

1942.

NEW ZEALAND.

THE NATIVE PURPOSES ACT, 1935.

REPORT AND RECOMMENDATION ON PETITION No. 344 OF 1934-35, OF WI HAPETA AND OTHERS
PRAYING FOR A REHEARING OF THE APPLICATION FOR PROBATE OF THE WILL OF
NGAKETE HAPETA, DECEASED.

Presented to Parliament pursuant to the provisions of Section 22 of the Native Purposes Act, 1935.

Native Land Court (Chief Judge's Office),
Wellington C. 1, 23rd July, 1942.

Memorandum for the Hon. the NATIVE MINISTER.

NGAKETE HAPETA, DECEASED.

I TRANSMIT to you the report of the Court, made pursuant to section 22 of the Native Purposes Act, 1935, upon Petition No. 344 of 1934-35, of Wi Hapeta and others, concerning the will of Ngakete Hapeta.

In view of the Court's report, I recommend that legislation be enacted empowering the Native Land Court, on application made to it in that behalf within six months from the passing of the enactment, with the formal consent of the persons presently entitled under any succession order made in pursuance of the wills of Ngakete Hapeta and Ani Karo (that consent being given either in writing or in open Court), to cancel any such succession order, and, in its ordinary jurisdiction, to make all new succession orders which may be necessary to give effect to the terms of any arrangement entered into between the persons presently entitled and any other persons being the next-of-kin of Ngakete Hapeta and Ani Karo and those proving descent from the next-of-kin of Ngakete and Ani.

G. P. SHEPHERD, Chief Judge.

HK 17/110, 128, 193, and 209 ; HK 18/256-274.]

In the Native Land Court of New Zealand, Tokerau District.—In the matter of the Native Purposes Act, 1935 ; and in the matter of Petition No. 344 of 1934-35, of Wi Hapeta and others, praying for a rehearing of the application for probate of the will of Ngakete Hapeta, deceased.

To Chief Judge Shepherd, Native Land Court, Wellington.

WHEREAS pursuant to section 22 of the Native Purposes Act, 1935, the claims and allegations made by the petitioners in the above-mentioned petition were referred to the Native Land Court for inquiry and report : Now, therefore, the Court reports as follows :—

Sittings of the Court were held at Utakura on the 19th and 20th days of February, 1940, and on the 18th and 19th days of March, 1940, before Frank Oswald Victor Acheson, Esquire, Judge.

It was found from evidence that the petition really intended to affect not only the lands of Ngakete Hapeta, deceased, but also the lands of his wife, Ani Karo, deceased, whose interests in land had passed or would pass to Ngakete Hapeta under the will of Ani Karo, deceased.

Ani Karo predeceased the husband, Ngakete Hapeta, and under her will probated at the same time—31st July, 1924—Ngakete Hapeta is the sole devisee. The executors to whom probate was granted *re* Ngakete Hapeta, deceased, were also appointed administrators in letters of administration with will annexed *re* Ani Karo, deceased.

It follows that legally the lands of Ani Karo passed to Ngakete Hapeta and thence to the sole devisee of her issue under the will of Ngakete Hapeta, deceased.

The Court finds from the evidence brought before it that there is insufficient ground to actually invalidate the will of Ngakete Hapeta, deceased. Testamentary capacity was not disproved and undue influence was not proved. There was no new evidence brought forward to justify the actual setting aside of the will.

On the other hand, both Ngakete Hapeta and Ani Karo, being Natives of prominence in their time, became possessed of fairly large shares proportionately in the respective family lands, and it seems inequitable to the Maori mind that the next-of-kin of both Ngakete and Ani should be shut right out

of the valuable interests of both, some of which are even in the blocks occupied by the next-of-kin. This view is apparently shared by the representatives and issue of the devisee under the will of Ngakete Hapeta, and they have offered to return some of the interests to the next-of-kin of both deceased.

The Court agrees that this is fair and wise under all the circumstances. The next-of-kin, on their part, have withdrawn any suggestion of "fraud" in the will and probate of Ngakete Hapeta, deceased, and all parties adhere to the proposed settlement in a spirit of friendship.

Such agreement for a settlement was arrived at after lengthy evidence and conference between representatives of the petitioners and the issue and representatives of the devisee under the will of Ngakete Hapeta, deceased—the present owners by succession.

Finalization of the matter was then of necessity held over to enable a complete search of all the lands of both Ngakete Hapeta and Ani Karo to be made and submitted to the Court and the interested parties.

A further sitting of the Court was held at Whakapara on the 15th July, 1941, and later at Utakura on the 16th and 17th July, 1941, before Maurice Vincent Bell, Esquire, Commissioner, at and by request of the Judge aforementioned.

The proceedings of the former sittings were recapitulated, and the complete search of the landed interests of both Ngakete Hapeta and Ani Karo was before the Court and was exhibited to the parties.

After full consideration by all parties, with the Court presiding, the parties representing the devisee of her issue under the will of Ngakete Hapeta, deceased, agreed to return to the next-of-kin respectively of Ngakete Hapeta and Ani Karo, both deceased, all lands derived by them under the will with the exception of the Rewarewa B 1A Block (Whangarei District) and the Whakanekeneke D 1 and D 2 Blocks (Hokianga District), three blocks of value to them.

The latter blocks are only affected in a small way—i.e., a proposed variation of the succession order in Rewarewa B 1A, while in Whakanekeneke D 1 a marae-site of 6 acres to 7 acres (the old Maraenui Pa) is provided for by the agreement, the marae to be for the whole of the next-of-kin of both Ngakete Hapeta and Ani Karo, both deceased, including the issue of the devisee under the will.

This arrangement in Whakanekeneke D 1 will be carried out on partition, when the marae-site will be defined and vested in trustees, and no alteration need be made to the existing succession orders in the Whakanekeneke D 1 and D 2 Blocks.

The next-of-kin of Ani Karo, deceased, thereupon decided to stand out of Hokianga Blocks in favour of the next-of-kin of Ngakete Hapeta, deceased, as provision had been made for the marae above mentioned, and they were satisfied. The Court also agrees with the wisdom of this action.

By consent and agreement of all parties the following arrangements were agreed to and are approved by the Court (as the next-of-kin affected are so numerous, representative successors have been arranged for many of the interests of small value):—

Rewarewa B 1A (area, 41 a. 2 r. 08 p.; value, £90).

The sole owner was Ngakete Hapeta. The present succession order in favour of the issue of the devisee under the will of Ngakete Hapeta, deceased, to be cancelled and a new succession order made as follows:—

Mere Ihaiia Hita	..	..	..	..	F. a.	As to 1 acre undivided.
and as to the balance, to—						
Komene Kake, <i>alias</i> Te Poro Kake	..	..	..	..	M. a.	} The surviving issue of the devisee under the will of Ngakete Hapeta, deceased. Equally.
Rihi Kake	..	..	..	..	F. a.	
Riria Kake	..	..	..	..	F. a.	
Heperi Kake	..	..	..	..	M. a.	
Karuru Kake	..	..	..	..	F. a.	
Raupia Kake	..	..	..	..	F. 20	
Eru Ngahoari Hetaraka	..	..	..	..	M. 14	
Trustee: Hohepa Heperi.						

Puketotara (7 shares; area, 7 acres (approximately); value, £5 6s. 7d.).

An undivided interest of Ani Kaaro, deceased. Present succession order in favour of issue of devisee under will of Ngakete Hapeta, deceased, to be cancelled and new succession order made in favour of—

Te Hoe Pita Heperi	..	..	..	..	M. a.	} Equally.
Warana Petimana	..	..	..	..	M. a.	

Puketotara (7 shares; area, 7 acres (approximately); value, £5 6s. 7d.).

An undivided interest of Ngakete Hapeta, deceased. Present succession order in favour of issue of devisee under will of Ngakete Hapeta, deceased, to be cancelled and new succession order made in favour of—

Te Hoe Pita Heperi	..	..	..	..	M. a.	Solely.
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Papakauri A 3 (1 share; area, 16 p.; value, 1s. 7d.).

An undivided interest of Ani Ngakete, deceased, not as yet succeeded to. To be vested by succession order in—

Te Hoe Pita Heperi	..	..	..	..	M. a.	Solely.
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Papakauri D 3 (1 share; area, 4 a. 1 r. 12 p.; value, £4 15s. 1d.).

An undivided interest of Ani Ngakete, deceased, not as yet succeeded to. To be vested by succession order in—

Ani Nehua (Mrs. Ani Birch)	..	..	..	..	F. a.	Solely.
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Waihaha 1c (4 shares ; area, 3 r. 21 p. ; value, 10s. 7d.).

An undivided interest of Ani Karo, deceased, not as yet succeeded to. To be vested by succession order in—

Neha Toki, deceased M. Solely.

Wiroa C (12 shares ; area, 12 a. 1 r. 00 p. ; value, £5 10s. 1d.) and *Section 1, Block I, Kawakawa Survey District* (12 shares ; area, 6 a. 2 r. 34 p. ; value, £3 7s. 6d.).

An undivided interest of Ani Kaaro Ngakete, *alias* Ani Kaaro, deceased, not as yet succeeded to. To be vested by succession order in—

Harata Patu Hohaia	..	..	..	F. a.	} Equally.
Te Huranga Tapua	..	..	..	M. a.	
Korowaenga Raunateri	..	..	..	M. a.	
Paikaraihe Raunateri	..	..	..	M. a.	

Okuratope 2 (1 share ; area, 37 p. ; value, 5s. 10d.).

An undivided interest of Ani Kaaro, deceased, not as yet succeeded to. To be vested by succession order in—

Harata Patu Hohaia F. a. Solely.

Utakura 2d 4d (6 shares ; area, 30 a. 3 r. 27 p. ; value, £56 2s. 11d.).

Undivided interests of Ngakete Hapeta, deceased, 2 shares ; and Ani Kaaro Patuone (Ngakete), deceased, 4 shares.

Utakura 2d 12 (30 shares ; area, 152 a. 3 r. 37 p. ; value, £115 11s. 3d.).

Undivided interests of Ngakete Hapeta, deceased, 4 shares ; and Ani Kaaro Patuone (Ngakete), deceased, 26 shares.

Wairere 2d 2B (44 $\frac{3}{4}$ shares ; area, 44 a. 0 r. 33 p. ; value, £151 6s. 1d.).

Undivided interests of Ngakete Hapeta, deceased, 29 $\frac{3}{4}$ shares ; and Ani Karo (Ngakete), deceased, 15 shares. Present succession orders (six) in favour of the issue of the devisee under the will of Ngakete Hapeta, deceased, to be cancelled and new succession orders made in favour of all the next-of-kin of Ngakete Hapeta, deceased. These three blocks are the three interests of major value to be returned, and as all the next-of-kin are already owners therein it will not be confusing to put in all the next-of-kin again, as follows :—

Wi Tawau Hapeta	..	..	..	M. a.	1/6
Peepi Hapeta, deceased	..	..	..	F.	1/6
Tuwhangai Kooti Pomare	..	..	..	F. a.	1/66
Heni Shelford	..	..	..	F. a.	1/66
Witana Shelford	..	..	..	M. a.	1/66
Erana Shelford	..	..	..	F. a.	1/66
Mate Shelford	..	..	..	F. a.	1/66
Mere Shelford	..	..	..	F. a.	1/66
Hami Shelford	..	..	..	M. a.	1/66
Puti Shelford	..	..	..	F. a.	1/66
Hone Shelford	..	..	..	M. a.	1/66
Neri Shelford	..	..	..	M. a.	1/66
Roma Shelford (II)	..	..	..	F. 19.	1/66
Wirihana (or Riapo) Maihi	..	..	..	M. a.	1/12
Kato Hapeta	..	..	..	M. a.	1/12
Pahara Rameka Kere	..	..	..	M. a.	1/24
Rongo Rameka Kere	..	..	..	F. a.	1/24
Rehu te Aparua Rameka	..	..	..	F. a.	1/168
Pii te Aparua Rameka	..	..	..	F. a.	1/168
Rongo te Aparua Rameka	..	..	..	F. a.	1/168
Whakaaria te Aparua Rameka	..	..	..	M. a.	1/168
Ihaka te Aparua Rameka	..	..	..	M. a.	1/168
Huriana te Aparua Rameka	..	..	..	F. a.	1/168
Ngahiki te Aparua Rameka	..	..	..	F. 20	1/168
Hihiria Hori Rameka	..	..	..	F. a.	1/24
Paikaraihe Ihimaera Otene	..	..	..	M. a.	1/48
Nopera Ihimaera Otene	..	..	..	M. a.	1/48
Mahu Ihimaera Otene	..	..	..	M. a.	1/48
Kerei Ihimaera Otene	..	..	..	M. a.	1/48
Kurahoro Ihimaera Otene	..	..	..	F. a.	1/48
Rakeiti Ihimaera Otene	..	..	..	F. a.	1/48
Meri Toko Hona	..	..	..	F. a.	1/384
Eruini Marsh Tamihana	..	..	..	M. a.	1/384
Paretaunu Evelyn Tamihana	..	..	..	F. a.	1/384
Hapeta Harry Tamihana	..	..	..	M. a.	1/384
Jean Sophia Tamihana	..	..	..	F. a.	1/384
Rangi Raymond Tamihana	..	..	..	M. a.	1/384
Nora Elizabeth Tamihana	..	..	..	F. a.	1/384
Maata Rea Tamihana	..	..	..	F. 20	1/384
Te Kiri Tutehe Otene	..	..	..	F. a.	1/96
Hokioramai Tutehe Otene	..	..	..	F. a.	1/96

Wairere 2F 1c 2B (36.4 shares; area, 36 a. 1 r. 33 p.; value, £15 12s. 4d.).

Undivided interests of Ngakete Hapeta, deceased, 24.4 shares; and Ani Karo (Ngakete), deceased, 12 shares.

The present succession orders (two) in favour of the issue of the devisee under the will of Ngakete Hapeta, deceased, to be cancelled and new succession orders made in favour of—

Tuwhangai Kooti Pomare	..	..	..	F. a.	} Equally.
Heni Shelford	..	..	..	F. a.	
Witana Shelford	..	..	..	M. a.	
Erana Shelford	..	..	..	F. a.	
Mate Shelford	..	..	..	F. a.	
Mere Shelford	..	..	..	F. a.	
Hami Shelford	..	..	..	M. a.	
Puti Shelford	..	..	..	F. a.	
Hone Shelford	..	..	..	M. a.	
Neri Shelford	..	..	..	M. a.	
Roma Shelford (II)	..	..	..	F. 19	

Wairere 1c ($\frac{1}{4}$ share; area, 2 r. 34 p.; value, 10s.).

An undivided interest of Ngakete Hapeta, deceased. The present succession order in favour of the issue of the devisee under the will of Ngakete Hapeta, deceased, to be cancelled and a new succession order made in favour of—

Pokaitara Wi Tawau M. a. Solely.

Waihou A 7B (1 share; area, 10 a. 2 r.; value, £21 11s. 8d.).

An undivided interest of Ngakete Hapeta, deceased. The present succession order in favour of the issue of the devisee under the will of Ngakete Hapeta, deceased, to be cancelled and a new succession order made in favour of—

Peepe Hapeta, deceased F. Solely.

Puha B 4 ($\frac{1}{2}$ share; area, 1 a. 0 r. 12 p.; value, £3 15s. 4d.).

An undivided interest of Ngakete Hapeta, deceased. The present succession order in favour of the issue of the devisee under the will of Ngakete Hapeta, deceased, to be cancelled and a new succession order made in favour of—

Wi Tawau Hapeta M. a. Solely.

Whataipu A (3 shares; area, 3 a. (approximately); value, £12 16s.).

An undivided interest of Ngakete Hapeta, deceased. The present succession order in favour of the issue of the devisee under the will of Ngakete Hapeta, deceased, to be cancelled and a new succession order made in favour of—

Mahu Ihimaera Otene M. a. Solely.

As the issue of the devisee have been included in a revesting order made on 30th November, 1926, subsequent to the making of the original succession orders, consequential amendments will require to be made therein.

The Court finds that the arrangements set out above are satisfactory and suited to the position, having in view the locality, value, and occupation of the interests affected, and considers that it would be a fair settlement.

The Court therefore recommends that the above arrangements be given effect to by the making of all necessary cancellations and new succession orders.

The action required or the authority to the Court for carrying it out would be as follows:—

- (1) To cancel the succession orders for the interests of Ngakete Hapeta, deceased, made on the 5th August, 1924, in the following blocks—viz., Puha B 4, Rewarewa B 1A, Utakura 2D 4D, Utakura 2D 12, Waihou A 7B, Wairere 1c, Wairere 2D 2B, Wairere 2F 1c 2B, and Whataipu A Blocks.
- (2) To cancel the succession order for the interest of Ngakete Hapeta, deceased, made on the 17th April, 1925, in the Puketotara Block.
- (3) To cancel the succession orders for the interests of Ani Kaaro, *alias* Ani Kaaro Patuone (Ngakete), *alias* Ani Karo (Ngakete), *alias* Ani Ngakete, deceased, made on the 17th April, 1925, in the following blocks—viz., Puketotara, Utakura 2D 4D, Utakura 2D 12, Wairere 2D 2B, and Wairere 2F 1c 2B Blocks.
- (4) That, notwithstanding the wills duly probated of Ani Kaaro, deceased, and Ngakete Hapeta, deceased, respectively, and notwithstanding the provisions of section 51 of the Native Land Act, 1931, the Court be authorized and empowered to make new succession orders in accordance with the arrangements set out in the report for all the interests set out in paragraphs numbered (1), (2), and (3) above, and in addition to make succession orders, again following the said arrangements, for the interests in the following blocks—viz., Papakauri A 3; Papakauri D 3; Waihaha 1c; Wiroa C; Section 1, Block I, Kawakawa Survey District; and Okuratope 2 (being the interests therein of Ani Karo, *alias* Ani Ngakete, *alias* Ani Kaaro, deceased) and to make consequential amendments (if any) found necessary in other orders of the Court.

As witness the hand of the Judge and the hand of the Commissioner and the seal of the Court.

[L.S.]

F. O. V. ACHESON, Judge.
M. V. BELL, Commissioner.

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