IN THE HIGH COURT OF NEW ZEALAND
TAURANGA REGISTRY

CIV-2012-470-65
[2012] NZHC 3381

UNDER	Section 299 of the Resource Management Act 1991
IN THE MATTER OF	an appeal against Environment Court Decision No. [2011] EnvC 402
BETWEEN	NGATI RUAHINE Appellant
AND	BAY OF PLENTY REGIONAL COUNCIL First Respondent
AND	PORT OF TAURANGA LIMITED Second Respondent
AND	TE RUNANGA O NGAI TE RANGI IWI TRUST First Third Party
AND	THE ATTORNEY-GENERAL Second Third Party

Hearing: On the papers

Counsel: P Kapua for the Appellant
J P Koning for Te Runanga o Ngai Te Rangi Iwi Trust (supporting Appellant)
P H Cooney for Respondent
V J Hamm and M Paddison for Port of Tauranga Limited
P A McCarthy for the Attorney-General

Judgment: 13 December 2012

COSTS JUDGMENT OF PRIESTLEY J

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[1] On 18 September 2012 I released a judgment[1] dismissing the appellant's appeal under s 299 of the Resource Management Act 1991 from a December 2011 judgment of the Environment Court.

[2] The appellant in the intituling was Ngati Ruahine, a hapu with legitimate cultural interests in Tauranga Harbour. The Court file, however, suggests that the appellant was in fact Mr Lance Waaka. This is understandable since, unlike Mr Waaka, Ngati Ruahine was not a legal entity.

[3] At all stages the appeal proceeded (as indeed had the matter in the Environment Court) on the basis that Mr Waaka was representing the hapu.

[4] Affidavits have been filed questioning Mr Waaka's status as an appellant. For the purposes of this costs judgment, I do not consider the issue of Mr Waaka's precise status is of much moment. Mr Waaka himself has filed an affidavit dated 23 November 2012. He appears to have obtained a mandate from a hui held at the Waimapu Marae on 24 June 2012 in respect of Ngati Ruahine's appeal. That hui was convened by Mr Waaka in his capacity as Chairman of the Ngati Ruahine Incorporated Society.

[5] I glean from the affidavits filed that Ngati Ruahine has not been unanimously in support of Mr Waaka's role. Resolutions at the hui were not passed unanimously and other Ngati Ruahine groups are clearly opposed to Mr Waaka's actions. It would be astounding if the hapu had not reflected a number of views on pursuing the appeal.

[6] Of importance, however, is a letter from another group, the Ngai Ta Ahi Settlement Trust, dated 12 November 2012 to Ms Kapua which states that the Ngati Ruahine Incorporated Society was throughout an umbrella for Mr Waaka. So clearly Mr Waaka knows what groups and members of the hapu he can look to for indemnity.

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1 *Ngati Ruahine v Bay of Plenty Regional Council* [2012] NZRMA 523 (HC).

[7] The first respondent, the Bay of Plenty Regional Council, does not seek costs against the appellant. The second respondent, Port of Tauranga Limited, does seek costs on the 2B scale of $18,905 (which includes an allowance for second counsel) and disbursements for photocopying and preparation of the bundle of authorities of $200.

[8] The appellant, pursuant to previous Court orders, has paid $1,000 into Court for security for costs. Peters J, on 8 February 2012, categorised the 2B scale as appropriate for the appeal.

[9] Ms Hamm submits that standard costs principles should apply, that the second respondent was successful in opposing the appeal, and that the appeal had little merit.

[10] Although Ms Kapua was directed, by my minute of 31 October 2012, to file reply submissions on costs, none have been received.

[11] The scope of costs judgments has been hugely assisted by the recent Supreme Court judgment, *Manukau Golf Club Inc v Shoye Venture Ltd*.[2] The Supreme Court said, when criticising the Court of Appeal for giving no reasons for not awarding costs in favour of a successful appellant:

> [8] A fundamental principle applying to the determination of costs in all the general courts in New Zealand is that costs follow the event. Because we are dealing with a Court of Appeal costs decision, we cite the principle as set out in r 53A(a) of the Court of Appeal (Civil) Rules, but the same principle underlies costs in the District Court,10 the High Court11 and this Court:12
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> > The party who fails with respect to an appeal should pay costs to the party who succeeds.
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> ...
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> [16] We wish to make clear a court does not have to give reasons for costs orders where it is simply applying the fundamental principle that costs follow the event and the costs awarded are within the normal range applicable to that court. So here, had the Court of Appeal awarded costs in the Club's favour on a standard appeal basis, no further explanation would have been required. It is only when something out of the ordinary is being done that some explanation, which may be brief, should be given.

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2 *Manukau Golf Club Inc v Shoye Venture Ltd* [2012] NZSC 109.

[12] Despite there being no submissions from Ms Kapua, there is no apparent reason why costs should not follow the cause on this appeal. I accept that the cultural interests and beliefs of Ngati Ruahine (or those members of the hapu who supported the appeal) would undoubtedly have led them to wanting to leave no stone unturned. That of course is a factor which drives many appeals.

[13] I see no reason to depart from the "fundamental principle that costs follow the event". Nor do I intend to give any further reasons. I do not, however, intend to allow the second respondent costs for second counsel. Ms Hamm's junior was not required to make any submissions to the Court. Furthermore, Ms Hamm was in the fortunate position of being supported in her submissions by both counsel for the first respondent and counsel for the Attorney-General.

[14] Making the appropriate adjustment to Ms Hamm's schedule of costs attached to her submissions (all other items being standard and reasonable) I order the appellant is to pay costs to the second respondent in the sum of $16,915 plus disbursements of $200. The $1,000 security sum held by the Registry is to be paid out to the second respondent's solicitors.

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Priestley J

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