

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

**A20140002110**

UNDER Section 135, Te Ture Whenua Māori Act 1993

IN THE MATTER OF TAHORAKURI A NO 1 SEC 8B AND LOT 1  
DEPOSITED PLAN SOUTH AUCKLAND  
63822

JOSEPH EDWARD SKUDDER  
Applicant

Hearing: 5 August 2014, 102 Waiariki MB 45-48

Judgment: 5 December 2014

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**RESERVED JUDGMENT OF JUDGE L R HARVEY**

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**Introduction**

[1] Joseph Skudder seeks an order changing the status of Tahorakuri A No 1 Sec 8B and Lot 1 Deposited Plan South Auckland 6388 (formerly Part Tahorakuri A1 Section 18A1) to General land. He says that due to illness and his inability to work he needs to sell this land. The applicant is concerned that mortgage payments on his home in Opotiki will not be met due to him being unable to work full time meaning that his house is at risk of mortgagee sale. The applicant therefore wishes to sell the blocks in order to pay off his mortgage and provide a secure future for his family.

[2] Mr Skudder has advertised the sale of the land in a local newspaper and maintains that the application is unopposed. No objections have been received by the Registrar.

[3] A hearing was held on 5 August 2014 where I raised with the applicant the idea of obtaining a report from an independent farming consultant as to the viability of the land for leasing or cropping. At the conclusion of the hearing I adjourned the application to Chambers to await the outcome of that report upon receipt of which I indicated that I would issue a decision.

[4] The issue for determination is whether or not the tests for a change of status have been made out so that Mr Skudder can sell his Māori freehold land in Reporoa to pay off his mortgage over his General land home in Opotiki.

## Background

[5] Tahorakuri A No 1 Sec 8B was created by partition order on 1 August 1990.<sup>1</sup> It is 25.5404 hectares in size and is vested in the applicant solely.

[6] Lot 1 Deposited Plan South Auckland 63822 was formerly known as Part Tahorakuri A1 Section 18A1. Tahorakuri A1 Section 18A1 was created by partition order on 1 November 1961 and vested in Te Oiwhare Whata for a life interest with remainder to Te Taawhi Mita.<sup>2</sup> On 30 April 1996 the block was subdivided into Lot 1 and Lot 2 DPSA 63822. The applicant became the owner of Lot 1 by way of exchange order dated 7 March 1997.<sup>3</sup> Lot 1 Deposited Plan South Auckland 63822 is 35.6770 hectares.

## The Law

[7] Section 135 of the Act provides that the Court may make an order changing the status of Māori freehold land to General land. Section 136 sets out the criteria for making a status order per s 135 as follows:

### **136 Power to change status of Maori land owned by not more than 10 persons**

The Maori Land Court may make a status order under section 135 where it is satisfied that—

- (a) the land is beneficially owned by not more than 10 persons as tenants in common; and
- (b) neither the land nor any interest is subject to any trust (other than a trust imposed by section 250(4)); and
- (c) the title to the land is registered under the Land Transfer Act 1952 or is capable of being so registered; and
- (d) the land can be managed or utilised more effectively as General land; and
- (e) the owners have had adequate opportunity to consider the proposed change of status and a sufficient proportion of the owners agree to it.

[8] The principles that apply to applications to change the status of Māori freehold land are summarised in *Manunui v Church – Lot 37 -49 DP 34051*.<sup>4</sup> I adopt the reasoning set out in that decision.

## Discussion

[9] The applicant meets the pre conditions set out in s 136 (a) – (c) and (e) of the Act. The remaining condition is whether the land can be utilised more effectively as General land.

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<sup>1</sup> 227 Rotorua MB 115 (227 ROT 115)

<sup>2</sup> 36 Taupō MB 293 (36 TPO 293)

<sup>3</sup> 68 Taupō MB 157 (68 TPO 157)

<sup>4</sup> (2013) 55 Taitokerau MB 28 (55 TTK 28)

[10] The Court has previously determined that a change of status order requires cogent evidence of specific plans to justify a change of status. In *Thornton – Opanake 2K2K* Judge Ambler declined to change the status of the block where the applicant was seeking to change the status in order to be able to sell the block.<sup>5</sup> The applicant was elderly and in poor health she also lacked the ability to continue to run the property. Judge Ambler declined to change the status on the basis that there were no specific plans for the land, the sale of the land remained a mere possibility and the applicant had not presented any evidence that the status of the land is a hindrance to its sale.

[11] Similarly in *Taura – Ngapakihī 2D3A1A* I declined to change the status of the block.<sup>6</sup> I was not persuaded in that case that the circumstances of the applicant were sufficient to warrant a change of status. The only grounds made out were that the applicants were elderly and wished to sell the land in order to finance the building of another home on another property and that none of their family wanted to reside on the block. There was little evidence that the land could be managed or used more effectively as General land.

[12] In this case, Mr Skudder proposes to sell the block as General land in order to have funds available to repay the mortgage on his Opotiki home. The applicant submits that he has no life insurance and is very sick he says that the ability to pay off his mortgage sooner will be impeded by leasing the land as opposed to selling the land. The applicant's priority is to pay the mortgage off on his home so that he can provide security for his family in the future.

[13] Mr Skudder has advertised the sale of the land in a local newspaper. He received one expression of interest. However he says that the farmer who responded said that he would only be interested in purchasing the land if it was in General title. As Judge Ambler noted in *Thornton – Opanake 2K2K*:

...the authorities make it clear that an application to change the status of the land because of a wish to sell the land can only succeed where the owner has taken steps to sell the land and has been unsuccessful or where there is a sale and purchase agreement on the table.

[14] The applicant has not provided any further evidence to demonstrate that there have been any steps taken to purchase the block. All that has been provided is an expression of interest. To an extent this is understandable since he would no doubt not want to go to the expense and trouble of securing a conditional sale and purchase agreement signed if there was uncertainty over whether or not the condition would be fulfilled.

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<sup>5</sup> (2013) 55 Taitokerau MB 28 (55 TTK 28)

<sup>6</sup> (2012) 294 Aotea MB 106 (294 AOT 106)

[15] I further note that the report commissioned by the Court from Perrin Ag Consultants Ltd says that despite the blocks being in a rundown condition there remains the option of leasing. Perrin Ag considers that the ideal land use option would be if a neighbouring dairy farmer incorporated the blocks into their dairy platform. However with a high capital cost required and the falling pay out this rental type is considered unlikely. A more viable option would be to lease the block as a dairy support unit.

[16] There is also the possibility of renting out the house located on the block. The Report puts the likely income range for the blocks in their current state to be at a low market value from \$400-\$800/ha.

[17] The applicant maintains that even at a low market rental it would still take 10-15 years to pay off the mortgage on his Opotiki home which he says given his illness is too long and is not a viable option for him. He also submitted that the extra requirements around tax and accounting would put a lot of stress on both his wife and himself.

### **Decision**

[18] The applicant has not demonstrated that the land can be utilised more effectively as General land. It remains open to the applicant to lease the land and for such proceeds to be applied to the mortgage payments on his home in Opotiki.

[19] In the absence of a sale and purchase agreement or more substantial evidence as to the status of the land being an impediment to sale I decline to make the orders sought.

[20] The application is dismissed.

Pronounced in open Court at 11.55 am in Hastings on the 5th day of December 2014

L R Harvey  
**JUDGE**