

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

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE**

**CIV-2017-485-242
CIV-2017-485-247
CIV-2017-485-255
CIV-2017-485-302**

IN THE MATTER OF the Marine and Coastal Area (Takutai Moana) Act 2011

IN THE MATTER OF an application for an order recognising Customary Marine Title and Protected Customary Rights

BY HARO TE MOANA EDEN MCILROY
ON BEHALF OF TE WHĀNAU A
RAKAIROA KI WAIPIRO AND
TE WHĀNAU A IRITEKURA
(CIV-2017-485-242)

BY ROGER TICHBORNE ON BEHALF OF
NGĀ HAPŪ O TOKOMARU ĀKAU
(CIV-2017-485-247)

BY MARISE LANT FOR NGĀ HAPŪ O
KOKORONUI KI TE TOKA A TAI AU
TAKUTAI KAITIAKI TRUST
(CIV-2017-495-255)

BY TATE PEWHAIRANGI AND OTHERS
ON BEHALF OF TE WHĀNAU A
RUATAUPARE KI TOKOMARU
(CIV-2017-485-302)

On the papers:

Counsel: D Naden and M Yogakumar for CIV-2017-485-247
B Lyall for CIV-2017-485-255
C Beaumont for CIV-2017-485-242
N R Milner for CIV-2017-485-302
G Melvin for Attorney-General

Minute: 13 April 2021

MINUTE (NO. 3) OF CHURCHMAN J

[1] All four applicants have now filed memoranda in anticipation of the judicial conference scheduled for 14 April 2021.

[2] Mr Beaumont, counsel in CIV-2017-485-247 (McIlroy on behalf of Te Whānau a Rākairoa ki Waipiro and Te Whānau a Iritekura) wants an adjournment of his client's application for at least six months to explore the possibility of removal of the applicants from Schedule 2 to the Ngāti Porou Act. Unless the applicants are removed from Schedule 2, the Court is unable to further consider this application.

[3] Mr Milner, counsel in CIV-2017-485-302 (application by Tate Pewhairangi on behalf of Te Whānau a Ruataupare ki Tokomaru) indicates that if application CIV-2017-485-247 (Tichborne on behalf of Ngā Hapū o Tokomaru Ākau) is set down for hearing, his client will reserve his position in relation to their form of any participation in a hearing but would comply with timetable directions. The memorandum also confirms that the applicant has accepted an invitation from the applicants in CIV-2017-485-247 to meet and discuss issues as between them. The memorandum submitted that a hearing and determination on the question of mandate was not necessary.

[4] Mr Naden and Ms Yogakumar, counsel in CIV-2017-485-247 (Tichborne on behalf of Ngā Hapū o Tokomaru Ākau) confirmed that the issue of mandate was unresolved. The minute confirmed that a meeting with the applicants in CIV-2017-485-302 had been proposed and accepted with the purpose of discussing mandate issues. Notwithstanding the proposed meeting, the applicants sought a preliminary hearing to address mandate issues.

[5] The memorandum also advised the Court that the applicant was meeting with Te Arawhiti representatives in Tokomaru Bay on 19 April 2021 to discuss direct Crown engagement.

[6] Mr Lyall, counsel in CIV-2017-485-255 (Lant on behalf of Ngā Hapū o Kokoronui ki te Toka a Taiau Takutai Kaitiaki Trust) advised the Court that Te Arawhiti officials were meeting the applicant next week regarding direct engagement. There was a request that the

application be adjourned until 15 June 2021, and the case is scheduled to be called at the case management conference (CMC) in Gisborne.

Analysis

[7] Counsel are thanked for their memoranda, receipt of which has obviated the need for the CMC scheduled for tomorrow, 14 April 2021.

[8] These matters are accordingly all adjourned to the CMC in Gisborne on 15 June 2021.

Direct engagement

[9] Applicants are entitled to choose either direct engagement or litigation. I am aware that many applicants issued proceedings in order to preserve their position because, although their preference was direct engagement, they had not received a response from the Crown indicating whether the Crown wished to engage directly with them.

[10] It is not permissible for an applicant to simultaneously engage directly with the Crown in an attempt to reach a settlement agreement while at the same time actively pursuing litigation.

Mandating

[11] The only current outstanding issue which the Court could productively address at the CMC that was proposed for 14 April, is the issue of whether or not a separate hearing needs to be held on the question of mandate.

[12] As the parties involved in this issue have agreed to meet to address this issue, it is preferable that they be given the opportunity to resolve the matter in accordance with tikanga rather than have the Court impose an outcome on them.

[13] When the matter is called at the CMC on 15 June, the Court will expect to be updated on the following:

- (a) the discussions between the applicants in CIV-2017-485-247 and CIV-2017-485-302 regarding mandate;
- (b) progress that may have been made by those applicants seeking direct engagement in preference to litigation;
- (c) a report from counsel in CIV-2017-485-247 on progress towards possible removal of the applicants in that matter from Schedule 2 of the Ngāti Porou Act.

P.B. Churchman J

Churchman J