

IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY
I TE KŌTI MATUA O AOTEAROA
TE ROTORUA-NUI-A-KAHUMATAMOMOE ROHE

CIV-2025-463-_____

Between **TAMATI KRUGER** as trustee of **TŪHOE – TE URU
TAUMATUA TRUST**
First Applicant

And **TŪHOE TRUST CUSTODIAN TRUSTEE COMPANY LTD**
Second Applicant

And **DONNA MASON**
First Respondent

And **RITCHIE CONTRACTING LTD**
Second Respondent

And **ALAN MAURICE RITCHIE**
Third Respondent

And **PERSONS UNKNOWN**
Fourth Respondents

**MEMORANDUM IN SUPPORT OF APPLICATION FOR INTERLOCUTORY
INJUNCTION AND ORDERS FOR SUBSTITUTED SERVICE**

Dated: 19 February 2025

Solicitor acting:

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TĒNĀ, E TE KŌTI

1. This memorandum of counsel is filed in support of a without notice application for an interlocutory injunction and orders for substituted service. It is filed together with:
 - (a) a statement of claim and notice of proceeding;
 - (b) a without notice application for an interlocutory injunction and orders for substituted service;
 - (c) an affidavit of Umesh Naik in support of the without notice application; and
 - (d) an undertaking as to damages.
2. Counsel respectfully requests a hearing for the without notice application on an urgent basis, and anticipates that a one-hour hearing would be sufficient. Due to being based in Wellington, counsel would be grateful if the hearing were able to be accommodated by VMR.

BACKGROUND

3. The applicants—Tūhoe – Te Uru Taumatua Trust (**TUT**) and Tūhoe Trust Custodian Trustee Company Ltd (**Custodian Company**)—bring this application for an interlocutory injunction and orders for substituted service in relation to their claim that the first to fourth respondents/defendants are trespassing on the applicants' land.
4. TUT is the post-settlement governance entity for Nāi Tūhoe. The Custodian Company holds assets on behalf of TUT. In that role, the Custodian Company is the registered proprietor of seven parcels of land that together make up the forest known as Matahi Forest.
5. Parts of Matahi Forest and surrounding lands (including parts of what was then Te Urewera National Park), were periodically subject to occupation by members of Ngāi Tama Tuhirae (a hapū of Tūhoe) at various times prior to Tūhoe's settlement with the Crown in 2014. For instance, in 2007, Ngāi Tama Tuhirae sought to exclude the public from camping grounds, and to exclude the then owner of Matahi Forest from entering the land.

6. As a solution, in 2008 the Crown negotiated an option to purchase Matahi Forest, which was able to be assigned to Te Kotahi a Tūhoe—the entity mandated by Tūhoe to negotiate its Treaty settlement.
7. In 2016, TUT acquired Matahi Forest as part of Tūhoe’s settlement with the Crown. The Custodian Company became the registered proprietor of Matahi Forest, holding legal title of a fee simple estate in the Matahi Forest on behalf of TUT.

REASONS FOR INTERLOCUTORY ORDERS

8. Since approximately 23 January 2025, the applicants have become aware of unauthorised occupation of and activity on Matahi Forest.
9. The applicants are aware that:
 - (a) unidentified persons, understood to be members of Ngāi Tama Tuhirae and/or Ōmuriwaka Marae, have been and are occupying and/or interfering with Matahi Forest;
 - (b) the second and third defendants (together with others who may be their servants, subcontractors, officers, employees, personnel, agents or other persons authorised to act on their behalf) have:
 - (i) entered onto Matahi Forest;
 - (ii) undertaken forestry operations within the Forest, including earthworks and felling trees; and
 - (iii) on at least one occasion known to the applicants, removed logs from the Forest.
10. Neither TUT nor the Custodian Company have granted rights, proprietary or otherwise, to any of the defendants in respect of Matahi Forest.
11. The applicants have twice asked the second and third defendants in writing to cease forestry operations and to cease trespassing. This correspondence has included:
 - (a) An email on 24 January 2025, explaining the applicants’ ownership, requesting immediate compliance with the requirement to cease all forestry operations and remove all personnel and equipment, and attaching a formal trespass notice and copies of title documents showing the Custodian Company as registered proprietor.

- (b) A solicitor's letter on 11 February 2025, requiring:
 - (i) that the second and third defendants and others cease operations and remove all personnel and equipment from Matahi Forest without delay; and
 - (ii) an undertaking that they would provide an undertaking that they would cease operations and remove all personnel and equipment from Matahi Forest, and would not enter onto, or undertake any activity at, Matahi Forest.

- 12. The second and third defendants have not responded. However, the first defendant has responded alleging that:
 - (a) "Ōmuriwaka Māori Incorporation" and/or "Ōmuriwaka Incorporation" (**Ōmuriwaka Māori Inc**) is a body corporate under Te Ture Whenua Māori 1993 and is recognised as a Māori Authority;
 - (b) the first defendant is the secretary of Ōmuriwaka Māori Inc;
 - (c) Ōmuriwaka Māori Inc is the "legal and beneficial owner/shareholder and related whanaungatanga to the interest in the Local Hapu Ngai Tama Tuhirae within the Mataatua Native District" on the basis that the land is Māori customary land to which aboriginal title has not been extinguished, and it is held in accordance with tikanga Māori; and
 - (d) Ōmuriwaka Māori Inc "registered" the third defendant under "the Ahu Whenua".

- 13. As far as the applicants are aware, Ōmuriwaka Māori Inc is not a legal entity. Further:
 - (a) Ōmuriwaka Māori Inc is not validly constituted under Te Ture Whenua Māori Act 1993 and is not a Māori Authority;
 - (b) Ōmuriwaka Inc has no authority over, or legal and beneficial ownership of, Matahi Forest; and
 - (c) Ōmuriwaka Māori Inc has no authority or power to "register" the third defendant or anyone else in relation to Matahi Forest.

- 14. It appears that the first and fourth defendants, as well as the second and third defendants, intend to continue to encourage or undertake occupation and/or forestry operations despite having no authority or justification for doing so.

15. In addition, no regulatory approvals have been sought or granted for the forestry operations being undertaken or encouraged by the defendants. The Bay of Plenty Regional Council has informed the applicants that it has written to the first, second and third defendants to advise them that:
 - (a) the first, second and third defendants are in breach of forestry harvesting regulations; and
 - (b) the Council requires them to cease all forestry harvesting.
16. The defendants have caused damage to the land at Matahi Forest, and interfered with the applicants' rights to possession, to harvest the forest, and to sell the logs.
17. The applicants are extremely concerned that, absent an interlocutory injunction, the defendants will continue occupation and forestry operations, causing further damage and interference with the applicants' rights.

REASONS FOR APPLICATION WITHOUT NOTICE FOR INJUNCTION

18. The grounds for applying without notice are that requiring the applicants to proceed on notice would cause the applicants undue delay and prejudice, and that it is in the interests of justice to determine the issue without serving notice.
19. Requiring notice would delay the injunction for a period of some weeks until the matter could be heard and determined. This would provide the defendants with a further window to continue occupation and forestry operations, permitting additional damage to the land and continued trespass and interference with the applicants' rights.
20. The prospects of the defendants being successful in opposing the injunction, or defending the proceeding are weak. However, in the event they are successful in the proceeding, any damage suffered will be limited to financial loss. Any such loss will be adequately met by an award of damages, which the applicants are capable of meeting.

POSSIBLE GROUNDS FOR OPPOSITION TO INTERLOCUTORY INJUNCTION

21. It is possible to resist an interlocutory injunction on the basis that the legal test is not met. In the present circumstances, the defendants may possibly argue it is not met on the grounds that:
- (a) there is irremediable prejudice to the defendants;
 - (b) damages are an adequate remedy for the applicants; and/or
 - (c) the defendants have a tenable defence to the underlying action in trespass.
22. The defendants may argue that they have tikanga-based rights to Matahi Forest that will be irremediably prejudiced by an injunction which cannot be remedied by damages. However, in the context of the history of the land, any injunction will be comparatively brief, and any damage to purported tikanga-based rights can be remedied through the tikanga-based resolution processes in TUT's trust deed.
23. The defendants may also argue that damages would be an adequate remedy for the applicants. This is resisted on the basis that the current and likely future damage to Matahi Forest is significant due to installing forestry equipment, undertaking earthworks and removing trees, which is irreparable and difficult to quantify. In addition, the applicants harbour fears that the defendants do not have significant assets or liquidity to meet the likely significant damages award.
24. The background of protest and land occupation in this area prior to Tūhoe's settlement, as described above, is relevant. Counsel is also aware of more recent claims in the Māori Land Court by representatives of "Ōmuriwaka Māori Inc" or "Ōmuriwaka Inc" to ownership and/or authority in the area.¹ The Māori Land Court has found that:
- (a) "Ōmuriwaka Inc" sought to oust the jurisdiction of the Māori Land Court over certain Māori freehold land, but had no power to do so;
 - (b) "Ōmuriwaka Inc" is not constituted under Te Ture Whenua Māori Act 1993 and "has no constitutional validity";
 - (c) "Ōmuriwaka Inc" appears to be a "law unto itself"; and

¹ *Amoroa - Omuriwaka Māori Reservation* (2017) 163 Waiariki MB 93 (163 WAR 93) at [45]–[48].

- (d) it was unclear what, if any, authority the incorporation has, but it exerts an influence in hapū matters and presents a real risk to the assets of the Māori reservation at issue in those proceedings.
25. The correspondence the applicants have received from the first defendant is in a similar vein to the claims made before the Māori Land Court. This indicates the defendants may take a similar position in defence of the proceeding, namely that:
- (a) “Ōmuriwaka Inc” or “Ōmuriwaka Māori Inc” is constituted and/or has authority under Te Ture Whenua Māori 1993 and is a Māori Authority;
 - (b) Ngāi Tama Tuhirae operates under or is represented by “Ōmuriwaka Inc” or “Ōmuriwaka Māori Inc”;
 - (c) “Ōmuriwaka Inc” or “Ōmuriwaka Māori Inc” has authority over all land in the “Mataatua Native District” due to an alleged interest in the land pre-dating the applicants’ ownership, and/or due to the land allegedly being Māori customary land; and
 - (d) therefore, the defendants have authority to enter onto Matahi Forest and undertake forestry operations.
26. Accordingly, counsel anticipates that the defendants would, if this application was made on notice, mount an opposition on a similar basis as well.
27. None of these allegations or arguments are accepted, nor are they tenable. Tūhoe’s settlement settled all claims for historical Treaty breaches, including for Ngāi Tama Tuhirae. Land that was returned as part of that settlement, including Matahi Forest, is not Māori customary land. Nor is it subject to unregistered proprietary interests arising from events or interests pre-dating the applicants’ ownership.
28. The defendants, to the extent they are beneficiaries of TUT, may claim a beneficial interest in Matahi Forest. They may also claim tikanga-based rights in relation to Matahi Forest. However, TUT has not granted proprietary interests to the defendants, and any purported beneficial interests or tikanga-based rights are insufficient to overcome the applicants’ estate in fee simple and associated rights to possession, to harvest the forest, and to sell the logs.

29. Counsel is unaware of any other grounds for opposing the interlocutory orders, or any other possible defences likely to be available to the defendants in the substantive proceeding.

REASONS FOR SUBSTITUTED SERVICE WITHOUT NOTICE

30. Orders for substituted service are sought in respect of the fourth respondents, as their identities are as yet unknown. Requiring service of the application on the fourth defendants would defeat the purpose of a without notice application and render it futile.² It is in the interests of justice that this aspect of the application also be heard without notice, to enable a form of substituted service to take place so that the proceeding can continue.
31. The fourth defendants are understood to be members of Ngāi Tama Tuhirae, which falls within Te Waimana Kaaku Tribal (one of four rohe-based tribal authorities within Tūhoe). They are also understood to be affiliated to Ōmuriwaka Marae. It is submitted that the emailing the proceeding (and any interlocutory orders) to those entities will bring the matter to the attention of most, if not all, of the fourth defendants.
32. However, to provide additional assurance, the applicants suggest the documents should be both affixed to a place where the fourth defendants are likely to see them, and published on the first applicant's website. It is not proposed that individuals currently occupying Matahi Forest be personally served, due to safety concerns resulting from threatening and intimidating behaviour by individuals at previous Ngāi Tama Tuhirae occupations.
33. The proposed method of substituted service is therefore for the relevant documents to be:
- (a) emailed to Te Waimana Kaaku Tribal and Ōmuriwaka Marae;
 - (b) affixed to the entrance to Matahi Forest at Parau Road; and
 - (c) published on the first applicant's website.
34. It is respectfully submitted that the combined elements of the proposed method of substituted service are sufficient to bring the documents to the attention of the fourth defendants, and are proportionate to the matters at issue in the proceeding.

² *Aic Trustees Ltd v Weerts* [2023] NZHC 375 at [4].

35. If served with the application, the fourth defendants might seek to argue that the applicants should wait until they have identified the fourth defendants before initiating proceedings and/or filing the interlocutory application. However, it is submitted that this is overcome by the need for urgency on the basis of likely ongoing damage and inadequacy of damages as a remedy, as well as the safety concerns in respect of interactions with the fourth defendants.
36. Counsel is unaware of further reasons for opposing the orders for substituted service beyond those addressed above in respect of the interlocutory injunction application.

19 February 2025



MRG van Alphen Fyfe

Counsel for applicants