

daughters were present at Ngatiki as stated by Marokopa, and that Patohe had urged them to give Mangamingi back to their "papas," was not Patohe attempting to influence them to do that which, but for such consent, could not have been accomplished? He seems to have exercised great influence over his relatives, and the mantle of his dead brother would appear to have descended to him, for he appears to have been using the mana of his brother to obtain some advantage for himself and those who upheld his authority. Else why try to get into Puke-ngahu? Did he not succeed in getting into Ngatitanewai instead of his brother, contrary to the agreement alleged to have been made between them? We have it on the authority of Tutange Waionui that, in spite of Hone Pihama's injunction to him to look after his "tuawhines," he allowed Patohe to dictate to him as to what lands he should look after for the benefit of the daughters, and that they were to be Oeo and Waokena. Although this witness's evidence is viewed by the Court with the gravest suspicion, it must be remembered that he was speaking on behalf of the respondents.

The respondents were put into the order of 1890 on the ground that they were the nearest of kin to Tama Ohungia, Kaiti, and Kao. It was said that Patohe did this in order to rectify the wrong committed in 1880. The Court minutes are silent as to why the order was made in favour of the respondents and not of the daughters, and the reason for the exclusion of the latter seems inexplicable when it is recollected that the claim was sandwiched between the Oeo and Waokena cases, in which orders were made in favour of the daughters and their mother. Some further explanations are required in the following instances. Tama Ohungia was one of the original three men for whom the land was claimed. How came it, then, that his son was included on an equal footing with him in the order? Again, how did Tito Hanataua come to be included in the order, as he appears to be the same Tito Hanataua who conducted the case in 1880, and whose name is among the list of owners in No. 2? In proof of this, see Te Hikaka's *whakapapa*, which agrees with that given by Tito Hanataua in 1880. It is true that Te Hikaka was not a very satisfactory witness. He gave his statements hesitatingly, and it was at times difficult to get anything out of him, but no attempt was made by the respondents to discredit the *whakapapa* supplied by him.

Rangitupoki is another witness who claims to have been present at Taiporohenui, although his name is not mentioned by Ratoia. He confirms the latter's statement that the 100 acres was meant for Tama Ohungia and the others, but he goes a step farther and says that the suggestion emanated from Tito Hanataua and Hone Pihama. In light of Rangitupoki's subsequent conduct with reference to his application for the partition order, already mentioned, I am not prepared to accept this statement.

Mr. Marshall made a strong point on the claim for land set up on behalf of Tama Ohungia and others. He wanted to know whether the Court was to believe that these men desired to have $33\frac{1}{3}$ shares each in preference to 400 each. Mr. O'Dea replied that the claim was entitled to receive as much credence as that of Hone Pihama's 100 acres instead of 400 acres. Mr. Marshall's explanation was that, as Hone Pihama owned thousands of acres and had been liberally treated by the Government, he wished to let his poorer relatives share in the larger block, whilst he retained only a small area for himself. Such an action would certainly be consistent with Maori custom, and has often been done by chiefs of high rank.

The respondents have not shown that they made any use of the land, nor do they appear to have ever exercised any proprietary rights over the same; and, although they have accused the petitioner of *laches* in allowing so long a time to elapse before taking steps to ascertain the position of the title, still, I think the petitioner has given a reasonable explanation for the cause of the delay. In any case I see nothing in this argument, because *a fortiori* the respondents are themselves to blame for neglecting to protect their own title by having the same registered.

Counsel for the respondents laid great stress on the case of *Kereihi v. Duff* (4 G.L.R. 496 (C.A.)), contending that as his clients had held the title to the land for a period of over twenty years, the presumption that all conditions precedent to the validity of the order were duly performed could only be rebutted by the petitioner bringing evidence of such an overwhelming nature as to make it absolutely certain that her contentions were correct. There appears to me to be sufficient rebutting evidence to prove the petitioner's case. No satisfactory evidence has been produced to show that the order made in favour of Hone Pihama was wrongly granted, and to do otherwise it would be necessary for me to read into the minutes taken in 1880, and again in 1890, facts which are absent therefrom, and which are now heard for the first time after a lapse of thirty years, and long after the parties who were chiefly interested therein have departed this life.

After reviewing the whole of the matters carefully, I have come to the conclusion that the equities of the case will be well served by the cancellation of the order now in the names of the respondents, and by making a fresh order in favour of Te Onetu Pihama, Rangitaniwha Pihama, and Tekenui Pihama.

I have, &c.,

T. HENRY WILSON, Judge.

The Deputy Chief Judge, Native Land Court, Wellington.

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