

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2003-404-6164

BETWEEN	PETER KARAKA First Plaintiff
AND	EMILY KARAKA Second Plaintiff
AND	NGAI TAI KI TAMAKI TRIBAL TRUST Defendant

Hearing: 14 December 2009

Counsel: H T Sorenson for Applicants
F J Thorp for Interim Trustees
K Littlejohn for the elected trustees
No appearance by or on behalf of Defendant

Judgment: 14 December 2009

(ORAL) JUDGMENT (NO. 7) OF HEATH J

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Mr T Kirkwood, 41 Lauderdale Road, Birkdale

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[1] On 9 March 2004, I made orders removing all trustees of Ngai Tai ki Tamaki Tribal Trust and appointing Mr Mark Stevens of Wellington, chartered accountant as sole interim trustee. The powers reposed in Mr Stevens were designed to enable the financial position of the Trust to be determined and a hui a iwi convened so that those who were beneficially entitled to the Trust's property could be heard on how the Trust's future should be determined. In particular, I was concerned to ensure that a Waitangi Tribunal claim was progressed promptly, for the benefit of all iwi.

[2] In November 2007, following an unsuccessful settlement conference held at Maungarei Marae, I appointed Messrs Taua and Kirkwood as additional interim trustees. Subsequently Mr Taua was removed, at his request. Mr Stevens and Mr Kirkwood are the remaining interim trustees.

[3] When I made orders initially, in March 2004, I expressed the view that it was not in the interests of the iwi for two distinct factions, running on parallel courses, lead the Trust in important negotiations with the Crown and other bodies. I indicated that the mana of the iwi needed to be restored by a process of kotahitanga. I indicated that, only by restoration to the iwi of the authority to nominate those whom they wished to act on their behalf, would it be possible to resolve underlying issues.

[4] Over the last five years or so, I have supervised the activities of the Trust. It is fair to say that that has not always been an easy task. The issues that have divided the iwi have caused much friction. But the position has now been reached, I am pleased to say, whereby the Court can relinquish its direct supervisory role over the affairs of the Trust, in favour of members of the iwi in whom confidence has been reposed by those beneficially interested in the Trust's property.

[5] An election was held at the Annual General Meeting of the Trust held in March 2009. Twelve people were elected as trustees. Orders are now sought confirming their appointment and discharging Mr Stevens and Mr Kirkwood as interim trustees.

[6] Nevertheless, there is a need to retain some Court involvement to deal with outstanding issues of fees and disbursements that fall to be resolved.

[7] Generally, there is agreement on the orders to be made today. As a result of discussions with counsel this morning, I make the following orders:

- a) The appointment of Mr Tauk3 Kirkwood and Mr Mark Stevens as interim trustees of the Trust is terminated.
- b) The election of Mr James Brown, Ms Carmen Kirkwood, Mr Peter Karaka, Mr Billy Brown, Ms Emily Karaka, Mr Stephen Zister, Ms Deborah Pace, Ms Hiraina Whaanga, Mr David Beamish, Mr Laurie Beamish, Ms Lucy Steel and Mr Tipa Compain as trustees of the Trust is confirmed.
- c) Mr Stevens shall file and serve financial statements for the Trust for the period 9 March 2004 to 14 March 2009, identifying all fees and expenses incurred by the Trust over that period and any income received. Copies of invoices relating to all fees and expenses identified in the financial statements shall accompany those financial statements.
- d) The trustees shall file and serve a memorandum identifying those fees and expenses incurred with which it takes issue within one month of receipt of the information to be provided by Mr Stevens.
- e) Prior to the Court resolving any issues of fees and expenses, the new trustees shall file and serve financial statement, detailing moneys received and moneys paid by the Trust during the period 31 March 2009 to 31 March 2010. Those accounts shall explain (as notes) what has occurred with regard to contingent debts owing to the Commissioner of Inland Revenue and Metro Water Ltd.

[8] I direct the Registrar to set the proceeding down before me at 9am on the first available date after 1 June 2010, to finalise any outstanding issues. Memoranda shall be exchanged no less than 10 working days prior to that hearing to identify issues in dispute.

[9] Leave to any party, including the former interim trustees, is reserved should any issues arise that require Court intervention.

[10] In relation to the fees that are likely to be charged, I indicate my own view that those involved in considering them should take account of the benefits that have been achieved over the past five years. I would also urge those responsible for doing so, to make an approach to Sir Douglas Graham, in the context of the Waitangi Tribunal negotiations, to see whether an interim payment can be negotiated to deal with outstanding fees, any debts of the Trust and research costs for the Waitangi Tribunal claim.

[11] From my perspective of having oversight of the Trust over the last five years, I consider it would be beneficial to all concerned, including the Crown, for the Trust to be put on a stable financial base prior to completing research of its claim. However, I am clear that it would be wrong to regard the need to resolve past funding issues as having priority to those needed for the future. The two issues need to be dealt with in tandem.

[12] I thank all parties for their assistance.

P R Heath J