

1944
NEW ZEALAND

THE NATIVE PURPOSES ACT, 1938

REPORT AND RECOMMENDATION ON PETITION No. 14 OF 1937, OF HENARE RAKO AND OTHERS,
PRAYING FOR A REOPENING OF THE TITLE TO HIWARAU BLOCK

Presented to Parliament in pursuance of the provisions of section 23 of the Native Purposes Act, 1938

Native Land Court (Chief Judge's Office),
Wellington C. 1, 23rd November, 1944.

Memorandum for the Hon. the NATIVE MINISTER.

PETITION No. 14/1937 : HIWARAU BLOCK

I TRANSMIT to you the Court's report upon Petition No. 14/1937 concerning the Hiwarau block.
In view of the conclusions reached by the Court—conclusions in which I concur—I recommend
that no further action be taken.

G. P. SHEPHERD, Chief Judge.

In the Native Land Court of New Zealand, Waiariki District.—In the matter of section 23 of the
Native Purposes Act, 1938, and in the matter of Petition No. 14 of 1937, of Henare Rako and
others, praying for a reopening of the title of Hiwarau Block.

At a sitting of the Court held at Opotiki on the 19th July, 1939, before John Harvey, Esquire, Judge.
Upon reference by His Honour the Chief Judge of the said petition for inquiry the following
report is submitted :—

1. This land is part of an area confiscated to the Crown following upon acts of the Maori people
in the Opotiki District which were considered sufficiently grave to warrant this drastic action against
their lands.

2. The following notice, published in the *New Zealand Gazette* of the 14th November, 1874, confirms
the return of part of the confiscated area and evidences the award of the Compensation Court charged
with hearing and determining the claims of Natives to the return of parts of such confiscated area :—

Bay of Plenty District : Schedule No. 14, 1872

Lot to be granted under the Fourth and Sixth Clauses of the Confiscated Lands Act, 1867. The Lot herein specified
is to be inalienably assured by a Grant in Trust to the Members of the Upokorehe Tribe whose Names are included
in the Schedule attached. The right to take lines of road is reserved.

Name of Tribe for certain of whose Members Grant is made.	Names of Trustees.	Sex.	Rank.	Address.	Area.	No. and Description of Lot.	Locality.
Upokorehe ..	Teira Haruru ..	M.	Native Chief	Ohiwa	Acres. 1,073	Hiwarau Block : bounded on the north by high-water mark in Ohiwa Harbour from the mouth of Nukuhou River to Punawai : on the east by a road surveyed from Punawai to the point where it first strikes Nukuhou River : on the south and west by Nukuhou River	Ohiwa.
	Hemi Kakitu ..	M.	..	..			
	Hocroa ..	M.	..	..			
	Hemi Hamu ..	M.	..	..			
	Mita Tahanoke ..	M.	..	..			
	Iraia Kaiponi ..	M.	..	..			
	Hoani Akeake ..	M.	..	..			

N.B.—Lots 1 and 2, Hiwarau Sections, Pitcairn's Survey, 25 acres each, are not included in this block.

NAMES OF MEMBERS OF THE UPOKOREHE HAPU FOR WHOM HIWARAU BLOCK IS GRANTED

Men

1. Teira Haruru.	9. Wahaika.	16. Tamati.
2. Hemi Kakitu.	10. Watene Pureata.	17. Turei.
3. Hemi Kuri.	11. Hoani Akeake.	18. Papu.
4. Taituha Paora.	12. Iraia Kaiponi.	19. Mohi Taikororareka.
5. Horopapera.	13. Mita Tahanoki.	20. Wiremu Hineahua.
6. Hoeroa.	14. Kokere.	21. Hoani Mokomoko.
7. Tiopira.	15. Ani.	22. Warena Mokomoko.
8. Hemi Hamu.		

Women

23. Marara.	31. Maria Mu.	38. Holi.
24. Maria Watene.	32. Mere Ngutuhore.	39. Whakaetena.
25. Mere Katene.	33. Wheato.	40. Animerata.
26. Hiromene Tipa.	34. Ruruhira.	41. Rea Te Mara.
27. Moa.	35. Ripeka.	42. Erana.
28. Rutu.	36. Hiropuku.	43. Hemi Mokai.
29. Hinerau Kopihia.	37. Mahana.	44. Huriara.
30. Ani Peka.		

Children

1. Peta.	5. Timoti.	9. Ngakai.
2. Hemi.	6. Tawhi.	10. Rahi.
3. Waru.	7. Kararaina.	11. Ani.
4. Riripeti.	8. Otutu.	12. Hinehou.

3. On the 17th March, 1898, Judge Johnson gave the following decision upon an application for definition of the relative interests of the fifty-six persons named in the gazetted list—

" In this case, Te Warana Mokomoko and others ask for the definition of relative interests in the Hiwarau Block, and claim that only thirty persons are entitled to full rights as being really members of the Upokorehe Tribe, to whom they state that the grant of land made by the Government was restricted. They also state that the other twenty-six persons in the title are members of N'Karetehe, N'Hunapo, Te Kareke, and other hapus—not Upokorehe—and that therefore they should get merely nominal interests, as having been included in the title without right.

" Mihaere Rehua, on behalf of the persons objected to, set up a case, which was afterwards conducted by Rimaha te Pahau, who claims that most of the twenty-six persons are really Upokorehe, which is a general name given, in connection with the killing of Taikurere, to the people of a number of hapus in the Ohiwa district—the descendants of Raumoa—and objects to several of the thirty persons represented by Te Warana Mokomoko, as being members of another branch of the Upokorehe—N'Raumoa and N'Patu—who have become identified with Whakatohea, and got land at Opape, &c.

" This block—and the island named Hokianga, in its vicinity—formed part of the area confiscated by the Government at the time of the war. It was subsequently awarded by the Compensation Court, in conjunction with Mr. I. A. Wilson, Crown Agent, to fifty-six persons named as being members of the Upokorehe hapu—as stated in notice published in the *N.Z. Gazette* of 14th November, 1874—but the relative interests of those persons were not then defined.

" At the outset of this case the Court explained that, being confiscated land returned by Government to specified individuals, the ancestral title was not involved, but Te Warana Mokomoko was very desirous of bringing out certain matters in support of his claim, and the Court allowed him to proceed.

" A good deal of conflicting evidence has been given, but the Court is of opinion that Tapui te Kaka's evidence is reliable, and that the name Upokorehe was a general name applied to people of various hapus living in the Ohiwa/Waiotaha district.

" Reference has been made to evidence given before Judge Scannell in March, 1895, at the hearing of claim to succeed to the interest of Tawhi, deceased, in this block. Te Warana Mokomoko laid particular stress on the fact that Rawiri Makawe (who was then alive and gave evidence) was well versed in genealogies, &c., but this Court found that the evidence he gave distinctly supported the view now urged by Te Warana's opponents. Hemi Kakitu was also then alive, and gave evidence, being supported on that occasion by Wi te Akeake, who is now—strange to say—on the opposite side!

" This Court is of opinion that, when adopting the name Upokorehe as a collective name for the fifty-six persons in the schedule of owners of this block, the Compensation Court and Crown Agent did so merely to distinguish a certain set of people who had lived in the Ohiwa/Waiotaha district, and for whom land was to be provided for settlement purposes. The award then made was final and conclusive in favour of the individuals named, and it was not then contemplated that there should be a further inquiry with a view to practically the elimination of any who could not claim to be ancestrally connected with the Upokorehe. It appears to be quite true that a few individuals really belonged to outside tribes—such as N'Kahungunu, &c.—but they had become identified with the Ohiwa-Waiotaha people owing to long residence amongst them, and it is to be presumed that in including those persons in the schedule the Compensation Court and Crown Agent were fully aware of their position. So also in respect of persons included in other awards—at Opape, &c.—this Court assumes that the Compensation Court and Crown Agent were fully cognizant of those matters, and had good reasons for the action they took.

" This Court has simply to complete work left unfinished by the Compensation Court—that is, the definition of the relative interests of the owners. If such had been done at the time that the list of owners was settled, this Court feels quite sure that all would have been treated fairly, and that no attempt would then have been made to oust anybody—or to give merely nominal interests—more especially such persons as Hemi Kakitu and Te Teira Haruru, who were undoubtedly leading men, and who were so regarded by the Compensation Court

and Crown Agent. To do what has been asked would be simply going behind the award of the Compensation Court, and would be virtually making a fresh order in favour of a limited number of persons—a position which this Court is not prepared to take up.

“Taking that view, this Court awards three shares to each adult male, two shares to each adult female, and one share to each child—as set out in list published in the *N.Z. Gazette* of 14th November, 1874—making a total of 122 shares. Order accordingly.

“HIWARAU

No.	Owners (Names amplified).	Sex.	Shares.
1	(Te) Ani (Kotu)	M.	3
2	Ani Peka	F.	2
3	Ani Merata	F.	2
4	Ani	F.	1
5	Eraua (Akeake)	F.	2
6	Hemi Kakitu	M.	3
7	Hemi Kuri	M.	3
8	Horopapera (Akeake)	M.	3
9	(Te) Hoeroa (Horokai)	M.	3
10	Hemi Hamu (<i>alias</i> Mu te Hura)	M.	3
11	Hoani Akeake	M.	3
12	Hoani Mokomoko	M.	3
13	Hiromene Tipa (<i>alias</i> Hiro Tipa)	F.	2
14	Hinerua Kopiha	F.	2
15	Hiro Puku	F.	2
16	Hohi (Mokomoko)	F.	2
17	Heni Mokai	F.	2
18	Huriana (Moku)	F.	2
19	Heni (te Whakapae)	F.	1
20	Hinehou (Hinehau Kotu)	F.	1
21	Iraia Kaiponi	M.	3
22	Kokere (te Ani)	M.	3
23	Kararaina (Mu)	F.	1
24	Mita Tahanoki	M.	3
25	Mohi Taikororareka	M.	3
26	Marara	F.	2
27	Maria Watene	F.	2
28	Mere Katene	F.	2
29	Moa (Nui)	F.	2
30	Maria Mu	F.	2
31	Mere Ngutuhore	F.	2
32	Mahana (Mahanga Mokomoko)	F.	2
33	Ngakai (Heperi)	F.	1
34	Otutu	M.	1
35	Papu (Kiripa)	M.	3
36	Peta (Mokai)	M.	1
37	Rutu (Haruru)	F.	2
38	Ruruhira (Wawatai)	F.	2
39	Ripeka (Wahaika)	F.	2
40	Rea te Mara	F.	2
41	Riripeti (Rangihachaewaka)	F.	1
42	Rahi (Erana)	F.	1
43	Teira Haruru	M.	3
44	Taiuha Paora	M.	3
45	Taiopira	M.	3
46	Tamati (Rutangiwhenua)	M.	3
47	Turei (Rutangiwhenua)	M.	3
48	Timoti	M.	1
49	Tachi	M.	1
50	Wahaika	M.	3
51	Watene Pureata	M.	3
52	Wiremu Hine (i) ahua	M.	3
53	Warena Mokomoko	M.	3
54	Wheato	F.	2
55	Whakactena	F.	2
56	Waru	M.	1
	Total	..	122 shares.”

4. According to Mr. Hislop, the conductor for the petitioners before this Court, they claim that only the thirty persons named in list No. 1 before Judge Johnson should be retained in the title and that the twenty-six persons named in List No. 2 should be excluded. These lists were lodged by Te Warana Mokomoko. No. 1 were alleged to be true Upokorehe, and No. 2 wrongly described as Upokorehe.

5. In this regard the Court must agree with previous Courts that the identity of Upokorehe hapu remains a matter of doubt. The origin of the name Upokorehe is also in doubt and the subject of many conflicting stories. There seems to be a consensus of opinion that the Upoko (head) belonged to one Taikurere, but opinion is equally united on the point that others besides the descendants of Taikurere are entitled to be called Upokorehe. Mihirangi Kotu, who was called before this Court to give evidence on behalf of the petition and whose family are included in List No. 1, said, "I cannot trace from Taikurere."

6. On the 22nd March, 1895, Judge Scannell (in the case of succession to one Tawhi Rangi) delivered the following judgment, after hearing in evidence Rimaha te Pahau, Hemi Kakitu, Wi te Akeake, Rawiri Makawa, and Mihaera Rehua—all of them elders whose knowledge of the history of this title must have been as nearly complete as it was possible to bring to bear at that time:—

"In this case the Court finds it impossible to get satisfactory evidence from either side. The land was given to the Upokorehe hapu by the Government, but none of the witnesses can give us any satisfactory explanation as to who the Upokorehe are or from what source the hapu comes. All we have from which the Court can derive any guidance is the fact—admitted by one of the witnesses called to support the counter-claimants' case—that for four generations at least the mother of the deceased and claimant in the case—and her ancestors—have lived with Te Upokorehe and at Hiwarau. Under these circumstances the Court is of opinion that the share ought to go to the mother as the nearest of kin now living, and awards accordingly. The successor therefore will be Merihi Haoriri, f.a., Hiwarau."

7. It appears from the evidence given at the hearing of the application for definition of relative interests that some persons were included in the list who were from outside tribes altogether, but who had long occupation at Hiwarau.

8. This, together with all other material that has been searched, confirms the Court in the opinion that the words "Upokorehe Hapu" and "Upokorehe Tribe" used in the *Gazette* notice of 14th November, 1874, cannot be applied in derogation of the rights of the persons named as grantees from the Crown.

9. It does not appear to the Court that a reopening of this matter is justified, as no evidence can now be adduced that could enable any tribunal to detect and correct mistakes (if any) made in the root of title to Hiwarau Block.

[L.S.]

For the Court,
JNO. HARVEY, Judge.

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