IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV 2008-485-2511

UNDER	the Judicature Amendment Act 1972 and Part 7 of the High Court Rules
IN THE MATTER OF	Decisions made by the Minister in Charge of Treaty of Waitangi Negotiations
BETWEEN	HENRY KOIA Applicant
AND	MINISTER IN CHARGE OF TREATY OF WAITANGI NEGOTIATIONS Respondent
AND	TE RUNANGA O NGATI POROU Second Respondent

Hearing: 23 June 2009

Counsel: C Tenant for Applicant
H M Carrad for Respondent
A Knowsley for Second Respondent

Judgment: 23 June 2009

ORAL JUDGMENT OF RONALD YOUNG J

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[1] This is an application by the applicant for a change of venue. These proceedings are currently in the High Court in the Wellington Registry.

[2] The application for a change of venue was filed in this Court on 19 June 2009. These proceedings involve judicial review of a decision made by the Minister in Charge of Treaty of Waitangi negotiations and relates to Crown negotiations with Te Runanga O Ngati Porou and whether or not those apparently currently represented by the applicant, Mr Koia, come within the ambit of Ngati Porou for the purpose of negotiations with the Minister.

[3] There have been affidavits filed by the applicant and in response by the second respondent relating to a memorandum signed by those said to be associated with Mr Koia's claimed iwi as to whether or not they are content to have Ngati Porou negotiate on their behalf.

[4] The applicant claims that this memorandum, which says that those who signed it are content for Ngati Porou to negotiate with the Crown on their behalf, is somehow fraudulent by failing to make it clear on the body of the document that those who are signing it are effectively authorising Ngati Porou to negotiate on their behalf. Currently as I recollect it, there are four or five affidavits from deponents who claim that they signed the memorandum in blank.

[5] Broadly described, the applicant's case is based on the claim that this memorandum (with, it is said, the fraudulently obtained signatures) was influential in decisions made by the Minister in identifying the organisation that he would negotiate with relating to East Coast, North Island Treaty of Waitangi claims. This review seeks to challenge that ministerial decision.

[6] With that background Mr Hirschfeld on behalf of the applicants sought an order that these proceedings be sent for trial at Gisborne. The basis of his application for change of venue was that this case raised disputed questions of fact and that pursuant to r 9.51 of the High Court Rules disputed questions of fact arising at trial must be determined on evidence given by means of witnesses examined orally. Gisborne is where the deponents reside and therefore was the most convenient court.

[7] This application is based on a misunderstanding of these proceedings and the High Court Rules. These proceedings are judicial review. Evidence is by affidavit. If a party desires to cross-examine a witness then leave must be obtained from the Court. It has been observed many times that the Courts are reluctant to allow cross-examination in judicial review proceedings for the self evidence reason that Courts, in review proceedings, are concerned to review process, rather than substance.

[8] In any event, Mr Hirshfeld has not sought an order from the Court that he be able to cross-examine any of the respondents' witnesses. Currently, therefore, the proceedings will continue without evidence other than by affidavit. Given that proposition Mr Koia's application for a change of venue, based as it is on the convenience of witnesses Mr Hirshfeld imagined would be appearing, is misplaced. In those circumstances, therefore, the proper course is for me to dismiss the application for change of venue.

[9] Currently the matter is for trial on 31 August 2009. The Crown and no doubt the second respondent are anxious to have the matter dealt with on that date given there are current negotiations between those groups.

[10] Mr Tenant invited me to timetable any application by Mr Hirshfeld to cross-examine the respondent's deponents. I am not prepared to do so. It is for the applicant to decide whether he wishes to make such an application. I note, however, the closer to the hearing that application is made the more difficult it will be for Mr Koia to convince this Court that such an application should be granted.

[11] Mr Hirshfeld will also be aware that it is not simply a question of identifying whether there is a factual dispute between the parties. The factual dispute must be one that is pivotal to the litigation and one which cannot be resolved in any other way before success in such an application could be expected.

[12] As to costs. This was a misconceived application, which could never have succeeded. Both respondents are entitled to $500 costs from the applicant.

Ronald Young J

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