

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 82/2018  
[2018] NZSC 119

BETWEEN TONI COLIN REIHANA  
Applicant

AND RAKIURA TITI COMMITTEE  
First Respondent

MARAMA COOPER  
Second Respondent

STEWART BULL  
Third Respondent

RON BULL  
Fourth Respondent

SONIA RAHITI  
Fifth Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: Applicant in person  
C M Lenihan for First Respondent

Judgment: 3 December 2018

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**JUDGMENT OF THE COURT**

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- A The application for leave to appeal is dismissed.**
- B The applicant must pay the first respondent costs of \$2,500.**
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**REASONS**

[1] Mr Reihana filed three sets of judicial review proceedings in the High Court challenging various decisions relating to the management of the Beneficial Tīti Islands

under the Titi (Muttonbird) Islands Regulations 1978.<sup>1</sup> Mr Reihana is a beneficiary with rights to enter and take birds at Hinekuha manu on Te Kanawera (also known as Taukihepa) tītī island. In the High Court the first respondent, the Rakiura Titi Committee (elected under the Regulations), sought to strike out or, in the alternative, stay all of the proceedings.

[2] Gendall J declined the strike-out application, but did stay the proceedings under r 15.1(3) of the High Court Rules 2016 until the conclusion in each case of the independent decision maker procedure provided for in the Regulations.<sup>2</sup> Mr Reihana’s appeal from that decision to the Court of Appeal was unsuccessful.<sup>3</sup>

[3] In dismissing the appeal, the Court of Appeal upheld Gendall J’s conclusion a stay should be granted on the basis that the proceedings were an abuse of process because there was a more appropriate method of resolution under the Regulations.<sup>4</sup> That was in part because the underlying issues involved tikanga and the Regulations vested governance of the matters in issue in Rakiura Māori.<sup>5</sup> The Court also said that the resolution of the factual matters in dispute would require findings on contested facts which are unsuited for judicial review.<sup>6</sup> For example, one aspect of the claim relates to the building of some structures which Mr Reihana says was done without the necessary approvals.<sup>7</sup>

[4] Mr Reihana seeks leave to appeal to this Court from this decision on the basis of a miscarriage of justice.

[5] Whether bringing the proceedings without first exhausting the independent decision maker procedure provided for in the Regulations is properly characterised as an abuse of process is an issue that potentially raises a question of general importance. However, the other matters relied on by the Court of Appeal, such as the need to

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<sup>1</sup> The proceedings have been described as “an amalgam of judicial review and tort” and include a claim for damages for misfeasance in public office: *Reihana v Rakiura Titi Committee* [2018] NZCA 325 (Kós P, French and Miller JJ) [*Reihana* (CA)] at [14].

<sup>2</sup> *Reihana v Rakiura Titi Committee* [2016] NZHC 2048, [2016] NZAR 1491 [*Reihana* (HC)].

<sup>3</sup> *Reihana* (CA), above n 1.

<sup>4</sup> At [15]–[16].

<sup>5</sup> At [18].

<sup>6</sup> At [19].

<sup>7</sup> See *Reihana* (HC), above n 2, at [30].

resolve factual issues and the relevance of tikanga, reflect conclusions about the particular factual circumstances of the case. Those issues accordingly do not raise any question of general or public importance. In these circumstances, this is not an appropriate case for leave. Nor does anything raised by Mr Reihana lead us to consider a miscarriage of justice arises, particularly where Mr Reihana will have the opportunity to pursue the various matters identified after the process undertaken under the Regulations has concluded if he wishes to do so. The criteria for leave to appeal are not met.<sup>8</sup>

[6] The application for leave to appeal is dismissed. The first respondent has incurred the cost of filing submissions in opposition to this application. There is no good reason why, in these circumstances, having been unsuccessful, Mr Reihana should not pay costs. Costs of \$2,500 are awarded to the first respondent.

Solicitors:  
Scholefield Cockroft Lloyd, Invercargill for First Respondent

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<sup>8</sup> Supreme Court Act 2003, s 13; and Senior Courts Act 2016, s 74.