

**IN THE MĀORI LAND COURT OF NEW ZEALAND
TAITOKERAU DISTRICT**

A20120015718

UNDER Section 18(1)(a), Te Ture Whenua Māori Act
1993

IN THE MATTER OF Pataua 4B - Determination of the ownership of a
house and garage

BETWEEN KENNETH CONNOR
Applicant

Hearing: 18 February 2016
12 May 2016
(Heard at Whangarei)

Appearances: Kenneth Connor, Ratahi Mahanga, Maxine Klink, Samantha
Mehana, Jane Mehana

Judgment: 12 May 2016

ORAL JUDGMENT OF JUDGE M J DOOGAN

Introduction

[1] Because this is an oral judgment, I reserve the right to amend the transcript as to references or grammatical errors, but the substance will not change.

[2] This is an application by Kenneth Aubrey Connor for an order under section 18(1)(a) of Te Ture Whenua Māori Act 1993 (“the Act”) to determine ownership of two buildings on Pataua 4B.

[3] The first building is described as a bach and measures approximately 14 metres by 6 metres. The second building is a working shed or garage of approximately 5.6 metres by 6 metres.

[4] The issue is whether Mr Connor is entitled to an order under section 18(1)(a).

[5] Section 18(1)(a) provides the Court with jurisdiction to hear and determine any claim at law or in equity to the ownership or possession of Māori freehold land or to any right, title, estate or interest in Māori freehold land or in the proceeds of the alienation of any such right, title, estate or interest.

Background

[6] The application arises in the context of earlier proceedings that came before Judges Ambler and Spencer. Applications were previously made by Mr Connor and a number of his siblings for occupation orders. Those applications were withdrawn by consent.

[7] In this present application, Mr Connor states that his bach has been on whenua belonging to his tupuna on the Pataua 4B block for approximately 27 years. He therefore makes the application to secure his dwellings and he says he wishes to dwell in peace on the land.

[8] In reasonably close proximity to Mr Connor’s buildings, there are a number of other buildings that have been erected by a number of his siblings.

[9] Mr Connor has told me that one of the prompts for this application was a suggestion by Judge Ambler that he may wish to consider such an application in light of the fact that in the absence of any governance structure over Pataua 4B, dwellings on that land would be in the common ownership of all owners of Pataua 4B.

[10] The Pataua 4B block consists of 50.2138 hectares. There are 189 owners.

[11] Mr Connor holds an interest in the block as a beneficiary and also an administrator of the Huia Faith Taha Moana Whānau Trust. That trust holds a total of 11.916 shares (of a total shareholding in the block of 2064 shares).

[12] In the earlier proceedings, Judges Ambler and Spencer had noted the need for a governance structure over Pataua 4B and encouraged the owners to take steps to establish an ahu whenua trust. It appears that the attempts to establish an ahu whenua trust have failed due to lack of sufficient support amongst the owners.

[13] Mr Connor has provided several photographs with his application which show the two dwellings from various angles.

[14] The main building which is described as the bach is fixed to the land by wooden piles and Mr Connor informs me that the shed or garage is similarly placed on the land.

[15] Both buildings were purchased by Mr Connor from another site and then brought onto the land by trailer and then erected onto the present location. Mr Connor informed me that he could remove them in the same way.

[16] The matter was first called on 18 February. At that time, Mr Connor was unable to attend Court due to the illness of his mother. Mr Barry Gough appeared that day as did Maxine Klink and Pearl Going. I heard evidence from Mr Gough and Ms Klink and directed that the minutes be sent to Mr Connor.

[17] I then convened to hear the application today. Mr Connor spoke to the application and I also heard in support Mr Harry Mahanga. Ms Maxine Klink also appeared today to register a concern as to the location of Mr Connor's buildings. That concern echoed concerns that she had raised in the February hearing and were similar to concerns raised by

Mr Barry Gough. In brief those issues relate to a difference of view between Mr Connor and Mr Gough and Ms Klink as to respective areas for whānau occupation on Pataua 4B.

[18] Also filed with the Court was a letter from Star Kathleen Peek dated 4 May 2016, raising an objection to Mr Connor's application which was mistakenly understood to be an application for an occupation order. Ms Peek raises objection on the basis that the requirements for an occupation order are not made out. The application is in fact to determine ownership of a dwelling under section 18(1)(a).

[19] The Court has also received an email dated 5th of May from June Ford, also objecting to what she understood to be Mr Connor's occupation order application. That objection has also evidently misunderstood the nature of the application.

[20] I drew those objections to Mr Connor's attention. That correspondence, and the matters raised by Mr Gough and Ms Klink, touch upon a range of wider matters that were the subject of the proceedings before Judges Ambler and Spencer. I am of the view that I can resolve this application without having to make any finding or determination in relation to those issues.

[21] I note in passing that Ms Klink said that her mother, who I understand to be approximately 92 years of age, had indicated to Ms Klink that the Connor, or the Mei Connor whānau, should stay where they are. I took that to mean an indication from Ms Klink's mother that she at least was not raising an issue as to the location of the structures that Mr Connor and his siblings had placed on Pataua 4B.

[22] I understand from Mr Connor that the structures placed on the land by his siblings are all in relatively close proximity to his buildings. He described them as being within a stone's throw and occupying in total approximately 2 acres.

[23] The section 18(1)(a) jurisdiction entitles the Court to determine ownership or possession of Māori freehold land or any right, title, estate or interest in any such land. The immediate issue that arises in relation to the structures that Mr Connor has erected is whether or not they constitute fixtures, the ownership of which at law runs with the land.

[24] The legal test is known as the degree of annexation and it is helpfully set out in the reserved judgment of Judge Ambler in the *Stock v Morris*¹ case. The test is summarised in the following way.

“A house which is constructed in such a way so as to be removable whether a unit or in sections may well remain a chattel even though it is connected temporarily to main services such as water and electricity, but a house which is constructed in such a way that it cannot be removed at all saved by destruction cannot have been intended to remain as a chattel must have been intended to form part of the realty.”

[25] That is from the English case of *Elitestone Limited v Morris*.²

[26] On the facts as I understand them, the two structures that Mr Connor has placed on the land could be removed without destruction. They had in fact been relocated onto the land from another site. In my view, they are therefore chattels. No issue as to ownership arises. I understand Mr Connor’s concern given the location of these buildings on multiply-owned Māori land.

Decision

[27] I make a finding that the buildings described as the bach and the associated garage are chattels placed upon the land by Mr Connor and are owned by Mr Connor. As they are not fixtures on the land, no issue arises as to a possible claim by other owners of Pataua 4B to an interest in those buildings.

[28] As I have found that they are chattels on the land owned by Mr Connor, the jurisdiction the Court has under section 18(1)(a) is not triggered. Only if the buildings could be properly described as fixtures on the land would the section 18(1)(a) jurisdiction arise.

[29] As I have made a finding of fact that the buildings are chattels owned by Mr Connor, I don’t have jurisdiction to make a section 18(1)(a) order. Nonetheless, I trust that the findings of fact that I have made in this judgment will clarify for Mr Connor, and for his whānau, ownership of those structures.

¹ *Stock v Morris* (2012) 41 Taitokerau MB 121 (41 TTK 121).

² *Elitestone Limited v Morris* [1997] 1 WLR 687.

[30] Based on that finding the appropriate course is to dismiss the application.

Pronounced at Whangarei at 12:06 pm this 12th day of May 2016.

M J Doogan
JUDGE