IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 31/2021
[2021] NZSC 124

BETWEEN	POUTAMA KAITIAKI CHARITABLE TRUST AND D & T PASCOE Applicants
AND	TARANAKI REGIONAL COUNCIL First Respondent
	NEW PLYMOUTH DISTRICT COUNCIL Second Respondent
	NEW ZEALAND TRANSPORT AGENCY Third Respondent

Court:	William Young, Glazebrook and O'Regan JJ
Counsel:	P T Beverley, D G Allen and T J Ryan for Respondents and Te Rūnanga o Ngāti Tama Trust as Interested Party
Judgment:	23 September 2021

JUDGMENT OF THE COURT

A **The application for recall of this Court's judgment of 15 July 2021 (*Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2021] NZSC 87) is allowed only to make the changes identified at [2] below.**

B **The [2021] NZSC 87 judgment is reissued with these changes.**

REASONS

[1] In [2], [8] and [9] of our judgment of 15 July 2021 we said:[1]

> [2] In the course of its judgment, the Environment Court held that Ngāti Tama are tangata whenua exercising mana whenua and kaitiakitanga over the project area. By contrast, it held that these terms as used in the Resource Management Act 1991 do not apply to Poutama or Mr and Mrs Pascoe in respect of the land. Mr Pascoe is not Māori, and although Mrs Pascoe is, there was no reliable evidence before the Court linking her Māori ancestry to the Pascoe land. Likewise, the Court considered that there was no reliable evidence before it that the Poutama collective was an iwi or iwi authority exercising mana whenua in the project area. It therefore concluded that there was no relevant error in the approach taken by the respondents.
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> …
>
> [8] Even if the Environment Court had applied an incorrect understanding of the principle of mana whenua (a proposition the applicants do not advance in express terms), the factual findings of that Court leave no room for argument that any such error could have been material. *The Court found that there was in fact no evidence of a Poutama ancestral connection to the land in question.* This was a finding justified on the evidence. The Court recorded its preference for the report commissioned by Te Rūnanga o Ngāti Tama Trust over the report commissioned by Poutama on this central issue.
>
> [9] The same factual finding meets the claimed error in relation to s 6(e) of the Resource Management Act, which requires decision makers to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands. Insufficient evidence of an ancestral connection means that the Pascoes and Poutama could not have a relevant interest under s 6(e), regardless of whether that section applies to iwi, hapū or Māori more generally.

To the sentence we have emphasised in [8], there is a footnote reference in these terms:

> Likewise, as noted above at [2], it found there was insufficient evidence of an ancestral connection between the Pascoes and the land in question.

[2] Poutama Kaitiaki Charitable Trust filed an application for recall on 13 August 2021 challenging the accuracy of the sentence which we have italicised – that is whether it correctly summarised the conclusions of the Environment Court. We consider that it does. However, as expressed, it could be misinterpreted. For this

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1 *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2021] NZSC 87 (footnotes omitted and emphasis added).

reason we have decided to recall and reissue our judgment declining leave to appeal with the following substituted [8] and [9]:

> [8] Even if the Environment Court had applied an incorrect understanding of the principle of mana whenua (a proposition the applicants do not advance in express terms), the factual findings of that Court leave no room for argument that any such error could have been material:
>
> (a) The Court found that there was insufficient evidence of a Pascoe ancestral connection to the Pascoe land, or to the wider project area.[2]
>
> (b) In relation to the project area the Court recorded its preference for the report commissioned by Te Rūnanga o Ngāti Tama Trust over the report commissioned by Poutama.[3] The preferred report included evidence as follows (at [323]):
>
> > The crux of my evidence is that land rights in the Mokau-Poutama area during the nineteenth century were complex, disputed and subject to change. But one constant was that there are no historical records, at least as far as I am aware, that refer to a tribal group known as Nga Hapu o Poutama.
>
> This and associated factual findings show that there was also insufficient evidence of an ancestral connection between Poutama as a collective and the land in question.[4]
>
> [9] These factual findings also meet the claimed error in relation to s 6(e) of the Resource Management Act, which requires decision makers to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands. Insufficient evidence of an ancestral connection means that the Pascoes and the Poutama collective could not have a relevant interest under s 6(e), regardless of whether that section applies to iwi, hapū or Māori more generally.[5]

Solicitors:
Buddle Findlay, Wellington for Respondents and Te Rūnanga o Ngāti Tama Trust

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2 *Director-General of Conservation v Taranaki Regional Council* [2019] NZEnvC 203 (Judges Dwyer, Doogan and Dickey and Commissioners Bunting and Bartlett) [EnvC judgment] at [318]–[320], [330] and [339].

3 At [324]–[325].

4 At [320] and [339].

5 The Environment Court acknowledged that some individuals with ancestral links to the project area chose to be represented by Poutama (at [325]), but this does not in turn mean that their ancestral links derive from their association with Poutama nor does it mean that Poutama as a collective have an ancestral connection to the project area.