IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

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

CIV-2017-485-217
CIV-2017-485-309
CIV-2017-404-479

IN THE MATTER OF	the Marine and Coastal Area (Takutai Moana) Act 2011
AND	
IN THE MATTER OF	applications by **Hunau of Tame Horomona Rehe, Ngāti Mutunga o Wharekauri, Ngā Uri o Wharekauri** for orders recognising customary marine title and protected customary rights

Teleconference: 1 July 2020

Counsel: M Solomon for Hunau of Tame Horomona Rehe (CIV-2017-485-217)
T Castle for Ngāti Mutunga o Wharekauri (CIV-2017-485-309)
C Hirschfeld for Te Aitanga o Ngā Uri o Wharekauri (CIV-2017-404-479)
G Melvin for Attorney-General

Minute: 2 July 2020

MINUTE (NO. 25) OF CHURCHMAN J

---

[1] This matter was scheduled to be called at the Wellington case management conference on 29 June 2020 with arrangements having been made for Mr Solomon to attend by AVL.

[2] Unfortunately, the AVL link to Rekohu/Wharekauri/the Chatham Islands was not able to be established. The matter was adjourned until 1 July 2020 when it proceeded by way of teleconference.

Issues arising

[3] Memoranda had been filed in this matter by Mr M Solomon (12 June 2020) and Ms D King (25 June 2020).

[4] It appears that differences have arisen as between the named applicants in this application.

[5] In the memorandum of 12 June 2020, Mr Solomon sought orders from the Court relating to the removal of two of the named applicants should they not participate in the CMC or clarify whether they wish to continue as named applicants.

[6] It is not for the Court to tell applicants who should or should not be named as the representatives advancing the claim on behalf of an applicant.

[7] The applicant is the whānau, hapū, or iwi or whose behalf the claim to either a customary marine title or a protected customary right is being advanced. It is that entity which must be formally identified on the application.[1]

[8] The leave of the Court is required pursuant to r 4.56 of the High Court Rules 2016 (HCR) before the identity of an applicant could be amended.

[9] In a number of cases, the representative, or one of the representatives, named on the proceedings as representing an applicant has either died or become unable or unwilling to continue in that capacity. In those circumstances, it is for the applicant to decide who the new named representative or representatives will be.

[10] The applicant is required to advise the Court (and any overlapping applicants or relevant interested parties) of any amendment to the identity of a named representative or representatives but does not need the Court's permission.

---

1 See Marine and Coastal Area (Takutai Moana) Act 2011, s 103(2).

[11] A circumstance where the Court will have a role in relation to a representative is where the authority of a representative to represent the named applicant is challenged, including by a cross-applicant or interested party.[2]

[12] In her memorandum of 25 June 2020, Ms King's principal concern seemed to be to avoid any cost of pursuing the application falling on the Manukau Land Trust (MLT) of which she was a trustee.

[13] While a trust can be a representative advancing a claim on behalf of the Act, it cannot be an applicant because it is not a whānau, hapū, or iwi.

[14] The MLT is not either the applicant or a named representative in respect of this case. Therefore, unless there is some agreement between it and the applicant (the Hanau of Tame Horomona Rehe), it would not be liable for the sorts of costs that Ms King appears to be concerned about in her memorandum.

[15] In the memorandum Ms King said:

> I have no objection to being removed [as a representative] but only on the understanding that the application is not in the name of Manukau Land Trust and therefore no burden can be placed on the trust due to these proceedings.

[16] As the application is clearly not in the name of MLT the precondition to Ms King resigning as a representative would appear to have been met. No further authorisation is required from the Court for her to cease to be a named representative.

[17] I note that in her memorandum Ms King says that she has no objection to Paul Te Teira Solomon being added as a named representative. Subject to my comments above about the jurisdiction of the Court where the right of a representative to represent an applicant can be challenged, it is for the applicant to decide whether Paul Te Teira Solomon should be a named representative.

[18] No memorandum was filed on behalf of Raymond Solomon. The Court is therefore unaware as to whether his position is similar to that of Ms King. It would assist in the orderly advancement of these proceedings if Mr Raymond Solomon would indicate to the applicant

---

[2] See *Re Tipene* [2016] NZHC 3199 at [157]-[176].

and its other named representatives whether he wishes to continue in the role of named representative or not.

Possible fixture

[19] Mr Solomon raised the possibility of a fixture being timetabled for this application. For that reason, I wanted to involve counsel for the two other applications most directly impacted by the allocation of a fixture in respect to claims involving Rekohu/Wharekauri. These are the applications by Ngāti Mutunga o Wharekauri (CIV-2017-485-309) and Te Aitanga o Ngā Uri o Wharekauri (CIV-2017-404-479). Both Mr Castle and Hirschfeld supported the concept of having a joint hearing for all claims involving Rekohu/Wharekauri. As it was for Mr Solomon's client, the funding available for preparation for a hearing was the most significant limiting factor but, subject to suitable funding being made available, there was a general consensus that a hearing might realistically be allocated either for the second half of 2021 or 2022.

[20] Mr Melvin, on behalf of the Attorney-General supported all such claims being heard contemporaneously and indicated that he would raise with Te Arawhiti the funding implications that such a proposal created.

[21] While it is potentially possible that the necessary research could be done in order to permit the allocation of a hearing in 12 to 18 months' time, in my view it would be premature to make timetable orders at the moment. Instead, I am going to adjourn these matters for 12 months. If Te Arawhiti is able to make funding for research available, then the parties should expect that when this matter is called in 12 months' time, a timetable toward a hearing will be set. In the meantime, to the extent that they are able to, the applicants should commence gathering tangata whenua evidence and commissioning historical research.

Churchman J