

**IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHU ROHE**

**CIV-2026-409-111
[2026] NZHC 568**

BETWEEN	TONI COLIN REIHANA Plaintiff
AND	DARREN K REIHANA Respondent

Hearing:	On the papers
Representation:	Plaintiff in person Respondent in person
Judgment:	12 March 2026

JUDGMENT OF DUNNINGHAM J

*This judgment was delivered by me on 12 March 2026 at 1 pm, pursuant to r 11.5
of the High Court Rules*

*Registrar/Deputy Registrar
Date:*

[1] I have had referred to me proceedings which are described as a “statement of claim for judicial review” filed by Mr Reihana.

Senior Courts Act 2016, ss 164A and 164B

[2] The proceedings have been referred to me under s 164A of the Senior Courts Act 2016. This provision (which was recently introduced under the Judicature (Timeliness) Legislation Amendment Act 2025, provides that if a Registrar of the Court believes that a proceeding which is tendered for filing is “plainly an abuse of the process of the Court”, the Registrar may refer it to a Judge of the Court in which the proceeding was filed for consideration as to whether any orders or directions should be made, or given under s 164B.

[3] Section 164B provides that if a Judge “is satisfied that the proceeding is plainly an abuse of the process of the Court ... may, on the Judge’s own initiative, —

- (a) make an order that the proceeding be struck out; or
- (b) make an order or give directions to ensure that the proceeding is disposed of or, as the case may be, proceeds in a way that complies with rules made under s 148 that apply to the relevant court.

[4] Under s 164B(3) any such order may be made on the papers and without giving the person who filed the proceeding the opportunity to make submissions.

The claim

[5] The application is described as an application for judicial review. However, it also appears to encompass a claim in tort described as “the Tort of Wilful Blindness”.

[6] The claim in judicial review claims that the respondent “did violate and breach ... Regulation 4(9) of the Titi Regulations 1978”.¹ Specifically, Mr Reihana pleads that the respondent was appointed by the administering Rakiura Titi Committee as Supervisor for his family’s manu (or land block) on the Muttonbird Island known as

¹ By which I understand he means the Titi (Muttonbird) Island Regulations 1978.

Te Kanawera, Big South West Cape, or Taukihepa. Mr Reihana claims that the first respondent “just charged in and hijacked the majority of owners land division majority decision all by himself – and of maximum benefit to himself!” He also claims that, in April 2025, the respondent assisted the person who was then appointed as Supervisor to “AGAIN circumvent and bypass the mandatory majority Beneficial owners consensus vote by leaving one owner completely out of the voting process”.

[7] He further claims that in April 2024 there was a “similar circumvention of the Reg 4(9) vote”. He is therefore critical of the respondent’s “single minded, self-centred, and Legislative provision breaching antics over the last three years” and describes the respondent’s approach as “to hell with the Law”.

[8] The starting point is whether the respondent, in his current position as a Supervisor pursuant to the Titi (Muttonbird) Island Regulations 1978 (the Regulations), can be the subject of judicial review proceedings. This is because judicial review concerns the exercise of a statutory power of decision, being a power or right that is conferred by or under—²

- (a) any Act; or
- (b) the constitution or other instrument of incorporation, rules, or bylaws of any body corporate and has a power or right to do any of the following:
 - (i) to make any secondary legislation; or
 - (ii) to exercise a statutory power of decision; or
 - (iii) to require any person to do or refrain from doing anything that, but for such requirement, the person would not be required by law to do or refrain from doing; or

² Judicial Review Procedure Act 2016, s 5.

- (iv) to do anything that would, but for such power or right be a breach of the legal rights of the person; or
- (v) to make any investigation or enquiry into the rights, powers, privileges, immunities, duties or liabilities of any person.

[9] It is unclear what statutory power of decision is alleged to have been exercised by the respondent and if it has, what the error in the exercise of that statutory power of decision is.

[10] However, more importantly, reg 6(2) of the Regulations provides as follows:³

If there is any dispute between Supervisors concerning the allotting of manus *or any other dispute arising out of these regulations*, the dispute shall be referred to the Committee who shall call a meeting of the Supervisors *or other parties concerned* to settle the dispute as soon as possible thereafter. Failing agreement being reached by the supervisors or parties, or if they do not attend the meeting so called, the Committee shall make the decision which will be final and binding on all parties.

[11] Regulation 9 provides as follows:

Referral to independent decision maker

- (1) A beneficiary (an **applicant**) who is dissatisfied with a decision of the Committee may apply, in writing to the Committee, for the matter to be referred to an independent decision maker for resolution.
- (2) The Committee must,—
 - (a) within 10 working days after receipt of an application under subclause (1), notify any other parties directly affected by the decision to which the application relates (the **other parties**); and
 - (b) within 15 working days after—
 - (i) receipt of the application, attempt to reach an agreement under subclause (3)(a)(i)(A) if no other parties are involved; or
 - (ii) giving notification to the other parties, attempt to facilitate an agreement under subclause (3)(a)(i)(B) if any other parties are involved.

³ Emphasis added.

- (3) The person to be appointed as independent decision maker—
 - (a) must—
 - (i) be agreed on—
 - (A) by the Committee and the applicant if no other parties are involved; or
 - (B) by the applicant and the other parties if any other parties are involved; and
 - (ii) be appointed by the Committee; but
 - (b) may be decided on, and appointed, by the President of the Arbitrators' and Mediators' Institute of New Zealand Incorporated if—
 - (i) agreement has not been reached under subclause (3)(a); and
 - (ii) the applicant has, within 15 working days after the expiry of the time specified in subclause (2)(b), made an appropriate written request to the President.
- (4) The procedures for resolution may—
 - (a) be agreed on by the applicant and the other parties; or
 - (b) be decided on by the independent decision maker, if agreement has not been reached under paragraph (a).
- (5) The independent decision maker must attempt to resolve the matter by mediation.
- (6) However, if the independent decision maker believes that mediation has failed, or will fail, to resolve the matter, he or she may resolve the matter in any way he or she considers appropriate.
- (7) Nothing in this regulation prevents more than 1 independent decision maker being appointed in relation to a particular matter and, if more than 1 independent decision maker is appointed, this regulation applies with all necessary modifications.

[12] Mr Reihana is well aware of this provision and has had other proceedings involving a dispute under the Regulations stayed as a consequence of failing to go through this regulatory dispute resolution process.⁴ When the Court of Appeal heard his appeal of the decision to stay his proceedings the Court said:⁵

⁴ *Reihana v Rakiura Titi Committee* [2016] NZHC 2048, [2016] NZAR 1491.

⁵ *Reihana v Rakiura Titi Committee* [2018] NZCA 325, [2016] NZAR 1652 (footnote omitted). See also *Reihana v Rakiura Titi Committee* [2026] NZHC 72 declining an application to lift the stay.

[17] Underpinning the claims appears to be an intra-whānau dispute over rights at Hinekuha manu and what may be a broader dispute among Rakiura Māori about rights and obligations under tikanga. Through his proceedings, Mr Reihana seeks to take decisions about these matters out of the hands of the Supervisor for the time being, the Committee for the time being, and any independent decision maker appointed under reg 9.

[18] Mr Reihana justifies this by arguing that the tort and misfeasance claims cannot be decided under the regulations and questions of interpretation of the regulations must be answered by the courts. ... But it remains the case that the underlying rights and obligations can and should be resolved under the Regulations, because they involve tikanga and because the Regulations vest governance of such matters in Rakiura Māori. That process should help clarify and reduce any remaining issues that must be resolved by the courts.

[19] Mr Reihana submits that most of his allegations ... are amenable to judicial review. He argues that it would be time consuming and inefficient to insist that disputes under the Regulations be resolved before the High Court proceedings, which could settle everything. We do not agree. As just explained, we think the core issues should be resolved under the Regulations. In addition, the factual allegations could not be settled without making findings on contested facts, meaning that they are not suited to the processes of judicial review. Oral evidence would be required. Mr Reihana would be wise to recognise that a judicial review application may fail for this reason alone. And finally, a judicial review is not an appeal; should he succeed in reviewing any given decision, it would likely be returned to the Committee for further decision.

[13] In my view, the same approach must apply here. Whatever the dispute Mr Reihana has with the respondent (which must relate to what he has done since being appointed Supervisor as prior to that there is not even an argument that his actions could be judicially reviewed) he should be required to first comply with the dispute resolution process contained in the Regulations. To allow him to proceed with this application would be an abuse of process because there is an alternative and more appropriate method of resolution under the Regulations, and a right of appeal under reg 9.

[14] To the extent he wishes to pursue a “Tort of Wilful Blindness” there is no such tort recognised in the common law and there is no reason for that head of claim in the proceedings to be allowed to continue independently.

[15] I also note, for the applicant’s benefit, that relief on judicial review almost always comprises an order setting aside the decision and directing the decision maker to reconsider it. The relief sought, in the form of “Exemplary” and “Aggravated” damages has no real prospect of success.

[16] Accordingly, I recognise that on the face of the document there appears to be a dispute over whether the respondent, as newly appointed supervisor, has complied with his obligations under the Regulations. I am not prepared to strike the proceeding out as an abuse of process, although it has many shortcomings.

[17] However, I do consider it appropriate to stay the proceedings until and unless the dispute resolution processes in regs 6(2) and 9 have been complied with.

Result

[18] Orders accordingly.

Copy to:
T C Reihana, Plaintiff
D K Reihana, Respondent