

**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 Pāhauwera Development Trust
TORO WAAKA, TUREITI MOXON,
CHAANS TUMATAROA-CLARKE,
REX ADSETT, GERALD ARANUI,
AMIRIA TOMOANA and TOM KEEFE
on behalf of NGĀTI PĀHAUWERA for
Customary Marine Title, Wahi Tapu
Protection and Protected Customary Rights

On the papers:

Counsel: R N Smail and E A James for Trustees of the Ngāti Pāhauwera
Development Trust (CIV-2011-485-821)
K Anderson for Maungaharuru-Tangitū Trust (CIV-2017-485-241)
S J Roughton for Ngai Tahu o Mōhaka Waikare (CIV-2017-485-235)
M Mahuika, L Underhill-Sem for Ngāti Pārau (CIV-2017-485-246)
G Sharrock for R Dargaville (CIV-2017-404-538)
J Mason for M Paul (CIV-2017-485-512)
G Melvin for Attorney-General

Minute: 22 April 2020

MINUTE (NO. 4) OF CHURCHMAN J

Background

[1] These proceedings relate to a priority claim lodged on behalf of Ngāti Pāhauwera involving an area of the Hawkes Bay coast. The priority application is set down for a full hearing in early 2021.

[2] As a result of the applicant filing an amended map which substantially increased the area of the claim, one of the cross-applicants, Maungaharuru-Tangitū Trust (MTT), filed a strike-out application on 30 January 2020. What was sought to be struck out was that part of the application relating to the amended map filed by the applicant.

[3] A case management conference (CMC) was held in Napier in this matter on 4 February 2020. The issue of the strike-out application was raised. The Court subsequently issued a minute of 14 February 2020 allocating a hearing date for the strike-out application in the High Court at Napier on 6 and 7 April 2020.

[4] The minute stated counsel appearing in support of the strike-out application were required to file and serve their submissions no later than 10 working days prior to the hearing (23 March 2020), and Ngāti Pāhauwera and any other party opposing the strike-out application to file and serve their submissions no later than five working days prior to the hearing (30 March 2020).

[5] All parties interested in these proceedings received a copy of the minute of 14 February 2020. A copy of the minute was also posted on the Courts of New Zealand website in the section relating to the Marine and Coastal Areas Act (Takutai Moana) Act list.

[6] There were some variations to the timetable dates and, as a result of the COVID-19 Level 4 measures, all interested counsel agreed that the 6 and 7 April 2020 hearing in Napier would be replaced by a hearing on the papers.

[7] An interested party (Ngai Tahu o Mōhaka Waikare) who had not attended the CMC made a late application to file submissions in relation to the strike-out hearing. In response to that, both Ngāti Pāhauwera and MTT filed memoranda seeking variations to the timetable order to allow them to respond to whatever was submitted on behalf of Ngai Tahu o Mōhaka Waikare.

[8] The Court granted the application for leave to file submissions but required the submissions to be filed by 8 April 2020.

[9] Counsel for Ngai Tahu o Mōhaka Waikare subsequently advised the Court that they did not wish to make any submission.

[10] By 8 April 2020, all submissions including those in reply had been filed and served.

[11] On 14 April 2020, Mr G Sharrock, on behalf of Rihari Dargaville, emailed the Registrar wishing to make submissions on the strike-out application. The Registrar responded pointing out that he had not complied with the timetable order.

[12] Mr Sharrock initially claimed not to have received an email from the Registrar of 26 March 2020 directing all interested parties to file submissions in accordance with the minute of 14 February 2020. When the Registrar pointed out to him that it had been sent to his email address, he responded by saying he could not explain lack of receipt. He acknowledged that he had overlooked a subsequent similar email in what he described as “covid chaos”.

[13] According to the documentation emailed by Mr Sharrock to the Registrar, he had sent a copy of his email of 14 April 2020 to Ms Mason who acts for Maanu Paul. Later that afternoon, Ms Mason emailed the Registrar saying:

Could I please also seek a similar extension, for reasons as per Mr Sharrock’s email.
Thank you.

[14] The Registrar replied to Ms Mason pointing out that all of the earlier emails about the timetable directions had been sent to her email address. She had also been present at the CMC in Napier on 4 February 2020 when the directions relating to the strike-out application hearing had been made. No explanation has been given by Ms Mason as to why she has not complied with the timetable directions.

[15] The Registrar’s records show that, although Ms Mason had received all the correspondence from the Court, there had been no indication prior to her email of 3:31 pm on 14 April 2020 of any wish on the part of her client to participate in the strike-out application.

[16] The emails from Mr Sharrock and Ms Mason requesting to file submissions out of time in relation to the strike-out application were served on the other parties active in that application. Submissions in opposition were received from counsel for Ngāti Pāhauwera and counsel for the applicant in the strike-out proceedings (MTT). Both strongly objected to the very late application to become involved in the strike-out proceedings.

[17] Mr Smail, for Ngāti Pāhauwera, opposed any extension of time on the basis that he had not been served with a copy of any application and was unaware of the basis upon which participation was sought. The Court has also not been provided with anything other than brief emails. No formal application or supporting affidavit has been filed, and no information provided as to whether Mr Sharrock or Ms Mason's clients support or oppose the strike-out application.

[18] Mr Smail indicated that Ngāti Pāhauwera were concerned about the delays and noted that no justification or reasons had been given for the failure to comply with the timetable order.

[19] MTT opposed the application on the basis that there had been ample time since the strike-out application was filed on 30 January 2020 for these parties to advise of their position and join in the strike-out application but neither had done so.

[20] Mr Anderson for MTT, also referred to the time, cost and delay in permitting additional parties to join in the application at a time when all of the submissions had been filed and responded to. He referred to prejudice to MTT if there was any further delay.

[21] Mr Sharrock has now withdrawn his application for leave to file submissions.

Analysis

[22] Rule 1.19 of the High Court Rules 2016 (HCR) confers a discretion on the Court to extend and shorten time limits. HCR 1.2 obliges the Court to secure the just, speedy and inexpensive determination of any proceeding or interlocutory application.

[23] Before the Court can exercise a discretion to extend time for something to happen, an applicant must lay a proper foundation.¹

[24] Ms Mason, who was present at the CMC in Napier on 4 February 2020, has known of the timetable directions set for parties who wished to participate in the strike-out application since that date.

¹ See *Day v Ost (No 2)* [1974] 1 NZLR 714 at 717.

[25] I am also satisfied that Ms Mason was sent all of the emails by the Registrar relevant to this matter.

[26] There has been no application (other than a one-line email) for leave. Neither has there been any explanation as to the reason for the failure to comply with the timetable order. There has not even been an indication whether Ms Mason's client intends to support or oppose the interlocutory application.

[27] I am satisfied that granting the application for leave is likely to cause prejudice and a further delay. Given the opposition of both Ngāti Pāhauwera and the applicant for the strike-out order, I am not prepared to grant any further extension for the filing of submissions.

[28] Accordingly, the application on behalf of Rihari Dargaville is declined.

Churchman J