IN THE SUPREME COURT OF NEW ZEALAND

SC 47/2015
[2017] NZSC 53

BETWEEN	MITA MICHAEL RIRINUI Appellant
AND	LANDCORP FARMING LIMITED First Respondent
	THE ATTORNEY-GENERAL Second Respondent
	WHEYLAND FARMS LIMITED Interested Party

Court:	Elias CJ, William Young, Glazebrook, Arnold and O'Regan JJ
Counsel:	M T Scholtens QC, A N Isac and J B Orpin for Appellant S A Barker for First Respondent D J Goddard QC and J R Gough for Second Respondent A A Hopkinson for Interested Party
Judgment:	1 May 2017

JUDGMENT OF THE COURT (AS TO COSTS)

A **The orders of the Court of Appeal as to costs are quashed.**

B **The parties are to bear their own costs in all Courts.**

REASONS

[1] In its substantive decision in this appeal, this Court reserved the question of costs, on the basis that the parties could file memoranda if they were unable to agree.[1] In the event, they have been unable to agree and the appellant, Mr Ririnui, has applied for a costs order against the respondents, Landcorp Farming Ltd and the Attorney-General. No order is sought against the interested party, Wheyland Farms

1 *Ririnui v Landcorp Farming Ltd* [2016] NZSC 62, [2016] 1 NZLR 1056 at [146].

Ltd, as it was agreed earlier that, as between Mr Ririnui and Wheyland, costs would lie where they fell.

[2] Mr Ririnui seeks costs in this Court and in the Courts below on the basis that this Court allowed the appeal in part and made a declaration that the decision by Landcorp, Landcorp's shareholding Ministers and the Minister for Treaty of Waitangi Negotiations not to intervene in the tender process on behalf of Ngāti Whakahemo as they did on behalf of Ngāti Mākino was a wrongful exercise of public power because it was made under a material mistake.

[3] Mr Ririnui's application is opposed by Landcorp and the Attorney-General:

(a) Landcorp argues that costs should lie where they fall in all Courts, at least as between it and Mr Ririnui. Landcorp does not seek costs against Mr Ririnui.

(b) The Attorney-General argues that the costs orders in relation to the High Court and Court of Appeal hearings should not be disturbed and that costs should lie where they fall in this Court.

[4] The principal theme of the submissions made by Landcorp and the Attorney-General is that Mr Ririnui was unsuccessful in the bulk of his claims and, although having some success in this Court, did not obtain relief in terms of setting aside the agreement for sale and purchase, which was the principal relief sought. Further, it was submitted for the Attorney-General that Mr Ririnui succeeded in respect of a claim (that the decision by Landcorp and the relevant Ministers was a wrongful exercise of public power) that became prominent only in the course of argument in this Court.

[5] The costs orders in the Courts below were as follows:

(a) In his final judgment, Williams J ordered Landcorp and the Attorney-General pay Mr Ririnui (on behalf of Ngāti Whakahemo) costs even though he had not succeeded.[2]

(b) In the Court of Appeal, Williams J's costs order was quashed and the matter was remitted to the High Court for costs to be fixed in accordance with the Court of Appeal's judgment. In respect of the appeal, the Court of Appeal ordered Mr Ririnui to pay costs to Landcorp and the Attorney-General.[3]

[6] We deal first with the position as between Mr Ririnui and Landcorp. We consider that Landcorp is right in its submission that costs as between it and Mr Ririnui should lie where they fall in all Courts. This is on the basis that Landcorp was also a victim of the Crown's error and any alleged bad faith on the part of its representatives was ultimately of minimal significance, despite the prominence it achieved in argument.

[7] Turning to the position as between Mr Ririnui and the Attorney-General, we do not accept the submission on behalf of the Attorney-General that the existing costs orders in relation to the hearings in the High Court and Court of Appeal should remain in force. While we accept that the focus of Mr Ririnui's case changed as it went through the court system, we think that is inevitable in a case of this type, particularly where events were continuing to unfold and information was not always easy to obtain. Accordingly, we propose to quash the costs orders made by the Court of Appeal.

[8] We do not propose, however, to make costs orders in Mr Ririnui's favour in this Court or in the Courts below. Normally, of course, costs should follow the event.[4] But in this instance, Mr Ririnui had only partial success, the bulk of his claims being unsuccessful. In terms of relief, he did not obtain the principal relief which he sought in respect of the agreement for sale and purchase. In addition, although he succeeded in part, Mr Ririnui did so in relation to an aspect of the case

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2 *Ririnui v Landcorp Farming Ltd* [2014] NZHC 3402 at [90]–[92].
3 *Attorney-General v Ririnui* [2015] NZCA 160 at [103]–[105].
4 *Prebble v Huata* [2005] NZSC 18, [2005] 2 NZLR 467 at [3]–[5].

that had not previously received prominence and was not highlighted in his written submissions. Although it had a foundation in the pleadings, the argument was developed only in the course of oral submissions in this Court. By the time he came to this Court, Mr Ririnui should have been in a position to refine and direct his claim to its strongest features. He did not do so, however, with the result that much of Mr Ririnui's written and oral submissions were misdirected. In these circumstances, we consider that costs should lie where they fall in this Court.

[9] Accordingly:

(a) The orders of the Court of Appeal as to costs are quashed.

(b) The parties are to bear their own costs in all Courts.

Solicitors:
Koning Webster Lawyers, Papamoa for Appellant
Buddle Findlay, Wellington for First Respondent
Crown Law Office, Wellington for Second Respondent
Cooney Lees Morgan, Tauranga for Interested Party