



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

2 FEBRUARY 2024

MEDIA RELEASE

PAKI NIKORA on behalf of TE KAUNIHERA KAUMĀTUA O TŪHOE v TĀMATI KRUGER on behalf of TŪHOE TE URU TAUMATUA TRUST

(SC 67/2023)

Hearing in the Supreme Court Tuesday 27 February 2024

CASE HISTORY SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court. The synopsis does not comprise part of the reasons for the judgment of the Court of Appeal. A direct link to the judgment is included at the end of this synopsis.

Background

This case concerns the Māori Land Court’s jurisdiction to oversee Māori trusts serving as post-settlement governance entities in accordance with the provisions of Te Ture Whenua Māori Act 1993 (the Act). The relevant trust in this case is the Tūhoe – Te Uru Taumatua Trust (the Tūhoe Trust), which is the post-settlement governance entity established by Ngāi Tūhoe to receive redress from the Crown for breaches of te Tiriti o Waitangi/the Treaty of Waitangi.

In 2019, the Appellant brought proceedings against the trustees of the Tūhoe Trust in the Māori Land Court, alleging multiple breaches of the Tūhoe Trust’s deed, principally in respect of the conduct of trustee elections. The Māori Land Court found that it had jurisdiction over the Tūhoe Trust, relying on the Māori Appellate Court’s judgment in *Moke v Ngāti Tarāwhai Iwi Trust*.¹ Judgment was given in favour of the Appellant on 21 April 2021, with orders for the Tūhoe Trust to hold fresh elections in respect of two trustees within six months of the judgment date, though a partial stay of the orders was later granted.

The Respondent appealed to the Māori Appellate Court on the basis that *Moke* was wrongly decided, and the Tūhoe Trust was not subject to the Māori Land Court’s oversight under the Act. On 21 December 2021, the Māori Appellate Court dismissed the appeal, upholding its decision in *Moke* and rejecting the Respondent’s argument that a trust must be established for the primary purpose of holding land in order for it to be “constituted in respect of General land owned by Māori” for the purposes of the Act.

¹ *Moke v Trustees of Ngāti Tarāwhai Iwi Trust* [2019] Māori Appellate Court MB 265 (2019 APPEAL 265), [2019] NZAR 1465.

In 2022, the Respondent appealed to the Court of Appeal. The Court reconsidered whether the Tūhoe Trust was “constituted in respect of General land owned by Māori”, and invited submissions as to whether the General land held by the Tūhoe Trust was “General land owned by Māori” for the purposes of the Act. On 18 May 2023, the Court of Appeal found that the Māori Land Court lacked jurisdiction under the Act on the basis that the relevant land held by the Tūhoe Trust was not “General land owned by Māori” and the trust itself was not “constituted in respect” of that land. The orders of the Māori Land Court were accordingly set aside.

This appeal

The Supreme Court granted the Appellant’s application for leave to appeal on 28 August 2023. The approved question is whether the Court of Appeal erred in allowing the Respondent’s appeal to that Court.

The issues on appeal concern the interpretation of s 236(1) of the Act, in particular whether “General land owned by Māori” includes land held in a discretionary trust of which Māori are discretionary beneficiaries, and whether a trust designated as a post-settlement governance entity is a “trust constituted in respect of General land owned by Māori” for the purposes of that provision.

Viewing of hearing

This hearing of the appeal will be live-streamed. Details about access to the live-stream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.

The panel

The Hon Justice Kós	The Hon Justice Glazebrook	The Rt Hon Chief Justice Winkelmann	The Hon Justice Williams	The Hon Justice O’Regan
------------------------	-------------------------------	---	-----------------------------	----------------------------

Judges as seen from the public gallery

Counsel

- Paki Nikora (Appellant): *M S Smith and P T Harman*
- Tāmami Kruger (Respondent): *M G Colson KC, M R G van Alphen Fyfe and K O M Fitzgibbon*
- Te Hunga Rōia Māori o Aotearoa (Intervener): *B R Arapere and I T F Hikaka*

Sitting hours

Court will begin at 10:00am and conclude at 4:00pm with adjournments taken from 11:30am to 11:45am and from 1:00pm to 2:15pm. There is no afternoon adjournment.

Enquiries

Any enquiries about the hearing should be directed via email to supremecourt@justice.govt.nz. While attending the hearing, enquiries can also be directed to the Court Registry, which is located outside the main courtroom in the Supreme Court foyer.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2023\] NZCA 179](#) (18 May 2023)

Supreme Court leave decision: [\[2023\] NZSC 114](#) (28 August 2023)

