

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

A20150006353

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UNDER Sections 18(1)(a) and 135 of Te Ture Whenua
Māori Act 1993

IN THE MATTER OF Horowhenua 9A6B1

CAROLINE CROSS
Applicant

Hearings: 347 Aotea MB 256-260 dated 18 January 2016

Appearances: S Hepburn for the applicant

Judgment: 29 February 2016

INTERIM DECISION OF JUDGE L R HARVEY

Introduction

[1] Caroline Cross seeks orders concerning the ownership and status of the Horowhenua 9A6B1 block. The Court's records confirm that Martin and Victoria Hartley are joint administrators of the land. However, a number of transfers have taken place through Land Information New Zealand with the result that Caroline Cross is now the registered proprietor as evidenced by Computer Freehold Register WN26D/26.

[2] Ms Cross submits that prior to the Court order made on 21 February 2014 declaring Horowhenua 9A6B1 to be Māori freehold land there was no status order registered against the CFR.¹ Ms Cross says she purchased the block in the belief that it was General land. She now seeks clarification as to the status of the land and if necessary a change of the status of from Māori freehold land to General land.

[3] At the hearing held on 18 January 2016 I questioned whether the provisions of the Māori Affairs Amendment Act 1967 had the effect of automatically changing the status of Horowhenua 9A6B1 to General land. I adjourned the proceedings pending the completion of a report on the status of the land following which, I would issue further directions.

[4] The report was completed on 19 February 2016 and concluded that the status is Māori freehold land.

Issue

[5] The preliminary issue for determination is whether the provisions of the Māori Affairs Amendment Act 1967 had the effect of changing the status of Horowhenua 9A6B1 to General land.

[6] I note that issues were also raised during the hearing concerning the application of the Property Relationships Act 1976 to Māori freehold land and the application of the principle of indefeasibility which I address briefly below.

¹ 347 Aotea MB 248 (347 AOT 248)

Background

[7] Horowhenua 9A6B1 was created by partition order on 4 November 1982.² The block was vested in Mirimiri Hartley solely. Following registration of the partition order with Land Information New Zealand, on 19 November 1984, CFR WN26D/26 issued in the name of Mirimiri Hartley solely.

Discussion

Did the status of Horowhenua 9A6B1 automatically change under the Māori Affairs Amendment Act 1967?

[8] Horowhenua 9A6B1 was created by partition order in 1982 and vested in one owner. At that time the Māori Affairs Amendment Act 1967 provided as follows:

3. Application of this Part

- (1) This Part of this Act applies to Maori freehold land beneficially owned by not more than four persons for a legal and beneficial estate in fee simple.
- (2) For the purposes of this section, land shall be deemed to be owned in the manner specified in subsection (1) of this section if, but only if,-
 - (a) The records of the Court in respect of the land disclose that it is vested in not more than four persons for an estate in fee simple and that no person other than those persons is entitled to be registered as a proprietor thereof; and
 - (b) None of the persons entitled to be registered as a proprietor is shown in the records of the Court as holding his interest subject to any trust whatsoever; and
 - (c) None of the persons entitled to be registered as aforesaid is disclosed by the records of the Court relating to the land to be a person under disability in terms of Part X of the principal Act, or is a person in respect of whose property the Maori Trustee, by virtue of section 92 of the principal Act, has the powers of a trustee under that Part.

4. Inquiries by Registrar-

- (1) As soon as conveniently may be after the commencement of this Act, and from time to time thereafter, the Registrar shall ascertain the blocks of land to which this Part of this Act applies and shall, in respect of each such block, make inquiry...

...

6. Registrar may issue declaration of change of status

Where, upon inquiry made under section 4 of this Act, in respect of any block, the Registrar is satisfied-

- (a) That the block comprises land to which this Part applies; and

² 84 Otaki MB 53 (84 OTI 53)

- (b) That there is no reason to believe that any of the owners, as disclosed by the records of the Court, is deceased; and
- (c) That the land is suitable for effective use and occupation; and
- (d) That a plan of the land sufficient for the purposes of registration of the order constituting the title to the land has been prepared or that a description and diagram thereof has been prepared and duly certified by the Chief Surveyor under subsection (3) of section 5 of this Act,-

the Registrar shall issue in respect of the block a declaration that the status of the land to which the declaration relates shall cease to be that of Maori land.

7. Effect of declaration upon registration

- (2) Upon the registration of a status declaration, the land to which it relates shall cease to be Maori land, but shall be subject to the provisions of section 10 of this Act.

[9] The provisions in Part 1 of the Māori Affairs Amendment Act 1967 require the Registrar to undertake an inquiry prior to issuing a status declaration that the land is General land. Per s 7 the status of the block only took effect upon registration. This was confirmed in *Māori Trustee v Takiari – Awarua A2C* where the Court determined that the status declaration made by the Court had no force or effect until it was registered in the Land Transfer Office.³

[10] In light of those findings I determine that the status of Horowhenua 9A6B1 did not change to General land by virtue of the Māori Affairs Amendment Act 1967.

If the status did not change under the Māori Affairs Amendment Act 1967 what was the status of the block prior to Te Ture Whenua Māori Act 1993?

[11] Pursuant to s 2(2)(e) of the Māori Affairs Act 1953:

- [(e) Maori freehold land which has been vested in any person by an order of the Court [or of a Registrar] for a beneficial freehold interest shall, except where it appears on the face of the order that the land has become [General Land], be deemed to remain Maori freehold land until either—
 - (i) An order is made by the Court under paragraph (i) of subsection (1) of section 30 of this Act determining that the land is [General Land]; or
 - (ii) Any other order is made by the Court as a consequence of which the land becomes or is deemed to have become [General Land]:]]

[12] Horowhenua 9A6B1 was vested in Mirimiri Hartley by order of the Court upon partition in 1982. There is nothing on the face of that order to indicate that the land has become General land. There is no record of the Court making an order per s 30 of the Māori

³ *Māori Trustee v Takiari – Awarua A2C* (1982) Chief Judges MB 63 (1982 CJ 63)

Affairs Act 1953 Act declaring the land General land or any other order which could have deemed the land General land.

[13] On that basis I determine that the status of Horowhenua 9A6B1 prior to Te Ture Whenua Māori Act 1993 was Māori freehold land.

What is the current status of the land?

[14] Sections 129(3) and 130 of Te Ture Whenua Māori Act 1993 make it clear that the status of land prior to the commencement of that Act remained unchanged upon the introduction of that Act:

129 All land to have particular status for purposes of Act

(3) Notwithstanding anything in subsection (2) of this section, where any land had, immediately before the commencement of this Act, any particular status (being a status referred to in subsection (1) of this section) by virtue of any provision of any enactment or of any order made or anything done in accordance with any such provision, that land shall continue to have that particular status unless and until it is changed in accordance with this Act.

130 Certain status not to change except in limited circumstances

No land shall acquire or lose the status of Maori customary land or of Maori freehold land otherwise than in accordance with this Act, or as expressly provided in any other Act. 5

[15] In *Gilbert Family Trust – Marokopa 3 Block* Judge Milroy considered the status of a block where a number of transfers took place after the introduction of Te Ture Whenua Māori Act 1993.⁴ Judge Milroy held that, given the transfers occurred after Te Ture Whenua Māori Act 1993 was introduced, s 2(2)(f) of the Māori Affairs Act 1953 did not apply to change the status. Pursuant to s 130 the status of the land could only be changed by order of the Court. Judge Milroy considered that in that case the applicants correctly made an application under s 135 for a change of status, rather than under s 131 for a determination of status.

[16] Again, I am satisfied that the current status of Horowhenua 9A6B1 is Māori freehold land and has remained so in the absence of a change of status order.

Does the Property Relationship Act 1976 apply to Māori freehold land?

[17] Section 6 of the Property Relationships Act 1976 provides that:

⁴ *Gilbert Family Trust – Marokopa 3 Block* (2015) 97 Waikato Maniapoto MB 68 (97 WMN 68)

6 Maori land not affected

Nothing in this Act shall apply in respect of any Maori land within the meaning of [Te Ture Whenua Maori Act 1993].

[18] In *Brokenshaw – Te Kaha B6X2* Deputy Chief Judge Fox dealt with an application to determine ownership of dwellings on Māori freehold land.⁵ In that case she determined that Mr Ottoway had made significant contributions during his marriage to the property and to the welfare of his late wife. Judge Fox noted that if their marriage had broken down before their deaths Mr Ottoway could have claimed compensations for his contributions. In line with the Property Relationships Act 1976 only monetary compensation could be claimed as the land is Māori land. Judge Fox went on to point out the possibility of a constructive trust claim arising in such circumstances.

[19] My conclusion is that Horowhenua 9A6B1 is not subject to the Property Relationships Act 1976.

Does the principle of indefeasibility apply to mean the status of Horowhenua 9A6B1 is General land?

[20] Pursuant to s 130 transfers occurring after the introduction of Te Ture Whenua Māori Act 1993 do not change the status of the land. As mentioned various transfers have occurred via Land Information New Zealand without confirmation by the Court per Part 8 of Te Ture Whenua Māori Act 1993. It is accepted that Ms Cross is a bona fide purchaser of the block and as such the principle of indefeasibility will arise to preserve her right to ownership of the block.

[21] However we are not, in this instance, concerned with ownership, rather, we are concerned with the status of the block. A similar situation arose in *Jensen v Registrar General of the Land* where the plaintiffs purchased a block of land after Te Ture Whenua Māori Act 1993 had come into force.⁶ That Act did not contain a provision equivalent to s 2(2)(f) of the Māori Affairs Act 1953 and the plaintiffs were unaware that the block was Māori freehold land. It was argued, in that case, that the plaintiffs had indefeasible title to General land.

[22] Brown J found that the status of land does not constitute an estate or interest in land:

⁵ *Brokenshaw – Te Kaha B6X2* (2003) 81 Opotiki MB 18 (81 OPO 18)

⁶ *Jensen v Registrar General of Land* [2013] NZHC 3525

(d) In the face of ss 129(3) and 130 of the TTWMA nothing in the [Land Transfer Act] can be invoked to advance the proposition that, because there was no notation on the certificate of title to the effect that the land was Maori freehold land, the act of the registration of the transfer of title of the land to the plaintiffs caused the status of the land to change from Maori freehold land to General land.

(e) The absence of a notation on the certificate of title recording the fact that the status of the land was Maori freehold land could not be viewed as an omission or failure to register an “interest” in the land such that such “interest” was defeated by the application of s 62 upon transfer of the title to the plaintiffs.

[23] I adopt the findings of Brown J. The registration of the transfer to Ms Cross did not cause the status of the land to change from Māori freehold land to General land. Accordingly, the principle of indefeasibility does not affect the status of the land.

Decision

[24] I am satisfied that Horowhenua 9A6B1 is Māori freehold land.

[25] Ms Cross is directed to take further advice on the matter and if necessary file further submissions concerning the s 135 application. Following the receipt of those submissions I will issue a final decision.

[26] Ms Cross may wish to seek advice as to a change of status application.

Pronounced at 2.15 pm in Rotorua on Monday this 29th day of February 2016

L R Harvey
JUDGE