

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

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

CIV-2011-485-821

IN THE MATTER OF the Marine and Coastal Area (Takutai
Moana) Act 2011

IN THE MATTER OF an application by the Trustees of the
Ngāti Pahauwera Development Trust
TORO WAAKA, TANIA HODGES,
TUREITI MOXON,
CHAANS TUMATAROA-CLARKE,
NGAIRE CULSHAW, REX ADSETT and
RICHARD ALLEN on behalf of NGĀTI
PAHAUWERA for Customary Marine
Title, Wahi Tapu Protection and Protected
Customary Rights, originally filed by
WAYNE TAYLOR, RUKUMOANA
WAINOHU and KUKU GREEN as an
application for protected customary rights

Hearing: 3 February 2020

Counsel: R N Smaill and E James for Trustees of the Ngāti Pahauwera
Development Trust (CIV-2011-485-821)
S Eccles for Trustees of Maungaharuru Tangitū Trust
(CIV-2017-485-241)
S J Roughton for Ngai Tahu o Mohaka Waikare (CIV-2017-485-235)
J Mason for Maanu Paul (CIV-2017-485-512)
L Underhill-Sem for Ngāti Parau (CIV-2017-485-246)
G L Melvin for Attorney-General (Interested Party)
M Williams for Pan Pac Forest Products Ltd (Interested Party)
M Conway and H Harwood for Hawkes Bay Regional Council
(Interested Party by memorandum only)

Minute: 25 February 2020

MINUTE (NO. 2) OF CHURCHMAN J

[1] The application by Ngāti Pahauwera is a priority application that has been set down for hearing in Napier to commence on 9 February 2021. Also to be heard with it at that time are those parts of the applications of other parties that overlap with the Ngāti Pahauwera claim.

Strike-out application

[2] Although Ngāti Pahauwera have not filed an application to amend their claim, they have filed an amended map which indicates that the area they are claiming now extends well south of the current mouth of Esk River to what they say is the historical mouth of the river. Effectively, the claim has almost doubled in size and now extends as far south as Napier.

[3] The effect of the filing of the amended map is that a number of other claimants who were previously either completely unaffected by the Ngāti Pahauwera claim or only affected to a small degree, have been drawn into these proceedings.

[4] One of those applicants, the Maungaharuru Tangitū Trust has filed an application to strike-out that part of the claim now reaching south beyond the current mouth of the Esk River. That application is supported by other similarly affected applicants.

[5] A two-day fixture has now been allocated for the hearing of the strike-out application. That hearing will take place in Napier on 6 and 7 April 2020.

Timetable variation

[6] A number of the cross-applicants sought variations of the existing timetable directions.

[7] Ngāti Pahauwera proposed that the cross-applicants should have until the end of April to file their evidence with the cross-applicants proposing the date of the end of June.

[8] In the memorandum of counsel filed for these proceedings, counsel for the Attorney-General had sought six months to respond with the evidence on behalf of the Attorney-General. However, during the course of the case management conference (CMC), Mr Melvin accepted that the Attorney-General could live with a period of four months.

[9] Given this concession, it will be possible to permit the various cross-applicants to file their evidence by 30 June 2020.

[10] Mr Williams, for the interested party Pan Pac, indicated his client intended filing evidence. That evidence and any evidence that other interested parties wish to file should be filed and served by 28 August 2020.

[11] Any evidence on behalf of the Attorney-General shall be filed and served by 30 October 2020.

[12] The applicants and cross-applicants shall have until 22 December 2020 to file any evidence in reply.

[13] All parties' opening submissions shall be filed and served by 26 January 2021.

Close of pleadings date

[14] Pursuant to r 7.6 of the High Court Rules 2016 (HCR), the Court is required to fix a close of pleadings date. The normal default date is 60 working days before the date the hearing is scheduled to commence although there is a discretion to vary that date.

[15] Given the amended timetable fixed with the filing of evidence, it is appropriate for the close of pleadings date to be 22 December 2020. After that date no further affidavit or interlocutory application may be made without the leave of the Court.

Maanu Paul application

[16] This application is one of two "national" applications said to be have bought on behalf of "all Māori". On their face, these applications do not comply with the requirements of the Act that an applicant be a whānau, hapū or iwi. As a result, the Court has issued a number of minutes, the most recent being on 30 January 2020. That minute gave the applicants until 29 February 2020 to amend the applications so that they complied with the Act in terms of the identity of the applicant and the detail of the claim.

[17] Ms Mason appeared in support of the Maanu Paul application and indicated that complying applications would be filed on behalf of two named proposed applicants by 29 February 2020.

[18] In relation to the two “national” claims, the Court has, to date, been sympathetic to the submission of counsel that these claims were “protective” claims in relation to specific applicants who wished to advance a claim but had not otherwise done so. During the course of this CMC, counsel for some of the cross-applicants made the point that amending the “national” applications in this way, may be in breach of the time limits for the filing of applications. If that issue is to be pursued, then a formal application will need to be promptly filed and served, and a time allocated for its hearing.

[19] In the meantime however, all applicants who wish to participate in the hearing of the Ngāti Pahauwera priority application in February 2021, will have to file the evidence in support of that part of their claim that overlaps with the priority claim by the time limits set out in this minute.

2008 Māori Land Court proceedings

[20] Counsel for Ngāti Pahauwera seeks from the Court an order that the briefs of evidence and the transcript from the 2008 Māori Land Court (MLC) proceedings be formally accepted by the High Court as evidence in these proceedings.

[21] I have come to the conclusion that no interlocutory application is necessary for this. The current application is a continuation of the application that was filed in the MLC in 2005. That application was transferred to the High Court pursuant to s 125(1) of the Marine and Coastal Area (Takutai Moana) 2011. Therefore, all evidence and the draft transcript of the hearing in the MLC held in February 2008 automatically becomes part of the record in this Court. Ngāti Pahauwera and the other parties are free to treat that evidence in the same manner as they treat any other evidence.

Pukenga

[22] I raised with the parties at the CMC the possibility of appointment of a pukenga. I encouraged the parties who intend appearing at the February 2021 hearing to discuss with each other who an appropriate pukenga might be. Ideally the parties will file a joint memorandum identifying a proposed pukenga. If no agreement can be reached, and no joint memorandum filed, the parties are directed to file their individual memoranda recommending their preferred choice or choices as a pukenga. The memoranda are to explain why the parties prefer one proposed pukenga over another. Such memoranda are to be filed no later than 30 April 2021.

Te reo Māori

[23] It is possible that some of the witnesses who are called to give evidence in this matter will wish to give their evidence in te reo. In order for the Court to have sufficient time to appoint an appropriate interpreter, any party wishing to give any of its evidence in te reo Māori shall notify the Court of the name or names of the witnesses no later than 30 October 2020.

Crown engagement

[24] Mr Melvin raised a concern that three claimants potentially affected by these proceedings had opted for direct Crown engagement rather than pursue applications to the Court. They are apparently unrepresented. He was concerned that they may be unaware of these proceedings. The Court has no involvement with, or jurisdiction in relation to applicants that the Crown chooses to engage with directly. Neither are their details held on the Court files. However, the Crown will have this information.

[25] None of the parties who attended the CMC raised any opposition to copies of the applications that will be heard in February 2021 being served on the applicants who have chosen to engage with the Crown directly and Mr Melvin is free to forward copies of those applications to the affected parties. However, it is not clear what steps those direct engagement applicants might be able to take in relation to these proceedings. They would now seem to be too late to participate in the hearing as interested parties.

Churchman J