

IN THE WAITANGI TRIBUNAL

Wai 863

CONCERNING

the Treaty of Waitangi Act 1975

AND

the Wairarapa ki Tararua district inquiry

AND

applications for remedies by Kingi Winiata Smiler on behalf of the shareholders of Wairarapa Moana ki Pouakani Incorporation (Wai 85), Noelene Reti on behalf of Ngāti Kahungunu ki Rongomaiwahine (Wai 1023), Ryshell Griggs and Mark Chamberlain on behalf of Ngāi Tūmapūhia-ā-Rangi hapū (Wai 429), Takere Leach on behalf of Te Hika o Pāpāuma (Wai 939), and Haami Te Whaiti on behalf of Ngāti Hinewaka (Wai 959)

MEMORANDUM-DIRECTIONS OF JUDGE C M WAINWRIGHT
FOLLOWING SUPREME COURT DECISION

12 December 2022

1. On 7 December 2022, the Supreme Court issued its decision in *Wairarapa Moana ki Pouākani Incorporation v Mercury NZ Limited* [2022] NZSC 142.
2. The Supreme Court referred the resumption applications back to the Waitangi Tribunal for it to continue its iterative process to achieve ea for the participants in this inquiry.
3. At a judicial conference convened this morning, Crown counsel said that the third reading of the Ngāti Kahungungu ki Wairarapa Tāmaki nui-a-Rua Claims Settlement Bill will occur tomorrow (13 December 2022) as planned. In other words, the government is not prepared to allow the Tribunal to give effect to the Supreme Court's judgment.
4. At the judicial conference, counsel for the various claimant groups expressed their extreme disappointment at this turn of events. Reference was made to other instances where the Crown has considered that constitutional propriety required it to stand back and allow litigants to pursue their legal rights, even where that conflicted with a government's desire to proceed to settlement of historical Treaty of Waitangi claims. That was the case earlier in this inquiry, in fact. Now, though, the government takes a different view.
5. I should simply observe for the record that if the Ngāti Kahungungu ki Wairarapa Tāmaki nui-a-Rua Claims Settlement Bill were not passed into law tomorrow, the Tribunal would pursue the path outlined for it in *Wairarapa Moana ki Pouākani Incorporation v Mercury NZ Limited* [2022] NZSC 142. This might have had the effect of returning significant hydro assets to the Wairarapa Moana ki Pouākani Incorporation or another appropriate entity. It might also have resolved longstanding raru between tangata whenua at Pouākani and Wairarapa Māori through a tikanga process that was allowed to run its course. However, the government has decided to extinguish those possibilities by passage of law tomorrow.

The Registrar is to send this direction to all those on the revised notification list for the remedies phase of Wai 863, the record of inquiry for the Wairarapa ki Tararua claims.

DATED at Wellington this 12th day of December 2022



Judge C M Wainwright
Presiding Officer

WAITANGI TRIBUNAL