

**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

Hearing: 5 June 2020

Counsel: R N Smail and E James for Trustees of the Ngāti Pāhauwera
Development Trust
K Anderson and M Dicken for Maungaharuru-Tangitū Trust
M Mahuika for Ngāti Pārau
G Erskine and S J Roughton for Ngai Tahu o Mōhaka Waikare
B Lyall for Mana Ahuriri Trust
J Mason for Maanu Paul
M Williams fir Pan Pac Forest Products Ltd (Interested Party)
G Melvin for Attorney-General (Interested Party)

Minute: 11 June 2020

MINUTE (NO. 7) OF CHURCHMAN J

Background

[1] In a minute dated 12 February 2019, Collins J directed that six claims (Ngāti Pāhauwera Development Trust, Ngai Tahu o Mōhaka Waikare, Maungaharuru-Tangitū Trust (MTT),

Ngāti Pārau, C M Paul, and R Dargaville be heard together in full. Since then the claim by R Dargaville has been withdrawn.

[2] The reasons that Collins J gave for directing that the claims be heard together were that there were only five overlapping claims with no consequential “cascading claims” (bordering claims that were affected); that the territorial area covered by discreet and that hearing the overlapping claims contemporaneously with the priority claim ensured the most effective use of scarce resources.

[3] Although Collins J did not make a timetable order on 12 February 2019, the timing of the evidence on behalf of all of the applicants was discussed and the minute records what the Court was informed. It records that the Court was told that Ngāti Pāhauwera, Ngai Tahu o Mōhaka Waikare, MTT and Ngāti Pārau would have their evidence completed by November/December 2019. No estimation as to the time required for preparation of evidence by either C M Paul or R Dargaville was given.

[4] In accordance with the indication given to the Court, Ngāti Pāhauwera filed and served its evidence on 20 December 2019. None of the other applicant parties complied with the time indication that they had given Collins J. Accordingly, it was necessary for the Court to make timetable directions and did so by minute dated 25 February 2020.

[5] The cross-applicants were directed to file their evidence by 30 June 2020, the interested party, Pan Pac Forest Products Ltd by 28 August 2020, the Attorney-General by 30 October 2020, with all applicants having until 22 December 2020 to file any evidence in reply.

[6] A further development is that, as a result of the decision in the strike-out application which led to the Ngāti Pāhauwera application being restricted in geographical area, the Ngāti Pārau application no longer overlaps with the Ngāti Pāhauwera application.

Issues

[7] The primary issues for resolution are:

- (a) What timetable amendments should be made?

- (b) Should the Ngāti Pārau application still be heard?
- (c) Is C M Paul a cross-applicant or an interested party?

Timetable

[8] The Court accepts that restrictions during COVID Levels 3 and 4, and to a lesser extent Level 2, will have impeded finalisation of evidence. However, the Court is surprised as to the extent that it is claimed this has disrupted the process, given that counsel for the various applicants assured the Court on 12 February 2019 that their evidence would be completed by November/December 2019.

[9] The interested party, Mana Ahuriri Trust abides the decision of the Court on timetable issues. It is not a cross-applicant, having elected to pursue direct negotiations with the Crown, but it is an interested party only.

[10] Pan Pac Forest Products Ltd is also an interested party. It has no issue with the revised timetable proposed in the memorandum from MTT dated 4 June 2020.

[11] Ms Mason, for C M Paul, sought and obtained the opportunity to file a further memorandum as to whether her client was a cross-applicant or an interested party. She indicated her client's position was that she was not going to file evidence and did not want to advance a claim at the February/March 2021 hearing but wanted to participate as an interested party.

[12] Ms Mason's client did not rely on any issue to do with COVID-19 to explain a failure to provide evidence but said that this resulted from her client wishing to wait to see the outcome of the application for leave to appeal to the Court of Appeal in the case of an application by *Re Collier & Ors*.¹ This means that, inevitably, if Mr Paul's claim is to proceed to a hearing, it will be a subsequent hearing to that where all the other claims in this area are being dealt with.

¹ See *Re Collier & Ors* [2019] NZHC 2096.

[13] Ms Anderson, counsel for MTT, was concerned that this would involve all overlapping parties in the costs and expense of an additional hearing which was something that Collins J had tried to avoid with his minute of 12 February 2019.

[14] Ms Mason has until 5.00 pm on 12 June 2020 to file a memorandum addressing these issues. Upon receipt of that memorandum, the Court will then determine the issues specific to Mr Paul's claim.

[15] The Attorney-General did not file a memorandum in this matter, but Mr Melvin indicated that the Attorney-General was able to accommodate the revised timetable filed by MTT in the memorandum of 4 June 2020.

[16] The timetable is thereby amended as follows:

- (a) the cross-applicants are to file and serve their evidence no later than **11 August 2020**;
- (b) the interested parties are to file and serve their evidence no later than **25 September 2020**;
- (c) the Attorney-General is to file and serve his evidence no later than **27 November 2020**; and
- (d) all applicants' reply evidence is to be filed by **22 December 2020**.

[17] The close of pleadings date will remain as **22 December 2020** and all parties are to file and serve opening submissions no later than **26 January 2021**.

Reply to reply submissions

[18] MTT, in its memorandum of 1 May 2020, claimed that it was being disadvantaged because it did not have a right to reply to submissions that Ngāti Pāhauwera made on their submissions.

[19] However, this submission ignores the fact that by the time MTT has filed the evidence in support of its application, it will have had Ngāti Pāhauwera’s evidence for some eight months. It will therefore have had ample opportunity to reply to anything Ngāti Pāhauwera has advanced. The right to file evidence in reply is designed to ensure that one party has an opportunity to reply to the evidence of the other party so that the Court is fully informed of both contending parties’ position. The High Court Rules 2016 do not provide for a “right to reply to a reply”. Anything that Ngāti Pāhauwera might say in its reply is limited to matters raised by MTT (or other cross-applicants) in their evidence-in-chief. There is no disadvantage to MTT in not having a “right to reply to a reply” timetabled.

[20] In the unlikely event that something completely unforeseen emerges from Ngāti Pāhauwera’s reply to MTT’s evidence, leave is reserved to MTT to apply to address that matter orally at the commencement of the hearing.

Ngāti Pāhauwera

[21] It is clear that one of the purposes of the minute of Collins J of 12 February 2019 was to have all claims in this geographic area heard at one time in order to avoid the costs involved and parties having to prepare for and run their applications in the February/March 2021 hearing, and then again have to participate in a subsequent hearing to the extent that their claim was overlapped by that of another party.

[22] Mr Mahuika, counsel Ngāti Pārau confirmed that his client had prepared on the basis that its case would be heard in full with the Ngāti Pāhauwera case and those of the other cross-claimants. They could not have anticipated circumstances changing as a result of the strike-out part of the Ngāti Pāhauwera’s claim.

[23] Accordingly, and in the absence of opposition from any other party, I direct that Ngāti Pārau’s claim will also be heard along with that of all other applicants in February/March 2021.

Churchman J