

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

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

**CIV-2017-404-479  
CIV-2017-485-217  
CIV-2017-485-309  
CIV-2017-485-316**

UNDER THE Marine and Coastal Area (Takutai Moana)  
Act 2011

IN THE MATTER OF applications by Te Aitanga o Ngā Uri o  
Wharekauri, Hunau of Tame Horomona  
Rehe, Ngāti Mutunga o Wharekauri and  
Moriōri Imi Iwi

Hearing: On the papers

Counsel: C Hirschfeld and B Tupara for Te Aitanga o Ngā Uri o  
Wharekauri  
T Bennion and E Whiley for Hunau of Tame Horomona Rehe  
T J Castle for Ngāti Mutunga o Wharekauri  
C Griggs for Moriōri Imi Iwi

Minute: 24 July 2024

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**MINUTE OF CHURCHMAN J**

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**Preliminary**

[1] I note that a number of the memoranda filed for this Case Management Conference (CMC) list the Attorney-General as the defendant in the proceedings. All applications under the Marine and Coastal Area (Takutai Moana) Act (the Act) 2011 are originating applications. There is no defendant. Neither is the Attorney-General automatically the contradictor in respect of all applications. The role of the Attorney-General in relation to claims for recognition orders under the Act was set out

clearly in this Court's decision in *Re an application by Rihari on behalf of Ngāti Torehina* [2019] NZHC 2658.

**CIV-2017-404-479 Te Aitanga o Ngā Uri o Wharekauri**

[2] Preparation of historical evidence is underway but evidence gathering has been deferred indefinitely as a result of the inability of Te Arawhiti to fund it. The application is adjourned for 12 months to be called again at the 2025 Wellington CMC and counsel's attendance at the 26 July 2024 CMC is excused.

**CIV-2017-485-316 Hokotehi Moriori Trust**

**CIV-2017-485-217 Hunau of Tame Horomona Rehe**

[3] A joint memorandum of counsel has been filed on behalf of these two applicants. These applicants are involved in Judicial Review proceedings relating to the Crown's signing of an agreement in principle with Ngāti Mutunga o Wharekeuri Iwi Trust. Counsel submits that the outcome of this proceeding is likely to have a significant impact on the present proceedings.

[4] On that basis these applicants contend that it is premature to timetable present proceedings. The applicants also note that these proceedings are not proceedings which Te Arawhiti has provided funding for. These matters are both adjourned for 12 months to be called again at the 2025 Wellington CMC. Council's attendance at the 26 July 2024 CMC is excused.

**CIV-2017-485-309 Ngāti Mutunga o Wharekauri Iwi Trust**

[5] In a memorandum dated 17 July 2024, counsel refers to the joint memorandum filed by counsel for Moriori dated 8 July 2024 in respect of applications CIV-2017-485-217 and CIV-2017-485-316. That memorandum refers to separate High Court Judicial Review proceedings (CIV-2023-485-162) and in particular, to that part of the pleadings in that matter which assert that Moriori are not Māori.

[6] Counsel asserts that this means that Moriori are not entitled to pursue a claim under the Act because the Act relates exclusively to the customary interests of Māori

in the common marine and coastal area. The memorandum asserts that the High Court therefore has no jurisdiction under the Act to make any recognition orders in favour of Moriori. The memorandum says that unless the two Moriori applications are withdrawn it will apply to the High Court for orders that they be struck out.

[7] The memorandum also notes that previously I had drawn to all counsel's attention the fact that I had, when in practice, acted for some Moriori interests. Mr Castle now seeks my recusal in respect of all matters including the Case Management Conference set for 26 July 2024 and anything further to do with the Moriori applications CIV-2017-485-217 and CIV-2017-485-316 as well as the Ngāti Mutunga application CIV-2017-485-309.

[8] The only directions sought by Ngāti Mutunga at the 26 July 2024 CMC are that their application be adjourned to the 2025 Wellington CMC and that counsel's attendance be excused.

[9] If Ngāti Mutunga wish to pursue a strike out application, the appropriate course for it to follow is to file an on notice interlocutory application to which the respondent can reply. A hearing of that application can then be fixed after consultation with counsel and any necessary timetable directions made.

[10] In terms of recusal, I have already made it clear that, because of my former association with Moriori interests it would not be appropriate for me to preside over any claims under the Act relating to Rekohu. That would include any defended interlocutory application such as a strike out. There is no need for me to repeat that again.

[11] However, the request that I recuse myself from conducting the CMC on 26 July 2024 is in a different category. The guiding principle in relation to recusal is that a judge is disqualified from sitting in circumstances where there is a real possibility, in the eyes of a fair-minded and fully informed observer, the judge might not be impartial in deciding the case.

[12] Case Management Conferences under the Act are purely administrative in nature. They do not resolve contentious issues. I undertake the CMCs for all applications under the Act in my role as the National List Judge for all such cases.

[13] In the present case, the only direction sought by Ngāti Mutunga at the 26 July CMC is that the application be adjourned for a year and that counsel's attendance be excused. This is not a situation where a fair-minded, fully informed observer would have a reasonable apprehension that I might not be able to bring in an impartial mind to the making of these simple directions. Accordingly, the application for recusal in relation to the CMC is misconceived and is declined.

[14] Ngāti Mutunga's application is adjourned to be called again in 12 month's time at the 2025 Wellington CMC. Counsel's attendance at the 26 July 2024 CMC is excused.

**Churchman J**