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

A20170005385

WĀHANGA *Under*	Sections 239 and 240, Te Ture Whenua Māori Act 1993
MŌ TE TAKE *In the matter of*	Whakarewarewa Lot 29 Block (Wāhiao Meeting House)
I WAENGA I A *Between*	HAPETA WHARERAU, MARAMENA RALPH and KAREN WALMSLEY Ngā Kaitono *Applicants*
ME *And*	RANGINGANGANA WADE Te Kaiurupare *Respondent*

Nohoanga: *Hearing*	10 May 2019, 212 Waiariki MB 126-132 2 September 2019, 218 Waiariki MB 280-286 12 September 2019, 220 Waiariki MB 254-307 (Heard at Rotorua)
Kanohi kitea: *Appearances*	M Sharp for Applicants P Cornege` for Respondent
Whakataunga: *Judgment date*	20 March 2020

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

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Hei timatanga kōrero - Introduction

[1] Wāhiao Marae sits in the heart of Whakarewarewa, an iconic village surrounded by geothermal vents and boiling hot pools. The underlying lands were set aside as a Māori Reservation for Ngāti Wāhiao. Ngāti Wāhiao is a hāpu of Tūhourangi, and while all Ngāti Wāhiao are Tūhourangi, not all Tūhourangi are Ngāti Wāhiao. Whether this distinction is at the heart of the conflict, or whether there are other underlying issues involved, the fact is that over the last five years there have been a series of applications before this Court concerning Wāhiao Marae.

[2] The applicants are Hapeta Wharerau, Karen Walmsley and Maramena Ralph. Hapeta Wharerau and Karen Walmsley are trustees of Wāhiao Marae (Whakarewarewa Lot 29 Māori Reservation) and have applied for the replacement of trustees. The respondent, Rangingangana Wade, opposes the appointment of trustees..

[3] There are two issues for determination:

(a) Was the intention to hold an election of trustees sufficiently advertised?

(b) Was the whakapapa verification process sufficient to ensure that only those who whakapapa to Ngāti Wāhiao could vote?

Kōrero whānui - Background

[4] Wāhiao Marae sits on two Māori Reservations, Whakarewarewa Lot 29 and Whakarewarewa Lot 52. However, the application before the Court only concerns Lot 29.

[5] On 30 September 1937 an order was made vesting the right to possession of the meeting house and other buildings in connection with Whakarewarewa Lot 29 ("the land"), together with the land, in 26 people, upon trust for the members of the Ngāti Wāhiao hapū.[1] On 18 September 1972, a recommendation was made that land be set apart as a Māori Reservation for the common use and benefit of the Ngāti Wāhiao hāpu, and the land was formally set apart as a Māori Reservation on 23 November 1972.[2]

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1 88 Rotorua MB 72 (88 ROT 72).

2 164 Rotorua MB 373 (164 ROT 373), "Setting Apart Māori Freehold Land as a Māori Reservation" (23 November 1972) 97 *New Zealand Gazette* 2631, at 2649.

[6] An order was made vesting the Māori Reservation in 13 trustees on 1 December 1972,[3] and further trustees were appointed in 1975.[4] The nine current trustees were appointed in 2001.[5] Until 30 July 2017, the trust did not have a charter established and was not holding regular annual general meetings ("AGMs") or replacing its trustees.

[7] On 17 March 2015, the respondent applied to the Court, seeking an inquiry into the administration of the Māori Reservation.[6] The Court considered that the trustees appeared to be performing satisfactorily, and the trustees indicated that they would hold an annual general meeting for the election of trustees. The application was dismissed on 22 June 2016.[7]

[8] On 29 March 2017, the respondent filed a further application seeking an inquiry into the administration of the Māori Reservation.[8] Two of the issues raised in this application, amongst others, was the lack of a marae charter and the need for the appointment of further trustees on an interim basis. The application was heard on 5 July 2017, where the trustees advised that an AGM would be held on 30 July 2017 to deal with a number of matters, including the establishment of a marae charter and 'trusteeship'.[9] The application was adjourned pending the outcome of the AGM. This application is yet to be determined.

[9] Following the AGM, the trustees filed an application to appoint four trustees elected at the AGM to replace those trustees who are deceased, and to remove two trustees who have resigned. The Court appointed replacement trustees on 3 November 2017.[10] The respondent appealed that decision, and on 10 May 2018 the Māori Appellate Court upheld the appeal on the basis that there was a breach of natural justice.[11] The application was remitted to this Court for rehearing, and the application was heard on 12 September 2019.[12]

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3 170 Rotorua MB 67-68 (170 ROT 67-68).
4 180 Rotorua MB 214 (180 ROT 214).
5 260 Rotorua MB 113-119 (260 ROT 113-119).
6 Application A20150002169.
7 143 Waiariki MB 88-89 (143 WAR 88-89).
8 Application A20170002626.
9 167 Waiariki MB 20-32 (167 WAR 20-32).
10 175 Waiariki MB 81-97 (175 WAR 81-97)
11 *Wade v Rangiheuea – Whakarewarewa Lot 29 (Wāhiao Meeting House)* [2018] Māori Appellate Court MB 283 (2018 APPEAL 283).
12 220 Waiariki MB 254-307 (220 WAR 254-307).

Ngā kiritake me ō rātou ake whakapono - The parties and their positions

[10] The applicants seek a replacement of trustees to give effect to the elections held at the AGM on 30 July 2017. They say that the notice of the AGM was sufficient to reasonably bring to the attention of Ngāti Wāhiao hāpu members that there would be an election of trustees at the meeting. They also say that the whakapapa checks on those registering at the meeting were sufficient to ensure that only Ngāti Wāhiao were able to register.

[11] The respondent says that an order to appoint replacement trustees should not be granted. She says that the notice was insufficient in that it failed to clearly state that an election would be held, and the term "trusteeship" is ambiguous. She also says that the registration and verification process at the AGM on 30 July 2017 was flawed.

Te Ture - The Law

[12] Sections 222 and 338 of Te Ture Whenua Māori Act 1993 ("the Act") set out the relevant considerations concerning the appointment of trustees. There is significant case law regarding the administration and management of Māori reservations, including the requirements for notice of trustee elections and the necessity for acceptability to the beneficiaries of any prospected nominees.[13]

[13] Section 222 of the Act sets out the relevant factors for the appointment of trustees. In deciding whether to appoint an individual as a trustee, the Court must have regard to the ability, experience, and knowledge of the individual, and shall not appoint an individual unless satisfied that the appointment would be broadly acceptable to the beneficiaries. The leading authority on the appointment of trustees is the Court of Appeal decision *Clarke v Karaitiana*.[14] In that case, the Court of Appeal confirmed that the views of the owners will be compelling, unless there are relevant disqualifying considerations.

[14] I adopt that approach.

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13 See for instance *Gibbs v Te Rūnanga o Ngāti Tama – Part Lot 2 and Lot 1 DP 4866 (TNK4/901) and Section 1 SO 103559 CT (TNK 4/792)* (2011) 274 Aotea MB 47 (274 AOT 47); *Bristowe - Section 4C1 Block II Tuatini Township* (2002) 151 Gisborne MB 250 (151 GIS 250); and *The Trustees of the Tauwhao Te Ngare Trust v Shaw - Tauwhao Te Ngare Block* [2014] Māori Appellate Court MB 394 (2014 APPEAL 394).

14 [2011] NZCA 154 at [51]-[53].

Kōrerorero - Discussion

Was the whakapapa verification process sufficient to ensure that only those who whakapapa to Ngāti Wāhiao could vote?

[15] The applicants' position is that the whakapapa checks on those registering at the hui was sufficient to ensure that only those who whakapapa to Ngāti Wāhiao were able to register and vote on the day. Mr Wharerau gave evidence in relation to the registration process and said that there were a number of registration tables on the marae. The registration tables had three sources of whakapapa, and those people wishing to attend the meeting were to give their whakapapa. Mrs Mihinui said that the whakapapa records relied upon are highly reputable sources, being:

(a) 2015 Tuhourangi Whakapapa Wananga presented by Mauriora Kingi, the foremost genealogist of his time;

(b) 2016 Te Whare Korero o Tuhourangi Wananga from the writings of Mauriora Kingi edited by Rangitihi Pene; and

(c) the 1883 Native land Court listings of the three Koromatua of Huarere; Hinganoa and Tukiterangi.

[16] Mr Wharerau said that two people sat on each registration table, and that they often moved between the different tables to ensure consistency. He said that at least four people sitting at the registration tables grew up in Whakarewarewa and were therefore familiar with the whānau of Ngāti Wāhiao. Many of those who wanted to register were well known as being Ngāti Wāhiao and could whakapapa to more than one koromatua. When Mr Wharerau knew that people had multiple connections they were given the opportunity to select which koromatua they connected to.

[17] When questioned as to whether anyone was denied registration, he said that there were two occasions where people had attempted to register for the meeting, but he had turned them down and asked them to come back with their whakapapa. One came back and provided the evidence, the other did not.

[18] Those wanting to attend the meeting were able to register on both Saturday 26 July 2017 and Sunday 27 July 2017. In total, 158 people registered to attend the meeting. Mrs Mihinui says that during the meeting, attendees were asked to stand if they could whakapapa to Ngāti Wāhiao. Everyone stood and no objections were made by those present regarding whakapapa, including Mrs Wade and Mrs Paul.

[19] The respondent's position is that there is no proper evidence that only Ngāti Wāhiao attended the meeting on 27 July 2017. Mrs Wade said that when she arrived at the meeting she did not see any type of verification process for those entering the wharenui. Ms Paul said that she did not see anyone at the registration tables going through the authorities to confirm whakapapa. She also says that she was not required to fill out any verification of whakapapa and was told at the desk "we know who you are, just sign the attendance register". The only requirement was for her to identify which of the three Ngāti Wāhiao hāpu she connects to.

[20] Ms Paul gave evidence concerning the Te Maru o Ngāti Wāhiao roll, and the process required to be registered on that roll. Ms Paul advised that she performs an administrative role for such registration. She receives the applications, reviews them and then provides them to a verification committee. She said that applicants are required to provide the names of their immediate whanau, six generations of whakapapa and name the tupuna the person connects to in the 1883 Native Land Court list.

[21] Ms Paul said that, of the attendees at the meeting, 47 were not registered with Te Maru o Ngāti Wāhiao. However, by 25 June 2019, 24 of the attendees were registered on the Te Maru o Ngāti Wāhiao roll, and by 12 September 2019, Ms Paul confirmed that a further 10 people had registered. When questioned, Ms Paul advised that of the remaining 14 attendees, she could say that a number of them were relatives of people who were on the roll.

[22] Ultimately there is no evidence that anyone other than Ngāti Wāhiao attended the meeting. It is clear that the sources of whakapapa relied on are authoritative, and while the process for verifying whakapapa is not as stringent as other verification processes, the evidence is that those who attended the meeting are Ngāti Wāhiao. If a more stringent verification process is sought, then it is for Ngāti Wāhiao to determine, and have the

processes set out in their marae charter. It would be wrong for the Court to dictate how the trust should determine its beneficiaries.

[23] Ultimately, the criticisms levelled at the trustees' verification process cannot be sustained.

Was the intention to hold an election of trustees sufficiently advertised?

[24] The meeting of 30 July 2017 was well advertised, with notices being placed in the Rotorua Daily Post on 1, 15, 28 and 29 July 2017 and on Facebook. The issue however, is not the extent of the advertising, but whether the reference to "trusteeship" on the agenda made it clear that there would be an election of trustees.

[25] The applicants' position is that the notice for the meeting was sufficient to bring to the attention of Ngāti Wāhiao that there would be an election of trustees at the meeting. Mrs Mihinui said that the first matter on the agenda was the approval of the charter, and that, if approved, the charter would set the process for election. Mrs Mihinui also said that she was present in the Māori Land Court hearing of 5 July 2017, where the upcoming meeting and agenda were discussed. She said that it should have been apparent to all in Court, including the respondent, that an election of trustees would be held at the meeting if the charter was approved.

[26] The respondent's position is that the notice was insufficient. The plain meaning of "trusteeship" refers to a trustee's performance, which was relevant given the respondent's concerns regarding trustee performance. Mrs Wade said that she did not understand that an election for new trustees would be held, and her views are echoed in the evidence of Grace Hoet and Lori Paul. She said that she objected to the elections at the meeting, as did others.

[27] Turning to the law, ss 239(2) and 338 of the Act provide for the appointment and replacement of trustees to Māori reservation trusts. As noted, there is significant case law regarding the administration and management of Māori reservations, including the requirements for notice for trustee elections and the necessity for acceptability to the

beneficiaries of any prospected nominees.[15] Ultimately, beneficiaries are entitled to notice as to the purpose of a meeting before they attend. As set out by Judge Harvey in *The Trustees of the Tauwhao Te Ngare Trust v Shaw - Tauwhao Te Ngare Block*:[16]

> [90] On the issue of notice, this Court has long emphasised the critical need for notice to owners of Māori land whenever proceedings affecting their interests are commenced. In the decision in *re Uruamo v Akarana Ongarahu B (Rewiti Marae)* this Court held that notice of a meeting without an agenda was deficient with the result that the existing trustees were not given notice that they were likely to be removed. Then in *Cameron – Part Maretai 3B* following a hui of beneficiaries the Māori Land Court made orders removing trustees and appointing replacements. Concerning the replacement trustees, this Court acknowledged that the advertisements for the hui did not state that new trustees were sought. The orders removing trustees were affirmed while the orders appointing new trustees were revoked because of this defect in notice.

[28] The applicants have relied on the decision of *Davies – Te Haroto Marae Maori Reservation* to support their position that the term "trusteeship" is sufficient notice to the beneficiaries that an election would take place.[17] Like the present case, the term "trusteeship" was included on the agenda of the advertised meeting.

[29] In my view, *Davies – Te Haroto Marae Maori Reservation* is particular to its own set of facts. In that case, issues concerning the trustees had been before the Court on three occasions over a six-month period before the meeting electing trustees. It is not clear what exactly was discussed at those hearings, however it appears that, based on submissions, elections had been discussed. Ultimately, the discussions were sufficient for Judge Harvey to determine that beneficiaries ought to have known that an election would take place.

[30] In the present case, there is no evidence of discussions concerning elections with any beneficiaries prior to the meeting on 27 July 2017. While the parties had been in Court concerning other applications, this was infrequent, and the applications were directed at the trustees' performance. An opportune time for the trustees to set the record straight about elections was the judicial conference of 5 July 2017. At the judicial conference, Judge Coxhead asked the trustees whether the agenda for the AGM would include "elections". Rather than answer in the affirmative, Mrs Mihinui's response was that the agenda

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15 *Gibbs v Te Rūnanga o Ngāti Tama – Part Lot 2 and Lot 1 DP 4866 (TNK4/901) and Section 1 SO 103559 CT (TNK 4/792)* (2011) 274 Aotea MB 47 (274 AOT 47); and *Bristowe - Section 4C1 Block II Tuatini Township* (2002) 151 Gisborne MB 250 (151 GIS 250).

16 *The Trustees of the Tauwhao Te Ngare Trust v Shaw - Tauwhao Te Ngare Block* [2014] Māori Appellate Court MB 394 (2014 APPEAL 394).

17 *Davies – Te Haroto Marae Maori Reservation* (2015) 45 Takitimu MB 174 (45 TKT 174).

included “trusteeship”.[18] In my view, this missed opportunity to clarify matters is fatal to the applicant’s case.

[31] I accept the submission of Mr Cornege`, that *Davies – Te Haroto Marae Māori Reservation* should be the exception as opposed to the rule and find that the use of the word “trusteeship” did not provide sufficient notice to the beneficiaries that an election would be held.

Kupu whakatau - Conclusion

[32] For the reasons set out in this decision the orders sought cannot be granted, and therefore the application is dismissed.

I whakapuaki i te 2:00pm i te Waiariki te 20 o ngā rā o Huitanguru te tau 2020.

T M Wara
JUDGE

[18] 167 Waiariki MB 20-32 (167 WAR 20-32) at 26.