

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

CIV 2011-485-789

IN THE MATTER OF An application by CATHERINE
CLARKSON AND OTHERS for a
customary marine title pursuant to section 58
of the Marine and Coastal Area (Takutai
Moana) Act 2011

Minute: 14 September 2020

MINUTE OF MALLON J

[1] The hearing of this proceeding is scheduled to commence on 2 November 2020. I am the presiding Judge.

[2] The currently outstanding matter is the appointment of a pūkenga. The role of a pūkenga is to provide advice to the Court on tikanga relevant to the area that is the subject of the application. A person qualifies as a pūkenga by reason of their knowledge and experience.

[3] I have reviewed the minutes of Churchman J and the memoranda from the applicant and from counsel about the appointment of a pūkenga in this proceeding. Of the people who have been proposed, the only person who has confirmed his availability and whose appointment is not opposed by any party, is Mr Wati Ngamane.

[4] The only qualification that has been raised about Mr Ngamane's knowledge and experience is that he is not of Ngāti Kahungunu, Ngāti Kere, Rangitāne or the Eriha whānau and so does not have knowledge and experience of tikanga that is unique to them. This may limit the scope of the advice that Mr Ngamane is able to provide.

[5] In the circumstances, I confirm the appointment of Mr Ngamane as pūkenga. I direct that he provide a report to the Court by **19 October 2020**. The report is to cover Mr Ngamane's comments on the tikanga that is discussed in the affidavit evidence based on his knowledge and experience. In particular, from the affidavit evidence, and to the extent that he considers he is in a position to assist on these topics by reason of his knowledge and experience, Mr Ngamane is to provide advice on:

- (a) the tikanga that applies to the application area;
- (b) whether there may be tikanga that is unique to the application area;
- (c) the aspects of tikanga that may be relevant to whether or not the area is held in accordance with tikanga; and
- (d) the group or groups that may hold the application area or some part of the application area in accordance with tikanga and who makes up that group or groups.

[6] The above topics are intended to provide general guidance on the topics which may assist the Court. They are largely similar to the questions posed for the panel of pūkenga appointed in CIV-2011-485-817. The topics are not intended to be prescriptive – Mr Ngamane may consider he is unable to assist on some of the topics and there may be other relevant issues of tikanga the parties or the Court or Mr Ngamane may identify on which his assistance could be provided. If the parties consider there are other topics that should be addressed by the pūkenga, they should confer and may put them forward in advance of the telephone case management conference scheduled for **21 September 2020 at 3.45 pm**.

[7] To prepare his report, Mr Ngamane will need to be provided with the affidavits that have been filed. The Registry will attend to this. It is envisaged that Mr Ngamane will attend the hearing. This will provide the parties and the Court with the opportunity to ask questions of him. The date(s) on which he will be needed can be discussed at the 21 September 2020 conference and finalised once the report is received.

[8] I have set the date of 19 October 2020 for Mr Ngamane's report so that the parties will have the report in time to consider it before the hearing. This should allow the parties and the Court sufficient time to consider it in advance of the hearing. The parties can then consider further whether the report should cover any additional matters, whether they seek to question/cross-examine Mr Ngamane at the hearing, or whether they wish to call other expert evidence on the matters of tikanga addressed in the report. That said, it is not absolutely crucial that the report be provided by the particular date I have set, so if Mr Ngamane needs further time he should advise the Court. However, a report in advance of the hearing will be needed.

Mallon J