

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 178/2025
[2026] NZSC 79**

BETWEEN ESTATE OF ERIC JOHN TUPAI RURU
First Applicant

ALAN PAREKURA TOROHINA
HARONGA
Second Applicant

AND ATTORNEY-GENERAL
First Respondent

WAITANGI TRIBUNAL
Second Respondent

TANYA ROGERS AND DAVID BROWN
Third Respondents

OWEN LLOYD
Fourth Respondent

DAVID THOMAS HAWEA
Fifth Respondent

ANTHONY TAPP
Sixth Respondent

Court: Winkelmann CJ, Ellen France and Miller JJ

Counsel: K S Feint KC and M S Smith KC for Applicants
C R W Linkhorn, C D Tyson and D W Hunt for First Respondent
H K Irwin-Easthope for Second Respondent
B R Lyall for Third Respondents
T H Bennion for Fourth Respondent
C F Finlayson KC, K H Dixon and T P Talamaivao for
Fifth Respondent
No appearance for Sixth Respondent

Judgment: 10 June 2026

JUDGMENT OF THE COURT

- A Leave to appeal is granted in part (*Estate of Ruru v Attorney-General* [2025] NZCA 597).**
- B The approved questions are:**
- (a) whether the Court of Appeal erred in its approach to the requirements for resumption in s 8HB of the Treaty of Waitangi Act 1975; and**
 - (b) whether the Court of Appeal erred in its approach to the Waitangi Tribunal’s discretion to award compensation under sch 1 of the Crown Forest Assets Act 1989.**
- C The application for leave to appeal is otherwise dismissed.**
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REASONS

[1] The first applicant (claimant in Wai 274 and Wai 283, representing Te Aitanga a Māhaki) and second applicant (claimant in Wai 1489, representing Mangatu Incorporation) seek leave to appeal from the judgment of the Court of Appeal in *Estate of Ruru v Attorney-General*.¹ They advance three proposed grounds:

- (a) Whether the Court of Appeal erred in its approach to the requirements for resumption in s 8HB of the Treaty of Waitangi Act 1975. This is a question about the required nexus between the Crown forest land in issue and a breach of Te Tiriti o Waitangi.
- (b) Whether the Court of Appeal erred in its approach to the Waitangi Tribunal’s discretion to award compensation under sch 1 to the Crown Forest Assets Act 1989 (CFAA). This is a question about the calculation of the appropriate percentage of the “specified amount” assessed under cl 3 of sch 1.²

¹ *Estate of Ruru v Attorney-General* [2025] NZCA 597 (Courtney, Ellis and Cooke JJ) [CA judgment].

² See also sch 1, cl 2(b).

- (c) Whether the Court of Appeal erred in its approach to the rate of return applicable on compensation awarded under cl 3(c) of sch 1 to the CFAA. This is a question about whether the prescribed rate of return on compensation for the first four years from the date of transfer of the relevant Crown forestry assets (or the date the claim was filed, if that came first) may be extended by the Tribunal under cl 6(b) of sch 1. The rationale for such an extension is that, for reasons beyond its control, the Crown could not carry out its obligations under the 20 July 1989 agreement between the Crown and Māori interest groups.

[2] The first respondent (the Attorney-General) opposes leave on all grounds. The second respondent (the Waitangi Tribunal) abides the decision of the Court and, if leave is granted, the appeal. The third and fourth respondents (claimants in Wai 499, Wai 874 and Wai 507, representing Ngā Uri o Tamanui) support the application for leave to appeal. The fifth respondent (claimant in Wai 892, representing Te Whānau a Kai) abides the Court's decision as to leave.

[3] Leave to appeal is granted on grounds one and two.

[4] Turning to ground three, we accept that the issue is commercially significant because the initial rate is lower than the rate payable, absent any extension, following expiry of the four-year period.³ We also accept that there was a very long period of delay in this case while the Tribunal completed its recommendations. The Tribunal declined to extend the four-year period, except to account for delays arising from the COVID-19 lockdowns.⁴ On judicial review, Grice J held that the Tribunal had erred in its approach to the causes of delay and ordered that the Tribunal should reconsider its recommendations in this regard.⁵ The Court of Appeal agreed with Grice J that the Tribunal had erred in its approach to this issue and had failed to engage with the necessary lines of inquiry.⁶

³ In declining leave to appeal directly from the High Court on this ground, we noted that the proposed appeal raised significant issues: *Estate of Ruru v Attorney-General* [2023] NZSC 82 (Glazebrook, Ellen France and Williams JJ) at [13].

⁴ Waitangi Tribunal *The Mangatū Remedies Report* (Wai 814, 2021) at 344.

⁵ *Attorney-General v Waitangi Tribunal* [2023] NZHC 132 at [232], and see at [230].

⁶ CA judgment, above n 1, at [148] per Cooke J, with whom Courtney and Ellis JJ agreed on this issue: at [190].

[5] The High Court and Court of Appeal both followed this Court's approach to the issue as set out in *Wairarapa Moana Ki Pouākani Inc v Mercury NZ Ltd*.⁷ This is a recent judgment of this Court and we accept the Crown's submission that it is not relevantly distinguishable. The applicants invite us to revisit it. We do not consider that the argument that it was wrongly decided has sufficient prospects of success to justify leave. We accordingly decline leave on the third ground.

Solicitors:

Gibson Sheat, Wellington for Applicants

Te Tari Ture o te Karauna | Crown Law Office, Wellington for First Respondent

Whāia Ltd t/a Whāia Legal, Wellington for Second Respondent

Te Aro Law Ltd, Wellington for Third Respondents

Bennion Law, Wellington for Fourth Respondent

Dixon and Co Lawyers Ltd, Auckland for Fifth Respondent

⁷ See *Wairarapa Moana Ki Pouākani Inc v Mercury NZ Ltd* [2022] NZSC 142, [2022] 1 NZLR 767 at [127]–[139] per Winkelmann CJ, Glazebrook and Williams JJ, and see at [166] per William Young J and at [230] per O'Regan J, both agreeing with the majority on this point.