

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

**CIV-2015-463-000171  
[2017] NZHC 1960**

UNDER the Judicature Act 1908  
the Judicature Amendment Act 1972  
the Declaratory Judgments Act 1908

BETWEEN KERE COOKSON-UA  
First Applicant

NIREAHA PIRIKA  
Second Applicant

AND TAIWHANAKE ERU MOREHU,  
KEREAMA PENE, DONNA HALL,  
RANGIMAHUTA EASTHOPE,  
WIREMU KINGI, HERBERT HAPETA  
and WERETI ROLLESTON-TAIT  
as Trustees of  
NGĀTI RANGITEAORERE  
KOROMATU COUNCIL  
First Respondents

RUIHI HAIRA, KAA KEREAMA,  
JEWEL HAPETA and JACK MOREHU  
Second Respondents

Hearing: 5 April 2017

Counsel: J P Temm and C M Bidois for the First and Second Applicants  
F E Geiringer and G M Davidson for the First Respondents  
No Appearance (Attendance Excused) of, or for the  
Second Respondents

Judgment: 17 August 2017

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**JUDGMENT OF EDWARDS J**

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This judgment was delivered by Justice Edwards  
on 17 August 2017 at 12.00 pm, pursuant to  
r 11.5 of the High Court Rules

Registrar/Deputy Registrar  
Date:

## **Introduction**

[1] Mr Cookson-Ua and Mr Pirika apply for judicial review of decisions rejecting their applications for registration as members of Ngāti Rangiteaorere (Decisions). In addition to denying them membership, the Decisions meant that neither applicant was eligible to stand for election as a trustee of the Ngāti Rangiteaorere Koromatua Council (NRKC) in 2015.

[2] The NRKC is the post-settlement governance entity established to hold and administer treaty settlement assets on behalf of Ngāti Rangiteaorere. The first respondents are the trustees of the NRKC. The second respondents are members of the Ngāti Rangiteaorere Validation Committee (Validation Committee) which made the Decisions. The members of the Validation Committee filed an appearance reserving rights but did not attend the hearing.

[3] Mr Cookson-Ua and Mr Pirika challenge the Decisions on a number of grounds. The key challenge concerns the correct legal test for establishing membership of Ngāti Rangiteaorere.

[4] Each ground of challenge is denied by the NRKC Trustees. They say the applications were declined because the applicants were unable to show that they were descended from an ancestor who exercised customary rights predominantly in relation to a Ngāti Rangiteaorere area of interest.

[5] The following issues arise for determination:

- (a) Was the Validation Committee properly appointed?
- (b) Is the legal test under the Act different to that in the Deed of Trust?
- (c) Did the Validation Committee apply the correct legal test?
- (d) Did the Validation Committee err in other ways (mistake of fact, improper purpose, or substantive unfairness)?

## **Relevant context**

[6] Ngāti Rangiteaorere is one of the eight iwi that make up the Te Arawa confederation of tribes. After a long battle over a number of years, it won the right to negotiate and settle its own Treaty of Waitangi claim independently of the other Te Arawa iwi.

[7] A deed of settlement of Ngāti Rangiteaorere's Treaty of Waitangi claims was signed on 14 June 2013 (Deed of Settlement). On the same day, a deed of trust establishing the Ngāti Rangiteaorere Koromatua Council (NRKC) as the post-settlement governance entity was also signed (Deed of Trust). The Ngāti Rangiteaorere Claims Settlement Act 2014 (Act) was enacted on 16 April 2014 to give effect to the terms of settlement reached.

[8] The first Annual General Meeting for the NRKC was held on 31 August 2014. The initial trustees appointed under the Deed were confirmed at that meeting. Members of the Validation Committee were read out and are recorded in the minutes of that meeting.

[9] In September 2015, nominations were called for the election of trustees of the NRKC. Under the Deed of Trust, only those who are registered members of Ngāti Rangiteaorere are eligible for election.

[10] On 10 October 2015, Mr Cookson-Ua and Mr Pirika submitted applications for registration as members of Ngāti Rangiteaorere, and forms nominating them as candidates in the forthcoming elections. The Validation Committee considered the applications on 15 October 2015 under urgency.

[11] By letters dated 16 October 2015, both applicants were advised that their applications had been rejected as they did not fall within the definition of Ngāti Rangiteaorere as that term is defined in the Deed of Trust. A further letter sent the same day informed them that their nominations for the elections had been rejected as they were not registered members of Ngāti Rangiteaorere.

[12] The second Annual General Meeting was held on 28 November 2015. A resolution was passed at that meeting confirming the names of the Validation Committee. The third Annual General Meeting was held in December 2016.

### **Was the Validation Committee properly appointed?**

[13] The applicants submit that the Validation Committee which made the Decisions was not appointed in accordance with clause 4.2 of the first schedule to the Deed of Trust. That clause provides:

#### **4.2 Composition of membership validation committee**

The Membership Validation Committee shall comprise not less than three (3) and not more than five (5) Adult Registered Members of Ngāti Rangiteaorere with the expertise and knowledge of Ngāti Rangiteaorere whakapapa necessary to make determinations regarding membership applications. The members of the Membership Validation Committee shall be appointed or reappointed by the Trustees in accordance with a resolution of Adult Registered Members of Ngāti Rangiteaorere under clause 14.1. For the period until the first annual general meeting after receiving the assets received pursuant to the Deed of Settlement and Settlement Act, the members of the Kaumatua Committee shall be the members of the Membership Validation Committee.

[14] The relevant parts of clause 14.1 provide as follows:

#### **14.1 Trustees to hold annual general meeting**

The Council shall, no later than six (6) calendar months after the end of each Income Year, and in any event no more than 15 months after the date of the last annual general meeting of the Council, hold a general meeting for the Members of Ngāti Rangiteaorere, to be called its annual general meeting, and shall at that meeting:

...

- (g) review the appointment or reappointment of the members of the Kaumatua Committee;
- (h) review the appointment or reappointment of the members of the Membership Validation Committee.

[15] The first annual general meeting for the NRKC was held on 31 August 2014. The minutes for that AGM record that the names of the Validation Committee were

called out. There was no resolution recorded in the minutes, and a resolution does not appear to have been passed.

[16] Following the AGM in 2014, two members of the Validation Committee passed away. They were replaced by two others in the interim. It was this Validation Committee which made the Decisions at the heart of this proceeding.

[17] The members of the Validation Committee were reviewed at the following AGM held in November 2015. A resolution was passed at this AGM confirming their membership.

[18] Properly interpreted, I consider the Deed allows the Trustees to appoint replacement members of the Validation Committee. Members of the Committee are not elected. Rather, they are appointed, with that appointment and reappointment “reviewed” at an AGM. Such an interpretation allows the business of the Validation Committee to continue without waiting for an AGM to be convened. Accordingly, there was no invalidity as a result of the appointment of two members to replace those who had passed away.

[19] However, clause 4.2 requires a resolution to be passed at the AGM confirming the members of the Validation Committee. There was no resolution passed at the 2014 AGM and the requirements of clause 4.2 were not therefore met.

[20] Nevertheless, I do not consider this breach warrants a grant of relief. The power to grant relief in judicial review proceedings is discretionary.<sup>1</sup> Although a resolution was not passed, the members of the Validation Committee were clearly considered by the AGM, and the names of those comprising the Committee were read out. The minutes do not record any objection to those members. Furthermore, the members of the Validation Committee which made the Decisions were subsequently affirmed at a 2015 AGM. In the circumstances, there would be little utility in granting relief on this ground and I decline to do so.

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<sup>1</sup> *Wendco (NZ) Ltd v Auckland Council* [2015] NZCA 617, (2015) 19 ELRNZ 328 at [59].

## **Is the legal test under the Act different to that in the Deed of Trust?**

[21] The applicants submit that the Validation Committee erred in law by applying the definition of “member of Ngāti Rangiteaorere” under the Deed of Trust, rather than the definition in the Act. They submit that the definition under the Act is wider than that under the Deed of Trust, and that the Act takes primacy.

[22] Relevant definitions from the Deed of Trust are as follows:

**“Member of Ngāti Rangiteaorere”** means an individual referred to in paragraph (a) of the definition of Ngāti Rangiteaorere;

**“Ngāti Rangiteaorere”** means:

- (a) the collective group composed of individuals who descend from one or more of Ngāti Rangiteaorere’s Ancestors; and
- (b) every whanau, hapu or group to the extent that it is composed of individuals referred to in paragraph (a) -

To avoid doubt, Ngāti Rangiteaorere:

excludes any whanau, hapu or group defined as “Affiliate Te Arawa Iwi/Hapu” in section 1.5.1 of the Affiliate Te Arawa Iwi/Hapu Deed of Settlement, to the extent of the Crown settlement within that deed; and

- (c) every individual referred to in paragraph (a).

**“Ngāti Rangiteaorere Ancestor”** means an individual who exercised Customary Rights by virtue of being descended from:

- (a) Rangiteaorere; or
- (b) a recognised ancestor of any of the groups referred to in paragraph (b) of the definition of Ngāti Rangiteaorere; and
- (c) who exercised customary rights predominantly in relation to the Ngāti Rangiteaorere Area of Interest at any time after 6 February 1840;

**“Ngāti Rangiteaorere Area of Interest”** means the Area of Interest of Ngāti Rangiteaorere as identified and defined in the Deed of Settlement.

[23] Relevant definitions under the Act are as follows:

### 13 Interpretation

...

**member of Ngāti Rangiteaorere** means an individual referred to in section 14(1)(a)

### 14 Meaning of Ngāti Rangiteaorere

(1) In this Act, Ngāti Rangiteaorere—

- (a) means the collective group composed of individuals who are descended from an ancestor of Ngāti Rangiteaorere; and
- (b) includes those individuals; and
- (c) includes any whānau, hapū, or group to the extent that it is composed of those individuals.

(2) In this section and section 15,—

**ancestor of Ngāti Rangiteaorere** means an individual who—

- (a) exercised customary rights by virtue of being descended from—
  - (i) Rangiteaorere; or
  - (ii) any other recognised ancestor of a group referred to in part 8 of the deed of settlement; and
- (b) exercised the customary rights predominantly in relation to the area of interest at any time after 6 February 1840

**area of interest** means the area shown as the Ngāti Rangiteaorere in part 1 of the attachments

[24] Section 14(2)(a)(ii) refers to “any other recognised ancestor of a group referred to in part 8 of the deed of settlement”. Part 8 of the Deed of Settlement includes the following:

8.5 In the deed of settlement Ngāti Rangiteaorere means:

- 8.5.1 the collective group composed of individuals who descend from an ancestor of **Ngāti Rangiteaorere**;
- 8.5.2 every whānau, hapu or group to the extent that it is composed of individuals referred to clause 8.5.1

- 8.6 To avoid doubt, **Ngāti Rangiteaorere**:
- 8.6.1 excludes any whānau, hapu or group defined as “Affiliate Te Arawa Iwi/Hapū in section 1.5.1 of the Affiliate Te Arawa Iwi Hapū Deed of Settlement, to the extent of the Crown settlement within that deed.
- 8.7 **Ancestor of Ngāti Rangiteaorere** means an individual who:
- 8.7.1 exercised Customary Rights predominantly in relation to the area of interest at any time after 6 February 1840 by virtue of being descended from Rangiteaorere.
- ...
- 8.9 **member of Ngāti Rangiteaorere** means every individual referred to in paragraph 8.5.

[25] As can be seen from the above, clause 8.6.1 of the Deed of Settlement contains the same exclusion clause as found in subpara (b) of the definition of Ngāti Rangiteaorere in the Deed. Both refer to section 1.5.1 of the Affiliate Te Arawa Iwi/Hapu Deed of Settlement. That section defines “Affiliate Te Arawa Iwi/Hapu” as meaning the iwi and hapu of Te Arawa affiliated to the Te Pumautanga Trust, and comprising the 11 collective groups which are then listed in the section. For convenience, I will refer to these groups as the Te Arawa groups. They include: Ngati Tutenui, Ngati Te Roro o Te Rangi and Ngati Uenukukopako. The NRKC submits that both applicants affiliate predominantly with these three groups.

[26] If the respective definitions of Ngāti Rangiteaorere are considered in isolation, then it is apparent that there is a difference between the Deed of Trust and the Act. The definition in the Deed of Trust expressly states that every “whanau, hapu or any other group” excludes the Te Arawa groups. The exclusion of the Te Arawa groups is not expressly incorporated in the definition of Ngāti Rangiteaorere under the Act. On its face therefore, the definition under the Act would appear to be wider than the definition under the Deed.

[27] However, when the respective provisions are worked through, I do not consider there to be a substantive difference. That is essentially for two reasons:

- (a) First, the definitions of “a member of Ngāti Rangiteaorere” under the Act and Deed are the same. The individuals who collectively

comprise the whanau, hapu and other groups of Ngāti Rangiteaorere are defined by reference to their descent from ancestors who exercised customary rights in an area of Ngāti Rangiteaorere interest. The defined group of other recognised ancestors excludes those ancestors of the Te Arawa groups.

- (b) Second, the exclusion of the Te Arawa groups in the Deed of Trust definition does not add a further gloss. It simply confirms that a distinction is to be drawn between Ngāti Rangiteaorere and the other iwi of the Te Arawa confederation. That distinction arises from a purposive and contextual approach to interpretation of the Act and Deed in any respect. The express reference to the excluded Te Arawa groups is “to avoid any doubt” about that distinction.

[28] Both these reasons are explained further below.

[29] The starting point is the definition of “member of Ngāti Rangiteaorere”. That definition is the same under the Act as it is under the Deed. It is defined to mean an individual referred to in the first limb of the definition of Ngāti Rangiteaorere, whether under the Act (s 14 (1)(a)) or under the Deed (subpara (a) of the definition).

[30] The first limb of the definition of Ngāti Rangiteaorere is also the same under the Deed and the Act. In both cases it is defined to mean individuals who descend from an “ancestor of Ngāti Rangiteaorere”.

[31] The definition of an ancestor of Ngāti Rangiteaorere differs in terms of structure and text, but is nevertheless substantively the same under the Act and the Deed. The Deed defines “Ngāti Rangiteaorere ancestor” to include Rangiteaorere, and a “recognised ancestor of any of the groups referred to in (b) of the definition of Ngāti Rangiteaorere”. The groups referred to in (b) of the definition of Ngāti Rangiteaorere include “every whanau, hapu or group” to the extent that it comprises the individuals referred to in (a), but specifically excludes the Te Arawa groups.

[32] The Act also defines an “ancestor of Ngāti Rangiteaorere” to mean “any other recognised ancestor of a group referred to in part 8 of the deed of settlement” (s 14(2)(a)(ii)). Part 8 of the Deed of Settlement refers to whanau, hapu or groups to the extent that they comprise the individuals referred to in clause 8.5.1, but also expressly excludes the Te Arawa groups as set out in clause 8.6.1 of the Deed of Settlement.

[33] The same exclusion of the Te Arawa groups therefore applies to the definition of an ancestor of Ngāti Rangiteaorere under the Deed of Trust, and under the Act, despite the different route by which the exclusion is incorporated. The group of other recognised ancestors is accordingly a very narrow group by virtue of the exclusion clause.

[34] Furthermore, both definitions of an “ancestor of Ngāti Rangiteaorere” require the individual to have “exercised customary rights predominantly in relation to the Ngāti Rangiteaorere Area of Interest at any time after 6 February 1840”. The structure of the definition in the Deed of Trust means that it could be interpreted so that such a requirement only applies to a recognised ancestor in subpara (b) of the definition. If that interpretation was adopted, it would mean that descent from Rangiteaorere would be enough to meet the definition of Ngāti Rangiteaorere Ancestor.

[35] I consider the definition should be interpreted consistently with the Act and the Deed of Settlement. The structure of s 14(2) of the Act makes it explicit that the alternatives posed refer to the identity of the ancestor. The requirement that there be an exercise of customary rights applying predominantly in relation to the Ngāti Rangiteaorere Area of Interest as set out in s 14(2)(b) applies irrespective of the ancestor from which the individual is descended.

[36] That interpretation is consistent with the definition of “Ancestor of Ngāti Rangiteaorere” under clause 8.7 of the Deed of Settlement which defines such an ancestor by reference to the criteria specified in s 14(2) of the Act and in subpara (c) of the Deed definition. The ancestor from which descent must be traced is not only narrowly defined by reference to the exclusion of the Te Arawa groups,

but that ancestor must also have exercised customary rights predominantly in relation to a Ngāti Rangiteaorere Area of Interest after 6 February 1840.

[37] It follows that the individuals which comprise the whanau, hapu and other groups of Ngāti Rangiteaorere are defined in the Act and the Deed by reference to their descent from a defined and narrow group of ancestors who exercised customary rights in a defined area. The defined group of ancestors excludes those ancestors of the Te Arawa groups. The overall effect is to draw a distinction between Ngāti Rangiteaorere, and the other Te Arawa iwi in the confederation.

[38] Defining Ngāti Rangiteaorere so as to exclude the Te Arawa groups is consistent with the context and purpose of both the Deed and Act. Clauses in a Deed of Trust must be construed in the context of the entire document, and in light of the surrounding circumstances.<sup>2</sup> Statutes are to be interpreted in light of their legislative purpose.<sup>3</sup>

[39] The background context in this case is Ngāti Rangiteaorere's efforts to negotiate a treaty settlement independently of the other Te Arawa iwi. Assets which were of particular significance to Ngāti Rangiteaorere were settled for the benefit of that iwi alone, and were not subsumed within the wider Te Arawa settlement.

[40] The purpose of the Act was to give effect to the Deed of Settlement, and bestow assets on Ngāti Rangiteaorere in settlement of their treaty claims. Section 12 of the Act provides:

It is the intention of Parliament that the provisions of this Act are interpreted in a manner that best furthers the agreements expressed in the deed of settlement.

[41] The definition of a "member of Ngāti Rangiteaorere" is accordingly defined in a way which maintains a distinction between Ngāti Rangiteaorere and the other Te Arawa iwi. Descent from Rangiteaorere alone is not sufficient to maintain that distinction. In an affidavit sworn on behalf of NRKC, Mr Pene deposes to the fact

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<sup>2</sup> *Firm PI 1 Ltd v Zurich Australian Insurance Ltd* [2014] NZSC 147, [2015] 1 NZLR 432 at [60].

<sup>3</sup> Interpretation Act 1999, s 5. *Commerce Commission v Fonterra Co-Operative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767 at [22].

that most of Te Arawa and Tuhoë can whakapapa to the eponymous ancestor Rangiteaorere. His concern is that if an unduly wide interpretation of the appropriate legal test was adopted then:

... the decisions of the Waitangi Tribunal and the Office of Treaty Settlements would be rendered void and Ngāti Rangiteaorere's quest for an independent identity would be defeated. This is the opposite of what was intended by the hapū in negotiating this settlement with this Deed.

[42] A narrow interpretation of the definition provisions is therefore necessary to preserve the purpose of the settlement with Ngāti Rangiteaorere. The exclusion clause in subpara (b) of the definition of Ngāti Rangiteaorere in the Deed simply confirms that purposive approach. It is incorporated "to avoid doubt". It does not add a separate requirement or gloss to the legal test, but simply confirms the intention of the parties to define Ngāti Rangiteaorere in a way which distinguishes that iwi from other Te Arawa groups.

[43] In summary, I do not consider there to be any substantive difference between the provisions of the Act and the Deed. The members of Ngāti Rangiteaorere are defined in the Act and the Deed by reference to their ancestry and the exercise of customary rights. Both the Act and the Deed exclude ancestors of the Te Arawa groups in the definition of ancestor of Ngāti Rangiteaorere. The overall effect is to draw a distinction between Ngāti Rangiteaorere and the other Te Arawa iwi. That is consistent with a purposive and contextual approach to interpretation. The exclusion clause in subpara (b) of the definition of Ngāti Rangiteaorere in the Deed of Trust simply confirms that approach.

#### **Did the Validation Committee apply the correct legal test?**

[44] The applicants contend that the Validation Committee applied the wrong legal test. To the extent that this argument turns on the claim that descent from Rangiteaorere is sufficient, then it cannot succeed. As set out above, the definition of "member of Ngāti Rangiteaorere" is narrowly defined, and is to be applied in such a way that Ngāti Rangiteaorere is distinguished from the other Te Arawa iwi.

[45] However, the applicants also submit that the Validation Committee applied the test for membership which was on the Ngāti Rangiteaorere website. The NRKC accepts that the information on the website was incorrect. The website contained the following:

Who Can Register?

To register people must not only be able to whakapapa to the eponymous ancestor Rangiteaorere, but must also:

1. have current land ownership interests in Whakapoungakau 1-7 land blocks;
2. or declare a primary Hapu/Iwi allegiance to Ngāti Rangiteaorere.

[46] The Validation Committee's reasons for rejecting the applications were set out in the same terms in each of the letters dated 16 October 2015 as follows:

The Validation Committee has considered your application and the information that you provided in support of it. It has been decided by the Committee that you do not fall within the definition of an a [sic] member of Ngāti Rangiteaorere individual as that term is defined in the Ngāti Rangiteaorere Koromatua Council Deed.

*In particular, the Committee is of the view that in recent decades past, you and your whanau have predominantly affiliated with Ngati Uenukukopoko and Ngati Tuteniu. These are the trusts that you and your whanau have given principal allegiance [sic].*

(emphasis added)

[47] A minute of the Validation Committee meeting of 15 October 2015 was produced in evidence. It is a short typed document recording the date, time and location of the meeting, those who attended, and those who gave their apologies. The minute is signed by Mr Kereama and dated 27 December 2015. The applicants say that the date is significant because it post-dates the commencement of this proceeding and can be seen as an attempt to justify the decision after the fact.

[48] The minutes record that the Committee received 16 applications for registration, and four had to be determined urgently as the applicants had been nominated to stand as candidates for the positions of trustee of the NRKC. The purpose of the meeting was therefore to consider those urgent applications. The

decisions on those applications and the reasons for those decisions are expressed as follows:

The Validation Committee considered the four urgent applications over the course of two hours. It was determined by consensus of the members of the Committee present that two applications would be approved and two applications would be rejected. *The rejections were for the reason that the Validation Committee considered that those applicants' ancestors did not exercise customary rights predominantly in relation to the Ngāti Rangiteaorere Area of Interest.*

(emphasis added)

[49] The applicants' suspicion that the wrong test was applied is understandable given the reference to "allegiances" in the letters informing them of the Decisions. However, the reasons given in the minutes of the meeting reflect the correct legal test and there is no evidence that the Validation Committee did not, in fact, apply that test. The reasons stated in the letters are reconcilable with the reasons set out in the minutes, and may evidence errors in expression, rather than any error in the application of the legal test.

[50] The affidavits filed both in support and opposition to the judicial review application set out in some detail the factors relevant to the legal test for membership. Mr Pirika's reply affidavit details evidence which he says establishes descent from an ancestor who exercised customary rights predominantly in relation to a Ngāti Rangiteaorere area of interest. That information does not appear to have been before the Validation Committee at the time the applications were considered.

[51] The evaluation of that information is entrusted to the Validation Committee. The members of that Committee have the specialist knowledge and expertise to be able to assess and determine questions of ancestry and the exercise of customary rights. This Court is not in a position to undertake that review, and to do so would usurp the role of the Validation Committee. If there is new information which has not previously been considered by the Validation Committee, then the appropriate course is to submit a new application for membership which the Validation Committee can consider afresh.

[52] For the purposes of this judicial review application, I am not persuaded that the Validation Committee applied the wrong legal test in making the Decisions.

**Did the Validation Committee err in other ways (mistake of fact, improper purpose, substantive unfairness)?**

[53] Mr Cookson-Ua and Mr Pirika challenge the Decisions on other grounds also. They say:

- (a) The Validation Committee made a mistake of fact as the evidence before them showed that they fell within the relevant definition under the Act;
- (b) The Validation Committee acted for an improper purpose;
- (c) The Decisions were substantively unfair.

[54] The Supreme Court in *Bryson v Three Foot Six Limited*, confirmed that the threshold for judicial review on the grounds of mistake of fact is very high.<sup>4</sup> A mistake of fact will only lead to a reviewable error of law where an ultimate conclusion of a fact finding body is so clearly untenable that the proper application of the law requires a different answer.<sup>5</sup>

[55] The substantive arguments put forward by the applicants in support of this ground have already been addressed in other parts of this judgment. The fact that both applicants can whakapapa to Rangiteaorere is not sufficient to establish membership of Ngāti Rangiteaorere. There is evidence to support the Decisions as set out in the affidavit of Mr Pene, sworn on behalf of the NRKC. The arguments put forward by the applicants fall far short of the very high threshold for judicial review under this head. There is no mistake of law which establishes a reviewable error in this case.

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<sup>4</sup> *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721.

<sup>5</sup> At [26].

[56] As to the second ground, the applicants contend that the Validation Committee has acted for an improper purpose in declining the applications. Mr Cookson-Ua has been publicly critical of decisions of the Trustees, including the decision to withdraw from the Te Arawa negotiation process. He says the registration process was used to punish him for that previous conduct. Other deponents have sworn affidavits setting out the genealogies of those who were accepted for membership. It is said the genealogies of the members are the same as the genealogies of the applicants. That is also relied on by the applicants as evidence of an ulterior purpose.

[57] I am not satisfied that there is evidence of an ulterior purpose. The correct legal test was identified by the Validation Committee. There is evidence to suggest it was applied correctly. As set out above, the substantive decisions regarding membership are entrusted to the Validation Committee, and this Court is in no position to second-guess or review the substance of those decisions. In the absence of further evidence of an improper purpose, this ground of review must also be dismissed.

[58] The final ground for review is that the Decisions are substantively unfair. The applicants do not identify any separate grounds of complaint under this head of review. The test for membership is as set out in the Deed of Trust and Act. The Validation Committee appears to have applied the correct legal test, and there is some evidence to support its conclusions. There is nothing to indicate that the “quality” of those Decisions may be impugned.<sup>6</sup> This ground of review must also be dismissed.

## **Result**

[59] The application for judicial review is declined.

[60] The parties are encouraged to confer on the question of costs. If agreement cannot be reached, then a memorandum in support of costs may be filed within 15

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<sup>6</sup> *Thames Valley Electric Power Board v NZNP Pulp & Paper Ltd* [1994] 2 NZLR 641 at 652 per Cooke P.

working days of receipt of this Judgment, with a memorandum in reply filed 10 working days thereafter.

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Edwards J

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