

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

**A20130010961**

UNDER Section 330, Te Ture Whenua Māori Act 1993  
IN THE MATTER OF Te Kaha 65 Block  
BETWEEN EDWARD MATCHITT  
Applicant

**A20130008237**

UNDER Section 289, Te Ture Whenua Māori Act 1993  
IN THE MATTER OF Te Kaha 65 Block  
BETWEEN PARATENE MATCHITT  
Applicant

Hearing: On the papers

Judgment: 27 June 2019

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**JUDGMENT OF JUDGE C T COXHEAD**

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*Tēnā tātou i ō tātou aituā maha e ngapu nei te whenua i tō rātou hinganga. Hēoi anō, e tāea te aha atu i te tangi, i te maumahara ki a rātou me tā rātou i mahi ai? Nō reira, waiho rātou ki a rātou, ko tātou ki a tatou.*

### **Hei tīmatanga kōrero - Introduction**

[1] In 2013, applications were filed by Edward Matchitt and Paratene Matchitt pursuant to ss 330 and 289 of Te Ture Whenua Māori Act 1993. Edward Matchitt sought to amend occupation orders granted in relation to Te Kaha 65 Block in 2010, while Paratene Matchitt sought a partition. The applications were dismissed by the Court and instead additional occupation orders granted in favour of the balance of owners in the land.<sup>1</sup> Following a rehearing and appeal to the Māori Appellate Court, the orders were revoked, and the two applications referred back to this Court for rehearing.<sup>2</sup>

[2] Counsel for Edward Matchitt has now filed an amended application together with an application for special aid pursuant to s 98 of the Act. This decision considers whether a grant of special aid should be made.

[3] I also note that the application for special aid was with the Court for a number of months before it was recently referred to me in Chambers. The delay in this matter being referred to me is unacceptable and the Court must apologise to the applicant and other interested parties.

### **Te tono hou - The amended application**

[4] The amended application seeks:

- (a) An order for partition pursuant to ss 289 and 301; and
- (b) An order allotting interest pursuant to s 292(1).

[5] The amended application notes that the owners of Te Kaha 65 agree that:

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<sup>1</sup> *Matchitt – Te Kaha 65 Block* (2014) 104 Waiariki MB 145 (104 WAR 145).

<sup>2</sup> *Matchitt v Matchitt – Te Kaha 65 Block* [2015] Māori Appellate Court MB 662 (2015 APPEAL 662).

- (a) Te Kaha 65 should be partitioned into new allotments, Te Kaha 65A and Te Kaha 65B;
- (b) The new allotment Te Kaha 65A be vested in certain persons as tenants in common in unequal shares and subject to the existing orders under ss 18(1)(a) and 328; and
- (c) The new allotment Te Kaha 65B be vested in certain persons as tenants in common in equal shares; and
- (d) The Matchitt homestead to be located within Te Kaha 65B.

[6] The matters that the owners have not been able to agree on are:

- (a) The location of the boundary between the two allotments of Te Kaha 65A and Te Kaha 65B; and
- (b) The value of the 4/7<sup>th</sup> share in the family homestead currently held by Edward Matchitt, Bert Matchitt, Roger Matchitt, Lisa Rose and Peter Mariu.

[7] The applicant seeks a hearing, determinations regarding the boundary and the allotment of interests, and orders per ss 289 and 301, conditional on approval of a plan.

#### *Discussion*

[8] As counsel for the applicant notes, this amended application will be the fourth time that the Court will hear an application for a partition with regards to the land in question.

[9] In 2006, Edward Matchitt filed an application for a partition order under s 289. In her decision of 28 March 2008, Deputy Chief Judge Fox issued a reserved decision where the application was adjourned for six months to facilitate a meeting of owners.<sup>3</sup> Following the meeting, the Court granted occupation orders in favour of Edward Matchitt, Bert Matchitt

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<sup>3</sup> *Matchitt v Matchitt – Te Kaha 65 Block* (2008) 101 Ōpōtiki MB 161 (101 OPO 161).

and Lisa Henry and dismissed the applications filed by Edward Matchitt for partition and Paratene Matchitt seeking an injunction.<sup>4</sup>

[10] Then in 2011, Edward Matchitt filed a further application for a partition order under s 289. On 6 November 2012, Deputy Chief Judge Fox dismissed that application.<sup>5</sup>

[11] Subsequently on 20 September 2013, Paratene Matchitt filed the present application for a partition under s 289, and Edward Matchitt filed his application to amend the occupation orders pursuant to s 330. As noted, Deputy Chief Judge Fox dismissed the applications.<sup>6</sup> Matters reached the Māori Appellate Court where the appeal was allowed, and the proceedings directed to be reheard.

[12] The amended application of Edward Matchitt currently before the Court flows from the Māori Appellate Court's decision to have both Paratene Matchitt's application and Edward Matchitt's application reheard.

#### **Te tono pūtea - Special aid application**

[13] The applicant believes that a grant of special aid is necessary to assist the parties in finalising the partition of Te Kaha 65. The ongoing dispute between the owners has now been the subject of three reserved decisions in this Court and one judgment of the Māori Appellate Court over the last 12 years.

[14] Counsel argued that the amended application is factually complex and as such, counsel will be required to assist with the presentation of expert evidence and legal submissions. A grant of special aid will allow the applicant to engage an expert valuer and surveyor to provide the necessary evidence for the Court to make a final determination. The grant will also allow counsel to engage these expert witnesses and arrange for the evidence to be presented to the Court.

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<sup>4</sup> 22 Waiariki MB 192-206 (22 WAR 192-206).

<sup>5</sup> *Matchitt – Te Kaha 65* (2012) 65 Waiariki MB 120 (65 WAR 120).

<sup>6</sup> *Matchitt – Te Kaha 65 Block* (2014) 104 Waiariki MB 145 (104 WAR 145).

[15] Counsel noted that the applicant is a superannuitant who receives a modest income, that legal aid is not available to the applicant, and that there is no real or personal property owned by the applicant or other owners suitable to be charged under s 98(6) of the Act.

[16] The application also notes the grant of special aid will benefit all owners of Te Kaha 65 and assist to bring finality to an on-going dispute. In that regard, counsel says the applicant makes the application in a representative capacity. He argues that the division and uncertainty due to the dispute causes ongoing hardship to all the owners of Te Kaha 65.

### **Te Ture - The Law**

[17] Section 98 of the Act provides for payments to be made from the Māori Land Court Special Aid Fund. Relevantly, it states:

#### **98 Maori Land Court Special Aid Fund**

...

- (3) The court may from time to time make orders for the payment from the Fund of the reasonable legal costs or the reasonable out-of-pocket expenses or both of—
- (a) any person or class of person heard or represented in any proceedings before the court:
  - (b) any barrister or solicitor appointed to assist the court under section 70(3)(a).

...

- (9) Except as the court may otherwise order, there shall also be paid out of the Fund—
- (a) the reasonable fees and reasonable expenses of any accountant to whom a Judge refers a matter under section 40(3); and
  - (aa) the reasonable fees and reasonable expenses of any person the Registrar is directed, by the Judge, to engage to assist with an inquiry and report under section 40; and
  - (ab) the reasonable fees and reasonable expenses of a mediator to whom a Judge refers matters under section 30B(3)(c), section 30C(3)(d), section 30G(3)(a), or section 30I(2); and
  - (b) all reasonable costs and reasonable out-of-pocket expenses of any person called by the court as a witness under section 69(2); and
  - (c) the reasonable fees and reasonable expenses of any barrister or solicitor appointed under section 70(3); and

- (d) the reasonable fees and reasonable expenses of any person appointed as a receiver under section 83; and
- (e) the reasonable fees and reasonable expenses of any person appointed as an examining officer under section 280 to investigate the affairs of a Maori incorporation.

...

[18] In *Mokomoko – Part Hiwarau C*, the Māori Appellate Court set out the general principles regarding payments from the Special Aid Fund.<sup>7</sup> Those principles have been cited with approval by several Māori Land Court and Māori Appellate Court decisions.<sup>8</sup> The Court also issued a practice note in 2012 regarding the Special Aid Fund, in particular the engagement and payment of counsel, which provides additional guidance in line with the general principles.<sup>9</sup>

[19] I adopt those general principles.

#### *Discussion*

[20] It is well-established that the Māori Land Court Special Aid Fund is not a general legal aid fund and that the use of the word “special” is a qualifying factor which denotes something distinguishable from others of its kind.

[21] While I acknowledge that this matter has had some history before the Court, in my view the amended application of Edward Matchitt for partition is not too different from many other partition applications the Court receives. When a person applies for a partition order, as part of the application, they will be required to provide valuation and survey evidence. That is the requirement in the ordinary run of cases. The applicant seeks a grant of special aid to engage expert valuer and survey evidence, and for counsel to present such evidence to the Court to determine the remaining issues. However, the fact that the applicant requires such survey and valuation evidence is not in itself “special”.

<sup>7</sup> *Mokomoko – Part Hiwarau C* (2001) 10 Waiariki Appellate MB 32 (10 APRO 32).

<sup>8</sup> *Barcello–Gemmell – Gore Blks XVII and XIX S90B2* (2004) 6 Te Waipounamu Appellate MB 29 (6 APTW 29); *Haig - Waipiro A13 Incorporation* (2008) 182 Gisborne MB 1 (182 GIS 1); *Pomare v Rangihaeata – Hongoeka 7 Lots 2 and 3* (2009) 16 Whanganui Appellate MB 108 (16 WGAP 108); *Ripia* [2012] Maori Appellate Court MB 175 (2012 APPEAL 175); *Wano v Ngati Hineuru Iwi Inc* (2013) 24 Tākitimu MB 56 (24 TKT 56); *Te Runanga o Ngāti Hine v Te Runanga ā Iwi o Ngāpuhi* [2014] Māori Appellate Court MB 133 (2014 APPEAL 133); *Te Awe Awe-Bevan – Pt Rangitikei Manawatu Pt B4 being Lot 1 DP 4102 (Old Post Office) Trust* (2016) 361 Aotea MB 69.

<sup>9</sup> Māori Land Court Practice Note, Special Aid Fund, Appointment of a Barrister or Solicitor, 31 May 2012.

[22] In *Byrne – Mereruiha Hakaraia Whānau Trust* the Court dealt with a claim for reimbursement of expenses paid by an applicant in prosecuting various applications.<sup>10</sup> The Court considered the purpose of the Māori Land Court Special Aid Fund and noted:

[11] While the Act refers to “reasonable out-of pocket expenses” I do not read *Hiwarau* to be authority to enable payment from the Fund of disbursements incurred by applicants in the ordinary course of prosecuting applications before the Court. ... In summary, the argument that Parliament intended all such persons should be entitled to effectively full reimbursement of all costs incurred in connection with their application by the State via the Special Aid Fund is unsustainable.

[23] Further, the fact that the applicant has engaged legal representation once again does not render this case “special”. Special aid is generally only available for those who would not otherwise be able to prosecute cases because of the special circumstances of their case. From a review of Court orders it appears that applicant did not require special aid when prosecuting the three previous partition applications.

[24] If parties were in agreement this application would be less complex, not in a legal sense, but in terms of whānau disputes that need to be dealt with. The fact that there is no agreement between the parties appears to add complexity to the matter. But that does not make this case any more special to the many other cases that come before this court where parties are in disagreement.

[25] Further, not granting special aid will not restrict current development and utilisation of the land as Edward Matchitt and several other whānau members are currently occupying the land pursuant to occupation orders.

[26] While I understand that this matter has a long history, the amended application before the Court for a partition is not, in my view, sufficiently distinguishable from others of its kind so as to qualify for a grant of special aid.

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<sup>10</sup> *Byrne – Mereruiha Hakaraia Whānau Trust* (2006) 164 Aotea MB 5 (164 AOT 5).

**Kupu whakatau - Decision**

[27] The application seeking a grant of special aid is dismissed.

Copy to be sent to all parties.

I whakapuaki i te 11:30am i Rotorua te 27 o ngā rā o Hune te tau 2019.

C T Coxhead  
**JUDGE**