

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 139/2024
[2025] NZSC 32

BETWEEN KAIMAI PROPERTIES LIMITED
First Applicant

BARTONS KAIMAI FARM LIMITED
Second Applicant

AND QUEEN ELIZABETH THE SECOND
NATIONAL TRUST
First Respondent

REGISTRAR-GENERAL OF LAND
Second Respondent

Court: Ellen France and Miller JJ

Counsel: I C Bassett and T C Waikato for Applicants
D M Salmon KC, T P Mullins and D A C Bullock for
First Respondent
No appearance for Second Respondent

Judgment: 8 April 2025

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicants must pay the first respondent one set of costs of \$2,500.**
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REASONS

[1] The applicants seek leave to appeal from a judgment of the Court of Appeal in which that Court upheld a High Court decision rejecting the applicants' challenge to the legitimacy of a Queen Elizabeth the Second open space covenant.¹

¹ *Kaimai Properties Ltd v Queen Elizabeth the Second National Trust* [2023] NZHC 3433, (2023)

[2] The covenant was volunteered to the first respondent (the Trust) by the previous owner of the land in 2005, established by deed, and registered on the title in 2007. The first applicant bought the land with knowledge of the covenant in 2009.

[3] As the Court of Appeal observed, this is the second set of proceedings in which the applicants have sought to achieve this outcome.² They previously failed to persuade the High Court and Court of Appeal that the open space covenant permitted them to expand their quarrying business into an area which is the subject of the covenant.³ In the present proceeding they seek to advance a set of new arguments; essentially, that the open space covenant was never lawfully established because they had an interest in the land at that time and did not give their consent to the covenant.

[4] The Court of Appeal agreed with Isac J that s 22 of the Queen Elizabeth the Second National Trust Act 1977, which provides that the Trust may treat and agree with the owner or lessee of land to be subject to covenant, does not require the Trust to treat and agree with any person who claims an interest in the land.⁴ Rather, the section refers to the owner of the freehold estate concerned or, in the case of leasehold land, the person holding the leasehold estate.

[5] The Court of Appeal did not find it necessary to determine whether the proceeding was an abuse of process in accordance with the principles outlined in *Henderson v Henderson*, because the Trust ultimately did not take that point.⁵

[6] We are not persuaded that the proposed appeal raises a question of general or public importance justifying the attention of this Court.⁶ Indeed, counsel for the Trust correctly observe that the applicants make no real attempt to explain why the leave criteria are met. In our view, the proposed appeal is confined to the particular

24 NZCPR 885 (Isac J) [HC judgment]; and *Kaimai Properties Ltd v Queen Elizabeth the Second National Trust* [2024] NZCA 616 (Cooke, Peters and Grice JJ) [CA judgment].

² CA judgment, above n 1, at [2].

³ See *Kaimai Properties Ltd v Queen Elizabeth the Second National Trust* [2019] NZHC 1591; and *Kaimai Properties Ltd v Queen Elizabeth the Second National Trust* [2021] NZCA 10, (2021) 21 NZCPR 889.

⁴ HC judgment, above n 1, at [95]; and CA judgment, above n 1, at [28]–[29].

⁵ CA judgment, above n 1, at [55]–[56] citing *Henderson v Henderson* (1843) 3 Hare 100 at 115, 67 ER 313 (Ch) at 319.

⁶ Senior Courts Act 2016, s 74(2)(a).

circumstances of the applicants. Nor do the decisions below raise any appearance of a miscarriage of justice.⁷

[7] The application for leave to appeal is dismissed.

[8] The applicants must pay the first respondent one set of costs of \$2,500.

Solicitors:
Kāhui Legal, Rotorua for Applicants
LeeSalmonLong, Auckland for First Respondent

⁷ Section 74(2)(b); and *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].