IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

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

CIV-2017-404-538

IN THE MATTER OF	the Marine and Coastal Area (Takutai Moana) Act 2011
IN THE MATTER OF	an application by RIHARI DARGAVILLE for an order recognising Customary Marine Title and Protected Customary Rights of New Zealand Māori Council Members

On the papers:

Counsel: G Sharrock for Applicant

Minute: 3 March 2020

MINUTE (NO. 5) OF CHURCHMAN J
["National Claims"]

Background

[1] These proceedings are one of two so-called "National" claims. In other words, Mr Dargaville lodged a claim relating to all of New Zealand purportedly on behalf of all Māori. The claim was initially for both customary marine title (CMT) and protected customary rights (PCR).

[2] The Marine and Coastal Area (Takutai Moana) Act 2011 (the Act) does not provide for claims to be made on behalf of "all Māori". Under s 100(1) of the Act, only an applicant may apply to the Court for a recognition order. Section 9 of the Act defines an applicant group as one or more iwi, hapū or whānau groups that seek recognition under Part 4 of the Act of their PCR or CMT.

[3] An applicant group is defined in the Act as including "a legal entity (whether corporate or unincorporated) or an actual person appointed by one or more iwi, hapū or whānau groups

to be the representative of that applicant group and to apply, and hold, an order or enter into an agreement on behalf of the applicant group."[1]

Jurisdictional issue

[4] When the apparent lack of jurisdiction for the Court to entertain national claims on behalf of all Māori was pointed out to the two national applicants, they indicated that the claims were "protective" in nature. By that they meant that the claims were lodged in case some applicants who wished to advance a claim had not done so within the statutory time limit. It was implied that these national claims would then be able to be utilised on their behalf.

[5] Given this explanation, the Court allowed the two national applicants the opportunity to refine their claims, identifying the group or groups in respect of whom specific claims were being advanced.

[6] This process has been the subject of a number of minutes in July and September 2019 and January 2020. In response to those minutes, there has been some refining of Mr Dargaville's claim.

[7] On 17 November 2019, counsel for Mr Dargaville, Mr Sharrock, filed what was said to be an amended application for orders for CMT. There was no application for PCR.

[8] A number of the defects identified in respect of the original application still remain. It is not entirely clear who the applications are being advanced in respect of. Indeed, in respect of an extensive claim to the Hawkes Bay/Wairarapa coast, no claimant was identified at all.

[9] In a minute of the Court of 30 January 2020, the defects were identified and the steps that needed to be taken were also set out. Mr Dargaville was given a month to remedy the defects and was put on notice that if he did not do so the claim was likely to be struck out.

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1 Marine and Coastal Area (Takutai Moana) Act 2011, s 9(1).

Confusing documentation

[10] Mr Sharrock filed a memorandum dated 25 February 2020. Also filed with the memorandum was what was described as "initial affidavit of Rihari Dargaville in support of amended application". This was dated on the coversheet 3 November 2019 but in the jurat was dated 27 February 2020.

[11] Accompanying the affidavit were two documents that were said to be amendments to the original application. Both of the documents seem to be the same. Confusingly, they seem to seek PCR rather than CMT.

[12] The memorandum filed by Mr Sharrock is difficult to follow. In response to the direction that it was necessary to identify on whose behalf individual claims were being advanced so that other claimants who had claimed the same area would be aware of who was contesting their claims, Mr Sharrock submitted that this concept needed "to be examined". He further submitted:

> The first point is that the claimants in these matters are mandated or authorised by the hapū. If their mandate or authorisation is properly withdrawn, then in my submission the applicant needs to be substituted.

[13] Nowhere in any of the material filed by Mr Sharrock is there an assertion that any of the applicants whose claims are now overlapped by the claims being advanced by Mr Dargaville, have had their mandate or authorisation withdrawn. Accordingly, there is no need for "substitution".

[14] Mr Sharrock goes on to refer to the Waitangi Tribunal and notes that many claims in the Waitangi Tribunal are no longer run by the claimant who commenced them. The inference is that a national claim is needed to address the situation where a named individual claimant dies.

[15] However, such a submission is also unjustified. Where named individuals have advanced claims on behalf of a hapū, whānau or iwi, there has been no difficulty in substituting another named claimant on behalf of that hapū, whānau or iwi where the originally named claimant has died.

Outcome

[16] As Mr Sharrock has failed to comply with the various directions given by the Court, it is appropriate that this application be set down for hearing as to whether it should be stayed, either in whole or in part, until such time as the requirements of the Act are met (including identification of the claimants in a way that permits other applicants affected by the claims to know the identity of those lodging overlapping claims; what is being claimed to be identified with particularity and for adequate maps to be filed).

[17] As an alternative to such a stay, the Court will also consider whether all or part of the application should be struck out, such orders being made pursuant to the inherent jurisdiction of the Court and to r 15.1 of the High Court Rules 2016.

[18] The Registrar is to allocate a one-day fixture to hear the stay/strike-out applications in the Wellington High Court.

Churchman J