

1937.
NEW ZEALAND.

THE NATIVE PURPOSES ACT, 1936.

REPORT AND RECOMMENDATION ON PETITION No. 224 OF 1936, OF TUPITO MARUERA AND OTHERS, RELATIVE TO A CERTAIN DEVISE UNDER THE WILL OF WAEWAE TUTANGE, DECEASED.

Presented to Parliament in pursuance of the Provisions of Section 13 of the Native Purposes Act, 1936.

Native Land Court (Chief Judge's Office),
Wellington, C. 1, 9th July, 1937.

The Right Hon. NATIVE MINISTER, Wellington.

PETITION No. 224 OF 1936.—WILL OF WAEWAE TUTANGE (DECEASED).

PURSUANT to section 13 of the Native Purposes Act, 1936, I transmit to you herewith the report of the Court upon this petition.

The land referred to was, by the Pariroa Native Reserve Act, 1901 (still unrepealed), vested in the Public Trustee upon trust for the exclusive use and occupation of members of the Ngatitupito and Ngatiringi Tribes. It is questionable whether the beneficiaries under that trust had such an interest as could be willed. The report shows that a stranger in blood to the tribes for whom the land was reserved has been admitted to ownership by virtue of a will, and it is of this that the petitioners complain. It is suggested that certain Orders of the Court have transmuted the title of use and occupation into one of freehold tenure in the Native beneficiaries. This raises the very important legal question: Is the Act of 1901 still in force or has it been repealed by implication?

I recommend that legislation be enacted authorizing the Chief Judge to state a case for the opinion of the Supreme Court as to whether the Native Land Court had jurisdiction to make certain partition orders dated the 16th August, 1918, and as to whether the interests of the beneficiaries under the said Act are devisable by will, with power to the Chief Judge to take the necessary steps to conform with the decision of the Supreme Court.

R. N. JONES, Chief Judge.

Office of the Native Land Court,
Wanganui, 29th March, 1937.

The CHIEF JUDGE, Native Land Court, Wellington.

PETITION No. 224 OF 1936.—WILL OF WAEWAE TUTANGE.

I HAVE the honour to inform you that the Court, sitting at Patea on the 18th February last, held the inquiry directed by you into Petition No. 224 of 1936, of Tupito Maruera and others, relative to a certain devise under the will of Waewae Tutange, deceased, and I beg to report as follows:—

The petition refers particularly to certain interests in the subdivisions of the Pariroa Native Reserve. This reserve was, under the Pariroa Native Reserves Act, 1901, originally vested in the Public Trustee in trust for members of the N'ringi and N'Tupito hapus and was, by section 2 of the Act, declared to be absolutely inalienable. In 1918 application was made to the Court by the Public Trustee under section 15 of the West Coast Settlement Reserves Amendment Act, 1913, to partition the land amongst the beneficial owners. The Court sat on the 16th August, 1918, and made a number of partition orders. In accordance with the provisions of the section these partitions are free from restrictions against alienation of any kind.

Waewae Tutange, whose will is objected to, acquired interests in the reserve as successor to various members of her family. She was legally married to a man belonging to one of the hapus—the marriage having been arranged by her relatives. She left this man, no doubt for good reason, and went to live with another man called Jim Tonganui, who had been her deceased sister's husband.

Waewae died leaving a will by which she devised all her devisable property both real and personal to him. When probate of the will was applied for, Tupito objected, but his objection was dismissed and probate granted to the beneficiary, Jim Tonganui, as the executor named in the will.

The beneficiary is a stranger in blood to these hapus to whom the Pariroa Reserve was awarded. Tupito's grievance is that it was never intended, when the reserve was made, that strangers in blood should at any time be admitted into the title. The Court explained to Tupito that if the original title had been allowed to remain as it was the land would have been inalienable by will, but the partition under section 15 had the effect of removing the restrictions and making the land alienable. He himself took a leading part before the Court in the proceedings on the partition, probably not realizing what the result would be.

The Court cannot help thinking, however, that his grievance is somewhat personal in that he was not allowed by Waewae and her sister to manage and arrange their matrimonial adventures and that he does not approve of Jim Tonganui, who, so far as the Court can learn, is a decent hardworking man and a skilled butter-factory hand.

JAS. W. BROWNE, Judge.

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