

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

**A20180002900
A20180002705**

UNDER Sections 67, 239, 298 Te Ture Whenua Māori Act
1993

IN THE MATTER OF Ngapuketuru 6C2B, Te Maipi 7C No 7C and Te
Maipi 7C No2 blocks

BETWEEN PETER BLOOR
Applicant

AND RYSHELL GRIGGS, PHILLIP PAKU, HUATAHI
PAKU-TAWI-RAKAIMARO-PINEAMINE AND
LOIS PEAKMAN, THE TRUSTEES OF THE
NGAPINI AND TARAWA TRUST
Respondents

Hearing: 30 October 2019
(Heard at Masterton)

Appearances: R du Preez, for Trustees

Judgment: 30 October 2019

JUDGMENT OF JUDGE M J DOOGAN

[1] Me noho tātou. Thank you for your patience. I am going to give an oral decision on the application for a partition. Because it is an oral decision I will reserve the right to fine tune or adjust the detail once it is typed back, but the substance will not change.

[2] An Ahu Whenua Trust known as the Ngapini and Tawara Trust administers the following land blocks, Ngapuketuruua 6A1 Part, 6C2B and 6D. The Hemi and Heni Morris Whānau Trust own approximately 55 percent of the shares in each of the blocks administered by the Trust. There has been longstanding trouble between the Morris whānau and some of the other owners.

[3] By application dated 13 April 2018 the Morris Whānau Trust applied to partition out their shares. The grounds included in the application were that the land could be better managed by removing the shares owned by the whānau trust. It is also said that at present there is no income from the land that is received by the Hemi and Heni Morris Whānau Trust. There is also a concern that trustees are mismanaging the whenua and not holding regular meetings with beneficial owners, not supplying the beneficial owners the information they are entitled to and trustees are failing to call meetings to discuss proposals to better utilise the land.

[4] It is said that the partition would benefit the land affected because by the Morris Whānau Trust partitioning out their shares that exceed 50 percent they can then control their own destiny, use income from the partition land to pay debt, no longer subsidise a trustee living on the land, attempt to remove the raruraru from their lives that has existed among family for generations and ensure by partitioning out their shares the balance owners have no less legal access than they currently have.

[5] The application was filed following a meeting of owners called by the Morris Whānau Trust. No one has attended because it is said that the trustees asked the owners not to attend. The matter first came before me by way of a judicial conference at Masterton on 8 June 2018.

[6] I carried out a site visit on 25 June 2018. In attendance at the site visit were Mr Sam Morris representing the Morris Whānau Trust and trustee Ryshell Griggs together with Court staff. I was able to see all of the land affected by the proposed partition. The lands are

currently leased for grazing purposes. Moving away from Homewood Road to the west the land gradually rises towards steeper bush clad hills at the back. The trust administers a 10 hectare block east of Homewood Road also with the remaining approximately 330 hectares to the west. The Morris whānau own adjacent general land to the south of the trust lands and wish to combine those lands with their interest in the Ngapuketuru blocks.

[7] In approximate terms the lands administered by the trust close to the road are suitable for grazing being reasonable pasture and gradient with a significant area of bush and scrub in the steeper land to the back which is not suitable for grazing.

[8] The Morris whānau propose to partition out the bulk of this steeper bush clad land. They have ideas for potential future use and development that may include bees and possibly ecotourism.

[9] At this point, I note the statutory requirements that the Court is required to have regard to in an application such as this.

[10] There are three requirements that must be met before I can consider granting a partition application. First, the owners must have had sufficient notice of the application and sufficient opportunity to discuss and consider it. Secondly, that there is a sufficient degree of support for the application among the owners having regard to the nature and importance of the matter. Thirdly, that the partition is necessary to facilitate the effective operation, development and utilisation of the land. Those are threshold requirements.

[11] If I am satisfied that those requirements are met I then have to have regard to what are known as mandatory requirements which is the opinion of the owners as a whole, the effect of the proposal on the interests of the owners and the best overall use and development of the land. Even if I am satisfied that all of those matters are met I still have a discretion whether or not to grant the application and in that regard I need to be satisfied that the application is consistent with the purpose of Part 14 of the Act which is “to facilitate the use and occupation by the owners of land owned by Māori by rationalising particular landholdings and providing access or additional or improved access to the land.”

[12] I just want to turn now to record in a little more detail the grounds advanced in support of the application by Mr Bloor who is representing the Morris Whānau Trust in this application. In his submissions Mr Bloor records that a meeting of the owners was held in Masterton on the 5th of April 2018. He notes that no trustees attended the meeting although the agenda and date were agreed by Lois Peakman (trustee) on the basis it would be a general meeting as required within the trust order. Mr Bloor also notes all trustees were sent notice and there had been communication with trustee Ryshell Griggs also. Mr Bloor says it is understood trustees contacted other owners advising them not to attend.

[13] In addition, letters were sent to all owners with known addresses on the 7th of March 2018. This included a sketch plan setting out the area that would be affected by the proposed partition.

[14] An application was then filed on the 11th of April for a judicial conference. This was sought so trustees could file with the Court up to date reports on the activities and financial reports for the last four years.

[15] I pause to note here that following the judicial conference in June last year the Court has issued a range of directions in order to allow for the calling of a general meeting of the trust. Compliance with those directions is ongoing and in particular the requirement to produce up to date financial records. As a result of delay in progress to that matter the Court has appointed Mr John Francois, accountant of Hastings, to conduct an independent investigation and report and following the completion of Mr Francois' report a date for the AGM will be set and will be facilitated by an independent person appointed by the Court.

[16] In the meantime and at the request of the applicant in this proceeding I have agreed to bring the matter back for hearing and in accordance with directions Mr Bloor on behalf of the Morris Whānau Trust filed updated plans setting out two options for the proposed partition. Those plans were filed in June this year and on my direction distributed to the parties and owners prior to this hearing.

[17] In support of the application Mr Bloor submits that the partition of the Ngapuketuruua 6C2B, Te Maipi 7C No 2 and Te Maipi 7C No 7C blocks will promote the effect of use and occupation of the land by owners and is necessary to facilitate the effect of operation,

development and utilisation of the land as required by section 288 (4) of Te Ture Whenua Māori Act so the balance minority owners can make decisions affecting their land without undue influence of the major owner.

[18] The proposed partition is by owners who are members of the same hapū. There are currently 37 owners. The shares held by the Hemi and Heni Morris Whānau Trust in each of the blocks are set out below:

<u>Blocks</u>	<u>CT Ref</u>	<u>Current Owner</u>	<u>Shares</u>
Ngapuketuruua 6A1(part)	435356	Hemi and Heni Morris Whanau Trust	190.908
Ngapuketuruua 6C2B1 and 6C2B2	<i>(LINZ titles still to issue)</i>	Hemi and Heni Morris Whanau Trust	5343.834
Te Maipi 7C No 7C	WN263/116	Hemi and Heni Morris Whanau Trust	26730.556
Te Maipi No 7C No 2	WN193/188	Hemi and Heni Morris Whanau Trust	42515.58

[19] Mr Bloor also submits that the preferred location for the partition is the area in bush in the Te Maipi blocks that are located on the boundary of the Hemi and Heni Morris Whānau Trust freehold land with the exception of the bush block being the Ngapuketuruua 6C2B Native Bush Reserve which as I understand it is on the other side of Homewood Road and is not affected by this proposed partition.

[20] Mr Bloor notes that the adjoining land west and south of the subject blocks is owned by the Hemi and Heni Morris Whānau Trust and if successful the partitioned areas will be further developed in conjunction with the adjoining general land blocks. It is argued that the minority owners would not then be confined to any restrictions imposed by the majority owner and the minority owners would finally be free to make their own decisions affecting their own destiny. The partitioned blocks are capable of development separately due to the area being partitioned out of approximately 191 hectares leaving approximately 158 hectares for the balance minority owners. It is proposed that the majority of better clear land be retained by the minority owners.

[21] Mr Bloor submits that the application to partition facilitates and promotes Parliament's intention being the retention, use, development and control of Māori land as an ancestral treasure by Maori owners, their whānau, hapū and descendants. It reinforces the kin structure fundamental to that goal set out by Parliament. As all severances would retain the status of Māori land partition would not prejudice any owners in the future with the opportunity to acquire the partitioned land at a fair price if put on the open market.

[22] If successful with the partition there is no intention of applying to change the status of land. The land will continue to remain Māori freehold land and continue to come under the jurisdiction of the Māori Land Court with regard to alienation. Persons of the preferred class as described in the Act will not be denied their ability to have input regarding alienations of the land.

[23] Mr Bloor also says the partitioned areas would not have less practicable legal access after partition. Mr Bloor notes there is no legal access to the Te Maipi blocks as they currently are. The proposed severances of Ngapuketuruua 6C2B blocks are already accessed off Homewood Road. The minority owners would then have options regarding the future of their land. By way of example the minority owners would then have the capacity to lease their land to any acceptable lessee, develop the land as they see fit or set aside parts of the land for the purposes of housing or retire more land as a Māori reservation.

[24] Mr Bloor also notes that no compensation for improvements is being sought by Hemi and Heni Morris Whānau Trust even though any improvements to the land may have been carried out by the Morris whānau. If successful the applicant shall produce a survey plan for approval by the Court within six months of the Court making provisional orders and obtain a valuation of the land to severed ensuring the area to be partitioned out has no greater value than the applicant currently holds in each of the three blocks. The request to partition complies with the Wairarapa District Council in that no partitioned areas shall be less than 12 hectares within the relevant zoning category for this land.

[25] At the hearing today I was able to discuss with Mr Bloor and the Morris whānau the area proposed for the partition and as a result of those discussions and after hearing from Ms du Preez representing the trustees and from trustees present some adjustments to the original application were agreed and will need to be the subject of a revised plan.

[26] It is appropriate to record at this point that there is no opposition expressed to the application today on the basis of the adjustments to the areas affected by the proposed partition.

[27] In terms of the threshold requirements that I must be satisfied of, first, have the owners had sufficient notice of the application and sufficient opportunity to consider it? Having regard to the history of the application which I have briefly outlined I am satisfied that the owners have had sufficient notice and opportunity to consider the application.

[28] Relevant notice includes:

- The initial notice Mr Bloor gave to the owners about the partition – By way of letter dated 7 March 2018.
- Notice of hearings – 9 May 2018, 30 November 2018, 19 September 2019.
- Court hearings – 8 June 2018, 12 December 2018 and 30 October 2019.

[29] In terms of the second threshold requirement which is whether there is a sufficient degree of support for the application amongst the owners having regard to the nature and importance of the matter, I am satisfied also that this threshold criteria has been met. First, having regard to relative shareholdings it is clear the applicant holding approximately a 55 percent shareholding in each of the blocks affected is in support of the application.

[30] The Court directed ahead of today's hearing that the revised plans be distributed with the notice of the hearing together with forms giving owners an opportunity to register support or opposition to the application. From the 36 letters were sent, five forms were received within the timeframe. Three opposed the partition, one person supported the partition and the last consent form was not completed correctly. In broad terms, two owners registered opposition on the basis they were not sure what the application involved. I am satisfied having regard to the responses received and from the indication in Court today that no party wished to speak in opposition that there is sufficient support for the application.

[31] I also have regard to the background which I understand to be accepted by all parties which is an unfortunate history of division amongst some of the owners which is in part the reason for the application and as I understand it is also in part why in principle trustees present today express support for the partition.

[32] Finally, I need to be satisfied the partition is necessary to facilitate the effective operation, development and utilisation of the land.

[33] The law with regard to this criteria is clear. The threshold is fairly high. The reference to “necessary” means reasonably necessary and is closer to that which is essential than that which is simply desirable or expedient.

[34] I also need to consider whether there are reasonable alternatives to partition which could include options such as an occupation order or a trust order defining areas of use and occupation.

[35] In terms of the operation, development and utilisation of the land I have particular regard to the fact that the proposed partition is based on the idea that the land to be partitioned out is that adjacent to the other lands owned by the Morris whānau and the bulk of the proposed partition lands represents the steeper bush clad areas towards the rear of the lands administered by the trust. That land is not suitable for grazing which is the use to which the bulk of the trust lands are currently put and the Morris whānau have indicated a wish to look at alternative uses for that area of land going forward (in conjunction with their adjacent general holding).

[36] I am satisfied therefore that it is not a case where the application is made simply because it is desirable or expedient to partition out the affected areas. More fundamentally the application arises out of an unfortunate history of division and a wish by the respective parties to achieve some independence going forward to enable decisions over future use and utilisation to be more freely made by both the Morris whānau and the remaining or residual owners. With that context in mind I am satisfied that that last threshold criteria is also met.

[37] I then need to consider the mandatory considerations which is the opinion of the owners or shareholders as a whole. Once again, having regard to all of the evidence before the Court it seems to me that there is perhaps resigned acceptance by owners, if I can put it that way, to the prudence of a partition. Such opposition as has been expressed was couched in terms of an uncertainty as to the application itself and no party at the hearing today has raised any further issue or expression of opposition. Therefore I am satisfied that I can infer that the overall view of the owners/shareholders as a whole is in favour of the partition.

[38] I then need to consider the effect of the proposed partition on the interests of the owners and I am satisfied that on the basis of the adjustments discussed and agreed at the hearing today that a fair and reasonable balance between the interests of the Morris whānau as the majority shareholder and the interests of the residual owners can be achieved and can be reflected in a partition following the boundaries described and agreed at the hearing today.

[39] I place some weight on the fact that both the Morris whānau and the remaining owners will have clear options with respect to use of the land going forward. The bulk of the land currently leased for grazing would remain with the residual owners and in turn the Morris whānau would have the opportunity to look at alternative options for utilisation of some of the scrub land and the bush land towards the rear. I do not see any obvious prejudice to either the Morris whānau or to the residual owners arising from the nature of the partition itself having regard to the characteristics and present utilisation of the land.

[40] In terms of the best overall use and development of the land I am satisfied that for the bulk of the lands the current grazing arrangement is the best current use of that land. It also appears reasonable to assume that the steeper bush clad land to the rear may offer opportunities of the kind described by the Morris whānau for either bees or ecotourism-type opportunities and that may well be a constructive option for future use and development. I do not see the proposed partition as an impediment to that objective.

[41] As to discretion, again the requirement is that I have regard to purpose of Part 14 which is to facilitate the use and occupation by the owners of land owned by Māori by rationalising particular land holdings and providing access or additional improved access.

[42] In terms of discretion, I conclude that this is an appropriate case to exercise discretion in favour of partition. I do not see it primarily as an exercise of discretion in favour of improved access. I see it more as a discretion in favour of enhancing the ability of the Morris whānau on the one part and the remaining owners on the other part to better use and enjoy the land free of conflict that has affected all parties in the past. So, I therefore will make conditional orders granting the partition. The exact terms of those orders I will finalise in Chambers once the revised plan has been made available to the Court.

[43] I note that there is a potential issue arising from the fact that Ms Ryshell Griggs is currently occupying a temporary or relocatable structure adjacent to the woolshed which I understand is currently located or primarily located on land that is to be subject of the partition in favour of the Morris whānau. There is a possibility under consideration of further minor boundary adjustments to the partition area with respect to the woolshed and I will await the final plan filed. Broader issues concerning the trust administration are still before the Court and will be the subject of further proceedings in due course. It may be that any issues in relation to the occupation of the woolshed or the area adjacent to the woolshed will need to be addressed at that time.

[44] For present purposes I indicate that in terms of any final orders I make in relation to the partition I will want to be satisfied that any matters relating to the current occupation can be addressed or a process for addressing them has been agreed, so I will ask for some further clarification from the parties on that specific point.

[45] Mr Bloor, I would normally make the orders conditional on completion and receipt of an ML plan approved as to survey by Land Information New Zealand. Also proof of compliance with any resource consent or council conditions. Also, clarification of any apportionment of rates liability that may be required and valuation of the proposed partitioned access.

[46] The application is adjourned accordingly pursuant to rule 6.9(1)(c) of the Māori Land Court Rules 2011 for orders to issue following the filing of a revised plan and confirmation of any boundary adjustment or additional process with respect to the woolshed and its immediate surrounds.

Dated at Masterton this 30th day of October 2019.

M J Doogan
JUDGE