

1946
NEW ZEALAND

**REPORT AND RECOMMENDATION ON PETITION No. 174 OF 1937, OF
TE HEKENUI WHAKARAKE AND OTHERS, CONCERNING THE
NGATIMARU LANDLESS NATIVES' LAND**

*Presented to Parliament in pursuance of the Provisions of Section 23 of the Native Purposes
Act, 1938*

Native Land Court (Chief Judge's Office), P.O. Box 3006, Wellington C. 1,
2nd September, 1946.

Memorandum for the Hon. the NATIVE MINISTER.

NGATIMARU LANDLESS NATIVES' LANDS

PURSUANT to section 23 of the Native Purposes Act, 1938, I transmit to you the report of the Court upon the claims and allegations contained in petition No. 174 of 1937, of Te Hekenui Whakarake and others, concerning the Ngatimaru landless Natives' lands.

These lands were granted by the Crown under the Ngatimaru Landless Natives Act, 1907, to certain Natives whose names were set out in the Schedule to the Act.

The petitioners claim that all members of the Ngatimaru Tribe at that time who were landless should have been included in the grant. They allege that they are members of the tribe who are landless, and claim that they or their elders should have been included; they also allege that some of the persons who were included were not members of the tribe and should not have been included.

The petition prays for an inquiry to ascertain the true membership of the Ngatimaru Tribe so that the strangers wrongly included may be removed from the titles and the rightful persons included.

The Court upon inquiry found that there was no foundation for the claims that all members of the Ngatimaru Tribe who were landless should have been included and that some persons were wrongly included. On the other hand, the Court was satisfied that it was not intended that all members of the Ngatimaru Tribe should be included, and, further, that the persons included were properly included.

I therefore recommend that no further action should be taken on the prayer of this petition.

The Court in its report has recommended that if the allegations made by the petitioners that they are landless are correct, and if there is any vacant Crown land in the vicinity which could be set aside for them, this should be done, and the matter referred to the Court to determine the names of the beneficiaries in pursuance of the power contained in section 527 of the Native Land Act, 1931.

This section provides that where any Crown land has been set aside or reserved for the use or benefit of Natives or where it is proposed to so set aside or reserve any such land, the Court shall have jurisdiction, on the application of the Minister of Lands, to inquire and ascertain what persons shall be included in the certificate of title or other instrument of title of that land, and to determine the relative interests of the persons so ascertained.

Such an award of additional land does not come within the prayer of the petition. If the Government should decide to take this recommendation into consideration, it should be borne in mind that there may be members of the Ngatimaru Tribe, besides the petitioners themselves, who are landless, and therefore, before setting aside any land, it would be advisable for the Court to inquire and ascertain the number of persons who would be concerned.

D. G. B. MORISON, Chief Judge.

REPORT OF COURT

NGATIMARU LANDLESS NATIVES

THIS is a petition, No. 174 of 1937, referred to the Native Land Court for inquiry and report in pursuance of section 23 of the Native Purposes Act, 1938.

The prayer of the petition has reference to the claims of certain members of the Ngatimaru Tribe to be included in lands granted by the Crown to other landless Natives in accordance with the Ngatimaru Landless Natives Act, 1907. Other lands in the vicinity were also granted to other Natives under the Purangi Landless Natives Act, 1907. Both these Acts were repealed by the Schedule to the Native Purposes Act, 1931.

The petitioners were represented at the several hearings by Hekenui Whakarake, who also gave evidence in support of the claims of the petitioners.

The evidence adduced, however, was not of any assistance to the Court, as such a long period of time had elapsed since the passing of the Acts referred to and the reference under the petition to the Court for inquiry. None of the original grantees appeared, nor was any other evidence submitted on their behalf. It is quite probable that the majority of these have passed away.

The Court was able, however, to obtain the old records through the courtesy of the Department of Lands and Survey which revealed the history of the land.

The area in question was Crown land part of the old confiscated lands, and on the departmental Surveyor's going on the land for the purposes of the subdivisional surveys they found certain Natives in occupation. The land is situated in the Upper Waitara and Ngatimaru Survey Districts. It is a well-known fact that Maori refugees fled to these parts during the Maori wars and remained there. They had no claim to the land and were there only on sufferance. The departmental Surveyors recommended that certain areas be set aside for these people, as at that time the Government of the day was providing land for occupation by Natives who had no lands. The names of the Natives were supplied to the departmental officers by one, Tutanuku Tume, the chief and leader of the people, and who was favourably spoken of by Mr. S. Percy Smith, then Commissioner of Crown Lands at New Plymouth.

The outcome of these negotiations was the passing of the Ngatimaru and Purangi Landless Natives Acts in 1907. The area set aside under the Purangi Landless Natives Act was 901 acres 2 roods and 7 perches, being part of Section 5, Block XIV, Upper Waitara Survey District.

The area set aside under the Ngatimaru Landless Natives Act comprised Sections 6 and 7, Block XIV, Upper Waitara Survey District, 1281 acres, and Section 33, Block II, Ngatimaru Survey District, 300 acres—a total of 1,681 acres. The names of the persons entitled to the lands are set out in the Schedule of the Act in each case.

Provision was also made in the Act for the Native Land Court to ascertain the areas to which each Native was entitled. This was duly done by the Native Land Court and the order forwarded to the Governor-General in pursuance of the Act. The subdivisional survey was subsequently made and the titles under the Land Transfer Act were issued in the names of the persons found entitled by the Native Land Court. The names were published in the *Kahiti* of the 4th June, 1909, at page 354, together with the respective areas to which each was entitled.

The Court cannot find that the allegations made in paragraph 5 of the petition have been sustained, as it is of opinion that every care was taken both by the Department of Lands and Survey and the Native Land Court to see that the Natives included in the titles were landless and entitled to the grants.

The Court is also of opinion that the grants of land were not made specifically to the members of the Ngatimaru Tribe, but were made to those Natives, irrespective of their tribes, who were found squatting on the Crown land in that locality when the staff Surveyors commenced the subdivisional surveys.

The Court is further of the opinion that the grants of land made in respect of the Ngatimaru Landless Natives Act, 1907, and of the Purangi Landless Natives Act, 1907, should not be disturbed, but would recommend that if the allegations made by the petitioners that they are landless are correct and that there is any vacant Crown land in the vicinity which could be set aside for them, then this should be done and the matter referred to the Native Land Court to determine the names of the beneficiaries in pursuance of the power contained in section 527 of the Native Land Act, 1931.

[L.S.]

R. P. DYKES, Judge.

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