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 G L Melvin and Y Moinfar-Yong for Attorney-General
Minute:	11 June 2020

MINUTE (NO. 12) OF CHURCHMAN J
["National Claims"]

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[1] On 5 May 2020, the Court issued a minute in this matter which adjourned the hearing that had been scheduled for 28 May 2020 in respect of the strike-out application. The adjournment was granted on the basis of Ms Mason's indication that she was then presently in Fiji and would be unable to return to New Zealand by 28 May.

[2] Ms Mason had also requested that the strike-out hearing take place in Auckland rather than Wellington.

[3] In an attempt to accommodate that request, the Court offered two alternatives:

(a) that the hearing could take place in Auckland on 23 July 2020 at 2.15 pm; or

(b) could be heard in Wellington on a date suitable to the Court with counsel and the applicant having the opportunity of attending either in person or by AVL link.

[4] Counsel was asked to advise the Court within 10 days which option the applicant wishes to pursue.

[5] In the absence of an indication from counsel, the Court confirms that the strike-out application will proceed to hearing in Auckland at 2.15 pm on 23 July 2020.

[6] Ms Mason filed a memorandum dated 21 May 2020 with a second amended application and submitted that this obviated the need for the strike-out hearing.

[7] That memorandum produced a response by way of memorandum from the Attorney-General dated 25 May 2020. That memorandum submitted that what the second amended application did was to replace the original application with eight discreet claims to different parts of the common marine and coastal area by 13 named individuals who were not named in the original application. It was submitted that the Act did not permit this on the basis that if amendments of this type were allowed, there would be nothing to prevent any other applicant from amending their application to introduce new claims by iwi, hapū or whānau groups. It was submitted that this application was an abuse of process in terms of s 107 of the Marine and Coastal Area (Takutai Moana) Act 2011.

[8] The memorandum indicated that the Attorney-General intended advancing the proposition that all of Mr Paul's application should be struck out.

[9] Ms Mason replied to this memorandum by memorandum of 29 May 2020. That memorandum submitted that by virtue of his role as a member of the New Zealand Māori Council, Mr Paul had obligations which included the protection of Māori customary interests in the takutai moana and that justified the nature of his application.

[10] Ms Mason submitted that the strike-out ground to be advanced by the Attorney-General had not been previously specifically identified, and that if the Attorney-General wished to

pursue a strike-out application on this ground, a formal application in accordance with the High Court Rules 2016 (HCR)was required.

Analysis

[11] Rule 1.2 of HCR provides that the objective of the rules is to secure the just, speedy and inexpensive determination of any proceeding or interlocutory application.

[12] HCR 7.19 specifies a form for interlocutory applications.

[13] HCR 1.5 provides that a failure to comply with the requirements of the rules must be treated as an irregularity but does not nullify any proceeding or step taken in a proceeding. The Court has a discretion to cure non-compliance. The Court is required to look at all the circumstances.[1] If prejudice or injustice would occur, the Court is unlikely to dispense with the requirement to comply with the rules.

[14] Many of the counsel appearing in applications under the Act do not appear regularly in the High Court and seem unfamiliar with the High Court Rules. The same observation can be made in respect of those applicants who are self-represented.

[15] Consistently with the rules' objective to secure the just, speedy and inexpensive determination of proceedings, the Court has on many occasions permitted interlocutory applications that would otherwise be required to be made by application, to be made by way of memorandum. This is because no prejudice or injustice has been occasioned by permitting informal applications.

[16] In this case, as Ms Mason has taken issue with the absence of a formal application, the Court has to consider whether prejudice or injustice results from the grounds upon which the Attorney-General seeks to support the strike-out being set out in a memorandum rather than a formal application.

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1 See *Metroinvest Ansalt v Commercial Union Assurance Co* [1985] 2 All ER 318 (CA) and *Zaza v Beckett* (1998) 12 PRNZ 415.

[17] The route by which the strike-out hearing has proceeded is a little unusual. At the various case management conferences (CMCs) held around the country, many applicants raised concerns about this matter and the other "national" claim.

[18] The Court has endeavoured to encourage the two national claimants to amend their claims in order to avoid the antagonism between applicants that might arise if the various applicants proceeded with strike-out applications.

[19] Ultimately, utilising the Court's inherent jurisdiction and HCR 15.1, the Court set the two strike-out hearings in respect of the two national claims down for 23 July 2020 in Auckland. Accordingly, no applicant or interested party has been required to file a formal application.

[20] The issue of whether the Act permits the so-called "national" claims at all, has been raised at various CMCs but the memorandum on behalf of the Attorney-General dated 25 May 2020 is the first occasion when it has been expressly advanced as being a matter to be pursued at the strike-out hearing.

[21] Given the two months period between the Attorney-General's memorandum of 25 May 2020 and the hearing on 23 July 2020, it is difficult to see what prejudice or injustice there might be in this ground being raised informally.

[22] However, out of an abundance of caution, I direct that the Attorney-General, within five days of this minute, file an interlocutory application complying with the rules which specifies the grounds upon which the strike-out of these proceedings is sought. Mr Paul will then have five days to file a formal notice of opposition.

[23] The timetable directions made in the minute of 5 May 2020 are varied so that the Attorney-General and all other applicants or interested parties supporting a strike-out of these proceedings are to file a memorandum of submissions, and copies of any authorities relied on by 24 June 2020, with Mr Paul to file and serve submissions in opposition by 8 July 2020.

[24] Ms Mason has not taken objection to the lack of formal interlocutory application by those other applicants who wished to support the strike-out of all or part of the proceedings on

the grounds identified in the various Court minutes that have addressed the national applications. Those issues are well known and there is no prejudice or injustice arising from the lack of a formal interlocutory application.

[25] Accordingly, while submissions are required to be filed in support of a strike-out, no separate interlocutory application is required by those applicants.

Churchman J