IN THE SUPREME COURT OF NEW ZEALAND

SC 100/2016
[2016] NZSC 157

BETWEEN	LEWIS ATA TURAHUI FOR AND ON BEHALF OF ARAUKUKU HAPU Applicant
AND	THE WAITANGI TRIBUNAL First Respondent
	THE ATTORNEY-GENERAL Second Respondent
	NGA HAPU O NGARUAHINE IWI INCORPORATED Third Respondent
	TE RUNANGA O NGATI RUANUI TRUST Fourth Respondent

Court:	William Young, Glazebrook and Ellen France JJ
Counsel:	T H Bennion for Applicant G L Melvin and E P Chapple for Second Respondent H J P Wilson and T N Ahu for Third and Fourth Respondents
Judgment:	1 December 2016

JUDGMENT OF THE COURT

A **The application for leave to appeal is dismissed.**

B **There is no award of costs.**

REASONS

[1] This application for leave to appeal concerns the refusal of the Waitangi Tribunal to conduct an urgent hearing.

Background

[2] Mr Tūrāhui is acting on behalf of the Āraukūkū hapu. The hapu can trace descent from adjoining southern Taranaki iwi, Ngāruahine and Ngāti Ruanui. It claims mana whenua interests within the boundaries of each iwi.

[3] An interim report on various large-scale claims in the Taranaki region was released by the Waitangi Tribunal in 1996.[1] The interim report found various breaches of the Treaty. The purpose of the release of the interim report seems to have been to facilitate settlement negotiations.

[4] A claim by the Āraukūkū hapu, Wai 552, was filed in October 1995, after the hearings on the large-scale Taranaki claims discussed above. This claim was mentioned in the interim report as one of the claims to which that report related.[2]

[5] After the interim Taranaki report, settlement negotiations were entered into. The Ngāti Ruanui claims have been settled. We understand that Āraukūkū was involved with this settlement and is represented on the implementation body.

[6] After a number of other mandating attempts, in May 2010 the Crown publicly notified the deed of mandate of Ngā Hapū o Ngāruahine Iwi Incorporated for the Ngāruahine claim. This Deed did not include Āraukūkū as a hapu of Ngāruahine but the Āraukūkū Wai 552 claim[3] was listed as one of the claims to be settled in part (ie insofar as it related to the Ngāruahine rohe). Āraukūkū objected to the mandate and met with Crown representatives but the mandate was signed in August 2010, without the inclusion of Āraukūkū.[4]

[7] On 4 June 2014 a deed of settlement was initialled. Āraukūkū was not listed as a hapu of Ngāruahine and, the Crown says by oversight, Wai 552 was not listed as a claim to be settled. The initialled deed was ratified by the Ngāruahine claimant community by 18 July 2014. Following ratification, but before the deed of

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1 Waitangi Tribunal *The Taranaki Report: Kaupapa Tuatahi* (Wai 143, 1996).
2 At 324. It is referred to as the Ahitahi/Araukuku claim.
3 Wrongly referenced as Wai 557.
4 *Tūrāhui v Waitangi Tribunal* [2016] NZCA 387 at [16] (Harrison, Kós and Toogood JJ) [*Tūrāhui* (CA)].

settlement was signed, Wai 552 was added to the list of claims in the deed that would be settled insofar as the claim related to Ngāruahine. The deed of settlement was signed on 1 August 2014.[5] The post settlement deed of trust does not list Āraukūkū as a hapu of Ngāruahine.

[8] In February 2015 Āraukūkū applied to the Waitangi Tribunal for an urgent remedies hearing or, if that was not available, an urgent hearing of Wai 552, which included a claim to resumption.

[9] This application was refused by the Tribunal (Sir Douglas Kidd) on 7 May 2015[6] and this decision was upheld by Williams J in the High Court on 10 July 2015[7] and by the Court of Appeal on 19 July 2016.[8]

[10] The Ngāruahine Claims Settlement Bill 2015 was introduced to Parliament on 14 July 2015 and passed its third reading on 30 November 2016.

Our assessment

[11] We accept that there are issues with the Tribunal decision and that of the courts below which may well have met the leave criteria in s 13 of the Supreme Court Act 2003. This is particularly the case because, as the High Court noted, Āraukūkū stands to see its Ngāruahine based claims extinguished without its consent, or even participation.[9] The Tribunal had found that there was "a strong indication that Crown actions and omissions have at least contributed to, if not in some cases resulted in, the significant and irreversible prejudice the applicants are likely to suffer."[10]

[12] In this regard, we also note that the Maori Affairs Committee, in the Commentary to the Settlement Bill when it was reported back to the House, among other things, called on the Crown to acknowledge, in public statements, the history

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5 At [18].

6 Waitangi Tribunal *Application for urgent hearing by the Wai 552 claimant on behalf of the Āraukūkū hapū* (Wai 522, #2.35, 7 May 2015) (Waitangi Tribunal).

7 *Tūrāhui v Waitangi Tribunal* [2015] NZHC 1624 [*Turahui* (HC)].

8 *Tūrāhui* (CA), above n 4.

9 *Tūrāhui* (HC), above n 7, at [94]. The High Court did, however, note that there is some doubt whether the Ngāti Ruanui settlement would in fact bar the claim: see at [60].

10 Waitangi Tribunal, above n 6, at [156]. See also at [168].

of the reserve awarded to Āraukūkū, including the Stratford Power Station land,[11] and explain why the land has not been returned through the Treaty settlement process. The Committee said:[12]

> We are concerned that Āraukūkū are treated fairly in the settlement negotiations, and that Āraukūkū individuals with Ngāruahine whakapapa are able to benefit from the Ngāruahine settlement. Ngāruahine has assured the Crown that this will be the case.
>
> Unfortunately, this claims settlement process does not allow us to address to our satisfaction the issues some Āraukūkū individuals have raised.[13] However, we will monitor the situation for these people through the Post Settlement Commitments Unit.

[13] Because the Ngāruahine Claims Settlement Bill has passed its third reading however, it is now too late for any decision of this Court to have any practical result. This means that a grant of leave is not appropriate.

[14] In the circumstances, and particularly those set out at [11], there is no order for costs.

Solicitors:
Bennion Law, Wellington for Applicant
Crown Law, Wellington for Second Respondent
Kensington Swan, Wellington for Third and Fourth Respondent

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11 This land was referred to in the Wai 552 claim.

12 Ngāruahine Claims Settlement Bill 2015 (45-2) (select committee report) at 4.

13 The Select Committee noted, at 2, that it was aware that "some members of Āraukūkū disagree with Ngāruahine about the exclusion of Āraukūkū from the list of hapū in the Ngāruahine claimant definition".