

I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TE WAIARIKI

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

AP-20240000013815

WĀHANGA <i>Under</i>	Section 19, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Mourea Papakainga 3E9 Māori Reservation and Others
I WAENGA I A <i>Between</i>	FRANCES GEORGINA WHATA, PIRIHIRA WHATA AND TEREHIA WICKLIFFE AS TRUSTEES OF THE TE HURIHANGANUI DAVID WICKLIFFE WHĀNAU TRUST Ngā kaitono <i>Applicants</i>
ME <i>And</i>	JEREMY PRYOR AND JACQUELINE PRYOR AS TRUSTEES OF THE JA AND JW PRYOR FAMILY TRUST Ngā kaiurupare <i>Respondents</i>

Nohoanga: 20 December 2024, 329 Waiariki MB 147-187
Hearing (Heard at Rotorua)

Kanohi kitea: A Ngapo for Applicants
Appearances J Gear for Respondents

Whakataunga: 16 April 2025
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ T M WARA
Judgment of Judge T M Wara

*Ka haere tonu ngā taipitopito kēhi i muri ake nei
Proceedings continue overleaf*

Ngā taipitopito kēhi e toe ana
Proceedings continued

AP-20240000013852

WĀHANGA
And

Sections 18(1)(a), 19(1)(a) and 19(1)(ba), Te Ture
Whenua Māori Act 1993

MO TE TAKE
In the matter of

Mourea Papakainga 3E 14C 2 and Others

I WAENGA I A
Between

JEREMY PRYOR AND JACQUELINE PRYOR
AS TRUSTEES OF THE JA AND JW PRYOR
FAMILY TRUST
Ngā kaitono
Applicants

ME
And

FRANCES GEORGINA WHATA, PIRIHIRA
WHATA, TE HURIHANGANUI DAVID
WICKLIFFE AND TEREHIA WICKLIFFE AS
TRUSTEES OF TE HURIHANGANUI DAVID
WICKLIFFE WHĀNAU TRUST
Ngā kaiurupare
Respondents

Hei tīmatanga kōrero*Introduction*

[1] Mourea Papakāinga is a close-knit community that is nestled between the Ohau channel and the western shores of Lake Rotoiti. Originally the papakāinga was created for haukāinga, and multiple sections were partitioned. These sections are situated close to the lake around Te Takinga Marae. Over the years, the title of some of these sections has changed from Māori freehold land to General land, and some of these titles have transferred to those outside of the whānau and hapū.

[2] The dispute before me relates to two neighbours. On the one hand are the trustees and beneficiaries of Te Hurihanganui David Wickliffe Whānau Trust (the Whānau Trust), who are haukāinga of Ngāti Te Takinga / Ngāti Tamakari descent. They have a close and spiritual connection to the whenua, which has sheltered their whānau for generations. On the other hand are the trustees of the JA and JW Pryor Trust (the Pryor Trust), including Jeremy Pryor of Ngāti Awa descent, who purchased the General freehold title in 2022. The Pryor Trust acquired the property for a holiday home, a fundamental draw card being the lake front access for their boat.

[3] The court has received cross applications for injunctions.

[4] First is an application filed on behalf of the Pryor Trust filed on 13 November 2024 seeking an injunction to enable the following:

- (a) Unobstructed access to Te Wirihana Road, from the property's southern boundary;
- (b) The removal of a fence erected on the southern boundary; and
- (c) The prohibition of Ms Whata and her contractors from erecting any further fences on the southern boundary of the property that is contiguous to Te Wirihana Road.

[5] The second application is filed by Georgina Whata on behalf of the Whānau Trust seeking an injunction to:

- (a) Prevent Jeremy Wallace Pryor, trustee and beneficiary of the Pryor Trust, and agents of the Pryor Trust, from obstructing, destroying, alienating and using Māori freehold land for their personal enjoyment.

He aha te kaupapa o tēnei kēhi?

What is this case about?

[6] This case is about a tension that exists between the haukāinga and others that have bought into the papakāinga. The parties are neighbours and are in dispute regarding the use and access of a roadway, and alleged damage to the land.

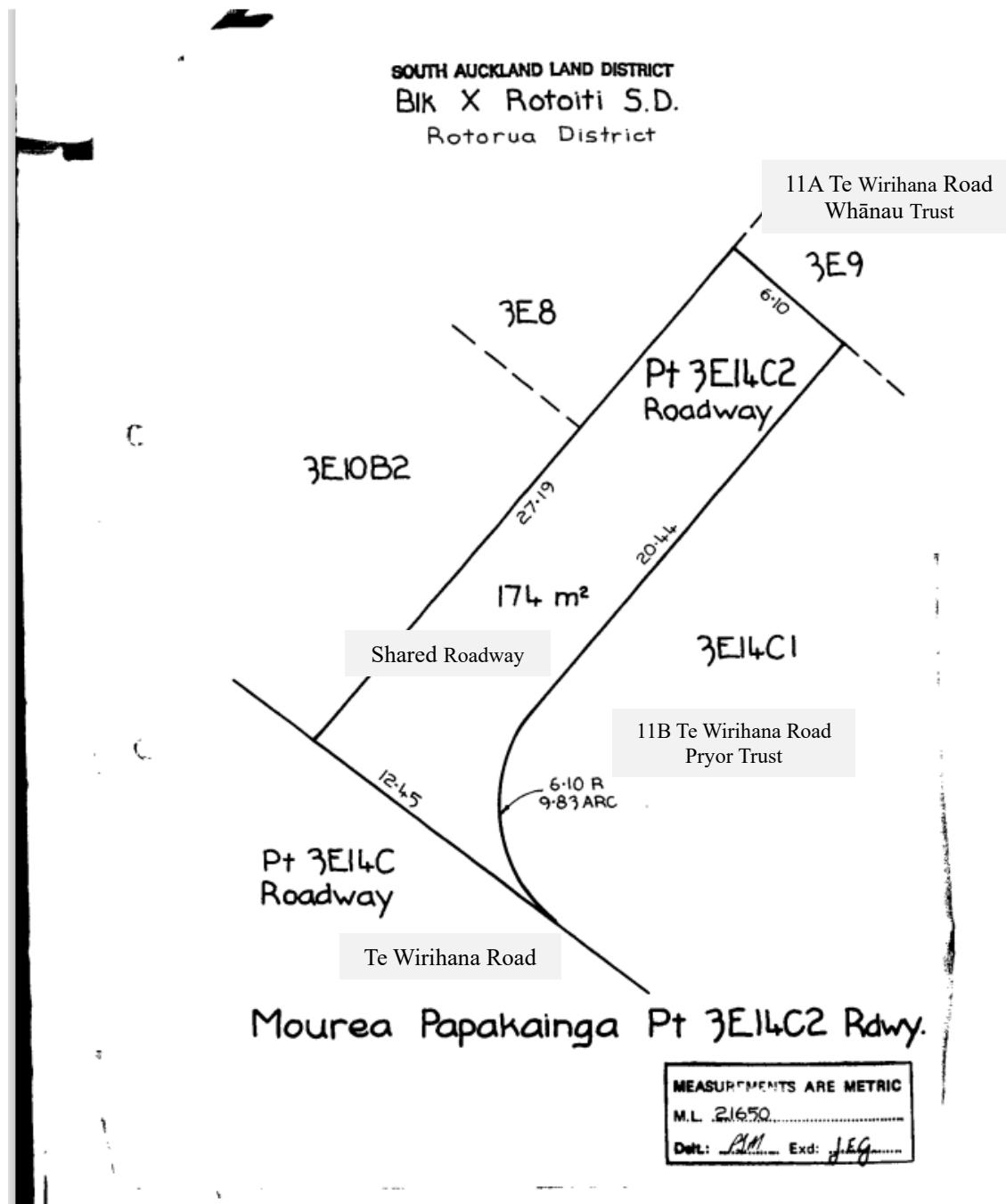
[7] The Pryor Trust is a private trust, with Jeremy Pryor, Jacqueline Pryor and Sharp Tudhop Trustees Services NO 11 Ltd acting as trustees. On 14 April 2022 the Pryor Trust purchased a property at 11B Te Wirihana Road (Mourea Papakainga 3E14C1), which is part of the Mourea Papakainga, as a holiday home next to the lake. This land was formally Māori freehold title but is now General land. The property has enjoyed access down a shared driveway (Mourea Papakainga 3E 14C 2) with the property at 11A Te Wirihana Road.

[8] The neighbouring property located at 11A Te Wirihana Road, Mourea Papakainga 3E No 9 is 0.4046 ha of Māori freehold land. While the certificate of title shows that the property is owned by Te Hurihanganui David Wickliffe, our records show that the land was vested in the Whānau Trust on 21 March 1996.¹ The trustees of the Whānau Trust are Georgina Whata, Pirihiira Whata, Te Hurihanganui David Wickliffe and Terehia Wickliffe. The majority of the land, being 0.3609 ha, is set aside as a Māori Reservation, some for a meeting house for the descendants of David Hurihanganui Whata, and a small portion for an urupā known as Te Karoro o Te Reretahi. There is a house located on the land that is occupied by a beneficiary of the Whānau Trust.

[9] The dispute between the parties started when the Pryor Trust commenced renovations on the house in 2024. The dispute is centred on the issue of access. The usual access to 11B Te Wirihana Road is via Pt Mourea Papakainga 3E 14C 2 Roadway (the Shared Roadway) however due to the nature of the renovations, the Pryor Trust seeks additional access via

¹ 243 Rotorua MB 277-278 (243 ROT 277-278).

Mourea Papakainga 3E14C Roadway (Te Wirihana Road). The plans are clear that 11B Te Wirihana Road shares boundaries with both the Shared Roadway and Te Wirihana Road.



[10] Ms Whata arranged for a fence to be built around the perimeter of 11B Te Wirihana Road. To be clear, the disputed fencing is not on the boundary shared by 11A and 11B Te Wirihana Road, between the Whānau Trust and the Pryor Trust, rather, the perimeter fencing is on the Pryor Trust's boundaries of the Shared Roadway and Te Wirihana Road.

[11] Pryor Trust seeks that part of the fence be permanently removed to allow access. This court needs to determine whether Ms Whata had the authority to erect the fence, and whether either party requires an injunction to protect their interests.

He aha te ture mō whakatāpu?

What is the law regarding injunctions?

[12] I have jurisdiction to grant a permanent injunction per s 19(1)(a) of Te Ture Whenua Māori Act 1993 to protect Māori freehold land, Māori reservations or wāhi tapu from actual or threatened trespass or other injury. An application may be advanced by person claiming to have an interest in the matter.²

[13] The applications before the Court pertain to both trespass and injury to land.

[14] In relation to *Taueki v Horowhenua Sailing Club - Horowhenua 11 (Lake) Block*, the Māori Appellate Court has discussed the legal elements for granting an injunction in an action of trespass:³

In applying for a permanent injunction, applicants must also fulfil the legal elements relating to the action of trespass before the Court will exercise its jurisdiction to grant the remedy. These elements are set out below:

The action for trespass to land is primarily intended to protect possessory rights, rather than rights of ownership. Accordingly, the person *prima facie* entitled to sue is the person who had possession of the land at the time of the trespass. Actual possession consists of two elements: the intention to possess the land and the exercise of control over it to the exclusion of other persons. Either element alone is not sufficient... Once the elements for the trespass action are made out, the Court then considers what remedy is appropriate. The *prima facie* rule is that a landowner is entitled to an injunction to restrain a trespass. However, the Court still has discretion as to whether to grant the injunction or not. Matters affecting the exercise of the discretion include the parties' conduct.

[15] In the recent Māori Appellate Court decision of *Meroiti v Meroiti*, the principles concerning the grant of a permanent injunction were summarised as follows:⁴

² Te Ture Whenua Māori Act, s 37.

³ *Taueki v Horowhenua Sailing Club - Horowhenua 11 (Lake) Block* [2014] Māori Appellate Court MB 60 (2014 APPEAL 60).

⁴ *Meroiti v Meroiti* [2025] Māori Appellate Court MB 142 (2025 APPEAL 142) at [32].

- (a) The Court must be satisfied that the grant of the injunction would not cause disproportionate hardship.
- (b) The Court must consider the overall justice of the case, and refrain from granting a permanent injunction that would cause injustice to the respondent. The test is oppression rather a balance of convenience.
- (c) The general principle is that an injunction should ordinarily be granted in favour of an applicant whose rights have been affected, unless damages are a more appropriate remedy. This is referred to as the "*good working rule*".
- (d) It would be oppressive to grant a permanent injunction where the "*good working rule*" applies.
- (e) As the decision to grant a permanent injunction is discretionary, the Preamble and the general objections set out in s 17 of the Act are relevant to the exercise of discretion.

Me whakaae ahau ki te whakatāpu tūturu?

Should I grant a permanent injunction?

Application of Te Hurihanganui David Wickliffe Whānau Trust

[16] Ms Whata gave evidence for the Whānau Trust. She says that she does not live at the papakāinga, and only became aware of the renovations once they had commenced. When she saw all the activity next door, she approached the foreman, Jason, who was the manager for the build. She confirmed that she was upset because it looked like there were roadways going in, and she was concerned about the effect that the activities would have on Te Wirihana Road.

[17] Ms Whata says that she made contact with Mr Pryor and met him on site. At this point, construction of the fence had begun. She says that Mr Pryor sought access through Te Wirihana Road, as the usual access through the Shared Roadway was no longer an option due to the erection of the boatshed. She confirms that temporary access was agreed. A portion of the fence was removed for temporary access, and then the fence went back up.

[18] She says that at some point she noticed that a hole had been cut in the fence, and she contacted the manager of the build, who advised her that a skip needed to be removed from site. The skip could not be removed from the usual access due to the boatshed, so she agreed for the fence to be modified as long as the fence was reinstated. Ms Whata says that the fence was never reinstated as agreed.

[19] Ms Whata's other concerns pertain to a trench dug on the Shared Roadway for underground cables to Mr Pryor's property, which she says has damaged the land. In addition, she raises concerns about Mr Pryor's accessway to the lake which has been dug up, as roots to native trees that her mother planted 30 years ago have been disturbed.

[20] Ms Whata initially sought a broad range of remedies, including the reinstatement of the fence; restoration of Mourea Papakainga 3E14C roadway; removal of electrical cables attached to the fence; removal of signage attached to the fence; remedying the damage to the roots; and removal of the extension (boatshed) erected near the boundary. However, during the course of the hearing, Ms Whata accepted that this court's jurisdiction is limited to Māori land or Māori reservations. She confirmed that a number of the remedies sought would be abandoned, and closing submission focused on the issues concerning the fence and restoration of the Shared Roadway.

[21] Ms Whata seeks a permanent injunction:

(a) Preventing the Pryor Trust from interfering with or removing the fence erected on the boundary of Te Wirihana Road; and

(b) Restoring the Shared Roadway to the condition prior to the renovations.

[22] Commencing with the issue concerning the fence, the starting point is assessing whether the Pryor Trust has a legal right of use and access to Te Wirihana Road.

[23] Counsel for Ms Whata submits that the Pryor Trust does not have a legal proprietary interest in the Māori roadway and therefore cannot claim trespass in respect of the erection of a fence by Ms Whata. On the other hand, it is submitted that Ms Whata is a descendant of the original owners of Te Wirihana Road and a major shareholder in adjacent land Mourea

Papakainga 3E 14C 2, and therefore entitled to take action. Counsel for the Pryor Trust submits that it is settled law that a successor in title from a block which contributes to a Māori roadway acquires part ownership in that Māori roadway from the alienator and cites the Māori Appellate Court decision of *Matchitt – Parekura Hei Road* in support of this argument.⁵

[24] In *Matchitt – Parekura Hei Road*, the court assessed both s 326 of Te Ture Whenua Māori Act 1993 and s 427 of the Māori Affairs Act 1953 as to roadways. Both sections specifically state that where a roadway that is comprised in a separate instrument of title has been laid out by the court whether before or after the commencement of the Act, the transfer of land to which the road gives access also transfers the interest in the roadway. Both the Shared Roadway and Te Wirihana Road are comprised in separate instruments of title, therefore the effect of *Matchitt – Parekura Hei Road* is clear, that the Pryor Trust has an interest in Te Wirihana Road.

[25] As the Pryor Trust has an interest in Te Wirihana Road, it is entitled to access it without obstruction.

[26] Given Ms Whata's history and connection to the land, and her affection for the property now owned by the Pryor Trust, it appears that the changes to the property do not sit well with her. However, the Whānau Trust's interest in Te Wirihana Road is no greater than the interest held by the Pryor Trust, and she has no lawful basis to erect a fence that prevents access. It appears that Ms Whata's legal understanding as to interests and rights was incorrect, and her actions were without a lawful basis. The trench that was dug on 11B Te Wirihana Road was a clear trespass, and the trench dug on the other side of the fence was a nuisance.

[27] As to the injunction sought to restore the Shared Roadway to the condition prior to the renovations, it is submitted that damage was caused to the land following the installation of cables. Having assessed the images evidenced before the Court, the images show that minor earth works were carried out that extend into a grass verge within the Shared Roadway,

⁵ *Matchitt v Opotiki District Council – Parekura Hei Road* (Part Te Kaha Block) (2004) 10 Waiariki Appellate MB 253 (10 WAR 253).

presumably where the cable trench was dug. The trench has been refilled, and there is no obvious damage that required restoration.

[28] For the reasons that I have outlined, I do not consider that the applicants rights have been affected, and therefore I cannot grant the permanent injunctions that are sought.

Application of Pryor Trust

[29] Mr Pryor gave evidence on behalf of the Pryor Trust. He says that before renovations commenced, he walked next door to 11A Te Wirihana Road and spoke with the occupant of the property, who he now understands is Ms Whata's sister. Mr Pryor offered to provide plans of his renovations but was told that what he did at the property was his business and did not concern her.

[30] Initially Mr Pryor's relationship with his neighbours was cordial, however this changed once the building works commenced. Mr Pryor says that on the day the diggers arrived to commence building works, Ms Whata arranged for two contractors to build a fence around his property to restrict access. This prevented access from Te Wirihana Road where temporary access had previously been agreed, as well as the shared driveway where the legal access is. The diggers had to return to the yard which resulted in additional delays and cost.

[31] Mr Pryor says he arranged to meet with Ms Whata and her contractors. At the end of the meeting Ms Whata agreed to allow access for the builders and diggers, and he organised to carry out the building work from the Shared Roadway by pulling down part of the fence. With regard to the boundary at the centre of the dispute, he says Ms Whata approved a temporary entrance to the property, with a gate being installed. However, the access did not last long as Ms Whata arranged for the hinges to be removed and trenches to be dug on both sides of the fence. Mr Pryor says that Ms Whata has no right to fence his property in its entirety, specifically the boundary in dispute. Any fencing must ensure that there is sufficient access to the Shared Roadway.

[32] Mr Pryor says that significant costs have been incurred due to the delays in building works, and the limitations of access. He has also been charged for the fence that was erected around his property without his consent.

[33] The Pryor Trust seeks a permanent injunction prohibiting Ms Whata, her agents and her contractors from altering or erecting any fence along the Pryor Trust's boundary fronting Te Wirihana Road.

[34] As outlined above at paragraphs [23] – [25], the Pryor Trust is entitled to access Te Wirihana Road without obstruction, and Ms Whata is responsible for erecting the fence that is preventing the Pryor Trust from exercising this lawful right.

[35] Ms Whata's connection to the whenua as haukāinga does not permit her to prevent others from exercising their lawful rights. The erection of a fence along the Pryor Trust's boundary fronting Te Wirihana Road was done without any proper lawful basis. The Whānau Trust's interests in Te Wirihana Road are no greater than the interests of the Pryor Trust, and where propriety interests are shared, so too are decisions affecting those shared interests.

[36] In determining whether to grant a permanent injunction, I must be satisfied that the grant of the injunction would not cause disproportionate hardship, and refrain from granting a permanent injunction that would cause injustice to the respondent. As Ms Whata has no lawful basis in erecting the fence, and no propriety interest in Te Wirihana Road that is greater than the Pryor Trust's interest, no injustice can be caused in prohibiting her from interfering with the fence. Further, I am satisfied that damages are not an appropriate remedy under the circumstances, as a payment of money is no substitute for access.

[37] For these reasons, I am satisfied that an injunction is not oppressive to the trustees of the Whānau Trust, and that it is necessary under the circumstances.

Kupu whakatau *Conclusion*

[38] I am satisfied that the overall justice of the case supports the grant of a permanent injunction. Pursuant to s 19(1)(a) of Te Ture Whenua Māori Act 1993 the Court grants a permanent injunction as follows:

- (a) Prohibiting the trustees of Te Hurihanganui David Wickliffe Whānau Trust, including Ms Whata, her agents, employees, contractors or invitees from altering or erecting any fence along the boundary of at 11B Te Wirihana Road

(Mourea Papakainga 3E14C1) fronting Te Wirihana Road or in any other way obstructing the lawful access to the property owned by the Pryor Trust.

- (b) This order is to be completed without delay under rule 7.5(2)(b) of the Māori Land Court Rules 2011.

[39] Any submissions as to costs to be filed within 21 days.

I whakapuaki i te 2:30 pm i Rotorua, tekau mā ono o ngā rā o Āpereira i te tau 2025.
Pronounced at 2:30 pm in Rotorua on this 16th day of April 2025.

T M Wara
KAIWHAKAWĀ