



**Supreme Court of New Zealand
Te Kōti Mana Nui**

20 May 2015

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**PIRIHIRA FENWICK, WIREMU KINGI AND HIWINUI HEKE v
JILLIAN NAERA, KEREAMA PENE, ANAHA MOREHU,
WARWICK MOREHU AND ERIC HODGE AND TAI ERU
(SC 95/2013)**

[2015] NZSC 68

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

This appeal concerns alleged conflicts of interest in relation to a joint venture among Maori land-owning trusts for the development of a geothermal power station. In 2008, the joint venture agreement (and related royalty and option agreements) were entered into by the Whakapoungakau 24 Ahu Whenua Trust, commonly referred to as the Tikitere Trust, with two other Maori trusts (the Paehinahina Mourea Trust and the Manupirua Ahu Whenua Trust) and with a company owned by the Tikitere Trust, Tikitere Geothermal Power Co Ltd (Tikitere Geothermal).

Seven of the beneficiaries of the Tikitere Trust objected to the actions of the trustees in entering into the joint venture arrangements. They brought proceedings in the Maori Land Court, objecting to the trustees’ actions on a number of grounds. Importantly, the beneficiaries claimed that three of the trustees (Mrs Fenwick, Mr Eru and Mrs Emery) had failed to protect the interests of the Tikitere Trust and the beneficial owners of that trust by allowing their personal interests to conflict with their duties. All three allegedly conflicted trustees had participated in the

decision-making process and voted in favour of the joint venture arrangements.

Mrs Fenwick owned approximately two per cent of the shares in the Tikitere Trust. She was also a trustee of the Paehinahina Mourea Trust and her family owned at least 20 per cent of the shares in that trust. She personally owned approximately 5 per cent of the shares in the Paehinahina Mourea Trust. A whanau trust in which Mr Eru was both a trustee and beneficiary held approximately 0.12 per cent of the shares of the Tikitere Trust and approximately 0.045 per cent of the shares in the Paehinahina Mourea Trust. Mr Eru was also a trustee of the Manupirua Ahu Whenua Trust. Mrs Emery's husband was a trustee of the Paehinahina Mourea Trust.

In the Maori Land Court, Judge Harvey held that, while there was an appearance of conflicts, none gave rise to a real risk of a conflict of interest.

Four of the beneficiaries unsuccessfully appealed to the Maori Appellate Court. With regard to the conflict of interest issue, the Maori Appellate Court agreed with Judge Harvey.

Five of the beneficiaries appealed against the Maori Appellate Court decision to the Court of Appeal. On the issue of the alleged conflicts of interests, the Court of Appeal held that two of the five trustees (Mrs Fenwick and Mr Eru) of the Tikitere Trust should not have participated in discussions and voting on the joint venture arrangements because of their interests in and links with the other trust parties to the joint venture. The Court held that the remedy for such a breach is rescission (the setting aside of the transaction). However, as that remedy is not available where the interests of innocent third parties are involved, the Court of Appeal remitted the matter to the Maori Land Court for further evidence and consideration on that issue.

Five of the beneficiaries applied for leave to appeal to this Court on other aspects of the Court of Appeal's decision. This Court dismissed the beneficiaries' application for leave to appeal, but granted the trustees leave to appeal against the Court of Appeal's decision on the conflict of interest issue.

The Supreme Court has unanimously allowed the appeal.

The Supreme Court has agreed with the Court of Appeal that Mrs Fenwick was disqualified from voting on the resolution to enter into the joint venture arrangements due to her personal beneficial interest in the Paehinahina Mourea Trust. Her voting on the resolution and her participation in the discussions breached s 227A of the Te Ture Whenua Maori Act 1993. The Court found that Mr Eru did not appear to have been disqualified because his indirect beneficial interest in the Paehinahina Mourea Trust appeared, on the information available to the Court, so small that there was no sensible possibility of a conflict. The Court found that Mrs Emery was not disqualified.

As to the appropriate remedy, in the context of ahu whenua trusts constituted under the Act, the Court found the consequence of a breach of s 227A is not, as the Court of Appeal had found, automatic rescission at the instance of a beneficiary, subject only to the interests of innocent third parties. Instead, the Maori Land Court has the power to decide upon the appropriate consequences of a breach of s 227A in this case, taking into account a full range of relevant factors. The Court also directed the Maori Land Court to consider whether it should remit the matter to be decided by the new trustees and, if so, what level of further consultation with the beneficiaries should be required.

William Young J wrote separately, differing from the majority's approach primarily in respect of the procedure that should be followed by the Maori Land Court on the reference back.

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