

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Wai 3048

E PĀ ANA KI
CONCERNING

Treaty of Waitangi Act 1975

Ā
AND

te tono pakirehua nonoi nā
Kingi Robert James Wiri mō
rātou ko Ngāti Ruapani ki
Waikaremoana

an application for an urgent
hearing by Kingi Robert
James Wiri on behalf of
himself and Ngāti Ruapani
ki Waikaremoana

***TE WHAKATAUNGA Ā TE TIAMANA TUARUA KAIWHAKAWĀ SARAH
REEVES***

DECISION OF THE DEPUTY CHAIRPERSON JUDGE SARAH REEVES

19 October 2023

Introduction

1. This decision determines a renewed application for an urgent hearing by Kingi Robert James Wiri (“the applicant”) of the Ngāti Ruapani ki Waikaremoana (Wiri) (Wai 3048) claim regarding the settlement process between the Crown and Ngāti Ruapani mai Waikaremoana (“NRMW”).

Procedural History

First application for urgency

2. On 28 May 2021, the Tribunal received an application for urgency and accompanying material by Kingi Robert James Wiri on behalf of himself and Ngāti Ruapani ki Waikaremoana regarding the settlement of seven Ngāti Ruapani claims¹ (Wai 3048, #1.1.1, #1.1.1(a) & #A13). The key allegations raised at that time were that the Crown had improperly conferred a mandate to settle the claims of Ngāti Ruapani, and the imminent signing of an agreement in principle (“AIP”) would result in significant irreversible prejudice because the claimant definition was incorrect. The application was dismissed on 27 January 2022 for failure to establish the criteria for an urgent inquiry (Wai 3048, #2.5.7).

Second application for urgency

3. On 11 January 2023, the Tribunal received an amended statement of claim seeking an urgent hearing by the applicant on behalf of the seven claims mentioned above at [2], concerning the negotiations and settlement process between the Crown and Ngāti Ruapani (Wai 3048, #1.1.1(c)).
4. On 8 March 2023, the Tribunal received a memorandum and submissions of the Crown opposing the application for urgency, accompanied by supporting evidence (Wai 3048, #3.1.18, #3.1.19, #A16, #A16(a) & #A16(b)). On 19 April 2023 the Tribunal received a memorandum of counsel and supporting material on behalf of the applicant (Wai 3048, #3.1.22, #A17, #A18, #A19, #A20, #A21, #A22, #A23 & #A24). Submissions in reply to the Crown were received on 21 April 2023 (Wai 3048, #3.1.23 & #3.1.24).
5. On 12 May 2023, the Ngāti Ruapani mai Waikaremoana Negotiating Group Trust (“The Negotiating Group”) filed a memorandum in response to the application, contesting the affidavits filed and opposing the application for urgency (Wai 3048, #3.1.25). The Tribunal received the applicant’s submissions in reply to the Negotiating Group on 16 May 2023 (Wai 3048, #3.1.26).

Application for urgency

6. The applicant submits that the Crown’s settlement process with the Negotiating Group diminishes the mana of Ngāti Ruapani through the incorrect claimant definition. The negotiation and settlement process has been contrary to the Treaty in respect to

¹ The Ruapani Lands (Wai 144) claim; the Noa Tiwai Lakes, Lands and Other Resources (Wai 937) claim; the Ngāti Ruapani Ancestral Land, Forests and Waterways (Wai 945) claim; the Pere Kaitiakitanga (Wai 1013) claim; the Heiotakoka 2B to Kopani 36 & 37 (Wai 1033) claim; the Matira Ruawai-Taoho Wills Whānau Trust (Wai 1342) claim; the Te Wiremu Waiwai and the Ngāti Ruapani Lake Waikaremoana (Thoms and Waiwai) (Wai 2245) claim.

rangatiratanga and his reasonable expectations that the Crown would assist an amicable settlement for Ngāti Ruapani (Wai 3048, #1.1.1(c) at [35] – [37]).

7. The Crown opposes the application for urgency on the basis that the applicant has not demonstrated that they are suffering or are likely to suffer significant and irreversible prejudice as a result of any act or omission by the Crown. This is also supported by the Negotiating Group (Wai 3048, #3.1.19 at [20] & #3.1.25 at [7](a)).

Claimant definition

8. The applicant alleges that the claimant definition, included in the Trust Deed establishing the Negotiating Group, excluded Ruapani as the relevant tipuna of the claimant community. This excludes Ngāti Ruapani descendants at Te Reinga, Wairoa, Iwitea and Gisborne (Wai 3048, #1.1.1(c) at [6] & [10] – [11] & #A15(a) at 109).
9. Pukehore is a significant ancestor in the tribal traditions of Ngāti Ruapani.² The Negotiating Group has deliberately denied Pukehore's whakapapa to Ruapani, providing a Tūhoe centric version of his mana whenua at Waikaremoana (Wai 3048, #1.1.1(c) at [13]).
10. The applicant alleges that the Negotiating Group failed to specify which Hinekura tipuna of Tūhoe or Ngāti Ruapani is referred to in the claimant definition and continues to falsely claim that Hinekura is the ancestress of Te Kūhā marae. This creates unnecessary ambiguity, allows a Tūhoe centric interpretation of Ngāti Hinekura's whakapapa, and denies the connection to Ruapani (Wai 3048, #1.1.1(c) at [10](ii) & [17]).
11. The Crown opposes the applicant's assertion that the claimant definition does not include Ruapani, as evidenced in the final Mandate Strategy, the Deed of Mandate and the Agreement in Principle signed in August 2022 (Wai 3048, #3.1.19 at [24] & #A16 at [49]).
12. During a hui on 24 July 2022, the whakapapa line of Hinekura (Te Rūhere) reflected Ruapani from Waikaremoana, as clarified by the Ngāti Hinekura hapū. The claimant definition is not in its final form and the Crown and Negotiating Group are open to receiving further feedback (Wai 3048, #3.1.19 at [25] – [26] & [33] – [34]).
13. The Negotiating Group submit that the definition is an internal dispute of whakapapa which is inappropriate for the Crown to determine, as also recognised in The Maniapoto Mandate Inquiry Report.³ The Crown submits this issue is best resolved through discussions between the parties (Wai 3048, #3.1.25 at [7](d)).
14. The applicant submits in response that the recognition of Ruapani is in name alone and the Negotiating Group's actions have shown a disregard for mana whenua descendants in Erepeti, Ruakituri, Te Reinga, Te Kapu, Wairoa and Gisborne (Wai 3048, #3.1.24 at [18] & #A17 at [28] – [29]).

² Wiri, R, *Te Waikaukau o Nga Matua Tipuna, Myths, Realities and the Determination of Mana Whenua in the Waikaremoana District* (M.A. Thesis, Auckland University, 1994).

³ Waitangi Tribunal *The Maniapoto Mandate Inquiry Report* (Wai 2858, 2020) at 4.2.3.3 & 4.2.4.3.

Engagement with the Negotiating Group

15. The applicant has attempted to engage in mediation, in line with clause 2 of the Negotiating Group's Deed of Mandate, to discuss the claimant definition (Wai 3048, #1.1.1(c) at [18]).
16. On 30 April 2022, the applicant met with the Negotiating Group to discuss Hinekura, Pukehore or Tuwai in the claimant definition and the exclusion of whānau connected to Ruapani in Te Tairāwhiti and the East Coast. The Negotiating Group Chair stated that the claimant definition was only focused on Ruapani connections at Waikaremoana (Wai 3048, #1.1.1(c) at [18] – [21]).
17. On 2 July 2022, a hui-ā-hapū was held with Ngāti Hinekura, the Negotiating Group and the applicant to vote on the issue of amending or withdrawing the mandate and shifting the claimant definition model. The applicant submits that an emphasis on Tūhoe connections continue to fail Ngāti Ruapani throughout separate hui where it was upheld that Hinekura of Tūhoe was the ancestress of Te Kūhā Marae and Ngāti Hinekura are a hapū of both Tūhoe and Ngāti Ruapani (Wai 3048, #1.1.1(c) at [22] – [24]).
18. The Crown submits there is still considerable opportunity to engage with the Negotiating Group as initialling a Deed of Settlement will not be reached by the general elections in October 2023. The Negotiating Group submits that alternative procedures in the Negotiating Group's mandate remain available. Further, the negotiation is purely for the settlement of claims. However, to the extent that some descendants of Ruapani have unsettled historical claims after the Deed of Settlement is signed, it is anticipated those will be settled by other settlements (Wai 3048, #3.1.19 at [21] & [22], #A16 at [42], #3.1.25 at [7](b) & (d)).
19. The Crown submits that it ensures the Negotiating Group provides fair and meaningful opportunities for dissenting views to be considered and encourages engagement between the parties. The Crown has included an additional opportunity in the Mandate Strategy for submissions to be made alongside the mandate hui (Wai 3048, #3.1.19 at [38.1] – [38.2] & #A16 at [11]).
20. Following discussions with the Negotiating Group, the final Mandate Strategy was updated to define Ngāti Ruapani mai Waikaremoana as 'the collective group composed of individuals who descend from Ruapani and one or more of his descendants, Hinekura, Pukehore or Tuwai'. During the hui on 2 July 2022, it was clarified that the whakapapa line of Hinekura reflected Ruapani from Waikaremoana (Wai 3048, #A16 at [48], #3.1.19 at [39.3], #A16(b) & 'SC-8' at [7]).
21. On 15 November 2022, a further hui was convened with the Minister for Treaty of Waitangi Negotiations, the applicant, and Hon Tamati Coffey to address the applicant's concerns. The applicant did not raise the intention to withdraw or challenge the mandate of the Negotiating Group. Following this, the Negotiating Group was to provide information in its mandate report regarding community engagement in relation to the concerns raised (Wai 3048, #3.1.19 at [39.4] & #A16 at [81] – [83]).
22. The Crown reiterates that ongoing opportunities remain open for consideration of the claimant definition whilst working towards a Deed of Settlement and establishing a post settlement governance entity. An opportunity will be available to discuss proposed amendments when voting for the Deed of Settlement (Wai 3048, #3.1.19 at [40]).

23. In response, the applicant submits that the Crown is failing to uphold their obligation to ensure that open and honest dialogue is facilitated with Ngāti Ruapani members as a pathway to resolution for Ngāti Ruapani, Tūhoe and the wider community. The Crown is treating the loss of confidence in the mandate as an inter-tribal dispute.
24. The applicant further submits that the Crown continues to recognise a mandate that provides for a '...collective group of individuals who descend from Ruapani and one or more of his descendants: Hinekura, Pukehore or Tuwai' with the knowledge that the Negotiating Group fails to engage with a significant proportion of the community that fits that description (Wai 3048, #A24 at [19] & #3.1.24 at [16] & [20]).
25. The applicant submits that the Crown has not suggested that negotiations be put on hold whilst the applicant's concerns are addressed. The possibility that final terms of settlement are agreed within a reasonable timeframe is not remote and the applicant should not have to wait until the signing of the Deed, or the introduction of settlement legislation is imminent before the hearing of the issues. The applicant submits that a recommendation that settlement legislation should not proceed is likely to be ignored by the Crown (Wai 3048, #3.1.26 at [4](b) & (c)).
26. The applicant reiterates that attempts to engage internally have continuously been ignored. The Negotiating Group refuse to accept that their mandate is invalid, thus external assistance is needed by the Tribunal. Finally, there is no bar on these issues as the Tribunal has previously engaged on these matters during the Wai 894, Te Uruwera Inquiry (Wai 3048, #3.1.26 at [4](c) & (f)).

Marae hui-ā-hapū

27. The applicant put four resolutions at hui-ā-hapū, including calling for the amendment of the current Deed of Mandate to include wider claimant community participation in registration and voting for the mandate and treaty settlement; the amendment of a 'Ngāti Ruapani whakapapa-based voting model'; and the addition of two new nominees and the removal of two independent negotiators in the Negotiating Group (Wai 3048, #1.1.1(c) at [28]).
28. The applicant submits that 93% of voters were in favour of amending or withdrawing the Negotiating Group's Deed of Mandate. The applicant submits that the Agreement in Principle signed by the Crown and the Negotiating Group has disrespected the Ngāti Ruapani whenua tipuna, mana of kaumatua and tikanga of Ngāti Ruapani people by allowing a restrictive claimant definition and proposing to settle Ruapani claims with a body that largely excludes Ruapani (Wai 3048, #1.1.1(c) at [31] – [34]).
29. The Crown submits that the resolutions regarding the claimant definition and the assertion that the current Deed of Mandate and Trust Deed is based on a 'Tūhoe tribal committee voting model' are based on a false premise as an amendment was made including Ruapani in the Deed of Mandate and Mandate Strategy (Wai 3048, #3.1.19 at [29.1] – [29.2]).
30. The Crown submits that the dismissed request to vote was ignored by the applicant at the hui on 6 November 2022 and signatures to amend or withdraw the Negotiating Groups mandate were still obtained. The Crown considers this is not a reliable indication of support and the criteria in the Deed of Mandate to amend or withdraw the mandate has not been met (Wai 3048, #3.1.19 at [31] – [32]).

31. The applicant submits that ample support has been demonstrated by Ngāti Ruapani tribal members for withdrawing or amending the mandate and as the Crown has ignored this result, an urgent inquiry must be convened.

Urgency Criteria

32. The Tribunal's *Guide to Practice and Procedure* states the following with regards to applications for an urgent hearing:

In deciding an urgency application, the Tribunal has a regard to a number of factors. Of particular importance is whether:

- The claimants can demonstrate that they are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions or policies;
- There is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise; and
- The claimants can demonstrate that they are ready to proceed urgently to a hearing.

Other factors that the Tribunal may consider include whether:

- The claim or claims challenge an important current or pending Crown action or policy;
- An injunction has been issued by the courts on the basis that the claimants have submitted to the Tribunal the claim or claims for which urgency has been sought; and
- Any other grounds justifying urgency have been made out.

Prior to making its determination on an urgency application, the Tribunal may consider whether the parties or the take or both are amenable to alternative resolution methods, such as informal hui or formal mediation under clause 9A of schedule 2 to the Treaty of Waitangi Act 1975.

Discussion

33. I note at the outset that this is a renewed application for urgency by the applicant, the previous application dated 28 May 2021 being dismissed on 27 January 2022.⁴ Similar issues have been raised again.

34. An urgent application will only be granted in exceptional circumstances where the applicant can demonstrate that the Tribunal should redirect its staff and limited resources away from existing inquiries and prioritise a new urgent inquiry. The threshold is high and a claim for urgency will fail if the criteria set out above are not satisfied.

35. The previous application contained allegations that the Crown had improperly conferred the mandate to settle the claims of Ngāti Ruapani on the Negotiating Group, and that the

⁴ Wai 3048, #2.5.7.

imminent signing of an AIP would cause significant and irreversible prejudice because the claimant definition was unduly restrictive thereby excluding Ngāti Ruapani descendants from outside Waikaremoana.

36. The current application again alleges concerns with the settlement process between the Crown and the Negotiating Group. These boil down to three key allegations:

- a) That the claimant definition incorrectly excludes Ngāti Ruapani uri from outside Waikaremoana from the settlement.
- b) That engagement with the Negotiating Group including through dispute resolution processes has not resolved the applicant's concerns with the settlement process.
- c) That the Negotiating Group no longer has a mandate to settle the claims of Ngāti Ruapani.

37. In determining the application, it is not my role to determine the merits of the claims, but whether the threshold for urgency has been reached. The key issue in this urgency application is whether the applicant is or is likely to suffer significant and irreversible prejudice if urgency is not granted.

38. I address each of these in turn.

Claimant definition

39. The applicant says the Crown is relying on a wrong claimant definition to support his allegation of significant and irreversible prejudice. The issue largely duplicates the previous application, with the specific complaint being that Ruapani is not included in the claimant definition set out in the Negotiating Group's Trust Deed dated 1 May 2018. Also, that there is lack of clarity concerning the identity of the tipuna Hinekura, which the applicant says has resulted in confusion and lack of clarity about who is included in the definition.

40. The issues raised have already been dealt with. Ruapani was included in the claimant definition as far back as the final mandate strategy following engagement with the claimant community in the mandating process. Ruapani was also included in the Deed of Mandate and the Agreement in Principle signed on 27 August 2022.

41. The other matter is the alleged lack of clarity in the claimant definition concerning the identity of Hinekura. The evidence shows that issue was clarified at a hui-a-hapū in July 2023.

42. The applicant's larger point is that he considers the claimant definition is too restrictive and excludes Ruapani descendants outside of Waikaremoana from the settlement of these claims. The Crown submits that the vote on the Deed of Mandate in 2019 confirmed the wishes of the claimant community that the Ruapani settlement be for those descendants of Ruapani from Waikaremoana, and that it is an internal matter for Ruapani mai Waikaremoana.

43. The Crown says that issues with the claimant definition can still be raised in the negotiation and settlement process and will be considered again prior to initialling a deed of settlement. The previous changes and clarification of the claimant definition indicate this is likely to be the case. As previous Tribunal inquiries have found, the Tribunal does not,

in general, make judgements on matters of identity.⁵ In any event there will be an opportunity for the claimant community to vote on the claimant definition when they vote whether to support a settlement with the Crown.

44. There are no time frames for settlement to be concluded at this point, and for the foregoing reasons I conclude there is no risk of significant and irreversible prejudice in relation to the claimant definition if urgency is not granted.

Engagement with Negotiating Group

45. The applicant alleges the Negotiating Group is ignoring his attempts to engage including by the dispute resolution processes. In large part, the allegations are directed at the actions of the mandated group and I am dubious whether this allegation concerns the conduct of the Crown, as is required for urgency.
46. The evidence shows the applicant has had a reasonable opportunity to put his case directly to the Negotiating Group and the Crown. This includes meetings on 30 April 2022, 2 July 2022, and a meeting with the Minister for Treaty Negotiations on 15 November 2022. That being the case, the Negotiating Group and the Crown clearly do not agree with him or consider that his point of view has the wide support of the claimant community. While the applicant clearly enjoys support, the level is difficult to determine because the evidence of that support and its basis is disputed. In any event the Crown appear to take the view that the Negotiating Group are maintaining their mandate.
47. Again, the Crown submits there are no time frames for settlement, and there are still opportunities for engagement. I conclude there is no risk of significant and irreversible prejudice in relation to engagement with the Negotiating Group at this time if urgency is not granted.

Hui-ā-hapū - Mandate

48. The applicant states in the application that he was directed in the previous urgency decision to pursue the dispute resolution provisions in the Deed of Mandate. That is not so. The previous decision noted that the applicant had not followed the dispute resolution process and that it remained open to him to do so. There was no implication, intended or otherwise that following the dispute resolution procedures was a pre-requisite for urgency being granted.
49. As stated above, the applicant clearly enjoys support in the claimant community, but the level and basis of that is hard to determine because the Crown disputes some of the evidence provided by the applicant. The Crown states that at least one hui proceeded without the consent of the marae and that information provided by the applicant in relation to the claimant definition was incorrect.
50. I note that the applicant met with the Minister of Treaty Settlements following the hui-ā-hapū where he had the opportunity to put his case directly to the Crown. Subsequently, the Crown have taken the view that the Negotiating Group have maintained their mandate.
51. Again, I reiterate that with no clear timeframes for settlement and opportunities to further engage with the Crown concerning the issues that concern the applicant, I conclude there is no risk of imminent significant and irreversible prejudice if urgency is not granted.

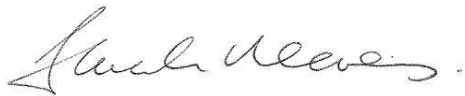
⁵ Waitangi Tribunal *The East Coast Settlement Report* (Wai 2190, 2010) at 62.

Decision

52. The application for urgency is dismissed.

The Registrar is to send a copy of this direction to counsel for the applicant, Crown counsel and those on the notification list for Wai 3048, the Ngāti Ruapani ki Waikaremoana (Wiri) claim.

DATED at Wellington this 19th day of October 2023

A handwritten signature in black ink, appearing to read 'Sarah Reeves'.

Judge Sarah Reeves
Deputy Chairperson

WAITANGI TRIBUNAL