IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 46/2024
[2024] NZSC 113

BETWEEN	KEVIN MOORE Applicant
AND	MĀORI LAND COURT First Respondent
	SHELDON NGATAI, GEORGINA TE OTIANA JOHANSEN, ROSELLE TAYLOR, BRIDGET TAYLOR AND VINCENT GEORGE BROWN AS TRUSTEES OF WAITARA EAST SECTION 81B (ROHUTU) TRUST Second Respondents

Court:	Ellen France, Kós and Miller JJ
Counsel:	C B Hirschfeld and G E Minchin for Applicant A P Lawson for First Respondent S W Hughes KC for Second Respondents
Judgment:	12 September 2024

JUDGMENT OF THE COURT

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

B **The application for a stay of enforcement of the injunction pending determination of the appeal is dismissed.**

C **There is no order as to costs.**

REASONS

Introduction

[1] The applicant, Kevin Moore, has filed an application for leave to appeal to this Court from a decision of the Court of Appeal.[1] That Court dismissed his appeal from a decision of the High Court rejecting his claim for judicial review.[2] Both the Court of Appeal and the High Court, in dismissing Mr Moore's challenge, determined that the power of the Chief Māori Land Court Judge under s 44(1) of Te Ture Whenua Māori Act 1993 relates to the correction of errors and omissions in orders of the Māori Land Court or of the Registrar of that Court. As Mr Moore's claim did not, in substance, challenge the relevant (partition) order of the Māori Land Court, his application for correction was outside of the scope of s 44(1).

Background

[2] The background is set out in greater detail in the judgment of the Court of Appeal.[3] For present purposes we need only note the following. In 1958 the Māori Land Court made a partition order in relation to the Waitara East 81B Block (the Block). The relevant beneficiaries identified in the partition order were the descendants of most of the original Māori owners named in the original Crown grant.[4] They did not include Mr Moore or his tipuna.

[3] Subsequently, the Waitara East 81B Rohutu Trust (the Rohutu Trust) was set up and legal ownership of the Block vested in the trustees of that Trust. The Rohutu Trust since then has, until recently, leased sections to various leaseholders on behalf of the beneficiaries, some who whakapapa to the whenua and some who do not. There are 30 leaseholders in total.

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1 *Moore v Māori Land Court* [2024] NZCA 112 (Gilbert, Whata and Churchman JJ) [CA judgment].
2 *Moore v Māori Land Court* [2023] NZHC 697 (Isac J) [HC judgment].
3 CA judgment, above n 1, at [3] citing HC judgment, above n 2, at [2]–[9].
4 The Crown grant was made in 1884 under the West Coast Settlement (North Island) Act 1880 and the West Coast Settlement Reserves Act 1881. For discussion of the history of the Block and the context of these two Acts, see Waitangi Tribunal *The Taranaki Report | Kaupapa Tuatahi* (Wai 143, 1996) at [9.3.3] and [10.5]; and Janine Ford *The Administration of the West Coast Settlement Reserves in Taranaki by the Public, Native and Māori Trustees 1881-1976: A report for the Waitangi Tribunal for Wai 143 Taranaki Claim* (Waitangi Tribunal, December 1995) at v.

[4] In 2013 Mr Moore began squatting on the land. He has remained there, having since built a whare. The High Court judgment recorded that he has not paid any rent.

[5] In early 2016, the trustees obtained an injunction in the Māori Land Court requiring Mr Moore to vacate the property and to remove his possessions.[5] Enforcement of the injunction was, however, stayed so that Mr Moore could pursue an application under s 44(1). The matter came for hearing before the then Chief Judge Isaac who, in a decision delivered on 6 May 2022, concluded that there had been no mistake or omission in the 1958 partition order that was capable of correction under s 44(1).[6]

[6] Mr Moore then brought judicial review proceedings in the High Court. In that Court, Isac J agreed with Judge Isaac on the scope of s 44(1). Isac J observed that "[t]he real issue" was what Mr Moore said was an error in the Crown grant and resolution of that issue was outside of the scope of s 44(1).[7]

[7] As we have noted, Mr Moore appealed unsuccessfully from the High Court decision to the Court of Appeal.

The proposed appeal

[8] Mr Moore argues that s 44(1) is not limited to correcting a procedural error given that it extends to errors based on the presentation of the facts of the case to the court or the Registrar. In support of the argument about the scope of s 44(1), Mr Moore relies on a number of factors including the scheme and purpose of the Te Ture Whenua Māori Act, its legislative history, and access to justice and comity issues. It is also said that, in any event, the error Mr Moore seeks to correct is a procedural error. That is because there was a mix-up by which an owners list annexed to a wrong Crown grant was provided to the Māori Land Court.

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5 *Trustees of Waitara East 81B (Rohutu) Trust v Moore – Waitara East Section 81B (Rohutu)* (2018) 384 Aotea MB 113 (384 AITT 113).

6 *Moore v Trustees of Waitara East 81B (Rohutu) Trust – Waitara East Section 81B (Rohutu)* [2022] Chief Judge's MB 191 (2022 CJ 191).

7 HC judgment, above n 2, at [33].

[9] The application is opposed by the second respondents who support the approach taken by the Court of Appeal.[8]

Our assessment

[10] In assessing whether the proposed appeal meets the criteria for leave in s 74 of the Senior Courts Act 2016, it is helpful at this point to set out s 44(1) of Te Ture Whenua Māori Act. The subsection provides that:

> On any application made under section 45, the Chief Judge may, if satisfied that an order made by the court or a Registrar … or a certificate of confirmation issued by a Registrar under section 160, was erroneous in fact or in law because of any mistake or omission on the part of the court or the Registrar or in the presentation of the facts of the case to the court or the Registrar, cancel or amend the order or certificate of confirmation or make such other order or issue such certificate of confirmation as, in the opinion of the Chief Judge, is necessary in the interests of justice to remedy the mistake or omission.

[11] Mr Moore seeks to have this Court reconsider arguments made in the Court of Appeal. In dismissing the appeal the Court of Appeal said this:[9]

> [20] Plainly s 44 is only concerned with errors of fact or law by the Court or the Registrar, or errors in the presentation of facts to the Court or the Registrar. The power exercised in 1958 was a power to partition pursuant to s 176 of the Māori Affairs Act 1953. The partition order was based on a Crown grant that included a list of owners. There is no challenge by Mr Moore to the correctness of the Māori Land Court partition order in terms of the accurate identification of the owners by reference to that owners list. …

[12] The Court also rejected the argument made by Mr Moore that the legislative history supported his case. In fact, the Court said, that legislation suggested that the proper vehicle for any challenge to the Crown grant was:[10]

> … the High Court … or by the intervention of the Governor-General either by conferral of special jurisdiction on the Māori Land Court (not exercised here) or pursuant to s 12 of the Crown Grants Act 1908.

[13] The approach adopted by the Court of Appeal reflected a careful consideration of the text of s 44(1) and its legislative context. Nothing raised by Mr Moore gives

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8 The first respondent abides the decision of the Court.

9 CA judgment, above n 1.

10 At [21]. Section 12(1) of the Crown Grants Act 1908 provides for the Governor-General to cancel a grant and issue a new, amended, grant where satisfied there is an error in any name in the grant.

rise to the appearance of an error in the approach to the question of interpretation that was before the Court. In these circumstances, the criteria for leave to appeal are not met.[11]

[14] Mr Moore also made an application for a stay of enforcement of the injunction pending determination of the appeal. Given that the application for leave to appeal is unsuccessful, this application falls away.

Result

[15] The application for leave to appeal is dismissed.

[16] The application for a stay of enforcement of the injunction pending determination of the appeal is dismissed.

[17] As Mr Moore is legally aided there is no order as to costs.

Solicitors:
Exeo Legal, Wellington for Applicant
Te Tari Ture o te Karauna | Crown Law Office, Wellington for First Respondent

[11] Senior Courts Act 2016, s 74(2).