

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

A20190004422

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

IN THE MATTER OF Lot 30 Deposited Plan 40840 being Part Oakura
F2A

BETWEEN KARA MOORE
Applicant

Hearing: 24 July 2019, 202 Taitokerau MB 245-249
(Heard at Whangarei)

Judgment: 11 November 2019

JUDGMENT OF JUDGE T M WARA

Introduction

[1] The applicant, Kara Moore, has applied to the Court seeking a determination that the status of Lot 30 Deposited Plan 40840 being part Oakura F2A("Oakura F2A") is General land.

Background

[2] Oakura F2A is currently registered in the names of Larry Charles Moore, Janice Moore and Webb Ross Johnson Trustees Limited, jointly.¹ Larry and Janice Moore are the applicant's parents, both of whom are now deceased.

[3] The historical search of the title shows that the applicant's parents first acquired the land from Craig Paterson Hart ("Hart") of Palmerston North, a solicitor, in 1993, with the transfer to them being registered on 21 September 1993.² The applicant's parents subsequently severed the joint tenancy held by them in respect of the land and then settled the land in themselves and Webb Ross Johnson Trustees Limited as trustees of their Family Trust known as L and J Moore Family Trust.

[4] On the death of the applicant's father on 22 September 2008, the power to appoint new trustees of the L and J Moore Family Trust was settled in the applicant's mother solely. By deed dated 25 January 2011, she appointed the applicant to be the trustee of the Trust. However, title to the land in the current trustees arising from the deed has not yet been registered.

[5] On 2 April 1976, a notation was recorded on the certificate of title identifying the status of the land as Māori freehold land.³

[6] On 19 September 1983, a vesting order was granted, vesting the land in Harriet Purcell, Kahutai Roberts and John Roberts pursuant to s 438(1) of the Māori Affairs Act 1953.⁴

¹ Record of Title NA11A/422.

² Land Information New Zealand Document C.518890.2.

³ Land Information New Zealand Document 608698.2.

⁴ Land Information New Zealand Document B.216585.1.

[7] On 7 March 1988, Messers Roberts and Ms Purcell entered into an agreement to transfer the land to Craig Hart, and the transfer was registered on 10 May 1988.⁵

[8] Section 438(7) of the Māori Affairs Act 1953 (“the 1953 Act”) provided that no alienation by trustees, in whom land was vested by an order under s 438 of the said Act, required confirmation of the Court under Part 19 of the said Act, but further provided that on any instrument of alienation by trustees a memorial was required to be endorsed by the Registrar of the Court pursuant to s 233 of the said Act.

[9] The applicant has filed a copy of the transfer B825012.1 by which the property was transferred by Purcell, Robert and Roberts to Hart, being the transfer registered on 10 May 1988. It will be noted from the transfer that:

- (a) there is no notation on the face of the transfer to the effect that the land has remained Māori freehold Land; and
- (b) the transfer was not endorsed with a memorial by the Registrar of the Court pursuant to s 233 of the said Act.

[10] The applicant relies on the decision of Judge Ambler in *Deputy Registrar - Te Ketī A2*, that the land attained the status of General land on registration of the transfer to Hart, he not being a Māori.⁶ The applicant has filed the affidavit of Craig Hart in support, where he advises that he is not Māori.

[11] The applicant says that the property therefore had the status of General land at the time that Te Ture Whenua Māori Act 1993 (“the 1993 Act”) came into effect on the 1 July 1993. The applicant now asks the Court to confirm by declaration that the property has that status.

⁵ Land Information New Zealand Document B.825012.1.

⁶ *Deputy Registrar – Te Ketī A2* (2011) 15 Taitokerau MB 76 (15 TTK 76).

Issues

[12] I am satisfied that prior to 10 May 1988 the land was Māori freehold land. To determine the current status of the land, I must assess whether the transfer to Craig Hart effected the status of the land.

The Law

[13] Section 224(1) of the 1953 Act provided that:⁷

- (1) Except as may be otherwise expressly provided in this or any other Act no alienation of Maori land by way of transfer by a Maori shall have any force or effect unless and until it has been confirmed by the Court.

[14] Section 2(2)(f) provided that:⁸

Unless expressly provided in this or any other Act with respect to any specified or defined area, and notwithstanding anything in the foregoing definition of the term ‘land’ or in any of the subsidiary definitions included therein, -

...

- (f) Māori freehold land the legal fee simple in which has been transferred otherwise than by an order of the Court or of a Registrar shall, except where it appears on the face of the instrument of transfer that the land has remained Māori freehold land, be deemed to be General 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 Māori freehold 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 Māori freehold land.

[15] The leading case on the registration of a transfer in breach of the confirmation requirements of the 1953 Act is *Deputy Registrar – Te Ketī A2*.⁹ In this decision, Judge Ambler considered the effect of ss 224(1) and 2(2)(f):

[27] The wording in s 224(1) speaks for itself. An alienation of Māori land by way of transfer by a Māori is said to be of no force or effect if it has not been confirmed by the Court. If the transfer is of no force or effect, then it must follow that the Court cannot undertake the exercise contemplated by s 2(2)(f) of considering the nature of the wording of the instrument of transfer. Section 224(1)

⁷ As amended by s 98(1) of the Māori Affairs Amendment Act 1967.

⁸ As amended by s 3 Māori Purposes Act 1982 and s 16(1) of the Māori Purposes Act 1975.

⁹ *Deputy Registrar – Te Ketī A2* (2011) 15 Taitokerau MB 76 (15 TTK 76).

effectively deems there to be no transfer to consider. It makes no difference whether or not the transfer purported to preserve the status of the land as Māori freehold land. The instrument of transfer is to be ignored.

[28] This interpretation is consistent with the operation of the 1953 Act. The Act governed the status of land. As per s 2(2)(f), the status of land could change upon the registration of a transfer. However, as per s 224(1), the transfer could only be relied on if the Act's confirmation requirements had been met. In other words, a purchaser could not rely on s 2(2)(f) to effect a change of status if the Act's confirmation requirements had been ignored. That is an entirely orthodox approach.

[16] Once determining that the transfer instrument was void and of no effect, and that s 2(2)(f) cannot be relied on, Judge Ambler goes on to consider the effect of indefeasibility and the Land Transfer Act 1952. He states that:¹⁰

... it has long been established that registration of a void instrument does not cloak that instrument with indefeasibility for purposes beyond the Torrens system. That is, registration may effectively validate a void instrument for the purposes of the Torrens system but it does not validate it for purposes *beyond* the Torrens system. This limitation on the reach of indefeasibility has been discussed in a number of leading decisions.

[17] The result is, that while the process of transfer was void, the registration of a void instrument gives rise to indefeasibility under the Land Transfer Act 1952 but does not validate the instrument for purposes beyond the Land Transfer Act 1952.

[18] As noted by Judge Ambler, the 1952 Act was silent on the question of status of land and therefore did not guarantee a particular status. The status of land was governed by the 1953 Act. Therefore, the registration of the void transfer passed indefeasible title but the transfer remained void for the purposes of the 1953 Act and therefore for the purposes of s 2(2)(f).¹¹

[19] While for the most part I endorse the approach taken by Judge Ambler in *Deputy Registrar – Te Ketī*, I disagree with his determination that status of the land is changed by reason of the definition of 'Māori freehold land' in the 1953 Act. In my view, if the transfer instrument is void and s 2(2)(f) is disregarded, then there is nothing to effect a change of status. For the status to have changed, the conditions set out in the 1953 Act must have been satisfied, and this is not the case.

¹⁰ *Deputy Registrar – Te Ketī A2* (2011) 15 Taitokerau MB 76 (15 TTK 76) at [30].

¹¹ At [34].

[20] When determining the status of land pursuant to s 131, I must have regard to ss 2 and 17 of the 1993 Act. Those principles are clear in that land is a taonga tuku iho, and that it is desirable to promote the retention of land in the hands of its owners, their whānau and hapū, and that it is the primary objective of the Court to promote and assist in this regard. By determining that the status of the land has not changed, the descendants of the owners, members of their whānau and hapū will have an opportunity regain ownership of their taonga tuku iho should the current owner wish to sell the land.

Orders

[21] Pursuant to section 131 of Te Ture Whenua Māori Act 1993, I determine Lot 30 Deposited Plan 40840 being Part Oakura F2A to be Māori freehold land.

Pronounced in open Court in Rotorua at 11:30am on Monday this 11th day of November 2019.

T M Wara
JUDGE