

**IN THE MAORI LAND COURT OF NEW ZEALAND
AOTEA DISTRICT**

A20110011066

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

IN THE MATTER OF Manukōrihi 1B Section 2

BETWEEN TAIMUTU TE ARIKI O KAHUKURA
Applicant

AND ANDREA MOORE
Respondent

Hearing: 288 Aotea MB 157, dated 10 August 2012
286 Aotea MB 29, dated 22 June 2012
280 Aotea MB 42, dated 24 February 2012
(Heard at New Plymouth)

Judgment: 22 March 2013

INTERIM RESERVED DECISION OF JUDGE L R HARVEY

Introduction

[1] On 1 November 2011 Taimutu Te Ariki o Kahukura filed an application per s 18(1)(a) of Te Ture Whenua Māori Act 1993 (“the Act”) to determine the ownership of the Ngaia Homestead situated on the Māori freehold land block known as Manukōrihi 1B section 2. The applicant seeks an order determining that the homestead be vested in all the shareholders of the block.

[2] At subsequent hearings and hui several proposals emerged as to the future use and control of the house and the land. It was contended that an ahu whenua trust be established and trustees be appointed from the owners to administer the land.

[3] Andrea Moore, a sibling of the applicant, opposed the orders being made. Ms Moore contended that an uncle for whom she is primary caregiver, Ian Ngaia, be provided with a life interest regardless of whether or not any trust is established.

[4] The two principal issues for determination are firstly, whether or not the tests for the creation of an ahu whenua trust have been met; and secondly, whether or not Ian Ngaia should be permitted to reside in the dwelling for his lifetime.

Background

[5] Manukōrihi 1B section 2 was created by partition order on 21 July 1949.¹ At the time it was vested in Mina Retimana solely.² The block is Māori freehold land and is 0.1065 (ha) in size. There are currently 44 beneficial owners who hold a total of 1 share.

[6] The interests of Mina Retimana were subsequently subject to succession orders in favour of Ira Retimana who then transferred her interest to Taimutu Ariki Ngaia.³ Taimutu Ariki Ngaia was succeeded to by his wife Miriama Ngaia for a life interest and their 12 children were named as the remainder persons.

[7] Ian Ngaia is one of the 12 children of Miriama and Taimutu Ngaia. Mr Ngaia currently resides in the homestead situated on the block. Andrea Moore has been his caregiver and resides in the homestead as well.

Procedural history

[8] The application was first heard before Judge Reeves on 24 February 2012.⁴ The applicant requested an adjournment to seek legal advice and to make sure that all the beneficiaries were informed. The respondent spoke in opposition to the application. Judge Reeves raised the possibility of establishing an ahu whenua trust over the block with the applicant. The application was adjourned in order for a meeting of owners to take place.

[9] The matter was then set down to be heard on 22 June 2012 me.⁵ A further adjournment was sought as the meeting of owners had not yet been held.

[10] On 10 August 2012 the matter came before the Court for hearing again. The case manager requested the application be dismissed as several hui had been held however the whānau were unable to reach an agreeable solution as to the management of the block. The

¹ 57 Taranaki MB 109 (57 TAR 109)

² Also known as Ngahuaia Retimana

³ 59 Taranaki MB 190 (59 TAR 190)

⁴ 280 Aotea MB (280 AOT 42)

⁵ 286 Aotea MB 29 (286 AOT 29)

applicant appeared and requested the matter continue to be heard so that it could be finally resolved. Following further oral submissions from the parties the matter was then adjourned to chambers for a decision.

Hui of owners

[11] A number of hui were held to discuss the options of establishing an ahu whenua trust for the block.⁶ The evidence confirms that none of the meetings have produced an amicable outcome. The applicant sent forms to the owners for signing setting out four resolutions as follows:

- (a) that an ahu whenua trust be set up to manage and administer the property
- (b) that the responsible trustees be selected from each Ngaia family who whakapapa to their tupuna Taimutu Ariki Ngaia and who are named in the current list of owners
- (c) that a chair, secretary and treasurer are decided amongst the trustees at a later date;
- (d) a special resolution that Ian Ngaia remain in the house for his lifetime and shall have a life interest in the home.

[12] A meeting was held on 24 June 2012 to discuss the resolutions. The whānau present discussed the issue of notice of the meeting and whether all owners had received the resolutions. The independent facilitator for the meeting did not put the resolutions to the meeting however the outcome of the meeting noted 75% agreement of those owners in attendance to resolutions 1, 2 and 3 and 100% agreement for resolution 4.

[13] The results of the resolutions are unclear as there was an issue of who was entitled to take part in the vote and who in fact took part in the vote.

Submissions for the Applicant

[14] The determination of the ownership of the homestead is sought on the grounds that there is no deed of title to the house, that the block is still in the name of the original owners and that there is a need for a more open and transparent management system for the property.

⁶ November 2011, 9 June 2012 and 24 June 2012

[15] The applicant has been actively pursuing the support of the whānau to establish an ahu whenua trust in order that the property can be managed more efficiently.

Submissions for the Respondent

[16] Ms Moore gave evidence that she had been looking after Mr Ngaia for ten years and that in the past she has made attempts to resolve the issue of the homestead as it was in a state of disrepair. She also gave an account of korero that had taken place amongst the children of Taimutu Ngaia regarding ownership of the homestead being put into the name of Mr Ngaia. Ms Moore opposed to the establishment of an ahu whenua trust however it is evident that there does appear to be general support for granting Mr Ngaia a life interest in the homestead.

Law

[17] Section 18(1)(a) of the Act provides:

18 General jurisdiction of Court

(1) In addition to any jurisdiction specifically conferred on the Court otherwise than by this section, the Court shall have the following jurisdiction:

(a) To hear and determine any claim, whether at law or in equity, to the ownership or possession of Maori freehold land, or to any right, title, estate, or interest in any such land or in the proceeds of the alienation of any such right, title, estate, or interest:

[18] The Court's jurisdiction is declaratory in nature – the Court may declare existing ownership rights at law or in equity but cannot create new ownership rights.⁷ In the case *Tohu – Te Horo 2B2B2B* the Māori Appellate Court stated:⁸

[15] Both parties claim ownership of the house as the result of an application under section 18(1)(a)/93. That section provides jurisdiction for the Court:

“To hear and determine any claim, whether at law or in equity, to the ownership or possession of Māori freehold land, or to any right, title, estate, or interest any such land or in the proceeds of the alienation of any such right, title, estate or interest.”

⁷ *Nga Uri a Maata Ngapo Charitable Trust v McLeod* (2012) 49 WMN 223

⁸ (2007) 7 Whangarei Appellate Court MB 34 (7 APWH 34)

[16] Where an owner of multiply owned land, as is Te Horo 2B2B2B, builds a house on the land, the house if affixed to the land, forms part of the title to the land and belongs to all the owners of the land according to their respective shares. That is the legal position. However the Court has, in many such cases, using its equitable jurisdiction under the above provision or similar preceding legislation, awarded the property in the house in an owner who has erected the building, thus giving him or her rights to the house.

[17] Generally such orders are based on informal arrangements or understandings as to rights of user or occupation of areas of land by various families. These arrangements are now less common because of the far greater numbers of owners of land as opposed to 50 years or more ago. The advent of occupation orders under the 1993 Act has provided an alternative means of setting aside house sites.

[18] An order under section 18(1)(a)/93 appears to separate the house from the title to land and treat it as a chattel. There is no ability to succeed to any such order, it not being an interest in land and the order is treated as being personal to the holder and lapsing on death. Anyone who wishes to sustain a further claim for the house needs to apply for another order.

Discussion

[19] The Registrar confirms that Manukōrihi 1B Section 2 is registered with Land Information New Zealand. Computer Freehold Register TN208/94 and lists the owners of the block as noted in the Court's Māori Land Information System or MLIS. The title is therefore not in the name of the original owner as contended by the applicant.

[20] In this case the applicant argues that the homestead should be put under the management of an ahu whenua trust. The respondent objects to that on the basis that there was it is said a previous agreement amongst the children of Taimutu Ngaia that Mr Ngaia be declared the owner of the homestead. The concerns over administering the property seem to have arisen because of an attempt by the respondent to manage the property more effectively when she suggested that the owners could relinquish their shares in the block in order that a mortgage could be obtained over the homestead and repairs undertaken.

[21] In any event I note that correspondence on the Court file suggests that this is essentially a sibling dispute which has divided the whānau. Moreover there does not appear to be unanimous support but rather majority agreement to establishing a trust over the land. And then there is the issue of who voted and who was in fact entitled to vote? In any case it may be that a whānau trust rather than an ahu whenua trust along with an occupation order may be more suitable for present circumstances.

