



## Supreme Court of New Zealand

**29 August 2014**

### **MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**JOHN HANITA PAKI, TORIWAI ROTARANGI, TAUHOPA TE WANO HEPI,  
MATIU MAMAE PITIROI AND GEORGE MONGAMONGA RAWHITI v THE  
ATTORNEY-GENERAL OF NEW ZEALAND FOR AND ON BEHALF OF THE  
CROWN (“THE CROWN”) (SC 7/2010)  
[2014] NZSC 118**

### **PRESS SUMMARY**

**This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz)**

The appellants are descendants of members of hapu who were awarded interests in land subdivided from the Pouakani block by the Native Land Court in the late 19th century. The lands included in their titles were bounded by the Waikato River and were said by the appellants to have included the river bed to the mid-point through the operation of a presumption of the common law. They claimed that the Crown’s later acquisition of these lands also transferred the river bed to the mid-point as a result of the mid-point presumption. The acquisition of the riverbed by the Crown in this way was claimed to have been in breach of fiduciary and equitable duties owed by the Crown to the Maori vendors of the riparian lands because it was not explained to them that, with the sale of the land to the Crown, they would lose their interest in the riverbed by presumption of law.

The Crown defended the claim on the basis that the riverbed was vested in it under the provisions of s 14 of the Coal-mines Act Amendment Act 1903, which vested title to the beds of all navigable rivers in the Crown. In the alternative (and against the possibility that s 14 of the Coal-mines Act Amendment Act 1903 did not apply) it said that it acquired the riverbed to the mid-point with its purchase of the riparian lands but denied it did so in breach of any fiduciary or other duties owed to the vendors. The Crown claimed that the appellants lacked standing in any event to bring the claim. It also took the position that the claim was barred by reason of the defences available to it under statute and in equity because of the effluxion of time. It contended that, in any event, the relief sought by the appellants, who had claimed that the Crown held the riverbed on constructive trust for those entitled to succeed to the vendors, could not succeed.

If the Crown had obtained ownership of the riverbed by the vesting accomplished under the Coal-mines Act Amendment Act, then it was common ground that the appellants' claim to have suffered loss by reason of breach of duties in the earlier acquisition of the riparian lands could not succeed. If the appellants lacked standing to bring the claims, similarly, the claim failed. In those circumstances, the Court first heard the appeals in relation to the Coal-mines Act Amendment Act and the standing of the appellants.

In the first judgment of the Supreme Court, delivered on 27 June 2012 (*Paki v Attorney-General* [2012] NZSC 50), the appellants were successful in their arguments that the River adjoining the Pouakani lands was not navigable and that the riverbed had not vested in the Crown under s 14 of the Coal-mines Act Amendment Act. That made it necessary for the Court to hear and determine the further points approved for the appeal:

- Did the Crown acquire title through the application of the presumption of riparian ownership to the mid-point of the river by reason of its acquisition of the riparian lands?

- If so, was the Crown in the circumstances in breach of legally enforceable obligations owed to the owners from whom title was acquired?
- If so, had the appellants lost their right to enforce such obligations because of defences available to the Crown through lapse of time?
- If not, what relief was appropriate?

Once it was decided that the riverbed had not vested in the Crown by operation of statute, the assumption underlying the case for both parties was that the Crown obtained the riverbed when it purchased the riparian land. That assumption was questioned by the first of the approved grounds of appeal that was heard at the second hearing. While the parties were content to assume that the vendors of the land owned the riverbed to the mid-point and that the land was subsequently conveyed on sale to the Crown by the effect of the same presumption of law, the Supreme Court has decided it is not appropriate to proceed on that basis.

The Court has been unanimous in deciding that it is not shown that the Native Land Court process affected ownership of the riverbed at all. The Court has also been unanimous in the view that it has not been shown that the decision of the Court of Appeal in *Re the Bed of the Wanganui River* [1962] NZLR 600 was authority as to universal Maori custom which applied to the Pouakani lands and which was the foundation of the title obtained through the Native Land Court.

The Judges have differed in the approach taken. Elias CJ expressed the view that in *Re the Bed of the Wanganui River* was not authoritative as to universal Maori custom and that, in any event, it should not be followed. Other members of the Court expressed doubt about the authority of the case in relation to Maori custom but reserved their final position on that point and on the question whether the decision remains authoritative.

The majority found that it was not necessary finally to resolve whether the mid-point presumption accorded with Pouakani custom because the appellants' claim could not succeed either way. If the mid-point presumption did accord with custom, the claim of breach of fiduciary duty could not succeed because the vendors of the land would have appreciated that selling the riparian land would necessarily carry with it the riverbed to the mid-point and there would, in those circumstances, be no obligation for the Crown to ensure that they appreciated that consequence, even on the assumption that the Crown owed a fiduciary or other equitable duty to the vendors. If, however, the mid-point presumption was not in accordance with custom, then the titles granted by the Native Land Court (the basis on which the claim has been brought) could not have included the riverbed land and would not have been lost in the sale to the Crown.

Because of this conclusion the Court did not find it necessary to determine the further issues raised by the appeal concerning whether the Crown could owe duties to the Maori vendors in the circumstances. Nor was it necessary to deal with the defences put forward by the Crown based on the effluxion of time.

William Young J would have concluded that, on the assumption that the riverbed passed with the sale of the riparian lands, the Crown was not shown to have been in breach of any duties owed to the vendors and would also have concluded that any such claims were barred, both under the limitation legislation and under the equitable doctrine of laches and acquiescence.

All other members of the Court reserved their position on the questions of the existence and breach of any duty and available remedies, as well as Limitation Act and equitable defences based on lapse of time. Elias CJ and McGrath J indicated some considerations which would have to be taken into account in a case where such matters arise for decision. Glazebrook J preferred to express no views as to the points that would arise.

Since neither of the cases advanced by the parties to the appeal was adopted, the Court has made no order for costs.

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