IN THE WAITANGI TRIBUNAL
KEI MUA I TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI

WAI 863
WAI 429

IN THE MATTER OF	The Treaty of Waitangi Act 1975
AND	
IN THE MATTER OF	The Wairarapa ki Tararua Inquiry
AND	
IN THE MATTER OF	An application for resumption of Crown Forest Licensed Lands by Ryshell Griggs and Mark Chamberlain on behalf of Ngāi Tūmapūhia-ā-Rangi hapū (Wai 429)

APPLICATION FOR URGENT REMEDIES HEARING ON APPLICATION FOR RESUMPTION OF LICENSED LAND PURSUANT TO S 8HB OF THE TREATY OF WAITANGI ACT 1975
Dated the 30th day of July 2018

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MAY IT PLEASE THE TRIBUNAL

1. This application for an urgent hearing of an application for resumption of Crown Forest Licensed Land (**"the Licensed Land"**) pursuant to section 8HB of the Treaty of Waitangi Act 1975 (**"application for resumption"**) is filed on behalf of Ryshell Griggs and Mark Chamberlain on behalf of Ngāi Tūmapūhia-ā-Rangi (Wai 429) (**"the claimants"**).

2. This application for an urgent remedies hearing accompanies the application for resumption dated 30 July 2018.

Urgent remedies criteria

3. The criteria for an urgent remedies hearing as prescribed in the Waitangi Tribunal *Guide to Practice and Procedure* (**"the Practice Note"**) are as follows:

    (a) The claimants must have a report of the Tribunal in which their claim or claims have been determined to be well-founded;

    (b) The claimants can demonstrate that they are suffering, or are likely to suffer significant and irreversible prejudice if a remedies hearing is not urgently convened;

    (c) There is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise; and

    (d) The claimants can demonstrate that they are ready to proceed urgently to a hearing.

4. The Practice Note states further that in assessing whether the claimants are suffering or are likely to suffer significant and irreversible prejudice if a remedies hearing is not urgently convened, the Tribunal may have regard to the factors set out in *Haronga v Waitangi Tribunal*, namely:

    (a) The size of the group represented by the claimants, and whether they can show clear support for their application from this group;

    (b) The connection between the remedy or remedies sought to be awarded and the original Treaty breach or breaches, including, where the return of land is sought as a remedy, whether this land was the subject of the well-founded claim or claims from which the application arises; and

(c) Where there are current negotiations between the Crown and a mandated settlement body to reach an agreed settlement of the well-founded claim or claims, whether the remedy or remedies sought are addressed by the negotiations, and whether the Tribunal's jurisdiction to hear the claimants on remedies is likely to be imminently removed by legislation as a result of these negotiations.

5. Where an application is for binding recommendations under sections 8A to 8HI of the Treaty of Waitangi Act 1975 as a remedy for their well-founded claim or claims, the Tribunal shall have particular regard to whether, if urgency is not granted for a remedies hearing, the Tribunal's jurisdiction to hear the claimants on remedies is likely to be removed by imminent legislation.

6. These criteria are addressed in turn below.

Well-founded claims

7. The original Wai 429 claim was submitted to the Tribunal by Takirirangi Smith for and on behalf of himself and all members Ngāi Tūmapūhia-ā-Rangi hapū on 17 March 1994. The claim concerned the wrongful dispossession of traditional lands of Ngāi Tūmapūhia-ā-Rangi as a result of breaches by the Crown of the principles of the Treaty of Waitangi (Wai 429, #1.1).

8. A further claim on behalf of herself and all members Ngāi Tūmapūhia-ā-Rangi was made by Ryshell Griggs on 1 September 2000. This claim was registered as Wai 886 (Wai 863, #1.17).

9. On 7 and 8 February 2003, parties representing the Wai 429 and Wai 886 claims attended mediation and as a result, Wai 886 was consolidated with Wai 429 and the named claimant was changed from Takirirangi Smith to Ryshell Griggs.

10. Subsequent amendments to the Wai 429 claim were made on 10 May 1995 (Wai 429, #1.1(a)), 14 March 2003 (Wai 429, #1.1(b)), 14 April 2003 (Wai 429, #1.1(c)), and 12 September 2003 (Wai 429, #1.1(d)). On 10 November 2017, Mark Chamberlain was added as a named claimant (Wai 429, #1.1(e)).

11. The Wai 429 claim relates directly to the land that the claimants seek be subject to the binding recommendations in the application for resumption. The Wai 429 claim was heard in the Wairarapa ki Tararua district inquiry and the Waitangi Tribunal found that the Wai 429 claim is well-founded (as set out in the *Wairarapa ki Tararua* report (2010)).

12. In particular, the Tribunal found that,

> *Article 2 of the Treaty guarantees te tino rangatiratanga of te iwi Māori. The guarantee states that Māori could keep their land until they wished to sell. This puts on the Crown a significant onus of proof: only those sales where Māori willingly, freely, and knowingly consented were made in accordance with the Treaty. Where there is no informed consent, transactions breach the Treaty, both in its terms and its principles[1].*
>
> *In the 1850s, the Crown and its officers knew and understood the tenets of good purchasing. Getting agreement before purchase on area, boundaries, interest holders, shares, and price is the sensible, reasonable, and fair way of making sure that there is informed consent. The Crown did not conduct its purchasing activities in this inquiry district in accordance with these tenets. In the Wairarapa, standards were lowered to facilitate speed, so that the district could be opened for settlement. In Treaty terms, the desire for speed does not justify dispensing with the procedural safeguards that ensure that consent is informed[2].*
>
> *We find that the Crown's abandonment of good purchasing practice in the Wairarapa purchases we have described undermined the capacity of Māori to make informed community decisions. This was a diminution of te tino rangatiratanga, and breached the Treaty[3].*
>
> *The practices described, which were adopted by McLean and continued by his successors, were the antithesis of what was required – that is, a process that provided for free, willing, and informed consent, a fundamental requirement of article 2 of the Treaty. They therefore breached article 2, the Crown's duty to act in good faith, and the principle of active protection[4].*

Significant and irreversible prejudice

Size and support

13. The application is made on behalf of all members Ngāi Tūmapūhia-ā-Rangi hapū. Ngāi Tūmapūhia-ā-Rangi hapū has approximately 4,000 members. Approximately 750 of those members are registered as

[1] *The Wairarapa ki Tararua Report* (Wai 863, 2010) vol 3 at 1046.
[2] Above.
[3] Above, at 1047.
[4] Above.

members of Te Rūnanga o Ngāi Tūmapūhia-ā-Rangi which is the only body that represents ngā uri o Ngāi Tūmapūhia-ā-Rangi.

14. The application is made with the support of Te Rūnanga o Ngāi Tūmapūhia-ā-Rangi and the hapū membership. As is set out in the Brief of Evidence of Mark Chamberlain provided in support of this application, on 14 April 2018 it was resolved at a Ngāi Tūmapūhia-ā-Rangi hui-a-hapū held in Masterton that Te Rūnanga o Ngāi Tūmapūhia-ā-Rangi call a Special General Meeting to discuss the return of Ngaumu Forest to the hapu of Ngāi Tūmapūhia-ā-Rangi.

15. That Special General Meeting was publicly advertised and was held in Masterton on 13 May 2018. At that meeting there were lengthy discussions about the options for the return of Ngaumu to Ngāi Tūmapūhia-ā-Rangi, and it was ultimately resolved that Te Rūnanga o Ngāi Tūmapūhia-ā-Rangi would establish a Working Group to submit and progress an application for resumption for Wai 429 to the Waitangi Tribunal with the objective that the application be successful.

16. Further publicly advertised hui were held in Masterton on 21 and 22 July 2018 whereby the Working Group and counsel reported back to the hapū to present information relating to the application to be submitted to the Tribunal. Those in attendance had the opportunity to have any queries addressed regarding the process and the application.

Nexus

17. The breaches alleged in the Wai 429 claim which have been deemed to be well-founded in the *Wairarapa ki Tararua* report (2010) as set out above relate directly to the Licensed Land that Ngāi Tūmapūhia-ā-Rangi seek be subject to the binding recommendations.

Treaty settlement negotiations

18. The Wai 429 claim is currently included in settlement negotiations between the Crown and the Ngati Kahungunu ki Wairarapa Tamaki Nui-a-Rua Settlement Trust (**"NKKWTNAR"**). An Agreement in Principle was signed on 7 May 2016 and the Deed of Settlement was initialled on 22 March 2018. NKKWTNAR are now proceeding to the ratification process.

19. The Deed of Settlement expressly includes the Licensed Land as part of the commercial redress and it confers the right for NKKWTNAR to purchase the Licensed Land (comprising 70% of the Ngaumu Crown forest licensed land) on settlement date.

20. The Supreme Court has found that the merits of an application for binding recommendations is not affected by ongoing settlement negotiations[5].

21. Should the claimants not be afforded the ability to have the application for resumption heard urgently, the ability for the Tribunal to hear it will almost certainly be removed by the passage of imminent settlement legislation. The claimants contend that the result most certainly be significant and irreversible prejudice being suffered by Ngāi Tūmapūhia-ā-Rangi.

Alternative remedy

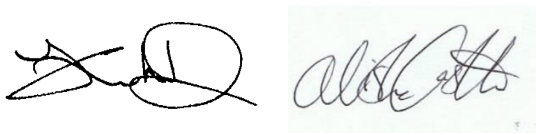
22. There is no alternative remedy available to the claimants that, in the circumstances, it would be reasonable for them to exercise.

23. The settlement negotiated between the Crown and NKKWTNAR will not deal with the specific claim for restoration of the land under the adjudicatory jurisdiction of the Tribunal. Further, and as set out above, it has been established that the existence of current settlement negotiations is not relevant to the determination of an application for binding recommendations and therefore does not create an alternative remedy for the claimants.

Readiness to proceed

24. The claimants are ready to proceed to a hearing.

DATED at Auckland this 30th day of July 2018



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[5] *Haronga v Waitangi Tribunal* [2011] NZSC 53 at [98].