

The Māori climate activist breaking legal barriers to bring corporate giants to court



Mike Smith at the Domain gardens in Auckland. The Māori activist has won the right to sue seven New Zealand companies over their alleged contributions to climate change. Photograph: Becki Moss/The Guardian

In a landmark case, Mike Smith has won the right to sue seven of the country's biggest companies over their alleged contributions to climate change

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ike Smith stands stock still in a khaki-coloured vest, posing for a photograph against dark foliage in the Auckland Domain gardens. He sets his face into a determined expression, raises his eyes to the horizon, and jokes he is creating the “Che Guevara look”.

“You know the one – where he is looking wistfully up?” Smith says of the Cuban revolutionary’s famous portrait.

Smith may be joking, but the 67-year-old grandfather and kaumatua (elder) of Northland tribes Ngāpuhi and Ngāti Kahu, is attempting to lead his own, albeit quieter, revolution – against climate change and those responsible for it. And after five years of court proceedings, he has just celebrated a major win.

In a landmark decision in February, New Zealand’s supreme court unanimously ruled Smith has the right to sue seven New Zealand-based corporate entities, including fuel companies Z Energy and Channel Infrastructure, power and gas company Genesis Energy, NZ Steel, coal company BT Mining, Dairy Holdings and the country’s largest, and biggest emitting company dairy exporter Fonterra, claiming they contributed to climate change.



Smith says Māori feel ‘bonded to environment ... not just on a philosophical level, but a deep cellular level’.

Photograph: David Clapp/Getty Images

Sitting in a cafe within the Domain’s grounds, Smith – a veteran Māori activist – details the trajectory of his life that has culminated in this particular fight.

Smith, who is also a climate change spokesperson for the Iwi Chairs Forum, a national forum of tribal leaders, was born in Northland to a Māori father and pākeha (New Zealand European) mother, whose own ancestors share a history – they sat across the table from one another during the 1840 signing of New Zealand’s founding document, the Treaty of Waitangi.

Smith was a child of the second world war generation. He grew up amid the cultural transformation of the 1960s which exposed him to conversations on decolonisation, capitalism and environmentalism – and in particular, he says, how extractive industries have plundered the land and Indigenous people, in the name of profit.

Armed with this knowledge, and a bond with the land, Smith turned to activism. For Māori, a love of the environment “is built into us” Smith says, and when it comes to the disastrous effects of climate change the “future of our children and our grandchildren is on the line”.

“That means when we see these things happening, we can’t just sit there and be silent – we must be responsible, and that sets us on a collision course with some of those economic and political systems that would destroy that relationship.”



New Zealand’s environmental credentials on the line as coalition takes power

Smith argues the defendants’ activities – including directly emitting greenhouse gases, or supplying fossil fuels – amount to three forms of civil wrong or “tort”: public nuisance, negligence and a new form of civil wrong described as a “proposed climate system damage tort”.

He alleges the companies together were responsible for more than one-third of the country’s total reported greenhouse gas emissions between 2020 and 2021. Smith alleges they have contributed to the climate crisis and damaged his whenua (land) and moana (ocean) in the small coastal settlement Mahinepua – five hours north of Auckland – including places of customary, cultural, historical, nutritional and spiritual significance to him and his whānau (family).

A distinctive element to Smith’s case is his argument that principles of tikanga Māori – broadly, a traditional system of obligations and recognitions of wrongs – could inform his action and moreover, should inform New Zealand common law generally.

The companies applied to strike out Smith’s proceedings in the lower courts, arguing, in part, that Smith’s claim was “incoherent” and would damage the integrity of tort law. In 2021, the court of appeal agreed, believing the case doomed to fail and struck it out.

But in a major reversal, the supreme court said a judicial pathway should be open and common law should be able to evolve. It acknowledged climate change was an “all-embracing” existential crisis and said the law should take into account the 21st-century context.

In other words, Smith should be allowed to test climate change harm through the court.

Challenging political ‘inertia’

Smith says he was driving when his legal team, led by lawyer Davey Salmon KC, called with the news of the judgment.

“I had been thinking, it’s been thrown out once, this is a long-bow man ... and then [they] go ‘we won!’ and you could hear them all in the background yelling. It was a very exciting moment ... but it took a moment to process,” Smith says.

In statements provided to the Guardian, Fonterra, Z Energy and Channel Infrastructure said that parliament, not the courts, was the appropriate place to determine public and economic policy on matters of significant public interest, such as climate change.

Fonterra and Genesis Energy expressed their disappointment in the supreme court’s decision.

Those that responded said they were all actively working towards a low-emissions future. BT Mining, Dairy Holdings and NZ Steel did not respond to requests for comments.

Climate litigation as a form of activism is gaining momentum around the world, as communities and individuals, frustrated by slow or poor action on behalf of their governments, seek recourse through the courts.

According to the [UN’s 2023 global climate litigation report](#), climate change court cases are now seen as an integral part of securing climate action and justice, with the number of cases worldwide more than doubling since 2017, from 884 to 2,180 in 2022. Increasingly, companies directly contributing to climate change are being targeted.

Like others across the globe, Smith is disturbed with the inertia over addressing climate change.



Why 2024 will be a crucial year for climate litigation

“One of the horns of that inertia is the power of lobbyists and the political process, the other horn is the politician’s fear of a public backlash to transformative change.”

The immediacy of the problem prompted Smith to go to court.

“If the government can’t [act], we need to seek a court compliance and enforcement decision that compels the companies to take action and doesn’t give them any choice.”

‘A court case whose time has come’

The world will be watching Smith’s case closely, says climate change law expert Vernon Rive, an associate professor of law at the University of Auckland.

Most climate related action in the courts has come through groups appealing government or local authority decisions, for example Greenpeace appealing against the consent for a coal fired power station.

“This one isn’t like that,” Rive says. “In common law jurisdictions around the world ... tort law cases haven’t come very far – so the supreme court ruling that there should be a full trial is a major deal.”

Both sides will face huge challenges when it comes to arguing their respective cases, Rive said. Smith will have to convince the high court that the seven companies’ contribution to global emissions are harming his land and culture,

while the defendants will have to convince the court that climate change responses should be left to the government.

But even if Smith does not succeed in getting the orders he has asked for – including the companies either stopping polluting or bringing down their emissions quickly – Smith has “already won something significant”, Rive said.



Climate litigation as a form of activism is gaining momentum around the world. Photograph: Kerry Marshall/The Guardian

“He has won the ability to invite some scrutiny to corporate actions in relation to climate change that will bring pressure on them and may impact the way that they take action on their emissions reductions strategies.”

It may be another year or two before Smith’s case comes before the high court and should he fail, he could face millions in costs.

As he finishes up his drink, Smith is hesitant to try to predict the case’s outcome – while he is confident in his team and the arguments, he is also sceptical the court will produce something in favour of Māori.

“Having said that, the courts are dragged along by the morality of the time ... maybe this is a court case whose time has come.”