

IN THE SUPREME COURT OF NEW ZEALAND

**SC 68/2012
[2012] NZSC 102**

BETWEEN	THE PROPRIETORS OF WAKATU First Applicant
AND	RORE PAT STAFFORD Second Applicant
AND	RORE PAT STAFFORD, PAUL TE POA KARORO MORGAN, WAARI WARD- HOLMES AND JAMES DARGAVILLE WHEELER, SUING AS TRUSTEES OF TE KAHUI NGAHURU TRUST Third Applicants
AND	THE ATTORNEY-GENERAL, SUED IN RIGHT OF THE CROWN Respondent
AND	NGATI RARUA IWI TRUST, NGATI KOATA TRUST, NGATI TAMA MANAWHENUA KI TE TAU IHU TRUST, TE RUNANGA O NGATI KUIA TRUST AND NGATI APA KI TE RA TO TRUST Interveners

Court: Elias CJ, McGrath and Glazebrook JJ

Counsel: B W F Brown QC and K Feint for Applicant
D J Goddard QC, J Gough and J Prebble for Respondent

Judgment: 28 November 2012

JUDGMENT OF THE COURT

The application for leave to appeal is declined.

REASONS

[1] The applicants seek leave to appeal directly from a decision of the High Court.¹ Such direct appeal is permitted by s 14 of the Supreme Court Act 2003 only if the Supreme Court gives leave on the basis that there are “exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court”. The threshold for granting leave is set by s 14 to ensure that the Supreme Court has the assistance of consideration by the Court of Appeal.²

[2] The basis on which it is suggested that there are exceptional circumstances here is that the Court has given leave to appeal in *Paki v Attorney-General*³ and the grounds on which the Court is to hear further argument in that case in February are said to be substantially the same as those the applicants wish to raise.

[3] In *Wakatu* the applicants claim that the Crown failed to implement reserves of one-tenth of the land acquired for the New Zealand Company settlement in the 1840s which were promised to the Maori vendors. In the High Court, Clifford J rejected the applicant’s claims based on express trust, resulting trust and constructive trust. The Court also rejected further claims based on a relational duty of good faith and breach of fiduciary duty.

[4] Claims of trust and fiduciary obligation are also put forward in *Paki*. In *Paki* the claimed constructive trust and fiduciary duties arise however out of Crown acquisitions between 1887 and 1899 along the Waikato River, in quite different circumstances.

[5] The claims made by *Wakatu* are more extensive and raise a number of issues which do not overlap with those in *Paki*. Although there is superficial similarity in respect of the claims based on equitable obligations said to be owed by the Crown to Maori owners of land, they arise in very different contexts. Whether fiduciary duties or relationships of trust exist fall to be determined against a close examination of the facts in each case. There is insufficient commonality between the claims to warrant

¹ *Proprietors of Wakatu Incorporated v Attorney-General* [2012] NZHC 1461 (Clifford J).

² *Ngan v R* [2006] NZSC 41 at [9].

³ Partly dealt with in *Paki v Attorney-General* [2010] NZSC 88.

depriving the Court of the benefit of consideration of the applicants' claim by the Court of Appeal.

[6] The application for leave to appeal directly to the Supreme Court is therefore declined. Should any discrete matter of law common to both claims arise in the *Paki* appeal, it would be open to the present applicants to seek intervener status if that course were thought appropriate and can be justified.

Solicitors:
Pitt & Moore, Nelson for Applicants
Crown Law Office for Respondent