IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

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

CIV-2017-485-512

IN THE MATTER OF	the Marine and Coastal Area (Takutai Moana) Act 2011
AND	
IN THE MATTER OF	an application by CLETUS MAANU PAUL for an order recognising Customary Marine Title and Protected Customary Rights

On the papers:

Counsel: J Mason for Applicant

Minute: 5 May 2020

MINUTE (NO. 8) OF CHURCHMAN J
["National Claims"]

Background

[1] The applicant has lodged a claim under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act) purportedly on behalf of "all Māori" and covering all New Zealand. The Act does not provide for claims to be made on behalf of "all Māori" instead, specifying that claims can be made on behalf of whānau, hapū or iwi.

[2] The Court has issued a number of minutes in an attempt to encourage the applicant to amend the claim so that it complied with the requirements of the Act.

[3] Those minutes were not successful, and the applicant persists in advancing their claim on behalf of "all Māori" or "all Māori not already represented in customary title proceedings under the Act over those parts of the MCA of Aotearoa New Zealand which they whakapapa to".

[4] By minute dated 11 March 2020, the Court allocated the date of 28 May 2020 for a one-day fixture to decide whether those parts of the applicant's claims where no detail of the applicant or the claim had been provided and in respect of which no maps had been filed, were to be struck out. The minute directed that the applicant's submissions be filed no later than 30 days prior to the fixture date.

Developments

[5] Instead of filing submissions, Ms Mason, counsel for the applicant, filed a memorandum of counsel dated 29 April 2020 seeking the following orders:

(a) that the strike-out proceeding in relation to the applicant's claim be heard together with a similar proceeding in relation to a claim by R Dargaville and that the two proceedings be consolidated; and

(b) an application for the proceedings to be transferred to Auckland.

[6] The grounds relied on in support of the adjournment were that the applicant needed to consult with other people who are said to support his application and had not been able to do so because of COVID-19 restrictions.

[7] Ms Mason also indicated that she was presently in Fiji and it was "practically impossible for Counsel to attend the May hearing".

Analysis

[8] The issues raised by the strike-out application are legal ones rather than ones requiring evidence. The issue of whether or not the Act permits an application "on behalf of all Māori" where no applicant or defined area is identified, would appear to be solely a question of law.

[9] Mr Paul is obviously entitled to consult with his supporters about the application should he wish to do so. However, there is no reason why those consultations should not be by telephone. It is also difficult to see what "instructions" Mr Paul and his supporters might need to give counsel given that the issues are matters of law.

[10] In any event, given the impending move to COVID level 2, there will no longer be any impediment to kanohi ki te kanohi meetings should the applicant wish to engage with them.

[11] There is significant prejudice to all of the applicants who have commenced applications within the time limits stipulated in the Act and whose applications comply with the requirements of the Act in relation to identifying the claimant and the area in respect of which the claim is made, if there remains a possibility of an amorphous claim in respect of all of New Zealand, of the nature being advanced by the applicant. It is therefore in the interest of all applicants whose claims comply with the requirements of the Act to have this matter resolved promptly.

[12] The issue of counsel being absent from New Zealand clearly creates problems in respect of the 28 May 2020 hearing, and it will be unreasonable to insist that the hearing proceed on that date. However, there are limits to the extent to which the Court can accommodate the convenience of counsel particularly if counsel are not resident full-time in New Zealand.

[13] Given the availability of AVL and similar links, there is no reason why this case should not be able to proceed in that manner should Ms Mason remain unable or unwilling to return to New Zealand.

[14] There is no justification for consolidating this case with the Dargaville proceedings. Although they both involve national claims, the Dargaville claim is more limited in nature and each of the claims is advanced on a slightly different basis.

[15] There is no evidence relevant to both claims and no obvious advantage in hearing them at the same time. Indeed, given Ms Mason's present absence from New Zealand, there may be a significant disadvantage in consolidating the proceedings and requiring them to be heard together.

[16] It is possible that time is able to be made available to hear this matter in Auckland on 23 July 2020 at 2:15 pm. If that date is unsuitable to counsel or the applicant, then it will be set down for hearing in Wellington at a date suitable to the Court with counsel and the applicant having to the opportunity of either attending in person or by AVL or similar link.

[17] Counsel is to advise within 10 days which option the applicant wishes to pursue.

[18] A synopsis of submissions of the applicant, together with a bound volume of cases relied on, is to be filed 30 days prior to the hearing date.

Churchman J