

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 40/2007  
[2007] NZSC 92**

BETWEEN                      GEORGINA KAIN, GEORGE HARRY  
   COUPER KAIN, GEORGE CHARLES  
   KAIN, GEORGE THOMAS CARLTON  
   KAIN AND GEORGE MICHAEL KAIN  
   First Appellants

AND                              GEORGE THOMAS CARLTON KAIN  
   Second Appellant

AND                              JONATHON RHODES HUTTON  
   First Respondent

AND                              WILLIAM ALEXANDER XAVIER  
   COUPER  
   Second Respondent

AND                              ANNETTE ELIZABETH COUPER  
   Third Respondent

AND                              WAYNE KEITH STARTUP  
   Fourth Respondent

AND                              GEORGE THOMAS KAIN  
   Fifth Respondent

AND                              MARY HUTTON  
   Sixth Respondent

Hearing:                      19 November 2007

Court:                              Tipping, McGrath and Anderson JJ

Counsel:                      J S Kós QC and J V Ormsby for Appellants  
   M R Camp QC for Second Respondent  
   R A Osborne for Third Respondent

Judgment:                      20 November 2007

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**JUDGMENT OF THE COURT**

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**A. The application for leave to appeal is granted as regards proposed grounds 1 and 2 and refused as regards proposed grounds 3, 4 and 5.**

**B. Costs are reserved.**

**C. The approved grounds are:**

**(1) Whether the Court of Appeal was correct to uphold the resettlement of the balance of the old Mangaheia trust on the new Mangaheia trust.**

**(2) Whether the Court of Appeal was correct to uphold the appointment of the shares in Ponui Station to Mrs A E Couper.**

## **REASONS**

**(for refusing leave)**

[1] The oral hearing which we held related to proposed ground 3. We have decided to decline leave on that ground because we are not satisfied that it is necessary in the interests of justice to grant leave, that being the ultimate criterion specified in s 13(1) of the Supreme Court Act 2003. Without prejudice to whether any issue of general importance underlay the proposed ground, we do not consider that the ground can be fairly or satisfactorily examined in this Court in the light of the absence of a specific pleading directed to it, and in the light of the fact that no relief by way of account of profits was sought in the second amended statement of claim on which the case went to trial.

[2] There is accordingly no evidence directed specifically to the relief now sought. Its absence might, in our view, cause an injustice to be done. It would, in this case, be inappropriate for this Court to state legal principles in relatively abstract terms and then remit the case to the High Court for further inquiry and quite probably further evidence. All in all, the restitutionary basis upon which the remedy

now sought is founded has not been properly set up, either in the pleading or in terms of the course which the case took at trial.

[3] The matters underlying proposed grounds 4 and 5 do not have sufficient general or public importance, or commercial significance; nor are we brought to the view that a substantial miscarriage of justice will or may occur unless the Court entertains them.

Solicitors:  
Wynn Williams & Co, Christchurch for Appellants  
DLA Phillips Fox, Wellington for Second Respondent  
Duncan Cotterill, Christchurch for Third Respondent