

MĀORI LAND COURT OF NEW ZEALAND
WAIARIKI DISTRICT

IN THE MATTER OF Whakapoungakau 24 (Tikitere) (subject
land)

AND An application by Tai Eru and Kereama
Pene, for a direction that the Registrar call a
meeting of assembled owners of the subject
land

Memorandum of counsel

Dated: 10 July 2014

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May it please the Court:

1. This memorandum is filed in accordance with the directions given by the Court during the telephone conference of 3 July 2014. The Court directed that the representatives of the two remaining trustees of the Tikitere Trust file a joint memorandum by 10 July 2014. For the reasons set out below, that has not been possible. The applicants therefore file their separate memorandum.

Agreement not possible

2. The applicants have sought to agree matters with the only other remaining trustee of the Tikitere Trust, Wiremu Kingi. Mr Dowthwaite summoned Mr Eru to a meeting to discuss these matters on Tuesday, 8 July 2014. Mr Eru attended with his legal representative, Ms Hall, and with Mr Michener who has been providing him with professional and administrative assistance in relation to these matters. Mr Dowthwaite refused entry to the meeting to Mr Michener. Nevertheless, Mr Eru attended with Ms Hall and attempted to resolve matters in good faith. This was not possible.
3. As is explained in more detail below, the applicants found Mr Kingi's position on these matters to be unreasonable. The stance he took and his related action were not conducive to arranging a mutually acceptable process. Rather, they seem designed to delay and disrupt the process that he has, throughout, been attempting to prevent occurring.
4. Since the meeting, Mr Dowthwaite has produced a note of what he says was agreed at the meeting. This note has now been filed. The applicants do not accept the note as accurate.

Applicants' position

5. The applicants' position on the meeting is simple. There are two remaining trustees. They do not have a quorum to determine anything on behalf of the trust. There needs to be a meeting as soon as possible.

The meeting process should be arranged to give equal standing to each trustee.

6. The applicants therefore propose:
 - 6.1. all financial accounts to be filed with the Court and distributed by 17 July 2014 (two weeks after the Court directed that they be filed immediately);
 - 6.2. nominations for new trustees called for on 24 July 2014;
 - 6.3. each trustee prepare their own trustee report and distribute it by 31 July 2014;
 - 6.4. nominations for new trustees close on 7 August 2014;
 - 6.5. the meeting to take place at the Waiohewa Marae on 16 August 2014;
 - 6.6. a neutral chairperson to be appointed to run the meeting – Mr White is proposed but other suggestions are welcomed; and
 - 6.7. each trustee to be given equal time to address the meeting either by themselves or with other speakers (suggestion of two speakers per trustee for a total of 40 minutes each side).

Mr Kingi's chairmanship

7. In contrast to the above proposal, Mr Kingi has appointed himself the chairman of the trust. In that role he insists that it is for him to prepare the trustee report.
8. Mr Kingi says he will address the meeting on behalf of the trust. He suggests doing this for an hour followed by an half an hour of question time. Mr Eru and Ms Hall can have a short time to address the meeting after Mr Kingi is finished (suggested total time of 30 minutes).
9. Mr Kingi insists that voting must not start until he has finished speaking, but must then commence before anyone else has spoken.

Mr Kingi also has his own view on venue and dates as discussed below.

10. During the 8 July 2014 meeting, Mr Kingi offered to produce financial reports by 22 July 2014, but reference to such an agreement did not appear in Mr Dowthwaite's note.
11. Mr Kingi has no right to declare himself chairman and to take over the management of the Trust. Even if he were chairman, he seems not to understand the limited role that a chairman has in a trust of this kind. This Court has produced documentation to explain the role of the chairman.¹ Delegation of management of the kind envisaged by Mr Kingi is not lawful.² There is no such thing as a "managing trustee."³

Early advert

12. Over the objections of the applicants, Mr Kingi has gone ahead and already advertised the AGM. The advert appeared in the Rotorua Daily Post today, Thursday 10 July 2014. A copy is attached.
13. This advert served no purpose except to attempt to disrupt the applicants' meeting that is taking place on 12 July 2014. The details for the AGM were yet to be agreed between the parties, let alone with the Court. The advert is likely to create confusion amongst owners.

Date

14. As set out in the advert, Mr Kingi seeks to have the meeting on 30 August 2014. This is the last possible weekend that would comply with the Court's 60 day direction. The applicants see this as a further attempt by Mr Kingi to delay the process. However, there

¹ Maori Land Court *Trustees' Duties* (Ministry of Justice, 2010), available at www.justice.govt.nz, at 3.

² The rule against delegation is discussed in Kelly & Kelly *Garrow and Kelly on the Law of Trusts and Trustees* (7 ed, LexisNexis, 2013) at [20.92].

³ *Rodney Aero Club Inc v Moore* [1998] 2 NZLR 192 (HC) at 195 per Hammond J.

are more important points of disagreement and the applicants do not seek to take issue with this date.

15. More important on finalising the date will be the availability of Court staff. The applicants do say that it is necessary for the date to be in the weekend. As discussed before with the Court, the owners of this trust are widespread and will need to travel significant distances to attend the meeting. Meetings held during the working week are simply not able to be attended by most owners.

Venue

16. Mr Kingi refuses to allow the meeting to take place at the tribal marae, Waiohewa Marae. In his self-appointed role of chairman, he says he has booked a venue (before discussing the date or the venue with the applicants). He says that the marae is not a neutral venue.
17. The use of the marae as a venue is extremely important to the applicants and not a matter that they are willing to compromise on this issue.
18. Mr Kingi's position is not reasonable. The trust lands are in the rohe of Ngāti Rangiteaorere. All of the owners of the trust are members of Ngāti Rangiteaorere. Mr King is a member of Ngāti Rangiteaorere, as is Mr Eru.
19. The marae is *the* neutral venue. All of the families of this tribe are represented and equal. It is the customary meeting place where Ngati Rangiteaorere does its business. The Court will be familiar with the tikanga significance of the tribe being able to discuss its issues on the marae. The importance of these principles is well understood by the courts. Hearings of the Family Court and the Youth Court are regularly held in marae.
20. The applicants do not regard a hotel as a neutral venue for the people of this tribe. They regard it as a foreign venue.

Participants at the meeting

21. The applicants are aware of the concern of people other than owners participating in the meeting and the voting. This is a legitimate concern, but applies irrespective of venue. There must, of course, be carefully observed procedures for registration with only owners and those holding powers of attorney given access to voting papers.

Other directions for the meeting

22. It is submitted that the applicants proposals set out above are a reasonable approach in the circumstances of this trust. They provide for equal standing for the two trustees. The Court should make directions accordingly.
23. Other matters of meeting procedure could be left to be determined by the neutral chair with an understanding that they are intended to provide for such equal standing.

Trust solicitor and the use of trust funds

24. At the 8 July 2014 meeting and in the subsequent note, Mr Dowthwaite held himself out as Trust solicitor. It is noted that he is also purporting to act for the trust in the document filed today with the Court.
25. Mr Dowthwaite has no such role. He is instructed by one of two trustees. Mr Kingi has no authority to instruct Mr Dowthwaite on behalf of the whole trust.
26. In asserting this role, Mr Dowthwaite also seems to be under a misconception about the nature of this trust or about the most basic elements of trust law. This is an unincorporated trust. The trust has no legal personality. It is not possible for a lawyer to act "for the Trust".
27. Even if such a role could exist and if Mr Kingi had the power to grant it, Mr Dowthwaite would be conflicted from acting in that role given that he acts for one trustee against another in other matters.

28. The applicants are concerned, given these representations, that Mr Kingi is funding his legal representatives out of trust funds. If that is the case he needs to be directed to stop.

Urgency

29. The deadline of 10 July 2014 for this memorandum was set so that the attendees at the meeting on 12 July 2014 could be informed of the details for the AGM. Any decisions that the Court was able to make in this very limited time will be gratefully passed on to that meeting.

Dated: 10 July 2014



Felix Geiringer
Counsel for the applicants