

**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:                        16 July 2020

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**MINUTE (NO. 28) OF CHURCHMAN J  
[“National Claims”]**

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**Background**

[1] By memorandum dated 2 July 2020, counsel for the applicant sought a number of directions. The first one was a direction as to whether the second amended application dated 21 May 2020 by the applicant in this matter obviated the need for the strike-out hearing.

[2] The Court is surprised that counsel would suggest that there is any doubt as to whether or not the strike-out hearing is proceeding. That is because, by minute dated 11 June 2020, the Court confirmed that the strike-out application would proceed to hearing in Auckland at 2.15 pm on 23 July 2020.

[3] The reason that the original date for the hearing of the strike-out application (28 May 2020) was vacated and the proceedings transferred from Wellington to Auckland was because Ms Mason had indicated that she was in Fiji and unable to make a 28 May 2020 hearing.

[4] In a minute of 5 May 2020, the Court had given counsel the option of either a hearing in Wellington with participation by AVL or a hearing in Auckland on 23 July 2020. Counsel was asked to advise within 10 days which option to pursue. No response was received within the 10-day period which led to the Court's minute of 11 June 2020, confirming the 23 July 2020 date.

[5] In the memorandum filed by counsel of 2 July 2020, another of the directions sought by Ms Mason is leave for Mr Paul to file evidence by 24 July 2020.

[6] This matter is an interlocutory application. As was made expressly clear by the Court in [8] of its minute of 5 May 2020, "The issues raised by the strike-out application are legal ones rather than ones requiring evidence."

[7] Ms Mason has known since 5 May 2020 of the 23 July 2020 hearing date.

[8] By memorandum of 29 May 2020, Ms Mason commented on a memorandum from the Attorney-General dated 25 May 2020. She submitted that a strike-out ground which the Attorney-General had indicated that he would be advancing, had not previously been specifically identified, and further submitted that a formal application in accordance with the High Court Rules was required, in order for the Attorney-General to be able to advance this ground.

[9] The Court addressed that point in its minute of 11 June 2020 varying the timetable directions which had been made in the minute of 5 May 2020 and directing the Attorney-General within five days of that minute to file an interlocutory application complying with the rules, specifying the grounds upon which the strike-out of these proceedings was sought. Mr Paul was then given five days to file a formal notice of opposition. The Attorney-General's notice was filed on 18 June 2020 and Mr Paul's notice of opposition was dated 1 July 2020.

[10] In counsel's memorandum of 2 July 2020, she says that she will not be back in New Zealand until September 2020. No information is given as to why counsel has not made arrangements to return to New Zealand by 23 July 2020.

[11] Although no formal application for an adjournment is filed, counsel says in her memorandum that “A viva voce attendance is preferred”. In the alternative, counsel seeks an AVL hearing and says that she will abide the Court’s decision as to the date.

## **Outcome**

[12] Counsel for the applicant has known of this hearing date for some two and a half months following the rescheduling of the original May 2020 hearing date to suit counsel’s convenience. All other counsel involved with the strike-out hearing have complied with the Court’s timetable in relation to the filing of submissions and have prepared on the basis that the hearing will proceed on 23 July 2020.

[13] As an indulgence to counsel, the Court is prepared to permit counsel to attend by way of AVL link should counsel not wish to brief the matter out. The Court notes that counsel has successfully attended recent case management conferences by means of AVL.

[14] In response to the specific questions raised in [33] of counsel’s memorandum of 2 July 2020:

- (a) as is apparent from the correspondence and directions given by the Court since the filing of the second amended application, that application has not obviated the need for the hearing of the strike-out application;
- (b) the fixture scheduled for 23 July 2020 in Auckland will proceed with counsel having the option of attendance by AVL. Counsel is to notify the Registrar by return email should she wish to avail herself of that option so that the necessary arrangements can be made;
- (c) as the issues involved in the strike-out application are legal ones, the application for leave to file evidence is declined;
- (d) the application for directions that the MTT Trust and RI Trust “clarify in what capacity they seek to be involved, and to apply to be involved in accordance with the requisite procedures in the HC Rules” is declined. Both the MTT Trust and the RI Trust have filed detailed submissions. Paragraph 5 of the RI Trust

submissions make it clear that they focus on those parts of the applicant's application which overlap their application. Paragraphs 37–40 of the MTT Trust submissions explain the overlap between Mr Paul's application and the MTT Trust application. Both Trusts are therefore directly affected by Mr Paul's application. They are not required to provide any additional justification to participate in the strike-out hearing.

[15] The Court noted at [24] of the minute of 11 June 2020 that, although Ms Mason had taken issue with the lack of formal interlocutory application by the Attorney-General, no similar opposition had been raised in relation to those other applicants (such as RI Trust and MTT Trust) who supported the strike-out application. The Court declined to require any supporter of a strike-out other than the Attorney-General to file a formal notice of application on the basis that the issues raised were well known and that there was no prejudice or injustice arising from the lack of a formal interlocutory application. That remains the situation.

**Churchman J**