

1950
NEW ZEALAND

**REPORT AND RECOMMENDATION ON PETITION No. 44 OF 1944,
OF TIKI RIITI AND OTHERS, CONCERNING THE TITLE TO
THE WHANGARA BLOCK**

*Presented to Parliament in Pursuance of the Provisions of Section 13 of the
Maori Purposes Act, 1944*

Maori Land Court (Chief Judge's Office),
P.O. Box 3006, Wellington C. 1, 24th October, 1950.

Memorandum for the Hon. the Minister of Maori Affairs, Wellington.

WHANGARA BLOCK

1. Pursuant to section 13 of the Maori Purposes Act, 1944, I transmit to you the report of the Court on the claims and allegations contained in Petition No. 44 of 1944, of Tiki Riiti and others, concerning the title to this block.

2. In view of the Court's report, I have no recommendation to make.

D. G. B. MORISON, Chief Judge.

In the Maori Land Court of New Zealand, Tairāwhiti District.—In the matter of an inquiry held under the provisions of section 13 of the Maori Purposes Act, 1944, into the claims and allegations made by the petitioners in the petition of Tiki Riiti and others respecting the Whangara Block.

To the Chief Judge of the Maori Land Court.

THIS matter having been referred by you to the Maori Land Court for inquiry and report, the Court reports as follows :—

(1) After due notice an inquiry into the claims and allegations made by the petitioners in the petition was held at Gisborne on the 18th and 19th days of April, 1950.

(2) Clauses 1, 5, 6, and 7 of the petition comprise the allegations which require to be inquired into. By clauses 2, 3, and 4 the petitioners, in effect, specify the nature of the investigations sought by reason of the allegations set out in the other clauses. The Court is therefore called upon first to examine the allegations and then to recommend whether or not the investigations as sought should be made.

(3) The conductor for the petitioners in presenting their case did not traverse the allegations individually, but made submissions generally in support of them to the following effect :—

- (a) That the owners who sold interests in the Whangara Block to one Seymour sold the whole of their respective interests, and had no right to be awarded interests in the balance of the block remaining after the award to Seymour representing, *inter alia*, the interests sold, excepting that these sellers might be given papakainga interests in the area set aside for this purpose :
- (b) That the Validation Court in 1896, upon a succession order in respect of the interest of one Ka te Mihi, wrongfully admitted as owners in the block certain persons who were not entitled as successors, and who were not entitled to be owners in the block :
- (c) That no persons other than the descendant of one Konohi, who in turn was a descendant of Tamahenga, referred to in clause 2 of the petition, were entitled as owners of the block.

(4) The conductor for the petitioners claimed that the sellers to Seymour should be removed from the title as to all interests awarded to them by the Validation Court subject to their being awarded papakainga interests as above mentioned, and also that the persons alleged to have been wrongfully awarded interests under the succession order in respect of Ka te Mihi, deceased, should be removed from the blocks as to these interests.

His claim as to the disposal or re-allocation of these interests was vague. He first claimed that the three petitioners were entitled to have all these interests allotted to them, and then amended this claim to one that the three petitioners should have allotted to them the interests of all those persons other than those who the Court considered should in equity be left in the title. Finally, he claimed these interests for the three petitioners and their families—*i.e.*, their brothers and sisters, and issue of deceased brothers and sisters, and also one Ema Reid (now deceased, having issue), who was a petitioner under an earlier petition.

(5) It is clear that the petitioners are not entitled to any redress unless they can substantiate some or all of the allegations in the petition, and the Court will therefore deal with these allegations. In order to do so it is necessary to traverse the transactions affecting the land from the original investigation.

(6) In 1870 the claimants to the Whangara Block came before the Court upon an application for investigation of title. On this application there was no dispute as to the tribal claim to, or the boundaries of, the block. The claimants at first sought to deal with the block in two parts, but this was later withdrawn. The names of the individual claimants totalling 137 were given by Kuihona Piwaka and Apiata. No objections were made to any of the claimants, and the names of ten persons were given to the Court as the representatives of the claimants to be put in the title. An order was made for a certificate of title to be issued in the names of these ten persons, and the names of the 137 claimants were recorded as the beneficial owners. No dispute arose as to the ancestors for the block. Three were mentioned—namely, Tamahenga, Te Hauiti, and Paika. The relative interests of the beneficial owners were not defined.

(7) In December, 1870, the ten nominal owners granted a lease of the land to Henry Wallis. This lease was assigned to James Seymour, who in 1879 was granted a fresh lease for twenty-one years. James Seymour left New Zealand and appointed Charles Seymour his attorney or agent. In 1882 and 1883 Charles Seymour purchased interests from fifty-eight of the beneficial owners for a total price of £1,381 10s., which was paid to the vendors. Seymour was unable to complete his title under this purchase, and in an endeavour to do so he became involved in protracted litigation with the owners and

with the Chief Judge of the Maori Land Court. Proceedings were also brought by some of the owners against Seymour in respect of the lease. The result of these various proceedings was that the sale was held to be void and Seymour retained the lease.

(8) The sale to Seymour was made the subject of an inquiry by the Commissioners appointed under section 20 of the Maori Land Courts Act Amendment Act, 1889. Following this inquiry an agreement between the Maori owners and Seymour was executed, which purported to settle all the matters in dispute between the parties. Legislation was drafted to give effect to this agreement, but was not passed. The whole matter was later dealt with by the Validation Court in 1894 and 1896. It is principally the decision of this Court which is called in question by the petitioners.

(9) In the proceedings before the Validation Court the Court was asked to give effect to the terms of the agreement between the Maori owners and Seymour above referred to. The first step was to deal with the lease and the sale to Seymour; on the 6th September, 1894, the Court pronounced judgment approving a decree under which Seymour was to be awarded an area of 4,500 acres of freehold which was calculated to represent the value of the interests purchased together with various legal and other costs and expenses and costs of survey which it was agreed should be borne by the Maori owners. Seymour was also awarded a leasehold interest in an area of 3,900 acres.

(10) The Court having pronounced that these decrees would be made the judgment of the Court, then went on to state the further matters which would have to be dealt with, as follows :—

The Natives have, on the other hand, now got a good unencumbered title to the rest of the block equal to 16,950 acres to lease or dispose the unleased portion of it as may be deemed advisable.

But much has yet to be done by the Court before the Native portion can be utilized in the hands of its owners. We have to find out the ownership not only as between the non-sellers in respect of their lands, but also we have to find out the lands to be treated as reserves for all Natives and the shares in these reserves of the Natives who sold to Mr. Seymour, and we have also to ascertain who are the owners of the 3,900 acres of land now leased by this Court's order to Mr. Seymour under the arrangements now made by the Court. This will take probably much time and arrangement between the Native owners and the Court, but meantime the rent of the lease to Mr. Seymour must be paid to somebody as receiver for these as yet unascertained lessors, and the Court must be open for further decrees to be made settling all these necessarily postponed matters and also to sanction the future arrangements as to utilization of the Native portion of the land, whether for leasing selling or as Native reserves.

(11) The matter did not come before the Court again until April, 1896, when proceedings were commenced to dispose of the matters referred to in the judgment just referred to. These proceedings continued with adjournments until August, 1896, when all matters outstanding were finally disposed of.

(12) At the opening of these proceedings on 22nd April, 1896, the following statements were made by the various counsel and conductors :—

Mr. Lysnar : All the Natives are here except one section, and arrangements have been partly completed. Lists have been prepared by the Natives.

Mr. Rees : I have not seen these lists, and I cannot allow my clients to be bound by anything until I have considered it.

Mr. E. F. Harris : The Natives have divided the block into eight portions, and have settled the ancestors for each portion, but from what he had seen some of the ancestors are spurious and some have been awarded large shares who are not entitled to large shares. I think the Natives should make another attempt to settle the question more satisfactorily. It was good that the Natives had made a start, but the result of their labours so far was not good.

Rawiri Karaha : Seven subdivisions have been arranged, but the shares in the eighth have not been settled. It will take two or three weeks to settle the matter.

Hapi Hinaki : Stated that the arrangements as to the seven subdivisions had been made by the Committee of Whangara, with the knowledge and consent of the owners. There were no objectors. As to the eighth subdivision, it was a subject of conflict and would have to be settled by the Court. He asked that names and shares of the seven subdivisions might be settled now.

The lists for Subdivisions 1-3 and 5-8 were then read out and objectors called for in each case. Various objections were made, including those by Pene Makomako and Rutene Arahi in respect of lists for Nos. 1 and 2 upon the ground that the shares were formerly equal, but in these lists they were unequal. No list was submitted for No. 4 as the Maoris had not yet agreed amongst themselves. The Court then adjourned the matter with the following minute :—

I will adjourn this case until the Natives have come to a more satisfactory arrangement outside—that is, except No. 4, which it appears will have to be settled by the Court.

(13) The proceedings were resumed on 29th April, when the lists for Subdivisions 1, 2, 3, 5, 6, 7, and 8 were read and objections called for. No objections were made on this occasion upon the ground that the shares were unequal. The following lists were passed after individual objections had been dealt with: Nos. 2, 5, 6, 7, and 8. The list for No. 1 was passed subject to the disposal of a minor claim. The list for No. 3 was held over to be dealt with together with No. 4.

(14) On 30th April the Court proceeded to deal with the dispute as to ancestors, affecting Nos. 3 and 4. The ancestors set up were Tamahenga, Konohi, and Te Whatu. After hearing evidence the Court decided that Te Whatu was not entitled to be enrolled as an ancestor in either of these two subdivisions. Various claims in respect of Nos. 3 and 4 were then dealt with, and the lists for both subdivisions were passed on 27th May. On the final reading of the list for No. 4 Mere Kingi objected upon the ground that some of those who had sold to Seymour were included, but she subsequently withdrew the objection.

(15) Mr. Harris, one of the conductors, then brought up the matter of including additional persons in certain of the subdivisions, such persons to be included as successors to two deceased but not to take any portion of the deceased person's shares. It appears that these were persons who had not been included as beneficial owners in 1870, and it is the inclusion of these persons that is objected to by clause 6 of the petition. The minutes covering this matter are as follows :—

Mr. Harris : There are certain names to be included in No. 3. They will be included as successors to two deceased persons, but will not take any portion of the deceased person's shares.

List read—no objectors. List approved.

Mr. Harris : There are other names to be included in the same way in No. 4.

List read—objectors challenged.

Himiona te Kani : I ask to be included.

The Judge : I will not include any names except on the general request of the tribe.

Ani Mekenā who received $5\frac{1}{2}$ shares as one of five successors to Hana Puihi, agreed to give 1 share back to Ateroa Mokai and Hori Mokai.

Agreed to by the Court.

Heni Korukoru objected, but subsequently withdrew objection.

No other objectors. List passed.

Subdivision No. 5

Mr. Harris : I will read out names to be included in the same way in No. 5.

Objectors challenged.

Karaitiana Amaru : I object.

Matter arranged by Hera Muka giving up three shares to Rutene Kubukuhu and 2 others.

No other objectors. List passed.

Subdivision No. 6

List of additional names read—No objectors. List passed.

Subdivision No. 7

List of additional names read out—No objectors. List passed.

Subdivision No. 8

List of additional names read out—No objections. List passed.

Rawiri Karaha : I apply for appointment of successors to Ka te Mili in No. 5, for 20 shares for her proper successors and 18½ shares for those subsequently included—

In No. 2—20 shares for her children.

In No. 8—15 shares for her children and 15 for additional names.

In No. 3—93 shares for additional names.

In No. 4—73 shares for additional names.

In No. 6—24 shares for additional names.

In No. 7—40 shares for additional names.

Rawiri Karaha (sworn) evidence signed.

Swearing, 2s. paid.

Order made accordingly.

(16) On 30th May and 3rd June the Court dealt with questions raised as between the sellers and the non-sellers, and after hearing submissions of counsel and conductors the Court declared as follows :—

The Judge : I am of opinion that the sellers have not parted with the whole of their interests. As to the division of the balance remaining over, I do not consider those who have small shares should be wiped out. As to the survey lien the non-sellers are equally liable with the sellers. The same with the costs on appeal, £530. The costs of £1,000 cannot be placed entirely on the sellers. I think that the sellers should get whatever balance they may be entitled to in the 13,000 acres, and not in the 3,900 leasehold. It is now a matter of arrangement. The liability as between the sellers and non-sellers can be ascertained in the £1,500 survey lien, £530 costs on appeal, and £1,000 Natives' costs. It can then be settled what area of the non-sellers to meet this liability shall be transferred to the sellers. The non-sellers up to the present have contributed nothing towards these liabilities, which have been borne entirely by the sellers.

Rawiri Karaha : I do not agree that I should not come into the 3,900 acres.

The Judge : I will not make it a hard-and-fast rule that the sellers shall all be outside the 3,900 A. leasehold.

(17) On the 29th and 30th June the Maoris came before the Court with their final lists of owners for the various subdivisions and the relative shares, the subdivision finally decided upon being now described by letters instead of numbers. These subdivisions included an area to be cut off and sold to defray various costs and expenses. The minutes of the opening of these proceedings are as follows :—

Mr. Harris : The Natives have completed the whole of the subdivision. Mr. Jackson has tabulated the results, which will be handed in to the Court. The piece cut off for sale contains 3,475 acres, to commence at Pouawa Stream at the point where the western boundary of the block leaves the said stream, and thence by a straight line northwards to Tauihu Peg on the surveyed line shown on plan No. 310 : thence west by the said surveyed line a distance of 30 chains : thence northeast to the main road : thence north by road 20 chains, and thence west by a swinging line to such a point on the western boundary of the block as shall include about 3,475 acres—exact area to be computed and checked from list.

Objectors challenged—No objections.

The Judge : Order will be made for above piece in the name of Henry Cheetham Jackson as trustee, for purposes of sale to clear off debts on the land, piece to be called Whangara C Block.

Mr. Harris : Other subdivisions have been agreed to, and we wish the arrangements come to put on record in the Court. The leasehold has been cut into two portions, one of 1,440 acres and one of 2,433 acres, and we ask that those two pieces be inalienable, but, of course, subject to existing lease to Seymour. We have agreed to the names to be put in these pieces and their relative shares.

The Judge : I will require these names and shares to be settled before we go further.

Mr. Harris : I have the names and shares in the tabulated list, but, of course, they are mixed up with the other questions.

The Judge : I must have separate lists for each subdivision.

Mr. Harris : We will supply lists either this afternoon or to-morrow.

The Judge : Very well, I will adjourn this case till to-morrow.

Mr. Harris submitted the final lists for all subdivisions other than the freehold awarded to Seymour, together with their boundaries and areas : objections were called for and dealt with, and orders were then made.

On 27th July Messrs. Jackson and Harris drew the attention of the Court to several errors in the draft decrees, and the Court made the necessary alterations to correct these.

The terms of the decree were settled and approved by the Court on 19th August. On 25th August the Court decided to make a provision in the decree leaving it open as far as possible to make application to the Chief Judge in respect of succession orders made by the Maori Land Court in respect of two deceased owners.

The foregoing history of the various proceedings traverses all the matters necessary to come to conclusions upon the various allegations contained in the petition.

(18) Clause 1 alleges that a proper investigation of the Whangara Block has never been held. The Court considers that this allegation is unfounded. In the original investigation of 1870 there was no contesting inter-tribal claims, nor was there any dispute as to boundaries or block ancestors. The names of all the individual claimants to ownership were put before the Court by representatives of the tribe and were accepted by the people without objection. The relative interests were settled before the Validation Court by the people themselves. All necessary opportunities were given for objections, various objections were made and disposed of by the Court before the relative shares were determined. We consider that there has been a full and proper investigation.

(19) Clauses 2, 3, and 4, as mentioned above, do not contain allegations.

(20) Clause 5 alleges that the Validation Court sitting in 1894 did not take into consideration the interests of the petitioners as would be indicated by Native custom. It was not until the Court sat in 1896 that it had to deal with the interests of individual owners, and the conductor for the petitioner directed his attention to this sitting. No submissions that he put forward went to show that the relative shares received by the petitioners were not in accordance with the shares to which they were properly entitled. The relative shares and the allocation of the owners to the various subdivisions were settled by the people themselves, and all objections were dealt with by the Court. The only objection made before the Court by the petitioners or their parents was one by Heni Korukoru, the mother of the first-named petitioner, which, however, was withdrawn by her. This objection did not relate to her relative interests or her location in the block, but related to the inclusion of additional owners under succession orders to deceased persons which will be referred to below.

In allocating the owners to the various subdivisions the Maoris in making the allocations, and the Court in putting them into effect, were unable to adhere strictly to the occupatory rights of the owners on account of the fact that before such allocation three separate areas were cut out of the block—namely, the areas awarded to Seymour in freehold and in leasehold, and the area cut out for sale to defray certain expenses. The residue of the interests of all the owners had to be fitted in to the remainder of the block, but that does not justify the owners whose occupatory rights were strictly situated in this remainder in claiming that their customary rights had not been taken into consideration by the Court. This Court is therefore of the opinion that allegations in clause 5 are unfounded.

(21) The allegations in clause 6 are that persons without valid claims became owners in various degrees, and persons in one block became owners in several.

The first part of this clause refers to the addition of persons included as owners under the succession order in respect of Ka te Mihi, deceased. Under this order the three children of the deceased, together with forty-three other persons, who were not ordinarily entitled to succeed, were appointed successors. The minutes show that this succession order was used to admit into the title persons who were not included as beneficial owners under the order of 1870 and that these persons received interests in addition to the interests to which Ka te Mihi was properly entitled. The minutes show, however, that this was done only upon the general request of the tribe (see Minute Book No. 5, Folio 94). Heni Korukoru, the mother of the first petitioner, at first objected to this course in respect of Subdivision No. 4, but then withdrew her objection. No

objection was made in respect of the inclusion of additional persons in the same way in other subdivisions. It is evident that the owners generally considered that these additional persons were entitled to interests in the block, although they had not been included upon the investigation in 1870.

Had there been any substantial objection to the inclusion of these persons it may be that the Court would have found itself unable to admit them in this manner. There was a right of appeal to the Supreme Court from the decision of the Validation Court in any matter of law. We consider that the question of the power of the Validation Court to admit these persons on the succession order would be a question of law upon which there would have been a right of appeal. No appeal was made. Furthermore, no question appears to have ever been raised as to the jurisdiction of the Validation Court to determine the relative shares and to make the orders which it did.

In view of the fact that the additional persons were included in the title with the general consent of the tribe and that the mother of the first-named petitioner withdrew the objection made by her, and the long lapse of time since the decision of the Court complained of, this Court can find no justification for a reopening of the title on this ground. It must be recognized that, in view of the lapse of time and the death of those who had a knowledge of the rights of the various owners, at the time when the investigation was made there is very much less likelihood of the Court being in a position to make a fair and just determination as to the rights of the owners than there was in 1896.

(22) As to the allegation that persons in one block became owners in several, the history of the proceedings outlined above shows that there was good reason for this, and therefore this allegation does not disclose any injustice. Clause 7 alleges that non-sellers were penalized to the advantage of sellers. In this connection the Court refers to the pronouncement of the Court as to the interests of the sellers set out in paragraph 16 of this report. The petitioners have not produced any material to show that this finding by the Court and the subsequent allocation of interests to the sellers resulted in any injustice to the non-sellers.

(23) As to the claim put forward by the conductor for the petitioners that no persons other than the descendants of Konohi were entitled as owners of the block, there is no allegation in the petition to support this claim, and therefore the Court refused to entertain it.

(25) In conclusion the Court is of the opinion that, as the allegations in the petition either are not proved or do not disclose any injustice, there is no justification for the investigation sought by clauses 2, 3, and 4 of the petition.

Dated the 7th day of August, 1950.

For the Court,

D. G. B. MORISON, Chief Judge.

JNO. HARVEY, Judge.

[L.S.]

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