23] The partnership was on notice at least by 21 March 2025 that there were concerns about the lease. Any activities undertaken by the partnership from that date were taken at the partnership's risk. Given this is only six days after the lease was signed, and because the partnership did not provide any specific evidence on this point, I consider that any activities undertaken by the partnership in those six days can only have been minimal and would not give rise to a degree of hardship or oppression that should override the general proposition that the applicant and her supporters are entitled to an injunction.

[24] These observations are also relevant to assessing the conduct of the parties. I consider that the partnership had many opportunities to resolve these issues after the lease was signed. However, the partnership continued to question the authority of the applicant and rely on the approval of Gregory Toatoa to the exclusion of other owners. Indeed, the partnership maintained this position at the hearing on 23 October 2025. Unfortunately for the partnership, this position cannot be sustained and the partnership's conduct in reliance on that position must be assessed in that light.

[25] Conversely, the evidence demonstrates that the applicant and her supporters acted reasonably in their engagements with the partnership. Although they maintained that the lease was invalid, they were prepared to formalise a lease with the partnership. They set out three principles: market rate rental, an independent assessment of the value of the works already undertaken by the partnership, and a rental reduction (from market rent) to reflect

that value. They provided a lease proposal to the partnership. They therefore took steps to resolve the issues.

Conclusion

[26] Because there is no valid lease, the partnership is trespassing on the blocks. The applicant and her supporters are entitled to an injunction, unless the "good working rule" dictates that damages should be paid instead. Applying that good working rule, damages are not an appropriate remedy instead of an injunction. Equity also points away from damages as a remedy. An injunction should be granted here.

Me whakatau e au kia utua te kaitono me ōna kaitautoko?
Should I grant damages in favour of the applicant and her supporters?

[27] The applicant seeks nominal damages, mesne profits and general damages for loss of enjoyment and for distress and anxiety.

[28] The applicant has successfully invoked s 19(1)(a) of the Act. This allows the Court to grant a permanent injunction. It does not, however, allow the Court to grant damages. That jurisdiction is invoked by s 18(1)(c) of the Act. No application has been filed under that section. That will need to happen in order for damages to be considered by the Court.

Whakataunga
Decision

[29] I grant the following orders:

(a) Pursuant to s 18(1)(a) of the Act, the court determines that the lease entered into by Gregory Toatoa, Diane Toatoa-Pakai and the PC & CL Raikes Partnership dated on or about 15 March 2025 is invalid and of no force or effect.

(b) Pursuant to s 19(1)(a) of the Act, the Court grants an injunction preventing the PC & CL Raikes Partnership, Peter Raikes, Caroline Raikes, or any of their agents, assigns or sub-lessees from entering into the blocks. Save that the PC & CL Raikes Partnership and its partners are permitted to enter the blocks for a period of three working days from the date of this decision to remove from the blocks any chattels owned by the PC & CL Raikes Partnership or its partners. Leave is granted to the PC & CL Raikes Partnership and its partners to seek an extension of this three working day period.

[30] The applicant will need to file an appropriate application to seek damages against the partnership for trespassing on the blocks.

I whakapuaki i te 3.00 pm i Te Whanganui a Tara, i te 31 o ngā rā o Oketopa i te tau 2025.

D H Stone
JUDGE