

**CASE MANAGEMENT CONFERENCE (No. 2)**  
**WELLINGTON**  
**7 FEBRUARY 2019 at 10.00 am**

**Application by Ms Catherine Clarkson & Ors**

**COURT:**

Good morning counsel

Mr Hope?

**MR HOPE:**

Yes, your Honour I'm appearing by AVL.

**COURT:**

Good morning, thank you for doing so.

**MR HOPE:**

And I'm appearing for the Clarkson sisters, Catherine Clarkson and Ketepunga Clarkson.

**COURT:**

Thank you very much Mr Hope.

Mr Watson?

**MR WATSON:**

Tēnā koe sir, I'm appearing up in Hastings. Thank you for providing that facility for the Ngāti Kere working group.

**COURT:**

Thank you, good morning and thank you for making yourself available.

Ms Bollen?

**MS BOLLEN:**

Tēnā sir, Ms Bollen here in Hamilton, appearing for the Rangitāne Tū Mai Rā Trust.

**COURT:**

Mr Hirschfeld, I've already heard your voice this morning you must be there somewhere.

**MR HIRSCHFELD:**

Tēnā koe sir. May it please your Honour sir I appear for Te Hika, that's CIV-481. I seek your Honour's leave to have Ms Danielle Morehau seated beside me in this conference. She's a senior researcher in my chambers and quite involved in this sir the purposes so that she can just have an idea of lawyers' process.

**COURT:**

By all means Mr Hirschfeld, that's not a problem.

**MR HIRSCHFELD:**

I'm very obliged to you sir.

**MR SHARROCK:**

Sir, it's Mr Sharrock also appearing from Auckland via AVL for Rihari Dargaville, number 404-538.

**COURT:**

Thank you very much Mr Sharrock.

Ms Tukapua?

**MS TUKAPUA:**

Tēnā koe sir, I appear for Ngāti Kahungunu ki Wairarapa Tāmaki nui-a-Rua Settlement Trust on behalf of Mr Ferguson sir. Thank you.

**COURT:**

Thank you very much and I'm very grateful for you being here.

Ms Collinson?

**MS COLLINSON:**

Tēnā koe sir, Ms Collinson here in place of Ms Mason and I'm here on behalf of Maanu Paul, that claim being 485-512 and sir this is actually my first appearance before the High Court so if I make any mistakes please advise me.

**COURT:**

I'll go very gentle on you then.

**MS COLLINSON:**

Thank you sir.

**COURT:**

Thank you, I'm very grateful to you. Thank you Ms Collinson.

And good morning Mr Melvin

**MR MELVIN:**

Tēnā koe sir.

**COURT:**

Mr Hope, I know you have just picked this matter up at very short notice and I am grateful and relieved that you have done so. I'm just not too sure how realistic it will be for you to have your clients' case ready for the hearing in July and if you are going to be ready by then, whether or not the other parties are going to be put in a position where they won't be ready because of the delays that have already occurred.

**MR HOPE:**

It's accepted your Honour. My instructions are not to ask to vacate the fixture but Ms Clarkson is realistic about them and the matters your Honour's raised. You'll also note from my memorandum that I'll be making an application to have Ms Clarkson's evidence heard before the Registrar or the Court if need be. It's a personal matter, but you will read between the lines that Ms Clarkson is ill and quite seriously so. She's been one of those many people whose condition is worsened by the lack of surgeons. She's been waiting for over a year for surgery and meanwhile her condition deteriorates.

**COURT:**

Mr Hope I'm sympathetic to your circumstances and obviously those of your client. It may be that Ms Clarkson's evidence can be taken on a day or two in July but I'll hear from other counsel.

Mr Watson, when we had the first stage of this case management conference just prior to Christmas, there was some discussion about whether or not your client might be able to become the lead applicant for the purposes of preserving the hearing in July and I just wanted to explore that with you a little further.

**MR WATSON:**

Thank you sir. With respect Mr Hirschfeld I think through his client had suggested to you that they may be ready. From my client's perspective, we were concerned at how we would be available to fill any vacated July fixture. My clients are not ready to proceed in the space of Ms Clarkson's matter. I would just briefly like to address you on Mr Hope's memorandum and obviously concede your supportive comments that Mr Hope is now involved so these comments are not related to him at all, but I've got residual concerns around the ability of Ms Clarkson and her sisters to comply with timetabling directions. I note that Mr Hope indicates that they wish to file further evidence but there is no indication of timetables for that and again I reiterate this is nothing in relation to his activities as counsel but really sir this has to be put in the context of a very, very long habit of Ms Clarkson missing deadlines and I'm just concerned that really there's no indication in the memorandum at all as to why the October deadline wasn't met and why she's instructed counsel so very late in the piece.

**COURT:**

I'm interpolating and accepting that it's because of her ill health that she has simply not been able to come to grips with her obligations to the Court.

**MR WATSON:**

And my sympathy to her as well sir, but the point is that if we are looking at timetabling for Clarkson evidence either by herself or her sister, my client's instructions are that we should insist upon absolute adherence to any timetable going forward and a realistic timeframe too sir so that we're not left with this matter dragging on.

**COURT:**

I am with you in both respects Mr Watson and that will be my intention, subject to anything that anyone else has to say.

Mr Hirschfeld, you have been industrious and are ready to go. My concern really isn't with you being ready to go but how affected parties will be positioned because of the delays that have occurred with Ms Clarkson.

**MR HIRSCHFELD:**

Sorry sir, I may have misunderstood you. Is your Honour asking what the position is for –

**COURT:**

Am I correct in assuming that you believe that you'll be ready to go. My only concern is whilst you may be ready to go and your clients have been industrious and they've been working diligently to be able to have their case ready for hearing, its everyone else who's been hanging off waiting for Ms Clarkson's evidence who are probably now not in a position to be able to deal with their cross-applications.

**MR HIRSCHFELD:**

Sir, I reiterate as I've previously mentioned in other conferences, that we are on track and certainly would be ready by a July date and that position is unaltered.

**COURT:**

Ms Tukapua? I teased with Mr Ferguson the possibility of his clients also being ready in July. Is there any update?

**MS TUKAPUA:**

I'm not able to update you much further. I understand there is the trustees meeting at the end of March, so sir we should be able to update and provide the confirmation on readiness in March sir.

**COURT:**

Ms Bollen? How are things with your clients?

**MS BOLLEN:**

Yes, we've had instructions that the trustees don't want to proceed with any hearing in the July date, due to the fact that they haven't been able to instruct their historian with no evidence being filed to date so they're opposing proceeding in July at this stage.

**COURT:**

Okay.

Ms Collinson?

**MS COLLINSON:**

Yes sir so we're in a similar position in that at this point we would need about eight weeks from the time of them filing their evidence in which to respond ourselves. So at this point our instructions are to abandon the July date.

Thank you sir.

**COURT:**

Thank you.

Mr Melvin?

**MR MELVIN:**

Yes sir it's looking unrealistic to have a hearing in July. With all due respect the Attorney-General's position is that parties need an adequate time to prepare their evidence.

**COURT:**

You basically need a six-month period?

**MR MELVIN:**

Well, it would depend on the evidence that is filed and the extent to which overlapping applications are heard. Ms Clarkson had already filed a degree of evidence.

**COURT:**

About three or four statements of evidence I think.

**MR MELVIN:**

Yes, and we had prepared evidence in response to that. So there may not be too much in relation to her application for the Crown to address further but in relation to other applications.

**COURT:**

And we also had to factor in interested parties who are not applicants.

**MR MELVIN:**

That's right sir.

**COURT:**

Alright, thank you very much. I will issue a minute. It probably won't come out until some stage next week. I am very grateful for everything you have done, but before we finish Mr Hope, how much more time do you think you require to complete the evidence on behalf of Ms Clarkson?

**MR HOPE:**

I really can't start on it until March, the beginning of March. But I'm completely free then. I intend to travel down to the Hawke's Bay and meet with Ms Clarkson and do everything that I need to do. I can probably put a week into it. For the rest of February, I have High Court commitments, including a week in the Waitangi Tribunal. So it's not realistic that I look at starting anything until the beginning of March. As I say, I've completely booked out March to deal with Ms Clarkson's matter.

**COURT:**

So mid-April or thereabouts would be appropriate for you to have the evidence completed?

**MR HOPE:**

Yes.

**COURT:**

Did I hear somebody else?

**MR SHARROCK:**

Sir, Mr Sharrock here from Auckland.

**COURT:**

Yes Mr Sharrock.

**MR SHARROCK:**

I'd just like to make a general observation that we're not able to proceed. I'm reminded of the saying that an "army marches on its stomach" sir. The logistics of paying for expert evidence, etc. I have paid for some thus far out of my own pocket, but having not received any payment to date for anything done in these proceedings I am reluctant to go further and I feel that the case is not only with regards to the funding of experts but also the ability of claimants to organise hui and wānanga for the purposes of collating their evidence is being prejudiced by the absence of funding from the Crown sir.

**COURT:**

Alright. Well Mr Sharrock I know that Mr Melvin is receptive to hearing any particular issues on behalf of any specific applicants to see what can be done to try and grease the wheels that control the payments.

**MR SHARROCK:**

I much appreciate that sir. Thank you.

**COURT:**

So can I invite you to talk directly to Mr Melvin about any issues that you're having in relation to funding arrangements?

**MR SHARROCK:**

Much obliged sir.

**MR MELVIN:**

Thank you sir.



**COURT:**

Alright. Thank you very, very much. I will issue a minute. It probably won't be until about mid-way through next week.

Thank you.