

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

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

AP-202400000003132

WĀHANGA
Under

Section 19, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Whakapoungakau 9B 13, 15B 10, 14, 10B 6A,
11B 6, 13B 5, 16 2B 2G 2E and Pikirangi 9
(Aggregated)

I WAENGA I A
Between

NGA WINIATA AS TRUSTEE ON BEHALF OF
THE TUKUAHAU WHĀNAU TRUST
Ngā kaitono
Applicants

ME
And

HINEMOA LOUISA NGATAI, JACQUELINE
TANIA MANEY, PARAONE PIRIKA,
RAYMOND ERIC PATIHANA TOLLEY AND
RIHIPA LANA TANIA TAIATINI AS TRUSTEES
OF WHAKAPOUNGAKAU 15B 10 MĀORI
RESERVATION (ROKOKAWA BATH SITE)
Ngā kaiurupare
Respondents

Nohoanga:
Hearing

9 May 2024, 315 Waiariki MB 135-171
(Heard at Rotorua)
30 April 2024, 314 Waiariki MB 43-50
(Heard at Rotorua via Teleconference)

Kanohi kitea:
Appearances

J Murray for Respondents

Whakataunga:
Judgment date

31 May 2024

TE WHAKATAUNGA Ā KAIWHAKAWĀ C T COXHEAD

Judgment of Judge C T Coxhead

Copies to:

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*Winiata v Ngatai, - Whakapoungakau 9B 13, 15B 10, 14, 10B 6A, 11B 6, 13B 5, 16 2B 2G 2E and Pikirangi 9
(Aggregated) (2024) 315 Waiariki MB 272 (315 WAR 272)*

Hei tīmatanga kōrero*Introduction*

[1] It is clear that Nga Winiata has concerns with regard to what is happening on Whakapoungakau 9B 13, 15B 10, 14, 10B 6A, 11B 6, 13B 5, 16 2B 2G 2E and Pikirangi 9 (Aggregated) (the Whenua) administered by the trusts.

[2] Ms Nga Winiata in her capacity as a trustee of Tukuahau Hohepa Whānau Trust has filed an application for an injunction against the trustees of the Whakapoungakau 15B 10 Māori Reservation (the Rotokawa Bath Trust) and Ngāti Uenukukōpako Iwi Trust.¹

[3] Ms Winiata is not a lawyer and has made genuine efforts to file her application with all necessary information along with supporting documentation.

[4] The exact wording of reasons given for the injunction application when first filed by Ms Winiata were:

- (a) Inclusion of other lands into the reservation in 2019/ 338 sec 2.
- (b) Did bath trust seek the Court's consent 338/Sec 12 Grant leases.
- (c) 338 sec 13 Revenue Lease/Occupation license 7 years.
- (d) Failure to pay lease.
- (e) 338 sec 22(1) &/ 338 sec 23(1) Offences
- (f) Enforce 338 section (7) - Appoint new trustees/owners.
- (g) Enforce 338 section (5)(d) Redefine persons of class use or benefit (handed back to original owner control).
- (h) 338 Sec 21 Inquiry into administration of reservation - Failures to perform, Neglect of the tāonga bath.

[5] It was difficult to understand how these points supported the granting of an injunction. I sought clarification as to a number of matters given it was difficult to understand what Ms Winiata was seeking, who she was seeking it on behalf of, what interest

¹ The current trustees of the Whakapoungakau 15B 10 Māori Reservation (Rotokawa Bath Site) are Hinemoa Louisa Ngatai, Jacqueline Tania Maney, Raymond Eric Patihana Tolley and Rihipa Lana Tania Taiatini appointed on 7 July 2022 at 277 Waiariki MB 264-267. Alongside Paraone Pirika appointed on 3 March 2000 at 235 Rotorua MB 86-87.

she had that required an injunction, the extent of the application and what grounds were submitted in support of the injunction application.²

[6] The purpose of seeking clarification was so the Court could better understand the application and to also provide the respondents with a clear application and grounds to respond to.

[7] Despite her best efforts unfortunately Ms Winiata's amended application still lacked clarity and lacks evidence in support of what I have been able to assess as being grounds for her injunction. In a number of places the grounds in support of the application are simply a quote of sections of an Act or regulation.

[8] The clear problem with the application as filed is that while there is a lot of information that has been put before the Court, it is difficult for the respondents to respond and provide meaningful answers to an application that is unclear.

[9] Further it is difficult for the Court to assess the arguments without making a number of assumptions and speculating as to what the application is all about.

[10] To confuse matters even more, when the applicant filed an amended application to the Court on 9 April 2023 her supporting documents included an undated affidavit that the Tukuahau Whānau Trust had presumably filed to the Registrar of the High Court at Rotorua. The affidavit provided that the Tukuahau Whānau Trust and trustee Ms Nga Winiata applied pursuant to a number of sections under Te Ture Whenua Māori Act 1993 (the Act) and the Māori Reservation Regulations 1994 for orders of a similar nature to this injunction application.

[11] At the hearing on 9 May 2024 Ms Winiata confirmed that her application was filed pursuant to ss 19(1)(a); 19(1)(b); 19(1)(ba) (i), (ii), (iii), (iv); 19(1)(d) and 19(4) of the Act.³

[12] As I understand the application, it is for injunctions against the trustees of Whakapoungakau 15 10B and Ngāti Uenukukōpako Iwi Trust. I have presumed that when

² 313 Waiariki MB 116-118.

³ 315 Waiariki MB 135-171.

Ms Winiata states Whakapoungakau 15 10B she means the trustees of the Rotokawa Bath Site (the Trustees).

[13] It was unclear as to why the injunctions were requested against the trustees of Ngāti Uenukukōpako Iwi Trust.

[14] In trying to assess what the grounds in support of the application are I understand that the applicant has concerns with:

- (a) Proposed social housing developments on the Whenua.
- (b) Risk of losing the geothermal baths.
- (c) Risk of losing the customary usage of the baths.
- (d) Whānau being disconnected from the Whenua.
- (e) Loss of whakapapa identity and connection to the Whenua.
- (f) Potential hazards on the Whenua.
- (g) Consenting to put a rehab on to the Whenua without informing the owners/beneficiaries.
- (h) Failure to collect rent monies from those occupying the Whenua.
- (i) Failure to collect lease monies from Puwhakamua.
- (j) The possibility of kaumātua who live on the Whenua becoming displaced and homeless.
- (k) Losing kaumātua from active participation on the Marae.

[15] These are genuine concerns.

Te Ture
The Law

[16] The applicant relies on the following specific subsections of s 19 of the Act, as it relates to injunctions:

19 Jurisdiction in respect of injunctions

- (1) The court, on application made by any person interested or by the Registrar of the court, or of its own motion, may at any time issue an order by way of injunction—
- (a) against any person in respect of any actual or threatened trespass or other injury to any Maori land or Maori reservation; or
 - (b) prohibiting any person, where proceedings are pending before the court or the Chief Judge, from dealing with or doing any injury to any property that is the subject matter of the proceedings or that may be affected by any order that may be made in the proceedings; or
 - (ba) requiring any person to—
 - (i) remove any structure or object from any Maori land or Maori reservation; or
 - (ii) reinstate any structure or object that has been removed from any Maori land or Maori reservation; or
 - (iii) restore any Maori land or Maori reservation to the condition it was in before it was modified by any infrastructure work, earthwork, or other means; or
 - (iv) remedy any damage done to any Maori land or Maori reservation; or
 - (c) prohibiting any owner or any other person or persons without lawful authority from cutting or removing, or authorising the cutting or removal, or otherwise making any disposition, of any timber trees, timber, or other wood, or any flax, tree ferns, sand, topsoil, metal, minerals, or other substances whether usually quarried or mined or not, on or from any Maori land; or
 - (d) prohibiting the distribution, by any trustee or agent, of rent, purchase money, royalties, or other proceeds of the alienation of Maori land or a Maori reservation, or of any compensation payable in respect of other revenue derived from the land, affected by any order to which an application under section 45 or an appeal under Part 2 relates.
- ...
- (4) Every injunction made by the court under this section that is not expressed to be of interim effect only shall be of final effect.

Kōrerorero*Discussion**Section 19(1)(a)*

[17] Section 19(1)(a) of the Act allows the Court to make an order by way of injunction against any person in respect of any actual or threatened trespass or other injury to any Māori land or Māori reservation.

[18] This part of the application fails as the Trustees of the Rotokawa Bath Site are not trespassing on the Whenua that they administer. Further there is no evidence put before the Court that the trustees of Ngāti Uenukukōpako Iwi Trust are trespassing on the Whenua.

Section 19(1)(b)

[19] Section 19(1)(b) allows the Court to make an order by way of injunction prohibiting any person, where proceedings are pending before the Court or the Chief Judge, from dealing with or doing any injury to any property that is the subject matter of the proceedings or that may be affected by any order that may be made in the proceedings.

[20] Section 19(1)(b) is normally granted on an interim basis so that something is stopped while other proceedings are heard.

[21] Ms Winiata does not have any other related proceedings pending before the Court or the Chief Judge.

[22] I could speculate that the undated affidavit of the Tukuahau Whānau Trust submitted with the application, is actually an application for an inquiry into the reservation. There is a heading in the affidavit that states “Māori Reservation Regulations 1994 Inqu[i]ry”. But the document is filed as an affidavit and is not an application like the other applications that the applicant has filed. As I say that would require some speculation on the Courts part.

[23] This part of the application therefore fails.

Section 19(1)(ba) (i), (ii), (iii), (iv)

[24] Section 19(1)(ba) allows the Court to make an order by way of injunction requiring any person to remove any structure or object from any Māori land or Māori reservation; or reinstate any structure or object that has been removed from any Māori land or Māori

reservation; or restore any Māori land or Māori reservation to the condition it was in before it was modified by any infrastructure work, earthwork, or other means; or remedy any damage done to any Māori land or Māori reservation.

[25] It is unclear from the information provided what structures the applicant wants removed or what needs to be restored on the Whenua. In fact, if I understand the applicant's concerns correctly, she has concerns that kaumātua flats will be removed.

[26] It is unclear as to what, if any, structure or earth works needs to be removed or reinstated or modified to what it previously was, or other remedy.

[27] This part of the application fails.

Section 19(1)(d)

[28] Section 19(1)(d) allows the Court to make an order by way of injunction prohibiting the distribution, by any trustee or agent, of rent, purchase money, royalties, or other proceeds of the alienation of Māori land or a Māori reservation, or of any compensation payable in respect of other revenue derived from the land, affected by any order to which an application under section 45 or an appeal under Part 2 of the Act relates.

[29] There is no evidence before the Court that there are any proceeds from an alienation of Māori land or a Māori reservation, or evidence of any compensation payable in respect of other revenue derived from the land, affected by any order to which an application under section 45 or an appeal under Part 2 relates.

[30] Clearly there is no evidence or record of any relevant s 45 order or an order of an Appeal Court.

[31] This part of the application fails.

Section 19(4)

[32] Section 19(4) of the Act provides that every injunction made by the Court under this section that is not expressed to be of interim effect only shall be of final effect.

[33] It is unclear as to what Ms Winiata was seeking in terms of s 19(4). In any case given no injunction has been granted this section is not needed.

Kupu Whakatau

Decision

[34] Clearly, Ms Winiata has some concerns with the administration of the Whenua by the Trustees of the Rotokawa Bath Trust. However, those concerns do not justify the granting of an injunction in this situation.

[35] Ms Winiata does need to set out her concerns in a better form and file the appropriate application for those issues to be put before the Court, which in this case is clearly not by way of an injunction application.

[36] The application is dismissed.

I whakapuaki i te 4:30pm i Rotorua, toru tekau mā tahi o ngā rā o Mei i te tau 2024.
Pronounced at 4:30pm in Rotorua on this 31st day of May 2024.

C T Coxhead

JUDGE