

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CIV-2017-485-247, CIV-2017-485-302
and CIV-2017-485-255**

UNDER The Marine and Coastal Area (Takutai
Moana) Act 2011

IN THE MATTER OF An application for orders recognising
Customary Marine Title and Protected
Customary Rights

BETWEEN NGĀ HAPŪ O TOKOMARU ĀKAU
Applicant

AND TE WHĀNAU A RUATAUPARE KI
TOKOMARU
Applicant

AND NGĀ WHANAŪ O HAUTĪ
Interested Party

AND SEAFOOD INDUSTRY
REPRESENTATIVES
Interested Party

AND ATTORNEY-GENERAL
Interested Party

Hearing: 5 September 2022

Counsel: D C F Naden and S M Yogakumar for Applicant Ngā Hapū
L A O’Gorman QC, R A Siciliano and C T Mataira for Applicant
Te Whānau A Ruataupare
B R Lyall and H L B Swedlund for Whānau Hauti
B Scott and S Cvitanovich for Seafood Industry (via AVL)
D A Ward and C C Barnett for Attorney-General

Minute: 8 September 2022

**MINUTE (No. 3) OF CULL J
[Pre-trial applications]**

[1] The applicant Ngā Hapū O Tokomaru Te Ākau (Ngā Hapū) filed two pre-trial applications. The first was an application to amend its originating application for recognition orders under the MACA Act and the second was an application opposing the admissibility of Te Whānau a Ruataupare’s reply evidence.

[2] I deal with each respectively.

Amended application for recognition orders

[3] Counsel for Ngā Hapū seeks three amendments to the originating application for recognition orders. First, Counsel seeks to include two additional named applicants, Danny Delamere and Kemara Pewhairangi. Second, the application seeks to correct the description of the specified area sought in the application. The originating application described the specified area as a coastline “in and around Tokomaru Bay – from Ngutu O Ngore (Orange Bay) in the north, to Mawhai Point in the south.” The amendment sought would read:

... in and around Tokomaru Bay – from Koutunui Head in the north to Mawhai Point in the south.

[4] Mr Naden clarified that it represented a reduction in or refinement of the boundary but it did not affect any new overlapping applications. He submits that it does not cause prejudice to other parties.

[5] Third, the application provides “greater detail” of the Protected Customary Rights recognition orders sought by Ngā Hapū. A typographical error is also corrected to a reference to NHOTA.

[6] The other parties filed memoranda indicating that they provisionally could consent to the amendment application but objected to the substantive rights sought by the late amendments.

[7] Counsel for Te Whānau consents to leave being granted but strenuously objects to Ngā Hapū representing the position of Te Whānau a Ruataupare. They contend that Ngā Hapū do not have proper authority to represent them.

[8] Counsel for the seafood industry representatives accept conceptually that the amendment could be permitted but on the basis that matters raised by the amendment, particularly in relation to the PCR rights sought, can be dealt with in closing submissions. As a matter of record, Mr Scott submits it is wrong in principle to allow late amendments seeking specific rights, which the legislation does not allow.

[9] Counsel for the Attorney-General abides the Court’s decision on whether to accept the amended application, noting that it appeared to be a similar permissible amendment accepted by Churchman J in *Re Ngāti Pāhauwera*.¹ The Attorney-General observes however, that the third amendment, which provides greater detail of the Protected Customary Rights sought by Ngā Hapū are additional rights rather than just “greater detail”.

[10] Prior to the commencement of the hearing, I granted the application to amend the originating application for recognition orders reserving the position of each of the respective parties to deal with the substantive issues raised, either by way of evidence or by submission.

[11] Accordingly, the application to file the amended originating application for recognition orders is granted.

Opposition to reply evidence

[12] Counsel for Ngā Hapū seeks an order that the reply evidence filed on 16 August 2022 by Te Whānau be ruled inadmissible. The grounds upon which the orders are sought are that the reply evidence has not been filed strictly in reply to the primary evidence of the applicant, that it is an abuse of process, and is likely to cause prejudice to Ngā Hapū.

¹ *Re Ngāti Pāhauwera* [2022] NZHC 394.


[13] Counsel detailed Ngā Hapū’s objections, submitting that the evidence bolsters the primary evidence, is repetitive, and fails to be properly referenced or signposted. The prejudice complained of is that Ngā Hapū witnesses will not have the opportunity to respond to wholly new matters raised in the reply evidence and the applicant will be put to unnecessary cost to properly review and consider the reply evidence in time for the hearing.

[14] The reply evidence under objection was listed helpfully in a schedule and relates almost principally to the “mandate” issue and meetings that had recently been held in May, June and July 2022.

[15] Ms Yogakumar for Ngā Hapū addressed the Court in support of its opposition.

[16] I declined Ngā Hapū’s application to rule the evidence inadmissible. The evidence is relevant to both updating the position for Te Whānau’s representation and goes directly to the representation issue at the heart of Ngā Hapū’s and Te Whānau’s claims for recognition orders. I consider that it is in the interests of justice to hear all the evidence pertaining to this representation conflict between the parties and given there is adequate time to deal with the evidence, it should be admitted. Both parties address the representation issue extensively in their filed evidence and I consider the risk of any prejudice is minimal in the circumstances. There has been sufficient time for Ngā Hapū witnesses to address it. What weight ultimately is given to the evidence, will be a matter for the Court in a final determination.

[17] **Accordingly**, Ngā Hapū’s evidence admissibility application is declined.



Cull-J