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

AP-20240000003924

WEHENGA *Under*	Section 18(1)(a), Te Ture Whenua Māori Act 1993
MŌ TE TAKE *In the matter of*	Tahoraiti 2A2 Lot L and others
I WAENGA I A *Between*	MEREANA MARY-ANNE WHAREWHITI-TUFFERY Te Kaitono *Applicant*
ME *And*	FRED WILSON, KAREN WILSON, NGAWAIATARERE KAA AND GALE COOPER AS TRUSTEES OF THE KAIRAMA AHU WHENUA TRUST Ngā Kaiurupare *Respondents*

Kōtitanga: *Hearing*	2 July 2024, 111 Tākitimu MB 154-164 14 October 2024, 114 Tākitimu MB 46-55 4 February 2025, 117 Tākitimu MB 168-176 7 May 2025, 120 Tākitimu MB 152-174 (Heard at Hastings)
Kanohi kitea: *Appearances*	M Rāhui for Applicant D Rendall for Respondents
Whakataunga: *Judgment date*	25 May 2026

TE WHAKATAUNGA A KAIWHAKAWĀ D H STONE
Judgment of D H Stone

Copies to:
M Rāhui, Tararua Community Law Centre, 17 Gordon Street, Dannevirke, tararua@mancomlaw.org.nz
D Rendall, OSC Law, 1181 Arawa Street, Rotorua 3010, d.rendall@osc.co.nz

Hei tīmatanga kōrero
Introduction

[1] This decision concerns an application to determine ownership of a house on the Tahoraiti 2A2 Lot L block ("the block"), in Dannevirke. Initially, Mereana Mary-Anne Wharewhiti-Tuffery filed an application to review

[2] the Kairama Ahu Whenua Trust ("the Trust"), which administers the block. During the course of hearings, it became clear that the key issue is ownership of the house. By chambers minute dated 17 October 2024, the Court recorded that the applicants' s 231 application for review of trust ought properly to have been brought under s 18(1)(a) of Te Ture Whenua Māori Act 1993 ("the Act"), and accordingly granted leave for the application to be amended and repleaded on that basis.

[3] The applicant seeks an order declaring that she and her siblings own the house. For ease of reference, I refer to this group of persons as the Wharewhiti whānau.

Whakarāpopototanga
Summary

[4] The Wharewhiti whānau (more particularly, the successors of Muriel Pakuku Rohe-Wharewhiti) hold an equitable interest in the house, to the full value of the house. They have the right to occupy the house for five years, subject to payment of market rental based on the value of the land area (as bare land) associated with the house.

Te Horopaki
Background

[5] The applicant, Mereana, has lived in the house for many years. Mereana's grandmother, Ngahuia Rohe, arranged for the house to be built in the 1950s. Ngahuia sadly passed away in 1952, a week before she was due to move into the house. Ngahuia's daughter, Muriel Pakuku Rohe-Wharewhiti, is the applicant's mother. Muriel was widowed in 1950, following which she brought her children to Dannevirke. After Ngahuia died, Muriel and her children moved into the house.

[6] A Māori Affairs loan of £1,260 was taken out in 1950-1951 to pay for the house. It had a 30-year term. It was secured by a registered mortgage. Muriel took over the mortgage payments when she moved into the house. The mortgage was discharged on 26 June 1963, roughly 18 years early.

[7] From 1952, the block (excluding the area upon which the house sits) was leased to Mark McDonald. Records show that the initial rental was £2 per acre, which would have amounted to a total lease rental of approximately £100 per annum. The parties submitted that the lease rental was £200 per annum, of which £76 was to be paid to the reduction of the Māori Affairs loan in respect of the house. The parties dispute who received the remaining lease money after the mortgage payments were made, and whether they were used to pay off the mortgage on the house.

[8] Muriel lived in the house for over 50 years, until her death in 2003. She appointed her eldest daughter, Mida Urania Toatoa, as her executor. Mida managed the property after her mother's death. Management of the house was transferred to the Trust in 2018, although the Trust considers that ownership, rather than management, of the house was transferred then. Mida and her siblings reached an agreement with the trustees of the Trust that Mereana would pay rent to the Trust, and the Trust would spend the rent money only on maintenance of the house. In June 2023, Mereana and her whānau sent a letter to the trustees stating they would no longer pay rent, because "Kairama Trust have not kept their agreement with the maintenance of the property."[1] Since then, a dispute has arisen over the ownership of the house.

[9] The trustees of the Trust filed an application with the Tenancy Tribunal to terminate the tenancy for unpaid rent, but in October 2023 the Tenancy Tribunal determined that it did not have jurisdiction to hear the application.[2] On 7 August 2023, Mereana filed her application to review the Trust. She now seeks a determination that the house is owned by the Wharewhiti whānau.

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1 Letter by Mary-Anne Wharewhiti-Tuffery & Whānau to Kairama Ahu Whenua Trust dated 26 June 2023.

2 [2023] NZTT 4670149, determining that the tenancy is an excluded tenancy under the Residential Tenancies Act 1986, as it falls within s 5(1)(n) of that Act.

Ngā kōrero a te Kaitono
Applicant's submissions

[10] Mereana seeks:

(a) a determination under s 18(1)(a) of the Act that she and her siblings hold an equitable ownership interest in the dwelling; and

(b) leave to apply for an occupation order, if appropriate.

[11] Mereana submits that the house belongs to Muriel and her descendants, on the basis that:

(a) Firstly, the Wharewhiti whānau have made significant financial contributions toward the dwelling and taken the responsibility of the ongoing upkeep and maintenance.

(b) Secondly, Muriel, her children and her mokopuna have had significant possession and management of the dwelling since 1952.

(c) Thirdly, the Wharewhiti whānau alone have upheld ahi kā over the dwelling, which has been a cornerstone of their history, identity, and connection to the land.

[12] The applicant submits that Muriel discharged the mortgage, relying primarily on her widow's benefit and income earned through various forms of employment, including working as a cook for a shearing gang.[3] She notes that Muriel's sister wrote her a letter in 1979 stating:[4]

> So you will have to be mighty thankful you have a home to live in which you paid with your pension and family benefit which I think you did very well.

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[3] With regards to the income Muriel received through various forms of employment, counsel refers to a letter from Kaylene Kani, filed on 16 August 2024 as Appendix I.

[4] Letter form Kurairirangi Duncan, Muriel's sister, dated 3 September of approximately 1979, filed on 16 August 2024 as Appendix J.

[13] Counsel also refers to an affidavit by Marie Patricia Wharewhiti, Muriel's second youngest child, which counsel says demonstrates that the household was financially stable due to Muriel's widow's pension, local employment, and that Muriel was a responsible and diligent financial manager who prioritised mortgage payments using her widow's pension and income from seasonal work.

[14] The applicant submits that without evidence suggesting otherwise, it can be assumed that Muriel paid off the mortgage using her own funds rather than lease payments for the block. She submits that the accusations that Muriel used the remaining lease money to pay off the mortgage, as opposed to that money being shared among all of the landowners, are speculative and unfounded. If the Court is not satisfied that Muriel paid off the mortgage using her personal income, then counsel submits that a s 18(1)(a) determination in favour of the Wharewhiti whānau can be sustained in any event. Counsel points to the fact the Wharewhiti whānau has continuously maintained possession and management of the dwelling, demonstrating a commitment to its preservation and improvement; and their role in upholding ahi ka, which is fundamental to their historical and cultural identity.

[15] In terms of the connection of the Wharewhiti whānau to the land, counsel for the applicant submits that Muriel and her children "cultivated large mārakai on the property, dedicating significant time and effort to its upkeep."[5] The children collected water from the Makirikiri stream, which also served as their bath, to maintain the gardens. The whānau maintained close relationships with neighbours and were well-integrated into the local community. As a Mormon faith-based whānau, they held daily karakia, and the dwelling became a home where many children were raised. Muriel and her children occupied and used the dwelling exclusively for 51 years. Counsel submits that the fact that Mereana still lives in the house underscores the uninterrupted connection and association the Wharewhiti whānau have had with the dwelling since 1952.

[16] Counsel for the applicant sets out the principles of constructive trust, and submits they apply here. In terms of the contribution Muriel made, she assumed and fully discharged the mortgage on the house by 1963. She submits that this gives rise to a reasonable expectation of an interest, especially given that Muriel is the only child of the original owner

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5 Applicant's submissions dated 20 Jan 2025 at [29].

who occupied the house. The applicant further submits that for almost 75 years the Wharewhiti whānau have maintained exclusive control and, until 2018, management of the house.

[17] The applicant submits that management of the house was transferred to the Trust in 2018 for administrative convenience, rather than as a relinquishment of rights. She submits the transfer did not extinguish the Wharewhiti whānau's equitable ownership or their historical connection to the house. She explains that, before her passing, Muriel wished to have the house vested in her but lacked the confidence and legal familiarity to bring that about. Counsel refers to "A Statement of Proceedings of Meeting of Assembled Owners", which reads "Pakuku Muriel Wharewhiti wished to have the house which was excluded from the lease vested in her legally."[6]

[18] The applicant submits that without an existing order confirming ownership, legal and equitable rights cannot be assumed, citing *Tihi v Nuku* as authority.[7] It is further submitted that the Trust has not presented any evidence to substantiate its claimed ownership of the house.

Ngā kōrero a te Kaiurupare
Respondent's submissions

[19] Counsel for the respondent submits that it was impossible for Muriel to have paid off the mortgage on the house using her personal income. That is, counsel submits, because she had seven children she was responsible for, and limited income. As mentioned previously, when Mark McDonald leased the land for a total sum of £200, £76 was to be paid to the reduction of the Māori Affairs loan in respect of the house. The remaining lease money should have been distributed to the whānau. Counsel submits that those funds were received by Muriel from the lessee, and there are no records of the funds being distributed to whānau.

[20] As to Muriel's financial resources, counsel refers to an affidavit by Robin Gale Cooper (nee Wharewhiti) dated 21 February 2025, which states:[8]

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6 Filed on 16 August 2024 as Appendix N.
7 *Tihi v Nuku - Ruatoki B Sections 23, 25, 26B, 27, 31, 32, 33B2C2, 38, 79* [2019] Māori Appellate Court MB 531 (2019 APPEAL 531).
8 Affidavit of Robin Gale Cooper (nee Wharewhiti) dated 21 February 2025.

> As a young child I remember lots of whānau living in our little whare. We lived off the whenua, maara kai and te awa. Chickens, trout and eels were a staple diet in our whare with watercress and pūhā. Our uncle had cows and my eldest sibling would milk his cows and in return, Uncle would give us milk for the table.
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> …
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> We never had a car. Muriel or my siblings would either walk or bike into town to do shopping. I remember Muriel would say: "It is benefit day tomorrow, we can go and do some shopping." I realised in later years, Muriel was receiving a widow's benefit plus a family benefit for my sister and I as we were still at school. Muriel was very frugal, we never had any treats.
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> I remember my older sisters looking after me and sending me to school on the bus. When Muriel went to work at the shearing sheds, she would work long hours to help with the general running cost of a busy household and school needs. We never had the luxury of a fridge or a TV until I was about nine or 10 years old.
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> …
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> I believe the mortgage on the whare was paid for from money from the lease of the farm. Muriel, struggled financially to raise us with what she received on a widow's benefit and working when work was available, paying a mortgage as well would have financially ruined her.

[21] Counsel submits that the applicant has provided no evidence of personal funds being used to pay off the mortgage. They say that the house therefore belongs to all of the landowners of the block, because the lease payments belonged to all of those landowners.

[22] The respondents further submit that the house is a fixture, as acknowledged by counsel for the applicant, and therefore it belongs to the owners of the land unless clear evidence is provided showing separate ownership. They submit that no reliable or factual evidence has been provided to support the current claim. Furthermore, no one from the Wharewhiti whānau has tried to make an ownership claim until now.

[23] Counsel for the respondent notes that Muriel's will did not mention the house. He submits that if Muriel had paid the mortgage off from her personal funds, she would have included it in her will or told her executors to file an application for ownership. The respondents submit that the will suggests that she accepted that the property was owned by all of the landowners.

[24] In response to the applicant's submissions, counsel for the respondent submits that Dannevirke is a community that often helps each other out, so the Wharewhiti whānau's gardening and produce sharing with neighbours is common practice. Counsel also submits

that it is incorrect that there has been an "uninterrupted connection and association with the property," and even so, mere occupation of the property does not give rise to a reasonable expectation of ownership. He submits that the landowners represented by the Trust have never considered the house to be anything other than Trust property.[9]

[25] They submit further that the trustees filed a history of the dispute. They said that their research found that the house belongs to the "99 descendants of Ngahuia Tamehana on the register". They explain that the house needs work to meet Healthy Homes standards. The trustees therefore need the house to be vacated in order to either bring it up to standard or demolish it and rebuild a warm home. Counsel for the respondent notes that the house needs to be rewired to remove illegal external wiring and make it safe.

Te Ture
The Law

[26] Section 18(1)(a) of the Act states that the Court has jurisdiction:

> (a) to hear and determine any claim to the ownership or possession of Māori freehold land or to any right, title, estate or interest in any such land or in the proceeds of the alienation of such land.

[27] The relevant legal principles of determining the ownership of a house on Māori land are as follows:

(a) Under s 18(1)(a) of the Act, the Court cannot create new ownership rights, only declare those that already exist at law or in equity.[10]

(b) An owner in the land may separately own an improvement on that land.[11]

(c) The starting point for the Court is that a house is a fixture and ownership runs with the land (that is, the house is owned by all of the owners of the land on which it sits). However, the Court may find that the house is a chattel (rather

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9 Respondent's submissions dated 20 February 2025 at [31].
10 *Nga Uri a Maata Ngapo Charitable Trust v McLeod — Harataunga West 2B2A1* (2012) 49 Waikato Maniapoto MB 223 (49 WMN 223) at [34].
11 *Tohu - Te Horo 2B2B2B Residue* (2007) 7 Taitokerau Appellate MB 34 (7 APWH 34).

than a fixture) or that, as a matter of equity, it is owned separately from the land on which it sits.[12]

[28] If an equitable interest exists, the Court must consider what relief is appropriate to grant under s 18(1)(a) – usually a right to occupy the dwelling, monetary compensation, or a right to remove the house from the land.[13]

Ngā take
Issues

[29] Four issues arise:

(a) Is the house a fixture or a chattel?

(b) Who owns the house?

(c) Has ownership of the house been yielded to the Trust?

(d) Should the house be removed from the block?

He tautara, he rawa rānei te whare?
Is the house a fixture or a chattel?

[30] If the house is a fixture, it becomes part of the land and is owned by all owners of the block, subject to any interests at equity that may exist. If the house is a chattel, it can be owned separately from the block.

[31] The main indicators of whether a house is a fixture are how it is fixed to the land, often called the degree of annexation. Another indicator the Court looks to is why it was fixed to the land, which is often called the purpose of annexation. Put plainly, a house that is rooted on the land with no intention for it to be moved in the future will be a fixture. A house that is capable of being moved off the land (for example, it has been built on piles)

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12 *Tohu*, above n 11.
13 *Stock v Morris — Wainui 2D2B* (2012) 41 Taitokerau MB 121 (41 TTK 121); *Nicholas v Te Amo* [2023] NZCA 22.

with no intention for it to remain permanently on the land will be a chattel. Of course, most scenarios sit between these two extremes.

[32] Limited evidence was presented by the parties as to whether the house is a fixture or a chattel. Counsel for the trustees submitted that it was impliedly agreed that the house is a fixture. The submissions for the applicant certainly seem to make that assumption.

[33] The applicant filed photos of the house. They show that the house is permanently fixed to the land. The degree of annexation of the house to the land appears relatively high.

[34] As noted, Ngahuia arranged for the house to be built. Muriel then lived in it for over 50 years. The house has been on the block for almost 75 years. The intention has clearly been that the house would remain a permanent fixture on the block.

[35] Having regard to how the house is fixed to the land and why it was fixed that way, the house is a fixture.

Nō wai te whare?
Who owns the house?

[36] As a fixture, the house is owned by all the owners in the block, subject to any equitable interests that may exist.

[37] Equitable interests in a house are most often recognised in this Court through the law of constructive trusts. To recognise a constructive trust over a house in favour of the Wharewhiti whānau, four elements must be present:

(a) The Wharewhiti whānau must have made direct or indirect contributions to the house.

(b) They must have made those contributions with an expectation that they would obtain an interest in the house.

(c) That expectation must be reasonable.

(d) The other owners of the block, through the trustees of the Trust, would reasonably expect to yield an interest in the house to the Wharewhiti whānau.

Have the Wharewhiti whānau contributed, directly or indirectly, to the house?

[38] The following facts are agreed:

(a) Ngahuia arranged for the house to be built in the early 1950s. A Māori Affairs loan was taken out to pay for the construction of the house. A mortgage was signed, to the amount of £1,260, to secure the loan. The annual loan repayments were £76.

(b) Muriel took over the loan repayments when she moved into the house. She received the widows benefit and child support payments, as well as working occasionally. Muriel was of limited means.

(c) The block was leased to Mark McDonald from 1952.

(d) The mortgage was discharged on 26 June 1963.

(e) Muriel lived in the house until her passing in 2003, being a period of over 50 years.

[39] The trustees of the Trust assert that, on the balance of probabilities, Muriel must have received all of the rent for the entire block (rather than just her share) and used that rent money to repay the mortgage. To support this assertion, they say:

(a) The mortgage was repaid early. It was supposed to be for a term of 30 years, yet was repaid in about 12 years.

(b) Muriel was of limited means. She could not have discharged the mortgage early because she lacked the personal funds to do so.

(c) Mark McDonald paid rent for the block of £200 per annum. There are no records of any owners of the block receiving income from these leasing arrangements. The lease money must therefore have been paid to Muriel, as she resided on the block.

(d) Muriel must have used the rent money to repay the mortgage.

[40] I am not convinced that, on the balance of probabilities, Muriel used rental money for the block to which she was not entitled in order to repay the mortgage. My reasons are as follows:

(a) I accept that Muriel was of limited means. However, the evidence indicates that she was good with her finances and frugal with her spending. It is possible that she was able to make extra repayments on the mortgage simply through her good financial management.

(b) There is no evidence, other than by inference, that Muriel received all the rental moneys from the block while the mortgage was operative. In fact, the evidence given by Mary Osbourne suggests that the owners in the block received cheques for rental money from the Māori Trustee. That evidence was not detailed and, accordingly, is not enough to confirm that the rental money was paid to the block owners by cheque through the Māori Trustee. However, it is enough to determine that, on the balance of probabilities, it was more likely that Muriel only received her share of the rental proceeds from the block.

(c) Although there is no evidence that other owners received income from the block while the mortgage was operative, it is just as plausible that they did receive income and there is simply no evidence either way before the Court.

[41] I therefore make a factual finding that, on the balance of probabilities, Muriel discharged the mortgage using her own personal funds and did not use rental proceeds from the block that ought to have been paid to the other owners of the block.

[42] There is no doubt that Muriel lived in the house for over 50 years. She and her family were the only occupiers of the house for that lengthy period. She contributed to its upkeep.

Direct contributions were made to the house. No other claims to ownership of the house appear to have been made during that 50-year period. The Wharewhiti whānau have clearly made significant direct contributions to the house.

[43] Given my finding that Muriel repaid the mortgage over the house with her own funds, the value of the contribution of the Wharewhiti whānau to the house is the total value of the house. If I am wrong in my conclusion that Muriel repaid the mortgage entirely with her own funds, I consider that, because she was entitled to a portion of the lease monies paid by the lessee of the block from 1952 and given her obvious contributions to the house over the 50-year period that she lived in it, the value of her own contributions to the house over that period is the total value of the house. Put another way, even if Muriel used block lease money she was not entitled to in order to discharge the mortgage (which I do not accept), her contributions to the house between 1963 (when the mortgage was discharged) and 2003 (when she passed) are such that she held an exclusive equitable interest in the house at her passing.

Were these contributions made on the expectation of an interest in the house?

[44] Muriel must surely have repaid the mortgage, contributed to the maintenance and upkeep of the house, and lived in the house for over 50 years in the expectation that she owned it. No other conclusion is plausible.

Is that expectation reasonable?

[45] Muriel moved into the house as a young widow and raised her children there. She repaid the mortgage. She lived in the house for over 50 years. During that period she maintained the house. No other owners claimed an interest in the house during that period. It is reasonable for Muriel to have expected to own the house, given her contributions to it and the historical circumstances of this case.

Should the trustees of the Trust reasonably expect to yield an interest in the house?

[46] No owners of the block claimed an interest in the house while Muriel was living in it. In fact, no other owners have claimed an interest in the house since. The trustees of the

Trust claim ownership of the house now. However, I consider it is reasonable for the trustees of the Trust to yield an interest in the house to the Wharewhiti whānau. The nature and circumstances of the contributions to the house made by Muriel and her descendants is such that it cannot reasonably be maintained by the trustees of the Trust that they are not required to yield an interest in the house to the Wharewhiti whānau.

Conclusion on constructive trust principles

[47] Based on the contribution of time and money towards the house, the length of occupation, and the absence of any counterclaims, by the time Muriel passed away in 2003, she had contributed sufficiently to the house to have an equitable interest in it. I determine the value of that equitable interest to be the total value of the house.

Who are the beneficiaries of that constructive trust?

[48] Muriel's will left her residual estate to her children and her granddaughter, Tui Wharewhiti, equally. Succession to Muriel was ordered in 2003 in favour of her children, including Tui (as a whāngai) and Sonny's children (Sonny having passed away before Muriel).[14] Succession included Muriel's interests in the block. Per s 99(2) of the Act, her equitable interest in the house formed part of her estate. Muriel's equitable interest in the house (being the full value of the house) is now held by her successors.

[49] It is in this context that I address the submission by the trustees of the Trust that Muriel herself did not consider that she owned the house, because she did not refer to it specifically in her will. The will is one page long. It is a Public Trust Office will. It is not unusual for a will of this nature to not refer to specific assets of the testator. Indeed, not only does the will not refer to the house, it also does not refer to any Māori land interests that Muriel held. I do not read anything into the fact that the will is silent about the house. I prefer the view that, given that Muriel had lived in the house since the early 1950s, repaid the mortgage in 1963 and continued to maintain the house while she lived in it, by the time she executed her will in 1990, there would have been little doubt in her mind that she owned the house.

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[14] 173 Napier MB 18 (173 NA 18).

[50] Muriel's successors have an equitable interest in the house to the full value of the house.

Kua whitia te whare ki te Taratī?
Has ownership of the house been transferred to the Trust?

[51] Muriel's will appointed the Public Trustee as her executor and trustee, together with her eldest daughter, Mida Toatoa, as the advisory trustee. Mida took on the responsibility for managing the house following Muriel's passing.

[52] Mida managed the house for some years. However, in 2015, Mida's husband passed away suddenly. Mida no longer wished to manage the house and took steps to vest this responsibility in the Trust. In July 2016, Mereana moved into the house and entered into a verbal agreement with Mida to pay rent. Mida then called a whānau hui, held on 12 August 2016, where she advised the whānau of her intention to transfer the administration of the house to the Trust. Following this meeting, Mida put a proposal to the Trust. The proposal was to put the house "under the management" of the Trust. An aspect of the proposal included that a 10-year lease with a right of renewal be granted to Mereana.

[53] The proposal does not appear to have been considered formally by the Trust until its annual general meeting held on 27 October 2018. Interestingly, the minutes of this meeting record the chairman confirming that "the dwelling on Laws Road [the house] was built by Ngahuia Rohe and paid for by Muriel Wharewhiti". In terms of the house, the minutes of this meeting record the following:[15]

> Moira explained that after the 2015 AGM Mida handed over the dwelling rental funds and responsibility of administering the property to the trustees of Kairama. On hand over of the information from Mida it was found [that] the dwelling was owned by the Estate PM Wharewhiti as a separate entity which was required to file income tax returns for the rental profit. To keep administrative costs to a minimum it is the wish of the trustees to wind up the Estate and incorporate the dwelling into the Kairama trust.
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> MOTION:
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> That the Estate Pakuku Muriel Wharewhiti by wound up.
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> The trust account funds held by MCI & Associates on behalf of the Estate would be transferred to the Kairama Ahu Whenua Trust.

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15 Kairama Ahu Whenua Trust – Tapairu 13B & 15D Ahu Whenua Trust Minutes of the 2018 AGM of the Trusts, dated Saturday 27 October 2018, filed on 16 August 2024 as Appendix U at 3.

> The trustees of the Kairama Ahu Whenua Trust would then administer the dwelling at Laws Road along with the farm land.

[54] The trustees of the Trust say that this resolution confirmed that the Trust was to own the house. The applicant says this resolution simply confirmed that the Trust was to manage the house, as proposed by Mida.

[55] I have determined that the house was owned by Muriel and is now owned by her successors.[16] Ownership of the house could only have transferred to the Trust with their agreement. I consider that Mida was clear that only management or administration of the house, and not ownership, were to be transferred to the Trust. This is the language used in the minutes of the Wharewhiti whānau meeting held on 12 August 2016. The resolution passed at the 2018 annual general meeting of the Trust also indicates that the trustees would "administer" the house: the resolution did not refer to ownership of the house. Even if this resolution could be construed as an attempt to transfer ownership of the house to the Trust, a resolution passed at an annual general meeting of the Trust could not have that effect. Such a transfer would have to be agreed to by the owners of the house. All of those owners had not agreed to such a transfer.

[56] Ownership of the house did not transfer to the Trust in 2018. Therefore, ownership of the house has not been yielded to the Trust.

Me hīkina te whare atu i te whenua nei?
Should the house be removed from the block?

[57] There is no licence, occupation order or other document that permits the house to be on the block. By simply owning the house, does that give the Wharewhiti whānau the right to occupy it?

[58] There has been some doubt as to whether the equitable owner(s) of a house on Māori freehold land can occupy it without some formal licence or right to do so. The Court of Appeal has removed that doubt, confirming that there is "no impediment to a constructive

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[16] I say Muriel "owned" the house as a shorthand. A more apt (but perhaps legalistic) description is that Muriel had an equitable interest in the house (in its entirety) through a constructive trust. See *Nicholas v Te Amo* [2023] NZCA 22 at [43].

trust being given practical effect by a right of occupancy, should justice require it in the circumstances of a particular case”.[17]

[59] In assessing where justice lies here, the following factors support the continued occupancy of the house by its owners:

(a) Muriel occupied the house for over 50 years, from the time it was built to her passing. The Wharewhiti whānau have resided in it for most of the subsequent 23 years. It is their whānau home and, in many respects, their tūrangawaewae. It would be unjust to prevent the whānau from accessing their tūrangawaewae.

(b) The house and yard have long been in use. These areas have been accessed exclusively by the Wharewhiti whānau for many years, without issue. The rest of the block can be leased. Granting access to the house for the Wharewhiti whānau does not prevent the remaining owners of the block from benefiting from the remainder of the block.

(c) There is limited prejudice to the other owners of the block if the Wharewhiti whānau have the right to occupy the house. While those other owners will not be able to access the house or the yard, this has been the case for so long that it has become the norm. Moreover, the house and curtilage represent less than 1% of the area of the block. There is limited prejudice to the other owners if such a small area is occupied exclusively by the Wharewhiti whānau.

(d) Muriel’s successors hold 12.5% of the shares in the block. On a straight shareholding to land area calculation, they would be entitled to occupy over 25,000m² of the block. The house and curtilage is only 1,415m². An occupation right over such a relatively small area, being much less of an area to which the Wharewhiti whānau may otherwise be entitled, does not seem unfair or disproportionate.

[17] *Nicholas v Te Amo* [2023] NZCA 22 at [52].

[60] The justice of this case lies in granting the Wharewhiti whānau the right to occupy the house.

[61] That said, it is also fair that some form of payment is made to the Trust for the right to occupy the house. That payment should be assessed on the market rental for the bare value of the land surrounding the house (the curtilage). That is because the Trust does not own the house on that land. This rental payment will likely be nominal: after all, the house and curtilage is less than 1% of the total area of the block. But, in fairness, it should be paid.

[62] A question arises as to the duration of this occupation right. This point was not addressed by the Court of Appeal in *Nicholas v Te Amo,* because the underlying occupation right in that case was time-bound, ending in 2066. That is not the case here, because the right of occupancy here arises purely through the interests of justice, rather than terms agreed between the parties. There is little guidance from previous court decisions as to the duration of an occupation right arising in this way.

[63] I consider that the duration of the occupation right must be determined through the same lens that determines the very existence of the right – being the interests of justice and fairness lens. While equity can recognise ownership rights in houses (through constructive trusts) and rights to occupy Māori freehold land (as an incident of a constructive trust where the justice of the case allows), it must do so in a fair and equitable way.

[64] In considering the duration of the occupation right associated with the house, the following factors are relevant:

(a) Muriel lived in the house rent-free for over 50 years. While she paid for the house, she did not pay for the use of the associated land.

(b) The Wharewhiti whānau have had use of the house for much of the 23 years since Muriel's passing. They have paid a rental for part of this period. However, for most of this period they too have occupied the land surrounding the house on a rent-free basis.

(c) When Muriel moved into the house, she would have had a reasonable expectation of being able to reside in the house for as long as she wished. However, it would not have been reasonable for her to expect that to continue beyond her lifetime, in the absence of formal agreement from the other owners of the block.

(d) All told, the house has now been on the block for almost 75 years. The occupation right associated with the house has therefore already been lengthy.

[65] Taking these factors into account, I consider that the duration of the occupation right associated with the house from now on should be no more than five years. This duration recognises that the house has been on the block for many years already and it is time for the owners to reconsider the arrangements associated with the house. A duration of five years allows those discussions to take place, while also giving the Wharewhiti whānau time to make necessary arrangements should the occupation right associated with the house not be renewed by the trustees of the Trust.

[66] Finally, I note that the applicant has sought an occupation order "if the Court finds appropriate". I cannot grant an occupation here, as no formal application has been made. Nor have the statutory grounds for an occupation order been made out. The five-year occupation right will provide sufficient time for the applicant to make such an application, if required.

Ngā ōta
Orders

[67] Pursuant to s 18(1)(a) of Te Ture Whenua Māori Act 1993, the court declares, by way of recognition of a constructive trust, that:

(a) the successors of Muriel Pakuku Rohe-Wharewhiti have an equitable interest, as per their proportions, in the house located on the Tahoraiti 2A2 Lot L block;

(b) the value of that equitable interest is the total value of the house;

(c) the successors of Muriel Pakuku Rohe-Wharewhiti have the right to occupy the house and associated curtilage (comprising 1,415m²):

(i) for a term of five years; and

(ii) for an annual rental that is equivalent to the market rental of the land under the house and the associated curtilage (being an area of 1,415m²), as bare land.

I whakapuaki i te 3.00 pm i Te Whanganui-A-Tara, i te 25 o ngā rā o Mei i te tau 2026.

D H Stone
JUDGE