

perhaps twelve months, then went away gum-digging. Came back; can't say when. Stayed with his sister a good while. His children were born there. Between the time of the Waikato War and the investigation of Kaipihā he lived at Kaipihā, but not all the time.

To myself, witness said he did not know when the war was nor when the investigation took place. Here Mokena and his children lived only with Ripeka, not anywhere else on Kaipihā. But Here was away a good deal with Tawhiao; he never had a home of his own. Did not see him at Kaipihā on any of my visits after my marriage. He was not at Kaipihā when the investigation took place. He had gone gum-digging.

On cross-examination witness stated: Kaipihā was Ripeka's home. There were two [*sic*] houses. One was Hone Tana's. One was Hare Tana's, and a kitchen. The big house belonged to the original Turner. Here Mokena lived at Tupekerua, Whangape, before the war. He had four children. I don't know where they were born (yet he had previously declared they were born at Kaipihā). Here Mokena came with other followers of Tawhiao during the war to Kotai. They started a settlement there, a number of them. Kotai was one of the chief kaingas of Ngatipou in this district. Here started that kainga for himself and those who followed him. He went to Kaipihā only on visits to his sister. He lived at Otorohanga for a time.

And on re-examination witness said: Ripeka never lived at Kotai. Both she and Here had interests at Whangape. I don't know of Ripeka going there. She went to Kaipihā before I was born.

Hera Tana, a daughter of Ripeka Tangi, who said she was born in 1841, was also called for the petitioner. She said all her brothers and sisters and herself were born on the block, but her half-sister, Mihi Pepene, was not: "She followed later."

I do not know why this witness was called. Her evidence does not help the petitioner in any way.

She said: I can't say if Here Mokena lived on Kaipihā before Waikato War. I do not know of any home of Here Mokena on this block. He was *noho noa iho* (the expression being used apparently as meaning a bird of passage). He moved from kainga to kainga. I visited Here Mokena's place at Whangape for a time. So far as I know, all his children were born there. His visits to Kaipihā were only casual visits. He lived with Ripeka. He lived with my husband and myself at Otorohanga during the war. He never returned to Kaipihā.

Possibly too much importance should not be attached to this witness's evidence, owing to her age. She was clear enough at first, but soon tired and was inclined to answer at random. But, for what it is worth, it accords with that of previous witnesses.

There were three other witnesses called for petitioner—the petitioner herself, her son, and a Ngati-Rora woman, Te Ata Hoani, of Te Kuiti.

I do not propose to traverse their evidence at any length. The petitioner's evidence, to my mind, was distinctly "coloured." One or two statements are in direct conflict with the evidence of other witnesses, and the records on investigation—*e.g.*, that Here Mokena was born on Kaipihā, and that it was his *kainga tuturu*, and that Here Mokena was asked by Tana and Kamupene for leave to run cattle on the block.

Petitioner's son, Hone te Whao, was also called. I do not know why. His principal answer was, "I don't know." But he declared that he knew Kotai and had heard it was his grandfather's kainga. At my suggestion he was not cross-examined.

Te Ata Hoani's evidence was that as a child of five or six years old she spent two years on Kaipihā with her aunt Atiria, who was married to Timi Tana. Had not been there since. The kainga where she stayed was called Konokono, and Here Mokena and family were there as well as Timi Tana and his wife. On the strength of her childish memories the witness was bold enough to declare that the house was Here Mokena's. Apart from the fact that her evidence is directly opposed to that of witnesses in a much better position to know, she broke down badly on cross-examination, and I consider her evidence worthless.

The case set up on investigation of title in 1886 on behalf of Mihi Pepene and her half-brothers and sisters, the Turner family, was a gift to their elders. Had the claim as made succeeded, Here Mokena would clearly have been entitled to inclusion. Even if that were so, however, the petitioner's case is that he would not claim because of his adherence to Tawhiao, and in such a position it would seem more than doubtful whether people who have been in possession for such a length of time and have greatly improved the block should be disturbed in their possession. Clearly, no Court would do it. But the question does not arise in this case.

The claim by ancestry and gift was found against by the Court—in my opinion, quite rightly. The evidence of gift was so vague and uncertain that no Court could find it established. The award of the Court was explicitly based on the fact that Ripeka Tangi was formerly placed at Kaipihā (together with her husband, Turner).

The record of this placing of Ripeka and Tana at Kaipihā is in the Court's judgment in Otorohanga Minute-book 2, page 64, and the award is on pages 67 and 69 of the same minute-book.

Under this judgment, therefore, the *take* is in Ripeka Tangi herself, and none of her collateral relations, however close, are entitled to come in under it.

The petitioner and her advisers have, in my opinion, entirely misconceived the position, and advanced their claim on the basis of an ancestral right which does not exist.