

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

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

AP-20250000005239

WĀHANGA
Under

Section 19, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Otarihau 2B1C

I WAENGA I A
Between

RACHEL WITANA
Te kaitono
Applicant

ME
And

ALICE CAPILL, BRETT SAMSON,
MARGARET TITO, MEREANA ROBINSON,
NIGEL TITO AND REUBEN CAPHILL AS
TRUSTEES OF OTARIHAU 2B1C AHU
WHENUA TRUST
Ngā kaiurupare
Respondents

Nohoanga: 25 April 2025
Hearing (Heard at Chambers on the papers)

Whakataunga: 30 April 2025
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ M P ARMSTRONG
Judgment of Judge M P Armstrong

Hei tīmatanga kōrero*Introduction*

[1] On 24 April 2025, Rachel Witana filed an application seeking an urgent interim injunction to prevent the trustees of the Otarihau 2B1C Ahu Whenua Trust from holding an annual general meeting.

[2] On 25 April 2025, I dismissed the application with reasons to follow. This decision sets out those reasons.

He aha te horopaki o tēnei tono?*What is this application about?*

[3] Otarihau 2B1C is a block of Māori freehold land located on the bank of the Orira River in the Hokianga. This land is administered by seven trustees of the Otarihau 2B1C Ahu Whenua Trust. Ms Witana is one of those trustees. She claims that three of the trustees called an AGM in breach of their obligations.

[4] At 4:03pm on Thursday 24 April 2025, counsel for Ms Witana, Mr Conder and Ms Titter, filed an application seeking an urgent interim injunction without notice to prevent the AGM from going ahead. The AGM was due to be held on Sunday 27 April 2025. Friday 25 April 2025 was ANZAC day, a public holiday. As such, Ms Witana filed this application at the last possible moment.

[5] Counsel for Ms Witana asked the Registrar to refer the application to a judge immediately given that the AGM was due to be held on Sunday, and the following day was a public holiday. The Registrar sent the application to me, by email, at 5:52pm on 24 April 2025.

[6] As the AGM was being held on Sunday, per r 9.6(3) of the Māori Land Court Rules 2011, I determined the application on the papers, without notice, and without appearances. At 11:18am on 25 April 2025, I dismissed the application and directed the Registrar to urgently advise the parties of this decision. Given the interruption of the long weekend, the Registrar only advised the parties of my decision on Monday 28 April 2025.

He aha ngā mātāpono o te ture?*What legal principles apply?*

[7] To obtain an interim injunction, the applicant must demonstrate that:¹

- (a) There is a serious question to be tried;
- (b) The balance of convenience is in favour of an injunction; and
- (c) It is in the interests of justice to grant an injunction.

[8] I consider these in turn.

He pātai motuhake hei whakawā?*Is there a serious question?*

[9] An application seeking an interim injunction is not a stand-alone proceeding. It is an interlocutory application seeking interim relief pending the determination of a substantive application.² When deciding whether there is a serious question, I have to consider whether the substantive application demonstrates a tenable cause of action taking into account the allegations, and questions of fact and law.³

[10] Ms Witana has not filed a substantive application. Her counsel have only filed the interim injunction application. I accept that an interlocutory injunction application can be filed before the substantive proceeding in truly urgent cases.⁴ For the reasons set out below, this is not one of those cases.

[11] Where an interlocutory application is filed before the substantive proceeding, I also expect that counsel would indicate what type of substantive application will be filed and when. Ms Witana's interim injunction application states:

¹ *Klissers Farmhouse Bakeries Limited v Harvest Bakeries Limited* [1985] 2 NZLR 129; *Bowkett v Action Finance Limited* [1992] 1 NZLR 449; and *Lomax v Apatu – Awarua o Hinemanu Trust* (2013) 22 Takitimu MB 282 (22 TKT 282).

² See s 19(1)(b) of Te Ture Whenua Māori Act 1993; *Koia – Wharekahika A13* (2006) 75 Ruatoria MB 155 (75 RUA 155); and *Finnigan v NZ Football Rugby Union Inc* (No 2) [1985] 2 NZLR 181.

³ *Henry Roach (Petroleum) Pty Ltd v Credit House (Vic) Pty Ltd* [1976] VR 309 and *Sutton v The House of Running Ltd* [1979] 2 NZLR 750 at 753.

⁴ See *Tardus Mortgages Ltd v Lister* HC Palmerston North CP38/98, 27 August 1999 and r 7.53 of the High Court Rules which provide some guidance.

The Applicant has longstanding concerns about the management of the Trust by the other trustees of the Trust and intends to bring proceedings in the Court to address those concerns.

[12] This does not indicate, other than in the most general of terms, what type of substantive application will be filed, pursuant to what provision in the Act, or what relief will be sought. As such, I cannot properly determine whether there is a serious question to be tried in any potential substantive application.

[13] Ms Witana argued that the AGM should not proceed as:

- (a) Only three of the seven trustees called the meeting;
- (b) The notice was insufficient; and
- (c) The meeting was being held in Auckland when the land is located in the Hokianga.

[14] If these facts are resolved in Ms Witana's favour, this may invalidate the meeting. This could also give rise to a serious question depending on the nature of any substantive application filed. As noted, I do not know what substantive application will be filed here. It is not my role to guess what that might be, or to repair glaring omissions in Ms Witana's case.

[15] While there are grounds to dismiss the application on this basis alone, I proceed to consider, briefly, the remaining issues.

Pēhea te taurite haratau mō tēnei take?

Where does the balance of convenience lie?

[16] The balance of convenience requires balancing the injustice that will be caused to Ms Witana if an interim injunction is refused and her substantive application succeeds against the injustice to the trustees if I grant the interim injunction but then discharge it in the substantive proceeding.⁵

⁵ *Wellington International Airport Ltd v Air New Zealand Ltd* HC Wellington CIV-2007-485-1756, 30 July 2008 and *Cayne v Global Natural Resources Plc* [1984] 1 All ER 225 (CA).

[17] The notice for the AGM advertises an election of trustees. Ms Witana argues that she and other owners will suffer irreparable harm if the AGM proceeds, and the elections are held, given the way in which the AGM has been called. I do not agree.

[18] If a minority of trustees have called the AGM in the way Ms Witana claims, the AGM may be invalid. However, even if an election is conducted at that AGM, an application will still have to be filed to appoint trustees based on that election.⁶ Unless such an order is granted, those elected at the AGM are not trustees. The existing trustees will continue in office. Ms Witana can oppose any application to appoint trustees based on that election. She can also file other substantive applications if she considers the trustees have breached their obligations. There is no prejudice arising from the AGM requiring an urgent interim injunction.

Kei whea te aronga o te tika me te ture?

Where do the interests of justice lie?

[19] Whether it is in the interests of justice to grant an injunction will depend on the circumstances of the case. Injunctions are an equitable remedy. The parties' conduct will often be relevant. An applicant should come to Court with clean hands and delay, acquiescence or other inequitable conduct may go against the grant of an injunction.⁷

[20] In an unsigned statement supporting her application, Ms Witana states that the majority trustees learnt about the AGM on 17 April 2025. Despite that, Ms Witana only instructed counsel to file this application on 24 April 2025, one week later and the last working day before the AGM. Ms Witana sat on her hands and waited until the final day to take any action. There is no explanation for this delay.

[21] Ms Witana is also an experienced litigant. She has been a party to numerous proceedings in this Court and the Māori Appellate Court.⁸ Filing proceedings in this Court is not new to her. Her conduct, leaving it to the last hour of the last day to file this application,

⁶ Te Ture Whenua Māori Act 1993, ss 220 and 239.

⁷ *New Zealand Fire Service Commission v Mitchell* CA36-99, 12 October 1999 and *Unilever Plc v Cussons (NZ) Pty Ltd* [1997] 1 NZLR 433.

⁸ See the discussion in *Witana v Cutforth - Kohewhata* 27C2A [2022] Maori Appellate Court 405 (2022 MAC 405) at [40].

and then insisting that it be referred to a judge for immediate determination, is inequitable and goes against the interests of justice.

Kupu whakataua

Decision

[22] For these reasons, this application was dismissed.

[23] I did not hear from the respondents. They did not have an opportunity to instruct counsel or to incur costs. Fortunately for Ms Witana, there is no issue as to costs.

I whakapuaki i te 12:00pm i Te Taitokerau, 30th o ngā rā o Āpereira i te tau 2025.
Pronounced at 12:00pm in Te Taitokerau, on this 30th day of April 2025.

M P Armstrong

JUDGE