

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

A20190005474

UNDER Section 151, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Allotment 246D1 Waimana Parish

BETWEEN KAREN POCOCK
Applicant

Hearing: 12 August 2019, 219 Waiariki 13-18
(Heard at Whakatāne)

Judgment: 5 December 2019

JUDGMENT OF JUDGE C T COXHEAD

He hōnore, he kororia ki te Atua, he maungārongo ki te whenua, he whakaaro pai ki ngā tāngata katoa tētahi ki tētahi

E tangi tikapa ana te kanohi ora mō rātou kua hoki ki te marinotanga, ki te urunga tē taka, tāoki mai rā koutou. Heoi, me pēnei noa te whakatau, ko rātou ngā mate ki a rātou, ko tātou te kanohi ora ki a tātou.

Hei timatanga korero – Introduction

[1] This is an application by Karen Winirangi Pocock for confirmation of alienation. Karen, as the only owner in the Māori freehold land allotment 246D1 Waimana Parish block, has entered into an agreement for sale and purchase. In support of the application Karen has stated that she purchased the block from her mother Janet Alice Thatcher. Her mother continued to live on the land and is still there with Karen's brother.

[2] The main reasons for selling this block are:

- (a) Karen's mother cannot manage such a big place and is looking for something smaller and more easily maintained. She is in her 80s and does not keep good health.
- (b) Karen is not able to manage the mortgage owing on the land particularly when there is no income coming from the property from either land use or house rental.
- (c) Karen's children do not intend to live there or desire to purchase the land.
- (d) As Karen is now in her 60s she finds the future requirements of the land a big responsibility both manual work-wise, as well as economically.

[3] I heard this matter on 2 December and indicated that I would complete a reserved decision by Friday 6 December.

Ngā rārangi 151 me 152 – Sections 151 and 152

[4] This is an application for confirmation of alienation by way of sale. The relevant sections of Te Ture Whenua Māori Act 1993 are 151 and 152 which state:

151 Application for confirmation

- (1) An application to the court for confirmation of an alienation of any interest in Maori freehold land may be made,—
 - (a) in the case of an instrument of alienation, by or on behalf of any party to the instrument; or
 - (b) in the case of a resolution of assembled owners, by or on behalf of any person interested or by the Recording Officer.
- (2) The court may decline to consider an application for confirmation if it is made,—
 - (a) in the case of an instrument of alienation, later than 3 months after the date on which the instrument was executed by the alienor or, where the land is situated in the Chatham Islands, later than 4 months after that date; or
 - (b) in the case of a resolution of assembled owners, earlier than 14 days or later than 12 months after the date on which the resolution was passed.
- (3) Notwithstanding subsection (2)(a), where an instrument of alienation is executed at different times by different parties alienating, successive applications for confirmation may be made in respect of the successive executions of the instrument, and the alienation may be confirmed from time to time accordingly.

152 Court to grant confirmation if satisfied of certain matters

- (1) The court must grant confirmation of an alienation of Maori freehold land if it is satisfied—
 - (a) that,—
 - (i) in the case of an instrument of alienation, the instrument has been executed and attested in the manner required by the rules of court; or
 - (ii) in the case of a resolution of assembled owners, the resolution was passed in accordance with this Act or regulations made under this Act; and
 - (b) that the alienation is not in breach of any trust to which the land is subject; and

- (c) that the value of all buildings, all fixtures attached to the land, all things growing on the land, all minerals in the land, and all other assets or funds relating to the land, has been properly taken into account in assessing the consideration payable; and
 - (d) that, having regard to the relationship (if any) of the parties and to any other special circumstances of the case, the consideration (if any) is adequate; and
 - (e) that the purchase money (if any) has been paid to, or secured to the satisfaction of, the Māori Trustee or court appointed agent or trustees in accordance with section 159; and
 - (f) that, if section 147A applies to the alienation, the alienating owners have discharged the obligation in that section.
- (2) Before granting confirmation, the court may, with the consent of the parties, vary the terms of the instrument of alienation or resolution.
 - (3) The Maori Land Court may confirm an alienation to a person of any Maori freehold land that is, or is part of, an overseas investment in sensitive land within the meaning of the Overseas Investment Act 2005 only if consent to that investment has been obtained, or an exemption from consent applies, under that Act.

[5] The application to the Court for confirmation of an alienation of an interest in Māori freehold land is made on behalf of the owner, Ms Pocock, noted in the sale and purchase agreement.

[6] The agreement for sale and purchase was originally signed on 21 January 2019. It has been properly executed by the vendor and purchaser. This contract had no end date as per the conditions of the contract outlined in cl 19-22. The real estate agent, Phillip Berry, has confirmed for the Court that the current agreement for sale and purchase is fully active and remains so until either terms of the agreement are satisfied in which case the agreement becomes unconditional or the agreement is cancelled. I requested an updated agreement that was not less than three months old. However, that would require the current active agreement be cancelled. The latest extension of agency was signed and dated on 31 October and takes the agency through to 31 January 2020. Essentially, that means that every three months the vendor confirms her intention to sell the property. Taking all these matters into consideration and the clear intention of the applicant to execute a sale, on balance I am satisfied that the condition set out in s 152(1)(a)(i) of the Act has been met.

[7] I am satisfied that the instrument of alienation, in this case the Agreement for Sale and purchase, has been executed and attested in the manner required.

[8] I note that the land is not vested in a trust and therefore the alienation is not in breach of any trust. The value has been negotiated between the vendor and purchaser and is at a market price. The price offered is in excess of the government valuation. The purchase money will be paid directly to the vendor's solicitor in accordance with the agreement for sale and purchase.

[9] I am therefore satisfied that the requirements of s 152(1)(a), (b), (c), (d) and (e) have been satisfied.

[10] When the matter first came to Court the applicant looked to rely on the fact that the property had been advertised widely as the basis for having complied with section 157(1)(f). I disagreed.

[11] I directed that the applicant was to give notice to the preferred class of alienees of their right of first refusal. In terms of notice, r 11.5 of the Māori Land Court Rules 2011 states:

11.5 Procedure for notifying preferred classes of alienees as to right of first refusal

- (1) Where a right of first refusal must be given under section 147A of the Act, an application for confirmation of alienation under rule 11.3 must be referred to a Judge for directions as to—
 - (a) a hearing date that will allow sufficient time for notice of the right of first refusal to be given to the preferred classes of alienees; and
 - (b) any other matter that is relevant, including directions as to notice.
- (2) For determining whether any preferred alienees wish to exercise their right of first refusal, an applicant for confirmation of alienation under rule 11.3 must—
 - (a) give public notice that complies with rule 11.5(3); and
 - (b) following publication, without delay file a copy of the notice with the Registrar; and
 - (c) comply with any directions that the Court has made in relation to notice.

- (3) The notice required under rule 11.5(2) must—
 - (a) be in form 27; and
 - (b) be published at least twice at intervals of not less than 5 working days in a newspaper approved by the Registrar and circulating in the district in which the land is situated; and
 - (c) stipulate a date for filing and serving a notice of intention to exercise the right of first refusal that is not less than 15 working days after the date of publication of the second notice.
- (4) On receipt of the notice, the Registrar must—
 - (a) arrange for the alienation to be notified in the next available Panui; and
 - (b) display a copy of the notice on a noticeboard in the public office of the Court for not less than 3 months, or until the application for confirmation is heard, if that occurs before 3 months.
- (5) A preferred alienee who wishes to exercise a right of first refusal must file in the Court and serve on the applicant, within the time fixed by the notice given under this rule, a notice in writing stating—
 - (a) that he or she intends to exercise the right of first refusal; and
 - (b) his or her full name and contact address.
- (6) The Registrar must give notice of the time, date, and place of the hearing of the application for confirmation to each person who files a notice of intention to exercise the right of first refusal.

[12] The first notice to the preferred class of alienees as to the right of first refusal was published in the Whakatane Beacon on 17 September 2019 and then a second notice was published on 24 September 2019. The first notice stated that written notice of intention to take up the right must be filed in the Māori Land Court no later than two weeks after the date of the second published notice. It stated in part:

Any member of the preferred classes of alienees who wishes to be considered by the owner as a prospective purchaser of the land must give written notice of their intention to pursue a right of first refusal to the Māori Land Court. **That written notice must be filed in the Māori Land Court no later than two weeks of the second published notice.** This is the first published notice.

[13] The notice is therefore defective in that it did not provide at least 15 working days from the date of publication of the second notice for filing. The notice has not provided sufficient time for the preferred class of alienees to exercise their right of first refusal.

Te taha tāwari – Opposition

[14] There is opposition to this application. The Court received 7 letters/emails of opposition. All are very similar, in fact, they are in most part template letters of opposition. The grounds of opposition are, in summary, that:

- (a) Those in opposition do not want to see Māori land alienated;
- (b) This land was once, before partition, part of a bigger block and those opposing the sale do not wish to see it sold to non-whānau members;
- (c) Whānau have not had time in order to, if they could, obtain finance to purchase the property; and
- (d) People were not aware of the sale until the right of first refusal 147A notice was published.

[15] There is a concern that if this land is sold it could lead to other Māori land blocks in the area also being sold.

[16] It is also noted that while there has been opposition filed with regards to the sale, no one of the preferred class of alienees has put forward an offer to purchase the property.

[17] Also, on file is a letter of offer from Karen's sister Josephine Howe. She has previously made an offer to purchase the property and that offer still stands. However, she acknowledges that her offer is not as high as the current purchaser whose offer is \$760,000.00 and she would not be able to match that offer, but she still thinks her offer is fair and reasonable.

[18] Rule 11.7 states:

11.7 Exercise of right of first refusal

- (1) An alienor must give a preferred alienee who has given notice of his or her intention to exercise the right of first refusal a reasonable opportunity to exercise that right.

- (2) If more than 1 preferred alienee has given notice of his or her intention to exercise the right of first refusal, the alienor may select the alienee to whom the opportunity of exercising the right of first refusal must be given.
- (3) The right of first refusal must—
 - (a) be on terms that are at least equivalent to the terms of the alienation that is the subject of the application for confirmation; and
 - (b) allow the preferred alienees a reasonable time, having regard to the nature of the alienation, to exercise the right of first refusal.
- (4) If the Court is not satisfied that the preferred alienee has been given a reasonable opportunity to exercise the right of first refusal, the Court may—
 - (a) extend the time for exercise of the right of first refusal:
 - (b) adjourn the application for confirmation to allow negotiation between alienor and preferred alienee to occur.
- (5) If the preferred alienee who exercises the right of first refusal is not the alienee named in the original application, the Court may amend the application and confirm the alienation without the necessity for a new application.
- (6) If a preferred alienee who is selected under rule 11.7(2) fails to complete the alienation, the alienor must then offer the opportunity of exercising the right of first refusal to any of the other preferred alienees who were involved in the selection process under rule 11.7(2) and the provisions of this rule continue to apply until—
 - (a) the right of first refusal has been exercised; or
 - (b) all preferred alienees who have given notice have been given the opportunity to exercise the right of first refusal.

[19] Josephine Howe has been the only person who has looked to exercise the right of first refusal. Unfortunately, for Josephine her offer is not on terms that are at least equivalent to the terms of the alienation that is the subject of the application for confirmation.

Kupu whakatau – Decision

[20] The Act provides a process for the alienation of Māori land. The Court must grant confirmation if the conditions as set out in s 152 of the Act are satisfied.

[21] Notice has been given to the preferred class of alienees. However, they have not been given long enough to exercise their right of first refusal, an issue that those in opposition have complained of.

[22] Section 147A of the Act requires the right of first of refusal be offered when alienating Māori land. Its requirements have not been fully complied with in this case. Neither, therefore, are the requirements of s 152(1)(f).

[23] I direct that further notice is to be given to the preferred class of alienees. The Māori Land Court will have the notice published in the Whakatane Beacon. The costs of the advertising will be paid for from the Māori Land Court Special Aid fund. The notice should read as follows:

**FURTHER NOTICE TO PREFERRED CLASSES OF ALIENEES
AS TO RIGHT OF FIRST REFUSAL**

**ALLOTMENT 246D1 WAIMANA PARISH
(93A Maraetotara Road, Ohope, Whakatane)**

Notice

Karen Winirangi Pocock has applied to the Māori Land Court at Rotorua for confirmation of a sale of the above Māori freehold land.

That sale cannot proceed unless the owner gives to the preferred classes of alienees a right of first refusal.

Any member of the preferred classes of alienees who wishes to be considered by the owner as a prospective purchaser of the land must give written notice of their intention to pursue a right of first refusal to the Māori Land Court. That written notice must be filed in the Māori Land Court within 15 working days from the date of publication of this notice. This is the third published notice.

If no notice is filed by the date set out above, the Court may confirm the alienation of the land by way of sale.

Further information about the application may be obtained from the Court at 1143 Haupapa Street, Hauora House, Rotorua or contact Jacinda Flavell, Deputy Registrar 07 921 7566.

[24] The application is further adjourned to allow further time to compile with s 147A requirements.

[25] Once the period for filing has expired the file is to be referred to Chambers with the intention of granting orders or making further directions.

I whakapuaki i te 12:00 pm i Rotorua te 5 o ngā rā Hakihea o te tau 2019

C T Coxhead
JUDGE