

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

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CIV-2017-404-1050**

**[2018] NZHC 915**

UNDER The Judicial Review Procedure Act 2016

IN THE MATTER Of a notice made under s 120 Nga Mana  
Whenua o Tamaki Makaurau Collective  
Redress Act 2014

BETWEEN NGATI TE ATA  
Applicant

AND THE MINISTER FOR TREATY OF  
WAITANGI NEGOTIATIONS  
First Respondent

HER MAJESTY THE QUEEN  
Second Respondent

NGATI TAMAOHO SETTLEMENT  
TRUST (NTST)  
Third Respondent

REGISTRAR GENERAL OF LAND  
Fourth Respondent

Hearing: On the papers

Counsel: J P Kahukiwa for Applicant  
S Kinsler for First and Second Respondents  
T Kapea for Third Respondent

Judgment: 3 May 2018

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**COSTS JUDGMENT OF WHATA J**

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*This judgment was delivered by me on 3 May 2018 at 3.00 pm  
pursuant to Rule 11.5 of the High Court Rules.*

*Registrar/Deputy Registrar*

*Date: .....*

Solicitors: Corban Revell, Auckland  
Crown Law, Wellington  
Tuia Legal, Wellington

[1] This is a costs judgment. The first, second and third respondents were successful. They seek costs on a 2B basis. The applicant, Ngāti Te Ata, opposes the costs order. Mr Kahukiwa contends that the litigation was public interest litigation. He says it was novel, addressing the scope of Nga Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014 and was of particular interest to affected iwi, including Ngāi Tai ki Tāmaki, Ngāti Maru, Ngāti Paoa, Ngāti Tamaoho, Ngāti Tamaterā, Ngāti Te Ata, Ngāti Whanaunga, Ngāti Whātua o Kaipara, Ngāti Whātua Ōrākei, Te Ākitai Waiohua, Te Kawerau ā Maki, Te Patukirikiri and hapu of Ngāti Whātua.

[2] Rule 14.7(e) of the High Court Rules 2016 empowers the Court to depart from the usual rule that costs follow the event if the proceeding concerned is a matter of public interest. A claim raising public law issues per se will not justify the departure. Usually it will require clarification of an area of law of general public interest.<sup>1</sup> While the litigation need not be motivated by pure altruism,<sup>2</sup> a significant private interest in the outcome will strongly militate against departing from the usual rule.<sup>3</sup>

[3] I accept that there are public interest elements to the present proceedings and there are cases involving the interpretation and application of Treaty settlement legislation where the ordinary costs principles have not been applied.<sup>4</sup> The guidance provided by litigation of this nature to the Crown in terms of its discharge of its duties to Maori serves the public interest. But I am satisfied on the facts of the present case, involving, at its core, competing claims by two iwi to the same land, the usual rules should apply. I am fortified in this view by two factors. First, no other iwi joined the proceeding. Their involvement might have been expected if the litigation was genuinely considered to raise a matter of wider importance to the potentially affected iwi. Second, the nature and content of the affidavit evidence filed in this matter highlights the private interests of the litigation. Strong allegations were made by a deponent supporting Ngāti Te Ata's claim deprecating Ngāti Tamaoho's claim right to the lands subject to the litigation. This reinforces the impression that, at its heart, this

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<sup>1</sup> *Wong v Registrar of the Auckland High Court* (2008) 19 PRNZ 32 at [24].

<sup>2</sup> *Ngāti Whātua Ōrākei Trust v Attorney-General* [2017] NZHC 1156 at [19]; see also *Te Waka Hi Ika O Te Arawa, Te Runanganui O Te Upoko O Te Ika Association (Inc) v Treaty of Waitangi Fisheries Commission* HC Auckland CP 395/93, 30 October 1997.

<sup>3</sup> *New Health New Zealand Inc v South Taranaki District Council* [2014] NZHC 993 at [10].

<sup>4</sup> *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513.

is an inter-iwi dispute. In saying this I mean no criticism of the deponent. Duties of rangatiratanga and kaitiakitanga may demand litigation together with strong statements in evidence underscoring claims to taonga tuku iho. But, by seeking redress in this Court affecting the rights of other iwi, the usual costs principles, including of predictability, are engaged.

[4] Accordingly, there shall be an order in favour of the first, second and third respondents on a 2B basis. I accept there was sufficient complexity to allow for second counsel. I also consider there should be separate awards. The third respondent was entitled to defend an adverse claim against its interests.

[5] Accordingly, there shall be an order for costs in the sums claimed by the first, second and third respondents, against Te Ara Rangatu O Te Iwi O Ngāti Te Ata Waiohua Inc (1920008).<sup>5</sup> They shall also have their disbursements, as set out in their schedules.

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**Whata J**

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<sup>5</sup> In the substantive Judgment I directed that all orders are to be made against Te Ara Rangatu O Te Iwi O Ngāti Te Ata Waiohua Inc (1920008), *Ngati Te Ata v Minister for Treaty of Waitangi Negotiations* [2017] NZHC 2058 at [5].