

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

**I TE KŌTI MATUA O AOTEAROA
TE ROTORUA-NUI-A-KAHUMATAMOMOE ROHE**

**CIV-2025-463-19
[2025] NZHC 263**

BETWEEN

TAMATI KRUGER AS TRUSTEE OF
TŪHOE-TE URU TAUMATUA TRUST
First Plaintiff/Applicant

TŪHOE TRUST CUSTODIAN TRUSTEE
COMPANY LIMITED
Second Plaintiff/Applicant

AND

DONNA MASON
First Defendant/Respondent

RITCHIE CONTRACTING LIMITED
Second Defendant/Respondent

ALAN MAURICE RITCHIE
Third Defendant/Respondent

PERSONS UNKNOWN
Fourth Defendants/Respondents

Hearing: 21 February 2025

Counsel: M R G van Alphen Fyfe for Plaintiffs/Applicants

Judgment: 21 February 2025

JUDGMENT OF McQUEEN J

[1] The plaintiffs in this matter (Tūhoe) bring a claim for trespass to land, trespass to goods and conversion in the context of unauthorised occupation of and activity on Matahi Forest by the defendants. By way of relief, Tūhoe seeks permanent injunctions and damages.

[2] Tūhoe also seek an interlocutory injunction and orders for substituted service on a without notice basis.

[3] Yesterday I directed that the proceeding be served on the defendants so that the hearing of the application for the interlocutory injunction could proceed on a *Pickwick* basis and set the matter down for a one-hour hearing.

[4] Counsel for Tūhoe, Ms van Alphen Fyfe, confirmed that service was completed as directed. There was no appearance at the hearing by or for the defendants.

[5] However, after the hearing, notices of opposition were received by the Court from “Donna Mason contracting limited”, “O Muriwaka Marae”, “Allen Maurice Ritchie” and “Ritchie contracting limited” which indicate there is opposition to the orders sought. I address the implications of this at the conclusion of the judgment.

Background

[6] I have drawn the following description of the background of this matter from the affidavit from Umesh Naik, an officer of each of the plaintiffs/applicants, filed in support of the application.

[7] The first plaintiff/applicant is Tamati Kruger as trustee of Tūhoe–Te Uru Taumatua Trust (TUT), the post-settlement governance entity for Ngāi Tūhoe.

[8] The second plaintiff/applicant is Tūhoe Trust Custodian Trustee Company Ltd (Custodian Company), which holds assets on behalf of TUT. 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.

[9] Matahi Forest is approximately 2,100 hectares of land located along Matahi Valley Road, approximately 40 km from Whakatane, Bay of Plenty, and near the boundary of Te Urewera. The land has been planted, for some decades, in pine for forestry harvesting purposes. The estimated value of Matahi Forest in 2021 was \$9.41 million (plus GST).

[10] Prior to the settlement of historical Treaty of Waitangi claims between Tūhoe and the Crown in 2014, parts of Matahi Forest and surrounding land were periodically subject to occupation by members of Ngāi Tama Tuhirae (a hapū of Tūhoe) at various times. 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.

[11] In 2008 the Crown negotiated an option to purchase Matahi Forest from the then owner. It was then able to be assigned to Te Kotahi a Tūhoe, the entity mandated by Tūhoe to negotiate its settlement of historical Treaty of Waitangi claims. In 2016 TUT acquired Matahi Forest as part of the settlement between Tūhoe and 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.

[12] Matahi Forest remains planted in pine for forestry harvesting purposes. Neither TUT nor the Custodian Company has granted anyone outside of TUT and the Custodian Company rights to go onto Matahi Forest and/or harvest trees.

[13] Since approximately 23 January 2025, Tūhoe has become aware of the unauthorised occupation and/or activity in Matahi Forest. Tūhoe is 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/respondents, Ritchie Contracting Ltd and its director Alan Ritchie, (together with others authorised to act on their behalf) have:
 - (i) entered onto Matahi Forest;
 - (ii) undertaken forestry operations within Matahi Forest, including earthworks and felling trees; and

(iii) on at least one occasion known to Tūhoe, removed logs from Matahi Forest.

[14] Mr Naik spoke with Mr Ritchie on 24 January 2025. Having explained to Mr Ritchie that Tūhoe is the owner of Matahi Forest and that his activities and presence on the land amount to trespass, Mr Ritchie told Mr Naik that he had authority to conduct forestry harvesting at Matahi Forest through the permission of hapū members. Mr Ritchie also told Mr Naik he was undertaking forestry operations and that he would continue to do so.

[15] By email sent later on 24 January 2025, Mr Naik asked Ritchie Contracting Ltd and Mr Ritchie to cease forestry operations and to cease trespassing. The email confirmed Tūhoe's ownership of Matahi Forest, requested immediate compliance with the requirement to cease all forestry operations and remove all personnel and equipment, and attached a trespass notice and copies of certificates of title showing the Custodian Company as the registered proprietor of the land in question.

[16] The trespass notice describes the relevant area as "Matahi Forest, 2,100.3173 ha (from the entrance of Parau Stream through Matahi Valley) with legal titles being Lot 2, Sec 2 Blk VIII Waimana, SD 2AE1 Sec 2 Tahora, Sec 3 Blk VIII Waimana, SD Lot 1 DP 2858, Sec 4 Blk VIII Waimana, SD Pt 2AD2 Tahora, Lot 1 DP 15670".

[17] Later again that day, Mr Naik received a call from an unidentified person, who he understood to be a member of Ngāi Tama Tuhirae, complaining angrily about the position of Tūhoe in relation to Matahi Forest and the trespass notice, including that an anticipated source of income had been cut off. Tūhoe thought that the forestry operations being undertaken would then cease.

[18] However, on 6 February 2025, Mr Naik was informed by a member of Tūhoe that a truck had been seen leaving Matahi Forest, laden with logs. On 10 February 2025, information was provided to Tūhoe that a number of people were guarding Parau Road and the gate at the entrance to Matahi Forest and were camping in the Forest. Tūhoe has not yet been able to confirm the number or identities of those people

but Mr Naik understands they are likely to whakapapa to Ngāi Tama Tuhirae and/or Ōmuriwaka Marae.

[19] On 11 February 2025, TUT's solicitor sent a letter to Ritchie Contracting Ltd and to their accountants (listed in the companies register as the company's address for service) requiring:

- (i) that Ritchie Contracting Ltd and Mr Ritchie and anyone purportedly authorised by them cease operations and remove all personnel and equipment from Matahi Forest without delay; and
- (ii) an undertaking that they would cease all operations at Matahi Forest immediately, remove all personnel and equipment from Matahi Forest by 13 February 2025, and would not enter onto, or undertake any activity at, Matahi Forest.

[20] Tūhoe has received no response from Ritchie Contracting Ltd or Mr Ritchie. However, Ms Mason, the first defendant/respondent, responded by email on 11 February 2025, stating 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) she 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” Mr Ritchie under “the Ahu Whenua”.

[21] Ms Mason also sent through a photograph of a document entitled “Order of Incorporation” dated 28 October 2002. It purports to have been made in “Te Kooti Paramata Māori ki Waitangi o Aotearoa (NZ)” and under various enactments, including Te Ture Whenua Maori Act 1993. The document purports to order or declare:

- (a) Ōmuriwaka Māori Inc is constituted under Te Ture Whenua Maori Incorporations Constitution Regulations 1998;
- (b) Ōmuriwaka Block XII vests in Ōmuriwaka Māori Inc;
- (c) Ōmuriwaka Māori Inc holds that land and all other land in the Native District of Mataatua Waka as legal, beneficial and equitable owners for which Native Aboriginal Title has not been extinguished, and is deemed Customary Māori Land held in accordance with tikanga Māori.

[22] Tūhoe does not accept that Ōmuriwaka Māori Inc is a legal entity or that it has any legal or beneficial ownership of Matahi Forest, nor that it has any authority or power to “register” the third defendant or anyone else in relation to Matahi Forest.

[23] The Bay of Plenty Regional Council (the Council) has contacted TUT on several occasions with concerns about the activities being undertaken in Matahi Forest.

[24] On 14 February 2025, the Council informed Tūhoe that it has written to Ms Mason, Ritchie Contracting Ltd and Mr Ritchie to advise them:

- (a) they are in breach of forestry harvesting regulations; and
- (b) the Council requires them to cease all forestry harvesting.

[25] Tūhoe says that the defendants have caused damage to the land at Matahi Forest and interfered with the rights of Tūhoe to possession, to harvest the forest and to sell the logs, causing loss to Tūhoe. Mr Naik has not yet been able to quantify the loss suffered but says it will include losses relating to the placement of

heavy equipment on the land, earthworks for forestry roads and theft of trees that belong to TUT.

[26] Mr Naik expresses the concern of Tūhoe that, absent an interlocutory injunction, the defendants will continue occupation and forestry operations, causing further damage and interference with the rights of Tūhoe. Tūhoe is further concerned about the health and safety risks from the unregulated forestry work being undertaken and its potential liability for that. Tūhoe also doubts that the defendants have assets or cash liquidity to meet any award of damages ultimately ordered against them.

[27] Mr Naik also deposes concerns held by Tūhoe in relation to the safety of anyone interacting with those persons occupying Matahi Forest. Mr Naik says that such occupiers have previously behaved in an intimidating manner toward the public as well as anyone who questions their authority — including people within their own Ngāi Tama Tuhirae hapū. It is for these reasons that the proceeding presently identifies the fourth defendants as persons unknown and why Tūhoe seeks an order for substituted service.

Legal principles applicable to interim injunctions

[28] The principles applying to the grant of an interim injunction are well settled. It requires the Court to find that:¹

- (a) there is a serious question to be tried;
- (b) the balance of convenience favours the granting of the injunction; and
- (c) the overall justice of the case requires it.

[29] I respectfully adopt the helpful discussion of these principles by Churchman J in *Caistea An Ime Ltd v Mount Cass Holdings Ltd*.²

¹ *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd* [1985] 2 NZLR 129 (CA) at 142; and *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 (HL); *Intellihub Ltd v Genesis Energy Ltd* [2020] NZCA 344 at [23].

² *Caistea An Ime Ltd v Mount Cass Holdings Ltd* [2023] NZHC 2298 at [10]–[16].

Serious question to be tried

[30] As already mentioned, the statement of claim pleads trespass to land, trespass to goods and conversion.

[31] Tūhoe are the legal and beneficial owners and occupiers of Matahi Forest, as confirmed by the certificates of title for estates and fee simple of the seven parcels of land that make up Matahi Forest.

[32] As acknowledged by Ms van Alphen Fyfe, the defendants may argue that they have tikanga-based rights to Matahi Forest.

[33] Ms van Alphen Fyfe also acknowledges the background of protest and land occupation in this area before the settlement of historical Treaty of Waitangi claims between Tūhoe and the Crown. She refers to a claim made in the Māori Land Court by representatives of Ōmuriwaka Māori Inc to ownership and or authority in the area. This claim was considered by the Māori Land Court in 2017, where the Court said that:³

- (a) Ōmuriwaka Māori 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 Māori Inc is not constituted under Te Ture Whenua Maori Act 1993 and “has no constitutional validity”;
- (c) Ōmuriwaka Māori Inc appears to be a “law unto itself”; and
- (d) It was unclear what, if any authority the incorporation has, but it exerts an inference in hapū matters and presents a real risk to the assets of the Māori reservation at issue in those proceedings.

³ *Amoroa – Ōmuriwaka Māori Reservation* (2017) 163 Waiariki MB 93 (163 WAR 93) at [45]–[48].

[34] Ms van Alphen Fyfe accepts that the correspondence Tūhoe received from Ms Mason is in a similar vein and therefore indicates the defendants may take a similar position in defending the present proceeding.

[35] Ms van Alphen Fyfe submits that none of these allegations or arguments are accepted nor are they tenable. She notes that the settlement between Tūhoe and the Crown settled all claims for historical Treaty breaches, including for the hapū of Ngai 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 ownership by Tūhoe.

[36] It is accepted by Tūhoe that to the extent the defendants are beneficiaries of TUT, they may claim a beneficial interest in Matahi Forest. They may also assert tikanga-based rights in relation to Matahi Forest. But TUT has not granted proprietary rights to the defendants. Ms van Alphen Fyfe submits that any purported beneficial interests or tikanga-based rights are insufficient to overcome Tūhoe's estate in fee simple and associated rights to possession, to harvest the forest, and to sell the logs. Although not available to me in the evidence, Ms van Alphen Fyfe indicated that TUT's trust deed contemplates tikanga-based resolution processes. It may be that the ongoing management of Matahi Forest can be addressed through such a process.

[37] Ms van Alphen Fyfe also addresses the implications of s 14 of the New Zealand Bill of Rights Act 1990—the right to freedom of expression. She emphasises that Tūhoe has no intention to affect the ability of the defendants to protest on land other than Matahi Forest but says the right to free speech and protest cannot include a right to trespass on private land.⁴

[38] I am satisfied that there is a serious question to be tried here and Tūhoe have a real prospect of succeeding at trial.

⁴ *Tasman Pulp and Paper Co Ltd v Greenpeace of New Zealand Inc* HC Auckland CP135/98, 22 April 1998 at 10.

Balance of convenience

[39] I agree with Tūhoe that in the face of the apparent position of the defendants, that they intend to continue to encourage or undertake occupation and/or forestry operations, despite the requests by Tūhoe in writing to cease forestry operations and cease trespassing, together with the damage caused to the land at Matahi Forest and the interference with Tūhoe's rights to possession, to harvest the forest and to sell the logs, that the balance of convenience favours Tūhoe.

[40] This is further reinforced by the absence of regulatory approvals having been sought or granted for the forestry operations being undertaken or encouraged by the defendants, with several consequential implications, including for health and safety.

[41] Tūhoe has provided an undertaking as to damages and says that any financial loss suffered by the defendants may be met by an award of damages, which Tūhoe is capable of meeting.

[42] While the defendants may contend that it is their tikanga-based occupation rights that cannot be recognised through any award of damages, I accept the submission from Ms van Alphen Fyfe that the period of an interim injunction will be relatively brief as against the history of the land (including the Treaty settlement between Tūhoe and the Crown).

[43] Relevant also here is the concern that the defendants do not have assets or cash liquidity to meet any award of damages ultimately ordered against them.

[44] These circumstances persuade me that damages would not be an adequate remedy for Tūhoe should the injunction be refused, and the defendants effectively left able to carry on their activities on Matahi Forest.

Overall justice

[45] Standing back and asking where the overall justice of the matter lies, I conclude that justice favours the grant of an interlocutory injunction.

[46] I raised with Ms van Alphen Fyfe the need for a clearer and more accessible description of the area of Matahi Forest for the purpose of any orders made. Certificates of title do not fulfil this purpose. Ms van Alphen Fyfe agreed that a map would be helpful and that she would provide one to the Court. With the provision of a clearly marked map, I consider that the area at issue can be properly identified. Mr Naik filed a further (final but unsworn) affidavit after the hearing, exhibiting a map showing the boundaries of the seven titles making up Matahi Forest. I am satisfied that this map sufficiently shows the area of Matahi Forest and I refer to it in the orders I make below.

“Persons unknown” and substituted service on them

[47] The fourth defendants are currently named as “persons unknown”. Ms van Alphen Fyfe submits that this group has been limited so far as it is presently possible, in that the order sought by Tūhoe relating to unknown persons is limited to “those persons currently unknown who are occupying and/or interfering with, or intending to occupy or interfere with, Matahi Forest (or part thereof) without the permission of [Tūhoe]”.

[48] Ms van Alphen Fyfe says that while Tūhoe will seek to name these persons as soon as it is able to, there will likely be a “rolling” group, that is, once persons are named, other unnamed persons may take their place in terms of trespassing on Matahi Forest. As stated by Gault J in *Kennedy Point Boatharbour Ltd v Barton*, injunctions against persons unknown are an exception to the general rule that proceedings may not be brought against unnamed parties, and where such an injunction is ordered, certain procedural guidelines should be followed.⁵

[49] I consider that here, the “persons unknown” in the present context have been defined by reference to their allegedly unlawful conduct and that there is a real and imminent risk of further trespass and conversion being committed. I also consider that the terms of the orders sought are, with the map now provided by Tūhoe, sufficiently clear and precise so that persons potentially affected will know what they must not do.

⁵ *Kennedy Point Boatharbour Ltd v Barton* [2022] NZHC 257 at [72], citing *Canada Goose UK Retail Ltd v Persons Unknown* [2020] EWCA Civ 303.

[50] Tūhoe also seek orders under r 6.8 of the High Court Rules 2016 dispensing with personal service of the proceeding and any interlocutory injunction order on the fourth defendants.

[51] Rather, Tūhoe proposes that service can be treated as effected by emailing documents to the Chair of Te Waimana Kaaku Tribal and to the Ōmuriwaka Marae Committee, affixing the documents to the entrance to Matahi Forest at Parau Road, and publishing the documents on TUT's website.⁶

[52] Tūhoe says that 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) and affiliated to Ōmuriwaka Marae.

[53] Ms van Alphen Fyfe therefore submits that substituted service on those entities will bring the matter to the attention of most, if not all, of the fourth defendants.

[54] I accept that an order for substituted service as sought is appropriate in the circumstances.⁷

Opposition to the application for an interlocutory injunction and time limit of orders

[55] I now return to the notices of opposition received by the Court after the hearing had taken place.

[56] The notices confirm that the first to third defendants/respondents oppose the orders sought. The documents state:

It's a breach of tikanga to prevent the Hapuu from exercising their kaitiaki duty to work their land in question. They are the local hapuu and are independent of TUT as a Maori incorporation. S144 of Te Ture whenua Maori land courts Whakatane.

The respondent relies on the Maori Land court order of incorporation which has its own injunction about this sort of behaviour.

⁶ I note Ms van Alphen Fyfe sought at the hearing minor amendments to the order to specify the Chair of Te Waimana Kaaku Tribal and the Ōmuriwaka Marae Committee.

⁷ *AIC Trustees Ltd v Weerts* [2023] NZHC 375 at [4].

[57] There are also two attachments, likely intended to be annexed to each notice of opposition. The first seems to be an excerpt from an unidentified affidavit. The excerpt appears to challenge the application of “Municipal Law” to tangata whenua. The second attachment is a notice published in the New Zealand Herald dated 11 August 2006 giving notice that certain land is to be vested in the “Ahi Kaa of Ngai Tamtuhirae o Omuriwaka Maori Incorporation”.

[58] As best as I can tell, the notices of opposition and attachments seem to raise the matters already discussed above in [20], [21] and [33].

[59] I remain of the view that I should grant the interlocutory injunction on a without notice basis, having directed service to allow the hearing to proceed on a *Pickwick* basis.⁸

[60] However, the duration of the interim injunction must now be for a limited time and the respondents must have an early opportunity to be heard.

[61] For that reason, I will make a further order that a hearing date be allocated by the Registrar within the next 15 working days, following consultation with counsel for Tūhoe and with the first and third defendants, to allow the application for an interlocutory injunction to be heard on an on-notice basis.

Orders

[62] I make orders in the following terms:

- (a) For the purpose of the orders made below, Matahi Forest is the 2,100.3173 ha (from the entrance of Parau Stream through Matahi Valley) with legal titles being Lot 2, Sec 2 Blk VIII Waimana, SD 2AE1 Sec 2 Tahora, Sec 3 Blk VIII Waimana, SD Lot 1 DP 2858, Sec 4 Blk VIII Waimana, SD Pt 2AD2 Tahora, Lot 1 DP 15670 and shown in the map attached to this judgment as Appendix 1 (Matahi Forest).

⁸ High Court Rules 2016, r 7.23. See also *Commerce Commission v Viagogo AG* [2019] NZCA 472, [2019] 3 NZLR 559 at [94].

- (b) The fourth defendants are those persons currently unknown who are occupying and/or interfering with, or intending to occupy or interfere with, Matahi Forest (or part thereof) without the permission of the plaintiffs.
- (c) For the period of 15 working days from 21 February 2025 or until further order of the Court, the first to fourth defendants, their directors, servants, related bodies corporate, subcontractors, officers, employees, personnel, agents or other persons authorised to act on their behalf, are to cease occupying Matahi Forest, cease all forestry operations within Matahi Forest, and remove all personnel and equipment from Matahi Forest within three days of this order.
- (d) For the period of 15 working days from 21 February 2025 or until further order of the Court, the first to fourth defendants, whether by their directors, servants, related bodies corporate, subcontractors, officers, employees, personnel, agents, other persons authorised to act on their behalf or by any other means at all, are prohibited from entering onto Matahi Forest or part thereof, or directing, encouraging or inducing others to enter onto Matahi Forest or part thereof.
- (e) Dispensing with personal service of the proceeding (and any interlocutory injunction order) on the fourth defendants.
- (f) Directing that the proceeding may be treated as served on the fourth defendants on the day on which the relevant document(s) have been:
 - (i) emailed to the Chair of Te Waimana Kaaku Tribal and Ōmuriwaka Marae Committee;
 - (ii) affixed to the entrance to Matahi Forest at Parau Road; and
 - (iii) published on the website of TUT.
- (g) Directing that any interlocutory injunction order may be treated as

served on the fourth defendants by the method for substituted service described at paragraph (f) above.

- (h) Reserving leave to apply for further directions for service of documents should that become necessary.
- (i) The Registrar is to allocate a hearing date within the next 15 working days, following consultation with counsel for Tūhoe and with the first and third defendants, to allow the application for an interlocutory injunction to be heard on an on-notice basis.

McQueen J

APPENDIX 1

Matahi Forest Map

