



Supreme Court of New Zealand

7 August 2008

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**KAIN AND ORS V HUTTON AND ORS
(SC 40/2007 [2008] NZSC 61)**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

Members of the Couper family have been engaged in extensive litigation relating to trusts which hold farming interests in Hawkes Bay. The Supreme Court has considered the validity of two actions of trustees taken on 19 July 1999.

Confirming the view of the Court of Appeal, the Court has unanimously upheld as valid an exercise of a power of appointment made in favour of Mrs A E Couper relating to shares in Ponui Station Ltd which Mrs Couper simultaneously resettled upon a trust which she herself established. The Court has rejected the allegation that there was a fraud on the power of appointment.

However, reversing the Court of Appeal, the Supreme Court has unanimously held that the trustees acted without authority and therefore invalidly when they purported to exercise a power of advancement by resettling the shares in Mangaheia Station Ltd on a new trust in which Mrs Couper was a beneficiary. Their action was unlawful because the power of advancement could not be exercised in favour of Mrs Couper because she was not a capital beneficiary of the old trust. The consent of her husband's adult nephews and nieces was also required and had not been obtained. Nor could the trustees' purported advancement be treated as if they had made an appointment of the shares. They had power to do that, as they had done for the Ponui Station shares, but had not exercised that power which is quite different from a power of advancement.

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