

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

**I TE KŌTI MATUA O AOTEAROA
AHURIRI ROHE**

**CIV-2025-441-69
[2025] NZHC 1991**

UNDER	ss 112 and 114 of the Trusts Act 2019
IN THE MATTER OF	the Kia Manaaki Trust
BETWEEN	MARITA LEE MATCHITT Applicant
AND	VERNON LEWIS MATCHITT, MAIA MATCHITT, and JOANNE MARAMA MATCHITT as trustees of the Kia Manaaki Trust First Respondents
	ANDREW MARK GALLIE as independent trustee of the Kia Manaaki Trust Second Respondent

On the papers:

Counsel: E R Anderson for Applicant

Judgment: 18 July 2025

JUDGMENT OF GRAU J
[Without notice application to commence proceeding by originating application]

[1] The applicant, Marita Matchitt, applies to the Court for orders to remove the respondents, Vernon Matchitt, Maia Matchitt, Joanne Matchitt and Andrew Gallie, as trustees of the Kia Manaaki Trust (the Trust) and replace them with a professional trustee and three other trustees who are said to have the necessary knowledge and connections to manage the Trust. Marita seeks permission to commence this proceeding by way of originating application without notice to any other party.

Background

[2] Marita's father, Paratene Temokopuorongo Matchitt (Para), was a renowned Māori artist who passed away in July 2021. His archive of works and his property in Napier (known as the Shed) are the principal assets of his estate.

[3] Marita is the eldest child of Para. She is an executor of Para's estate and is a trustee of the Trust.

[4] The first respondents—Vernon, Maia, and Joanne—are the remaining living children of Para and are also trustees of the Trust. Maia is also an executor of Para's estate. The second respondent, Andrew Gallie, was Para's solicitor, and he is the independent trustee of the Trust.

[5] The Trust was established in December 2020 by Para and Andrew. Marita and Andrew were named as trustees. Marita's siblings were originally named as discretionary beneficiaries and were then added as trustees. Marita believes her father did so in an effort to bring the siblings together.

[6] Marita's understanding of the purpose of the Trust is that Para wanted a papakāinga built on whānau land to house and exhibit a collection of his works and preserve his legacy. He also wanted a place for whānau, current and future, as well as a space that could be used for workshops and art exhibitions. Marita understood that Para wanted the Trust to be in place for future generations, and the wider community.

[7] Unfortunately it appears that Marita and the other trustees had different visions for the Trust. They were unable to agree on what to do with the Shed, which is in a state of disrepair. Artworks are stored there, risking damage to them. Meeting times were another source of dispute. Marita considers that the other trustees did not provide her with information and made majority decisions, contrary to the Trust Deed, including a decision to remove her as a trustee. Marita says that, even after her exclusion, the trustees have not produced a sensible plan for the Shed, organised insurance or a preservation and care plan for the art, nor made a business plan for the Trust more generally.

[8] Marita says that the Trust has possession of assets that are irreplaceable, but they are uninsured, and at risk of deterioration and damage. The Trust cannot meet its expenses and outgoings, nor can it undertake the work necessary to safeguard these assets for the beneficiaries. The assets have not yet been formally distributed to the Trust.

[9] Marita considers that the Trust is dysfunctional, and it is currently incapable of fulfilling its purpose and the wishes of its settlor, Para, without removing the current trustees and replacing them with independent and suitably qualified trustees.

[10] Accordingly, Marita has applied to the Court to remove the current trustees (including herself) and replace them under ss 112 and 114 of the Trusts Act 2019. This decision deals with Marita's without notice application to commence the proceeding to remove the trustees by way of originating application.

Discussion

[11] Part 19 of the High Court Rules 2016 (the HCR) governs the originating application procedure. Rule 19.5 enables the Court to permit any proceeding not mentioned in rr 19.2–19.4 to be commenced by way of originating application if it is in the interests of justice to do so. The Court's permission to do so may be sought without notice.¹ The interests of justice mean that the Court must secure the just, speedy and inexpensive determination of the proceeding.² Proceeding by originating application does not require the exchange of a statement of claim or statement of defence (although a Judge may order that they be exchanged³). Evidence is generally given by way of affidavit only. Accordingly, it is generally inappropriate to allow commencement via originating application where the factual issues are wide-ranging and disputed or the legal issues are particularly numerous or complex.

¹ High Court Rules 2016 (HCR), r 19.5.

² *Solar Bright Ltd v Martin* [2019] NZHC 300 at [18].

³ HCR, r 19.5A.

[12] The specific matters considered by the Court when determining whether it is in the interests of justice to proceed by way of originating application were summarised by Osborne J in *Solar Bright Ltd v Martin* as follows:⁴

- (a) Whether the exchange of statements of claim and defence are needed to better define the issues between the parties.
- (b) Whether interlocutory procedures are needed to resolve issues such as discovery.
- (c) Whether the application is straightforward, such as the application of a statutory test, or whether it is likely to involve an application of the common law principles or require expert evidence or cross-examination.
- (d) Whether the application involves multiple parties or may involve cross-claims.

[13] Proceedings involving the removal or replacement of trustees are routinely dealt with as originating applications under pt 19 of the High Court Rules.⁵ The issue is therefore whether the current application is an appropriate one to be allowed to commence in that manner, taking into account that the application for leave to proceed via such procedure has been made without notice.

[14] Having read the affidavits and the memorandum of counsel filed in support, I am satisfied that this proceeding is suitable to commence by way of originating application. While there appear to be some intricacies in the factual background to this matter—for example, possibly complicated family dynamics and what the purpose of the Trust was—and there may be strong disagreement among the whanau members, the actual factual and legal issues to be determined are confined and can be addressed effectively by way of originating application. I do not consider that statements of claim or statements of defence will be required to help define issues or the scope of

⁴ At [20]–[24].

⁵ See for example, *Re McKinsty* [2025] NZHC 966; *Wellwood v Wellwood* [2019] NZHC 801.

the proceedings. The issue is a relatively straightforward one and involves the application of the provisions in the Trusts Act. There is also a limited number of parties.

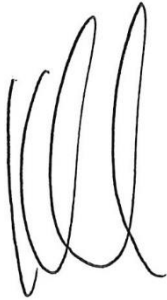
[15] At this point, there is nothing in particular that would suggest any need to cross-examine, nor is there anything to suggest the need for numerous interlocutory procedures such as discovery. The applicant has provided comprehensive affidavits with a significant amount of documentary evidence already, and further evidence could be similarly adduced by affidavit.

[16] The interlocutory application is sought on a without notice basis. I am satisfied that is in the interests of justice to proceed without notice to avoid undue delay in what is a routine matter.

[17] I therefore make the following directions:

- (a) Leave is granted for the proceedings to be dealt with as an originating application under Pt 19 of the High Court Rules 2016.
- (b) The applicant is to serve the originating application and supporting documents, together with this judgment, promptly, on the respondents. Once service has been effected, the applicant is to file affidavits of service.
- (c) The respondents are to file any opposition to the proceedings, together with any affidavit evidence in support, within 15 working days of receiving the originating application, supporting documents, and this judgment.

- (d) The parties are to appear in the Judge's Chambers List on 18 August 2025 for further directions, with a view to setting down a date for hearing (if the originating application is opposed) and other necessary timetabling. Should that date be unsuitable, the parties are to liaise with each other and the registry to obtain a suitable date.

A handwritten signature in black ink, consisting of several overlapping loops and a final flourish.

Grau J

Solicitors:
Braun Bond & Lomas Limited, Hamilton for Applicant