



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

3 October 2024

## **MEDIA RELEASE**

PAKI NIKORA AND PAREARAU POLLY ALICE NIKORA on behalf of TE KAUNIHERA KAUMĀTUA O TŪHOE v TĀMATI KRUGER on behalf of TŪHOE – TE URU TAUMATUA TRUST

(SC 67/2023) [2024] NZSC 130

## **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).

## **What this judgment is about**

This appeal concerns whether the Māori Land Court has jurisdiction over landholding trusts that are post-settlement governance entities (PSGEs). A PSGE is an entity that holds and manages Treaty settlement assets on behalf of a Māori claimant group. Most PSGEs receive land as part of their settlement packages. The Māori Land Court has jurisdiction over a “trust constituted in respect of any General land owned by Māori” as stated in section 236(1)(c) of Te Ture Whenua Māori Act (TWMA). The key issue is whether a trust that is a PSGE meets this definition. In this case, the Court must determine whether the Māori Land Court has supervisory jurisdiction over Tūhoe – Te Uru Taumatua Trust (TUT).

## **Background**

TUT is Tūhoe’s PSGE. It was established in 2009 and eventually received Treaty settlement assets in accordance with the Tūhoe Claims Settlement Act 2014. While TUT does hold some land, its assets are principally in other forms.

The proceedings arose out of a dispute regarding whether two of TUT’s trustees had been validly appointed. As the first appellant applied to the Māori Land Court for orders rectifying matters, the dispute raised the broader issue of whether the Māori Land Court had jurisdiction at all.

## **Procedural history**

Paki Nikora, on behalf of Te Kaunihera Kaumātua o Tūhoe (TKKOT), made an application to the Māori Land Court challenging the appointment of two TUT trustees. The Court determined that it had jurisdiction and directed that fresh elections be held for the two contested positions. Tāmami Kruger, on behalf of TUT, appealed unsuccessfully to the Māori Appellate Court. However, on further appeal, the Court of Appeal found that the Māori Land Court lacked jurisdiction. Mr Nikora applied for leave to appeal to the Supreme Court.

On 28 August 2023, the Supreme Court granted leave to appeal. The approved question was whether the Court of Appeal erred in allowing the respondent's appeal to that Court.

Sadly, Mr Nikora passed away before the substantive appeal could be heard. By consent, Pārearau Polly Alice Nikora was added as a second appellant. The intervener, Te Hunga Rōia Māori o Aotearoa has also filed submissions in respect of tikanga considerations, for which the Court expressed its gratitude.

## **Issues**

As noted, the key issue was whether TUT is “constituted in respect of any General land owned by Māori” as required by section 236(1)(c) of the TWMA. This raised two sub-issues.

The first sub-issue was whether TUT was “constituted in respect of” General land it would eventually acquire, when that land was not identified or even known when TUT was established in 2009. The second sub-issue was the meaning of “General land owned by Māori” and whether the fact that TUT was a fully discretionary trust meant that the beneficial estates in its landholdings could be said to be owned by any individuals, whether Māori or otherwise.

## **Supreme Court decision**

The Supreme Court has unanimously allowed the appeal. It has held that TUT was constituted in respect of General land owned by Māori. This means the Māori Land Court had jurisdiction over TUT. A summary of this Court's reasons follows.

*“... constituted in respect of ...”*

The Supreme Court found that “constituted in respect of” does not require land to be the primary or dominant asset of the trust. This is an unnecessary gloss on the words employed and is apt to create problems and uncertainties. Additionally, the Supreme Court did not consider that section 236(1)(c) requires TUT to have been established from the outset to hold particularised parcels of land on trust for the benefit of the identified beneficial owners of each parcel. There is no reason why “constituted in respect of” should not mean the trust was constituted in respect of particular land as and when TUT acquires it and subjects it to trust management. Furthermore, TUT not only holds General land in fact; this was an express purpose of the Trust from the outset.

*“... owned for a beneficial estate in fee simple ...”*

The Court recognised that the meaning of “owned for a beneficial estate in fee simple” was the more challenging question. TUT argued that it was a fully discretionary and perpetual trust. It argued that meant the land was not owned for a beneficial estate in fee simple by anybody and so did not satisfy the statutory definition. TUT also opposed intervention by the Māori Land Court for policy reasons. However, TKKOT countered that “owned for a beneficial estate in fee simple” should be construed purposively and in accordance with the TWMA’s Treaty-based objectives. TKKOT’s position was that the Māori Land Court was the most suitable jurisdiction.

The Court considered it to be consistent with tikanga that authority over and ownership of land vests in the tribe. It followed that, had tikanga been the controlling legal framework, TUT’s lands would likely have been beneficially—that is, substantively—owned by Tūhoe itself. In light of the history and purpose of the TWMA, the Court rejected the view that the English property law approach should be presumptively taken without further inquiry. Instead, the better approach to assessing whether the TWMA applied to TUT was to focus first on the purpose and provisions of TUT’s trust deed. If they were consistent with the purpose and text of the Act, then it should be taken that the legislature intended the Act to apply. The Court found it relevant that land retention is an important purpose of TUT and the TWMA, and that the TWMA contemplates the vesting of beneficial title in ancestors as a mechanism for the recollectivisation of tribal land management. Additionally, the Court noted that TUT’s form and purpose is a close analogue of the form and purpose of other trusts governed by the TWMA. There is, the Court concluded, no good reason to include these other trusts within the Māori Land Court’s jurisdiction while excluding PSGE trusts such as TUT.

Ultimately, the TUT deed makes it abundantly clear that the beneficial interest in TUT’s assets may be appropriately vested in Tūhoe and Pōtiki, the eponymous ancestors of the tribe. The Court found that this approach is consistent with Tūhoe tikanga as summarised in evidence adduced by TUT and involves no straining of the language in the TWMA. Nor, the Court considered, is it a novel or controversial approach under the TWMA generally. Beneficial interests in land subject to the TWMA are commonly vested in deceased individuals to facilitate collective management.

#### *Other considerations*

TUT argued that subjecting it to the Māori Land Court’s jurisdiction could have unintended collateral consequences. The Court concluded this concern was overstated. Further, while TUT’s opposition in principle to the Māori Land Court’s supervisory jurisdiction is understandable, that Court’s contemporary expertise and experience makes it an appropriate forum to consider and resolve disputes over TUT’s governance.

Finally, the Court acknowledged that it would be possible for a PSGE to move in and out of the Māori Land Court’s jurisdiction and noted that some settlement legislation has explicitly excluded the Court’s jurisdiction. This, the Court accepted, could lead to untidiness and uncertainty. A more thoroughgoing statutory reform would be preferable, but in its absence, a case-specific approach is required. It must, the Court considered, be accepted that there will

be untidiness, but that is best remedied through statutory reform in which all relevant policy factors can be considered.

## **Result**

The appeal was allowed. The orders made in the Māori Land Court requiring TUT to hold fresh elections for two trustees were reinstated. The Supreme Court also granted the respondent's application to adduce evidence related to Tūhoe tikanga. The Court ordered the trustees of TUT to pay the appellants their actual and reasonable legal costs and disbursements in connection with the appeal to this Court out of the assets of the Trust. If the parties are unable to agree on the amount of costs and disbursements payable, that will be determined by the Registrar of this Court. Any outstanding issues relating to costs in the Courts below are to be determined by those Courts, in light of this judgment.

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