

Place: Kaitaia
Present: M P Armstrong, Judge
 T Bristow, Clerk of the Court
 K Hardstaff, Deputy Registrar
 X Martin, Court Assistant
Date: 30 August 2018

Panui No: 66 **Application No:** A20180003772

Subject: Waimahana D3B3 - Injunction
Legislation: Section 19, Te Ture Whenua Māori Act 1993
Present: Sandra Van Dijk, Doris (Tarati) Povey, Thelma Sadlier, Annwyn Buchanan, Keea Smith, Manea Mareka, Leann Robinson, Avis Stewart, Rawiri Henare, Hone Rakena, Priscilla (Missy), Elizabeth Peterson, Glendith Samson, Jerati Hohepa Birks, Edward Shirley Gardner, Jean Joseph, Rueben Peterson, Roger Kingi, Hinepouterangi Jean Joseph, Leonie Nicholson, Janine Peterson, E A Peterson, Joan Martin, David Manuel, Patrick Ruhi, Wiremu Smith, Ray (Nare) Atama, Wilfred Peterson, Maata Rakena, Davina Ben, Josie Tarawa, Tahawai Cullimore, Raff Riwhi, Janice Smith, Anthony Smith, Ezrot Smith, Easton Smith, Aidon Smith, Henry Martin, Frank Butler, Tarati Hohepa, Atawhai Heta, Clayton Rogers, Margaret Littin, Rawinia Tait,

Details of the applicant are as follows:

<u>Applicant</u>	<u>Address</u>
Rueben Peterson	191/11 Potter Street, Waterloo, Sydney 2017

M Tuhoro, for Deputy Registrar: The application filed is seeking an urgent injunction order relating to the following block:

Taitokerau District:

Block:	Waimahana D3B3
Name of Trust:	Waimahana D3B3 Marae Trust
Type of Trust:	Māori Reservation
LINZ Ref:	500060
Area:	0.2023 ha
No of Owners:	1
Total Shares:	3.333
Location:	North Auckland
District Council:	Far North District Council
Original Trustees:	6 Kaitaia MB 126 dated 3 March 1970

	Jack Thomas, Edward Erihe Emery, Michael Peterson, Wilfred Peterson, Bernard Taipari Noel Olliver, Percy Tatai
Current Trustees:	14 Kaitaia MB 212 dated 8 July 1986 Bernard Taipari, Jerry Henare, Mary McKenzie, Michael Peterson, Noel Olliver, Percy Taitai, Raymond Broughton, Wilfred Peterson
Gazette Notice:	6 R 249 dated 13 July 1967 Set aside as a Māori Reservation for the purpose of a meeting house site for the benefit and recreation of all the Māori people

Block:	Waimahana A
Name of Trust:	Waimahana A Māori Reservation
Type of Trust:	Māori Reservation
LINZ Ref:	476506
Area:	1.6187 ha
No of Owners:	1
Total Shares:	5.000
Location:	North Auckland
District Council:	Far North District Council
Original and Current Trustees:	6 Kaitaia MB 126 dated 3 March 1970 Bernard Taipari, Edward Erihe Emery, Jack Thomas, Michael Peterson, Noel Oliver, Percy Tatai, Wilfred Peterson
Gazette Notice:	3 R 257 dated 14 August 1947

The injunction order sought is against Glendith Samson (the respondent) seeking to prevent her from acting in a de-facto trustee role on behalf of Waimahana A and Waimahana D3B3 Māori Reservations .

The applicant has lodged the application upon the following grounds:

1. I make this urgent application due to serious concerns regarding Ms Samson's appointment to the Kahukura Ariki Trust Board as a represented for Waimahana Marae.

Ms Samson is not registered with the Māori Land Court as a Trustee for Waimahana A or Waimahana B3B3.

Ms Samson has not engaged in an election for the purpose of becoming a Trustee for Waimahana A or Waimahana D3B3, nor has she sought the mandate from the registered beneficiaries of Waimahana A or Waimahana D3B3.

Instead she has claimed the right to herself to effectively act in the capacity and powers of a Trustee without having followed due process. Ms Samson is acting without the proper authority of all interested parties including myself and therefore acting unlawfully.

The applicant supports this with written statement summarised as follows:

Purpose of this application:

I dispute the right of Ms Samson to represent me as a registered beneficiary of Waimahana A and Waimahana D3B3 on the following grounds. Ms Samson:

- Is not a registered member of Waimahana Marae
- was not nominated by a registered member of the marae for the position of Trustee
- has not taken part in an election for the purposes of becoming a Trustee
- is not a Trustee
- no application has been made to the Court by a registered member of Waimahana D3B3 for the appointment of Ms Samson as a Trustee for the Marae Reservation
- has not been given the mandate to act on behalf of Waimahana Marae

Summary:

I make this application to the Court for an order prohibiting Ms Samson from claiming to represent the hapū marae of Waimahana because I sincerely believe that no individual has the right to speak or act on behalf of another without first gaining the consent of that person.

More pointedly, as a registered beneficiary of Waimahana A and Waimahana D3B3, I reject any claim by Ms Samson to have the authority or the right to act on my behalf or to action any matters that will directly impact me

At hapū marae level, the notion that an individual can represent Waimahana A and D3B3 without the proper consent of the people compounds the fraud.

I ask that the Court act in the interests of the beneficiaries of Waimahana A and Waimahana D3B3 and in operation of its duty with reference to s19(1)(a) of Te Ture Whenua Maori Act 1993 impose the injunction upon Ms Samson prohibiting her from acting in a representative role with third parties in any matter concerning or related to me, until due process has been carried out for proper recognition of Trustees of Waimahana A and Waimahana D3B3.

A full copy of the applicant's written statement is on file.

Orders are sought issuing an injunction order against Glendith Samson (the respondent) on the grounds sought by the applicant.

Transcript of Recorded Hearing:

Court: Kia ora.

R Peterson: (10:24:42) Tēnā koe.

Court: Reuben Peterson?

R Peterson: (Raises hand).

Court: Kia ora Mr Peterson, you are the applicant. This application is in relation to Waimahana D3B3 and Waimahana A, which I understand is the marae and the urupā. Can I just check, are there any existing trustees present for the marae or the urupā?

Janice Smith: (Raises hand).

Court: You are? Kia ora. Can I have your name please?

J Smith: Janice Smith.

Court: Ms Smith are you a trustee on the marae or the urupā or both?

J Smith: Yes Sir.

Court: On both?

J Smith: Ah?

Court: Are you a trustee on the marae or the urupā or both?

J Smith: The marae.

Court: The marae.

Unidentified Speaker: (10:25:48) And urupā.

Unidentified Speaker: (10:25:53) Excuse me Your Honour, my understanding is trustees for our marae and the urupā have all passed away. Janice is a trustee elect.

Court: I see.

Unidentified Speaker: (10:26:05) Newly appointed.

Court: Okay. Well, I will hear from Mr Peterson in relation to the issues that he wants to raise and then we will see where we are going to get to with this application. Mr Peterson.

R Peterson: Tēnā koe e te Kaiwhakawā me te taumata o te Kooti nei.

Court: Kia ora.

R Peterson: Ki a koutou hoki kua hui mai nei i tēnei rā tēnā tātou katoa. First, I just want to note that I've just been handed this documentation this morning by the respondent. I haven't had time to fully read it. I only arrived about five minutes ago.

Apart from the submission I just like to read a statement I've put together. (Reads submission).

I am here today to ask the Court for an order prohibiting Ms Glendith Samson from acting in a defacto role of trustee for Waimahana Marae.

I make this application on behalf of myself as a registered beneficiary of the hapū marae Puhī o Te Waka o Waimahana.

In support of this application I ask that the Court reaffirm the order made in July 1986 vesting Waimahana D3B3 Māori reservation, commonly known as

Waimahana or Waimahana Marae to its trustees under section 437 and section 34(10) of the Māori Affairs Act 1953.

That's in the documents I gave you with the application.

Reaffirmation of the order by the Court will confirm as the intention of the order that the duly elected trustees of Waimahana A and Waimahana D3B3 are the proper legal representatives.

Ms Samson has not been duly elected or appointed by the registered beneficiaries of Waimahana to serve as a responsible trustee for Waimahana A or Waimahana D3B3 and is therefore acting without the mandate of the beneficiaries. Without the consent of the marae trustees, the marae and in contempt of the order of 1986.

Well that's my opinion.

If Ms Samson's claim is genuine, then surely her first obligation is to the people and the marae of Waimahana. To date, Ms Samson has not attended a hui at the marae for the purpose of engaging in an election, or for the purpose of discussing the legitimacy of her claim.

Her failure or unwillingness to do so undermines her claim and I believe implies a contempt or at the very least disregard for the Court order of 1986, for due process with respect to each of the blocks, for the registered beneficiaries, for the policies initiated and implemented on behalf of the marae by the marae committee under the direction of the duly elected trustees of Waimahana A and Waimahana D3B3, since deceased, and for the traditional social process of hui with the people, particularly our kaumātua and kuia on the marae, tikanga and whanaungatanga; traditions handed down to assist the people of Waimahana to find pathways towards resolution, order and peace. I believe Ms Samson's failure to engage with the marae on these matters or alternatively her disregard for the significance and relevance of these matters with respect to the marae of Waimahana disqualifies her claim.

Ms Samson's claim is not unique. To my knowledge two others in recent history have made the same claim in the same manner. Like Ms Samson neither were elected responsible trustees for Waimahana A and/or Waimahana D3B3 and neither engaged in due process with respect to the marae and the beneficiaries. Verifying this statement the Court records will show that no trustees were added after 1986 apart from the one Janice Smith.

The injustice that unfolded was that with the support of third party interests and the tacit acceptance of the Crown, these individuals were permitted to engage, consult and enter into binding agreements on behalf of the marae without the proper recognition of being elected trustees. This application for an order against Ms Samson is not simply a case of sour grapes. It is an application to prevent any future injustice or prejudice likely to be inflicted upon the people of Waimahana. It is also an application to end an injustice inflicted upon and enjoyed by the people of Waimahana for over 25 years.

To allow Ms Samson to continue unchecked will subject the people of Waimahana to further injustice. Furthermore, it will empower and encourage others to contradict and defy their marae trustees and marae beneficiaries.

Like everyone else, should Ms Samson wish to become a duly elected trustee for Waimahana, she must comply with the rules and regulations that we are all obliged to follow. Until then she must be prohibited from claiming to be a representative for Waimahana.

It is my sincere hope today that the Court restores the mana vested in the Waimahana D3B3 Trust and its duly elected trustees by reaffirming the authority of the order of 1986 and in doing so (inaudible 10:32:02) misrepresentation by individuals such as Ms Samson. Restore the people's right to choose rather than be told and through recognition of the order by the Court provide a benchmark that will deter any other individuals from making any similar claims.

Thank you.

Court: Kia ora Mr Peterson. I do have some questions for you, so just going through the Court records in relation to these particular blocks. So as you have indicated it seems that the original trustees for both the marae and the urupā were appointed in 1970 –

R Peterson: Yes.

Court: -- and then there were some trustees replaced on the marae in 1986.

R Peterson: Yes that is correct.

Court: It seems that that was the last order by this Court in relation to the trustees for both the marae or the urupā.

R Peterson: That's right, yes. As far as I know there wasn't any documentation. There were two documents in the Court records but they were – I've got a photocopy of the same. I have provided with the same copy but as far as I know the 1986 trustees apart from the ones that were already appointed trustees for the Waimahana A were not appointed for Waimahana – the 1980 – the new ones on the 1986 trustees were not trustees for Waimahana A.

Court: Yes. It seems they were only appointed to the marae and not the urupā.

R Peterson: That's correct, yes.

Court: So those who are the existing trustees on both the urupā and the marae, are they still alive? Perhaps if I just go through --

R Peterson: The ones on the document, no. On those documents that I submitted, no.

Court: Okay. They have all passed away?

R Peterson: They have, yes.

Court: You have said in your application that Ms Samson is acting as a trustee and that there may have been others as well?

R Peterson: I understand – yes, so I understand Ms Samson has been appointed to a trust to represent Waimahana. I'm not sure whether she claims to be a – yes, she is recognised as a representative for Waimahana on the trust or as a trustee itself as a trustee or in the role of trustee.

Court: You also mentioned that she had entered into a binding agreement on behalf of the marae. Can you just explain what that is referring to?

R Peterson: No, what I intended to say there that by being recognised as a representative of Waimahana that she may enter into binding agreements on our – enter into.

Court: I see.

R Peterson: No, I do not know whether she has entered into a binding agreement already with the trust that she is registered with.

Court: Okay. And so what is it that you are seeking from this Court?

R Peterson: I would like the Court to prohibit Ms Samson or stop Ms Samson from claiming to act on behalf of the marae until she is engaged in an election with the people of the marae, of you know the beneficiaries of the marae.

Court: Have AGMs been held at the marae?

R Peterson: Can I pass that over to Annwyn? Can you answer that?

Annwyn Buchanan: Not recently.

Court: Sorry, can I have your name please?

A Buchanan: Annwyn Buchanan.

Court: So when was the last time an election was held at the marae?

A Buchanan: Actually I couldn't confirm that in the time that I've held the position as secretary. Not --

Court: Okay. How long have you been the secretary for?

A Buchanan: 2012.

Court: So for at least the last six years while you have been in that position there has not been an election at the marae?

A Buchanan: (No audible response given 10:36:35).

Court: Who is administering the marae at the moment?

A Buchanan: The marae committee.

Court: Who is on the committee?

A Buchanan: We have Vincent Tātai who is the chairman. We have Leanne Robinson who is vice-chair. Myself as secretary. Maggie or Margaret Littin sorry as treasurer with Janice Smith as assistant treasurer.

Court: Thank you. Mr Peterson anything further you want to put forward?

R Peterson: Not at this time, no. Not at this stage. Thank you.

Court: Glendith Samson.

Glendith Samson: Āe, kia ora.

Court: Kia ora. You would have heard what Mr Peterson has said. Is there anything you want to say in response?

G Samson: Yes. I've got a person here to speak on the election process and I'd like to hand it over to her please.

Court: Yes.

G Samson: Thank you. Thanks Avis.

Avis Stewart: Kia ora. My name is Avis Stewart. I'm the former project co-ordinator for Kahukura Ariki Trust. Kahukura Ariki Trust were the initial trustees under the trust deed. They had – so it's a Treaty claim. It was legislated in August 17th, 2017. The third reading went ahead and the claim was legislated on that date.

As part of the trust deed, the initial trustees were required to have an election for permanent trustees to go into that trust. So I have the trust deed here if you wish to see it.

The election for the permanent trustees was done through Election Services. We had to have an independent person and who was eligible to vote. So beneficiaries would register through the trust and that's how the elections were sought.

So when the registrations came in I was responsible also for receiving those registrations and putting them into a data base. Many of the beneficiaries would put two or three marae that they belonged to. The catchment area was from Matangirau over to – there are eight marae included in this claim, Waimahana being one of them.

Beneficiaries would nominate. So to be registered you had to fill in a form. You had to forward it through to the trust. Nominate the marae you were choosing to be with. Recognising that most of the beneficiaries were eligible for all of the marae.

A data base was formed. The Election Services were employed to run the elections for the permanent trustees and the beneficiaries had to nominate one marae that they chose.

Memory, my memory is there was about 516 approximately. The data base are under the Privacy Act. The forms that were put in did not ask that the beneficiaries could hand their information on to other people. I no longer have that data base that has gone into the permanent trustees, but my memory is 516 were registered over 18 for Waimahana.

Election Services were paid, were employed to carry out the election. So there were public notices through the *Herald*, *Northland Age*, *Northland Advocate*. There were two lots; one was for nominations; there were two public notices put out for the nominations and the closing dates and the process through that; and then the second one was for the elections.

Of that election round there was only one marae that actually had to go in for a vote and that would have been Otangaroa. Waimahana had no other nominations go forward for the permanent trustees but Glendith Samson. So Election Services duly noted in public notice that Glendith Samson was therefore the trustee for Waimahana Marae.

The public notices are here I've got those and the trust deed if you wish to see them.

Court: Yes, if you just provide those to Mrs Hardstaff.

A Stewart: Okay. And the nomination forms, the two people that nominated Glendith in fact.

Documents Produced

Court: So Ms Stewart just looking at the trust deed, the object and the purpose of the trust as set out in clause 2.4 is to receive, manage, hold and administer the trust assets on behalf of the present and future members of Ngāti Kahu ki Whangaroa.

A Stewart: Yes.

Court: So is that in relation to a Treaty Settlement?

A Stewart: Yes, yes.

Court: So it is a trust that has been set up –

A Stewart: Yes.

Court: – to receive Treaty Settlement assets?

A Stewart: Yes.

Court: And as part of the constitution of that trust it is intended that the trustees appointed represent the various marae that Ngāti Kahu ki Whangaroa affiliate with?

A Stewart: Yes.

Court: Okay, I understand that.

A Stewart: Mmm.

Court: What I am wanting to understand in relation to what Mr Peterson has raised, these applications are not in relation to the settlement trust they are in relation to the marae and the urupā itself.

A Stewart: Okay.

Court: Do the trustees on the Kahukura Ariki Trust purport to administer the marae or the urupā, or are they only –

A Stewart: No.

Court: They are not there? So that is a separate trust? It is a separate issue?

A Stewart: Yes, yes.

Court: Okay. So Ms Samson just coming to the specific issue that has been raised in relation to you. The election process you have been through that was for appointment as a trustee to the Kahukura Ariki Trust not on to the marae or the urupā?

Various Speakers: Yes.

G Samson: Yes that's correct Your Honour.

Court: So you do not consider yourself to be a trustee of the marae or the urupā?

G Samson: Not at all Your Honour.

Court: Okay. Well just coming back to you Mr Peterson. In terms of the orders I can grant I have got jurisdiction to grant various orders in relation to both the marae and urupā because those are Māori reservations that fall under Te Ture Whenua Māori Act.

The Kahukura Ariki Trust appears from the information I have seen to be a different type of trust. It appears to be a separate trust that has been set up for the purpose of receiving Treaty Settlement assets. I am not sure what stage that is at. But while the constitution of that trust is set up so that trustees are to represent marae those trustees are not trustees on the marae, unless or until they are appointed by this Court.

So there may have been some confusion perhaps in relation to Ms Samson's role. What I am being told is that she was appointed on or elected on to the Kahukura Ariki Trust to represent Waimahana Marae but is not actually a Waimahana Marae trustee.

Various Speakers: Kia ora.

Court: So I just want your response on that firstly because if that is the case that may affect whether I can grant injunction orders against Ms Samson. But it also raises the wider issue and that is, that it seems that all of the trustees both on the marae and the urupā have passed away. That orders have not been granted updating those trustees for the last 30 years and so it may well be time for an election to be conducted and for new trustees to be appointed for the marae and the urupā in any event.

R Peterson: Mhm.

Court: So I am considering whether I should set down a process for that to take place so that the trustees on the marae and the urupā can be updated.

Various Speakers: Kia ora.

Court: But perhaps if you can just let me know your views on that.

R Peterson: Okay. The issue I have with, well maybe it's because I don't understand everything the processes and that. But I don't understand how a person can actually be appointed to another trust and claim to represent the marae. I mean the marae as I know it and amongst the wider community when you talk about Waimahana it means Waimahana Marae, the people of Waimahana or Waimahana itself.

So when Ms Samson claims that she is a representative for Waimahana what it implies to everybody that she is actually speaking on behalf of the marae, on behalf of the people of Waimahana. That she herself is like she is Waimahana and – well I'm not going to go.

So what I understand from what you're saying is that Ms Samson does not have to be a trustee for the marae to be on another trust claiming to represent the marae. Am I understanding that correctly?

Court: What I am saying is, the appointment or election of trustees on the Kahukura Ariki Trust may not come within the jurisdiction of this Court because that is about a separate issue in terms of electing trustees on a private trust, not necessarily over a trust that falls under the power of the Māori Land Court.

R Peterson: Okay. Well I think –

Court: So –

R Peterson: Sorry.

Court: – that is what I am raising is, if that is the case –

R Peterson: Sorry.

Court: – because if it is it means I may not have the jurisdiction to look into whether there was a proper election process there. It might have to go to either the High Court or as sometimes occurs in relation to a Post-Settlement Governance Entity or Treaty Settlement sometimes those go to the Waitangi Tribunal but generally they do not come to the Māori Land Court.

R Peterson: Okay.

Court: So that is the first issue I am wanting your response on.

R Peterson: Well I –

Court: The second issue is, regardless of that given that there has not been an appointment of trustees for over 30 years should I direct that an election is held anyway to appoint new trustees on both the marae and the urupā?

R Peterson: Thank you. As far as – for some reason I think you were being drawn to – the Kahukura Ariki Trust has been drawn into this conversation and I don't know why it's been drawn into this conversation because all I'm asking for today is recognition of the Waimahana D3B3 Marae Trust as the – or the elected, duly elected trustees for Waimahana D3B3 Marae Trust be recognised as the proper representatives for the marae that's all I'm asking. I don't know why we're talking about the Kahukura Ariki Trust honestly because all I'm addressing is Ms Samson's claim itself that she actually represents Waimahana.

As far as the election processes, directing an election, I understand that an election was already carried out on the 30th. Advertised properly and carried out on the 30th and that nominations were made for new trustees for the marae. This was on the 30th of August and we've yet to file the application to have them recognised by the Māori Land Court.

But once again, I don't know why we're being drawn across the Kahukura Ariki Trust. It doesn't matter who the third party is, what I'm trying to establish is whether Ms Samson has the right to claim to represent Waimahana without being duly elected by the people of Waimahana and the beneficiaries of the Waimahana. That's what my application is about.

Court: Yes. Well the answer to that is fairly simple Mr Peterson because you are right, those persons who are the trustees of the marae and the urupā are the persons who were last appointed by this Court so that was in 1970 for the urupā and 1986 for the marae. So those are the persons who have the legal responsibility for administering the marae so that part is easy to confirm.

The issue, as has been clarified for me today, is Ms Samson is not claiming to be a trustee of the marae or the urupā. She is claiming to be a trustee on the Kahukura Ariki Trust, although she is there as I understand it as the representative for Waimahana Marae.

So I understand that it appears there is some overlap but what I am raising with you is the appointment or election of trustees on the Kahukura Ariki Trust is a separate issue to the appointment of trustees on the marae and the urupā itself.

R Peterson: Surely that's connected right if – surely – oh, yes but she's actually using the name Waimahana, surely that's connected to you know the Waimahana D3B3 Trust? Well the wider community understands Waimahana to you know as I stated previously they understand that to be Waimahana Marae, the people and the place Waimahana. So for her to stand up and say, "Oh look, I represent Waimahana," is she actually when the people haven't elected her to represent Waimahana. I don't understand how that you know the legality of that.

Court: Ka pai. Well I certainly understand the submission you are making.

Ms Stewart, if I could just ask you some questions again. Mr Peterson has advised that there has been an election held recently but I understood from your earlier submission that there had not been one for some time. Are you able to clarify?

R Peterson: Annwyn.

A Buchanan: Are you talking here to me or to Ms Stewart?

Court: Sorry to you, sorry. Yes, are you able to clarify what Mr Peterson has raised?

A Buchanan: Sure. I've actually got something to say which might just assist as well.

Court: Yes.

A Buchanan: (Reads submission).

My name Annwyn Buchanan. I am the secretary for the Waimahana Marae Committee following the resignation of Mrs Marlene Ransfield who relocated to Invercargill. I have held this position for some years now providing a tuakana teina tikanga process to manaaki (support) and provide guidance in this role to our rangatahi to encourage participation at the marae.

The marae committee is an operational committee responsible for the day-to-day cleaning, monitoring, running and maintenance of the marae. It is also the forum for people of Waimahana to gather to express their concerns and intentions for their whānau/hapū.

I will just like to go over a timeline. (Continues reading submission).

On the 28th of February an advertisement was placed in the *Northland Advocate* re the appointment of Glendith as trustee to the KAT Board or the Kahukura Ariki Trust Board.

On the 19th of March Glendith posted on the marae Facebook page her profile.

On the 30th of June Glendith attended her first marae hui to introduce herself as the trustee four and a half months after the nomination took place.

How can Glendith purport to represent the beneficiaries of Waimahana if we the people don't even know who she is? She has never actively participated at the marae and/or attended a marae hui prior to the 30th of June. It would be fair to say that neither have the majority of their whānau been active at the marae.

June Joseph advised it has been 30 years since their whānau were involved at the marae.

Glendith has no knowledge of the historical grievances, decisions and concerns of the people of Waimahana. For example, on the 4th of December 2016 re the people of Waimahana agreed that we do not recognise nor support the Kahukura Ariki Trust. We will not be participating in a nomination process and that we do not recognise an individual whānau who purport to represent the marae.

The actions by Glendith and the trust to usurp the mana of our marae is a disgrace and an insult to our marae trustees, ngā kaumātua kuia and the people of Waimahana. We have instructed the Kahukura Ariki Trust to remove this clause from their constitution.

On the 30th of June 2018 a special meeting was held for the removal of the deceased trustees and the replacement of their descendants. Michael Peterson who passed away on the 21st of June 2015 was the last registered marae trustee. There were two elect trustees but due to unforeseen circumstances Mr Peterson never filed the application with the Māori Land Court.

It should be noted that the marae trustees, they are now all deceased, held this position until death. This is the tikanga of the marae. The newly elected trustees are well aware of this.

Minutes from the 30th of June has it recorded that the nomination of newly appointed trustees was unanimously accepted and the motion was carried.

The marae trustees and the kaumātua kuia taumata are the kaitiaki. They are responsible for upholding the reo, the tikanga and the kawa of the marae. These are values and principles installed in us that we all strive to achieve and maintain.

I guess at the end of the day who has the higher authority, Māori Land Court or the Companies office regarding this issue?

Kia ora.

Court: Kia ora Ms Buchanan. I just have some questions around the election. I think you said that took place on the 30th of June.

A Buchanan: Yes.

Court: So was that held at the marae?

A Buchanan: Correct.

Court: And who called that hui, was it the marae committee?

A Buchanan: I did actually as a beneficiary.

Court: Was the hui advertised?

A Buchanan: Yes.

Court: How was it advertised?

A Buchanan: In the paper, *Northern Advocate* and the *Northland Age* with the required 21 days' notice.

Court: That notice set out that there was going to be an election for the appointment of trustees?

A Buchanan: The notice it was pretty, it was a one liner, two liner. It basically said it was for the removal of the deceased trustees and replaced with the descendants of those trustees.

Court: At that hui there were new trustees elected by those who attended?

A Buchanan: Yes.

Court: Were they elected for both the marae and the urupā?

A Buchanan: Yes they were.

Court: Do you have copies of the newspaper notice, the minutes and the attendance register?

A Buchanan: I can certainly get you those. I'm not actually the secretary for the marae trustees but I can get you that information.

Court: Is there anything else you want to say?

A Buchanan: (No audible response given 10:59:04).

Court: Well in relation to – yes, sorry?

Hinepouterangi Jean Joseph: Sorry Your Honour, my name is Hinepouterangi Jean Joseph. Am I at this stage able to reply to those selections of those trustees or isn't it pertinent to the Court and about that hui?

Court: So do you take issue with what occurred at that hui?

H Joseph: Absolutely and I've got written evidence that they have – we have sent a letter to Annwyn as the caller of the hui and also to Loreen Broughton as to our issues of how that selection of trustees were made and there were no elections at all.

Court: Okay.

H Joseph: And I have a letter here advising us what to do from the Māori Land Court.

Court: Ka pai. Well I probably do not need to hear from you further in relation to that because I am not going to be making a decision today about the appointment of trustees but I have got a clear idea in my mind responding to the current application and as to a way forward.

So in relation to this application Mr Peterson seeks an injunction restraining Glendith Samson from purporting to act on behalf of Waimahana Marae.

The issue in this case is that the trustees for both the marae and the urupā were appointed in 1970. There was a further order granted in 1986 which replaced some of the trustees for the marae. Those trustees were not replaced on the urupā. I am told that all of those trustees have now passed away which means that there are no longer any living or active trustees for the marae and the urupā.

Mr Peterson takes issue with Ms Samson claiming to represent Waimahana Marae when he says that there has not been an election for her to that role which took place at the marae itself.

I have received from Ms Stewart today a copy of the trust deed for the Kahukura Ariki Trust. Clause 2.4 of that trust deed states that the object and purpose of the trust is receive, manage, hold and administer the trust's assets on behalf of and for the benefit of the present and future members of Ngāti Kahu ki Whangaroa.

I have also been told that that trust has actually been set up in effect as a Post-Settlement Governance Entity. That is, that it is intended it is going to receive settlement assets on behalf of Ngāti Kahu ki Whangaroa.

I have also been advised that the election that took place was to elect Ms Samson as a trustee on Kahukura Ariki Trust not as a trustee on the marae.

It still seems clear that there are objections to the process which took place and there are clear objections that Ms Samson should not be recognised as the representative on that trust or at least as the representative for Waimahana Marae.

However, in terms of the orders that I can grant I have to first consider whether the Kahukura Ariki Trust comes within the jurisdiction of this Court.

I have clear jurisdiction in relation to Māori reservations, that includes both the marae and the urupā. Reservations come within section 338 of Te Ture Whenua Māori Act 1993 and I also have wide supervisory powers in relation to trusts that fall under Te Ture Whenua Māori Act 1993.

However, the current trust, being the Kahukura Ariki Trust, is not a trust that was constituted by this Court. It is a trust that has been set up by a private trust deed for the purpose of a proposed Treaty Settlement.

The general processes is that Treaty Settlements are negotiated between the settling group and the Crown. The Crown generally requires a mandating process where those who are seeking to enter into negotiations and settle on behalf of a particular group have to satisfy that they have obtained a mandate in order to represent the beneficiaries of that potential settlement.

Those mandate issues can be fraught and often can be controversial. However, where mandate issues arise in relation to those types of settlement issues generally they do not

fall within the jurisdiction of this Court. They do fall potentially to the High Court or in some cases claimants file applications with the Waitangi Tribunal seeking to review the Crown's actions and whether they have acted in a manner consistent with the principles of the Treaty.

For those reasons, I do not consider that I have the jurisdiction to consider what took place in terms of electing Glendith Samson as a trustee on the Kahukura Ariki Trust. I am aware that there is still strong sentiment felt because on the face of it Ms Samson is representing the Waimahana Marae on that trust.

However, it is clear that she is not a trustee of the marae or the urupā and she has told me today that she is not purporting to be a trustee on the marae or the urupā. Those are the trusts that I have jurisdiction over. Given that there is no evidence before me that she is purporting to act in those roles there is no basis for me to grant an injunction in relation to those particular trusts.

However, there is still an outstanding issue in relation to this marae and this urupā because the trustees have all passed away and they need to be updated so that there are current, active, living persons who are administering both the marae and the urupā for the benefit of those who affiliate to the marae. I had considered today whether I should direct that an election should be held and I have been told that an election was held recently, although that material is not available and is not before me today.

I consider I should exercise my powers to look at appointing new trustees. At this stage given that there has been a meeting held I am not going to direct a further election, rather I am going to direct that that material is filed.

I understand that there may well be some objections to the appointment of the persons who were elected through that process. I will consider that at the next hearing as to whether those who were elected on the 30th of June should be appointed as new trustees on the marae and the urupā. If I do not uphold that election process, it may be appropriate at that stage to direct that a new election will be held but that is a matter that I will consider at the next hearing of this matter.

As such I decline to grant the injunctive relief that has been sought. However, I am putting the parties on notice that pursuant to section 37(3) of Te Ture Whenua Māori Act 1993 I am going to be considering whether to exercise my powers to appoint new trustees to replace those on both the marae and the urupā and I am also going to consider whether I should exercise my supervisory functions to require an election process if necessary.

At this stage all I am going to do is adjourn the current proceedings. I am going to direct that Ms Buchanan is to file with the Court a copy of notice for the hui that was held on the 30th of June, a copy of the minutes, the attendance register and also any trustee consent forms for the persons who were elected at that hui. At the next hearing, I will consider the outcome of that hui whether those persons should be appointed as trustees on the marae or the urupā or whether I should require a fresh election to be held potentially under the supervision of Court staff.

So that concludes matters for today. I just want to thank you all for your attendance. Ka nui te mihi ki a koutou katoa.

Various Speakers: Thank you.

Unidentified Speaker: (11:07:09) Nō reira e tū atu tēnei ki te mihi ki a koe mō o kōrero rangatira e te Kaitakawaenga. He mihi kau atu ki a koutou ngā tini whanaunga e hīkoi tata e hīkoi tawhiti te haere mai te tautoko te karanga o te whenua Māori nō reira ngā mihi ki a koutou. Māku e aukati i tō tātou nei hui mai mihi ki te Runga Rawa.

Karakia Whakamutunga

Various Speakers: Kia ora.

Application is adjourned with directions.

Copy of minute to the applicant.

M P Armstrong
JUDGE