

His Honour Judge WARD, to the CHIEF JUDGE, Native Land Court, Wellington.

SIR,—

We, the undersigned Judge and Assessor of the Native Land Court, being duly appointed under the provisions of "The Native Land (Validation of Titles) Act, 1892," have inquired into the application of Arthur Amon, James Flockhart M'Kelvie, and John Hammond, Executors and Trustees under the Will of John M'Kelvie, of Lower Rangitikei, sheep farmer, deceased, made under the said Act, with regard to a transfer from certain Natives to the said John M'Kelvie, deceased, of the Waiakake Block, and report as follows:—

The evidence before us, and the minutes taken at the original investigation for title, show that the case was called on for hearing on the 28th day of July, 1881, at Upokongaro, and that the judgment of the Court was given on the 2nd day of August, 1881, in favour of,—

1. Weranika Warata	...	...	...	...	...	20 shares.
2. Metera te Urumotu	...	...	...	...	...	18 "
3. Aropeta Haeretuterangi	...	...	...	...	...	1 "
4. Wiare Turoa	...	...	...	...	...	1 "

Total, representing whole block	...	...	...	...	...	40 "
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The people in Weranika Warata's party of nine persons, in addition to herself, were her own children, sister, and aunts; and in Metera te Urumotu's party, in addition to herself, were eight persons—his wife, children, and other near relatives.

That some months after the judgment, an interlocutory order for the issue of a memorial of ownership was prepared and submitted to Judge Brookfield, the presiding Judge, for signature. This document was signed by him.

That there was great delay in getting the survey made of this block, and it was not till a short while ago that a memorial of ownership was engrossed and submitted to His Honour Mr. Chief Judge Seth-Smith for his signature, as Judge Brookfield had in the meantime retired from the Native Land Court. His Honour Chief Judge Seth-Smith declined to sign the memorial, for the reason that the minutes of the proceedings of the Court investigating the title showed that other Natives in addition to the said four persons were shown to have rights on the block, and that the matter ought to be further inquired into. His Honour considered that, under the Act of 1873 and amendments, it was the duty of the Court to include in the Order the names of all the persons found to be the owners, and that the names of all such persons should be enrolled in the memorial of ownership. The correctness of his Honour's opinion on the matter as placed before him is beyond any question whatever. But we respectfully submit that the case was not put before him in a proper light, and as showing the real circumstances connected with the hearing of the case when first before the Native Land Court. We are convinced that in preparing the Order for embodying the judgment of the Court, the clerk engrossed the wrong form. As we have before stated, the form is for the issuing of a memorial of ownership; whereas it should have been for the issue of a certificate of the Native Land Court under "The Native Land Court Act, 1880."

The minutes show us that before investigation there had been no survey of the block, and that the case was heard with only a sketch plan before the Court. This would have been legal under the said Act of 1880, but *not* under the Act of 1873 or amendments thereof. Again, the case was called on for hearing and the judgment given nearly a year after "The Native Land Court Act, 1880," came into operation. We are doubtful whether it was competent for the Court to have issued an order for a memorial of ownership at that time and under the circumstances.

The minutes expressly show that the arrangement as to the shares of the owners of the land, as fixed by the Court, should be the basis of proceedings, if need be, under section 43 of "The Native Land Court Act, 1880."

We think under section 24 of the last mentioned Act, the Court had the power to make such a decision as it did. The facts and circumstances connected with the case were before the Court, and as before stated we believe it was the intention of the Court to issue an order under the Act of 1880.

We beg to report that, in our opinion, the interlocutory order should be amended by striking out the words "memorial of ownership," and inserting instead thereof the words "certificate of the Native Land Court under 'The Native Land Court Act, 1880,'" and that, if necessary, power be given to issue a certificate of the Native Land Court in favour of the four Natives before named, with their shares respectively as fixed by the original judgment of the Court.

By these means justice will be done to all parties, and the deed of transfer of the block, which the said four Natives executed on the 28th day of May, 1884, to the said John McKelvie, may then be completed.

Given under our hands and the seal of the Court, at Wanganui, this 8th day of September, 1893.

ROBERT WARD,
Judge.

IENI TAPIHANA,
Assessor.

The Chief Judge, Native Land Court, Wellington.