

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

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

CIV-2017-485-247

UNDER	an application under the Marine and Coastal Area (Takutai Moana) Act 2011
IN THE MATTER OF	an interlocutory application being the strike out of a certain application
BETWEEN	NGĀ HAPŪ O TOKOMARU ĀKAU Applicant
AND	TE WHĀNAU A RUATAUPARE KI TOKOMARU Respondent

On the papers:

Counsel: D C F Naden for Applicant

Minute: 8 June 2022

MINUTE OF CHURCHMAN J

[1] On 7 June 2022, counsel for Ngā Hapū o Tokomaru Ākau has filed an interlocutory application seeking to strike out an application by Te Whānau a Ruataupare ki Tokomaru (CIV-2017-485-302).

[2] Both of these proceedings relate to claims under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act) in relation to the Tokomaru Bay area on the East Coast, north of Gisborne.

[3] Some 12 months ago, at the 2021 Gisborne case management conference (CMC), the Court raised its concern at what appeared to be the situation of two different claimants each claiming to represent Te Whānau a Ruataupare ki Tokomaru,

and encouraged the parties to resolve that matter in accordance with tikanga. Unfortunately, that has not occurred.

[4] The fact that a strike out application has been filed so close to the scheduled hearing date for the substantive applications causes significant practical problems. The respondent is entitled to have appropriate time to file a notice in opposition and supporting affidavits. The Court will then need to schedule a hearing and once the hearing has concluded, to prepare a decision. Either party unhappy with the result would then have a right of appeal. If that right of appeal is exercised then the reality is that the 5 September 2022 substantive hearing would have to be abandoned.

[5] Given the number of parties involved in that hearing and the length of time that has elapsed since it was set down for hearing and timetable directions made, having to abandon the hearing would be an unfortunate outcome.

[6] The difficulty in obtaining substantial blocks of time for hearing matters in the Gisborne High Court means that there could well be a considerable delay before the substantive hearing is able to be rescheduled.

[7] There appears to be no reason why the issue of mandate cannot be addressed as a discrete issue in the 5 September 2022 hearing.

[8] Accordingly, the application for a separate interlocutory hearing is declined. The respondent is granted leave to file affidavits in response to those filed by the applicant no later than 5pm 8 July 2022.

Churchman J