

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

A20180006300

UNDER Rule 4.10(3), Māori Land Court Rules 2011
IN THE MATTER OF Waitara East Section 81 B (Rohutu) and a decision
of the Registrar to refuse applications for filing
BETWEEN Kevin Moore
Applicant

Appearances: G Sharrock for the applicant

Judgment: 30 November 2018

JUDGMENT OF CHIEF JUDGE W W ISAAC

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Introduction

[1] This decision concerns an application by Mr Kevin Moore pursuant to r 4.10(3) of the Māori Land Court Rules 2011 seeking to review the Registrar's decision to refuse to file an application made by him on 7 May 2018 pursuant to s 45 of Te Ture Whenua Māori Act 1993 (A20180003483).

[2] Following a number of requests to Mr Moore to provide further information, the Registrar informed the applicant by letter dated 10 August 2018 of her decision to refuse to file the application on the basis that it did not comply with r 8.2(2)(b) of the Māori Land Court Rules 2011.

[3] The applicant now seeks a review of this decision.

Background to the application to review the Registrar's decision

[4] Mr Moore stated in his application dated 7 May 2018 that he sought to cancel or amend a partition order dated 27 February 1958 which created Block 17137 (also known as Waitara East Section 81 B (Rohutu)) and declared its owners and their relative shares. Mr Moore claimed that there was a mistake, error or omission in the presentation of the facts of the case to the Court.¹

[5] Mr Moore claimed that he was affected by the order as he had been served with an eviction order on the basis that he wasn't a member of the Trust, he and other members of his whānau had been refused membership, and he and his whānau risk becoming homeless and losing their connection to the land that Mr Moore's uncle and grandfather lived on.

[6] Also in his application, Mr Moore set out a history of the block including various other Court orders. These included:

- (a) A Crown grant (No. 5286) made on 28 October 1884 for the 22 acre Rohutu block (section 81). The applicant claimed that this list failed to include all the children of Wiremu Kingi Te Rangitake and included "loyalist" Māori who

¹ 67 Taranaki MB 165 (67 TAR 165).

had no interest in the block but were included as a reward for their service to the Crown.

- (b) A freehold order issued by the Native Land Court on 21 February 1916 which declared 11 people as owners of the block. The applicant claims that this “further diluted” the interests of the whānau and hapū of Wiremu Kingi Te Rangitake.
- (c) An order made under the Māori Affairs Act 1953 on 6 December 1960 vesting Rohutu block (section 81 B) in three trustees. The applicant similarly claims that this order “further diluted” the interests of Wiremu Kingi Te Rangitake’s whānau and hapū, including the Moore’s and Tito’s, as the trust membership list excluded them along with various other eligible owners.

[7] On 8 May 2018, the Registrar responded to Mr Moore by email to request further information as required by r 8.2. The Court received no response from Mr Moore.

[8] On 20 July 2018, the Registrar again asked for further information, specifically that the applicant clearly set out the order that was sought to be cancelled or amended. Mr Moore filed further information with the Court on 30 July 2018 and repeated his argument that the 1884 Crown grant did not properly reflect tangata whenua as it included “loyalists” with no connection to the land, and this was compounded by the Court proceedings which followed.

[9] By letter dated 10 August 2018, the Registrar informed Mr Moore that he had not sufficiently particularised the mistake or omission sought to be amended and, as a result, his application had been refused on the basis that it failed to comply with r 8.2(2)(b). The letter also informed Mr Moore that he could seek review of the decision in accordance with r 4.10(3).

[10] Mr Moore filed this application for review on 27 August 2018.

The Application

[11] In his application to review the Registrar’s decision, Mr Moore noted that the Registrar had requested that he clarify the nature of the “mistake or omission” sought to be

corrected. In response, Mr Moore argued that the Registrar erred in her decision to refuse to file the application by failing to recognise that the application did in fact specify mistakes and omissions of the Māori Land Court and Native Land Court as required under r 8.2(2)(b). He explained these acts and omissions as follows:

The Māori Land Court on a series of occasions acts and omissions perpetuated the distortion of the ownership of the land, and effectively gave control to those who were not tangita whenua and who then granted membership status to those who had no interest in the land.

[12] Specifically, Mr Moore listed the following Court proceedings:

- (a) An application from the Public Trustee heard before Native Land Court Judge Edger on 24 November 1902 seeking to determine relative shares and interests in the block. The Judge ordered a number of successions and declared that each of these owners held equal shares.²
- (b) The freehold order granted on 21 February 1916 by the Native Land Court which declared 11 owners in the block. The effect of this freehold order and related determination of shares was that the majority of the shares were held by loyalist, non tangata whenua owners.³
- (c) The vesting order granted on 6 December 1960, vesting the remainder of the Rohutu block (section 81 B) in trustees pursuant to s 438 of the Māori Affairs Act 1953. Mr Moore specifically noted the provision in the trust order allowing trustees to subdivide the land into building allotments, subject to approval by the Māori Land Court.⁴

[13] Finally, Mr Moore argued that the Māori Land Court has perpetuated this error by its subsequent registration of erroneous membership lists of the trust and its acceptance of applications by trustees whose appointment was flawed.

² 7 Taranaki MB 203 (7 TAR 203).

³ 25 Taranaki MB 17 (25 TAR 17).

⁴ 71 Taranaki MB 80 (71 TAR 80).

Law

[14] Rule 4.10 of the Māori Land Court Rules empowers the Registrar to refuse to accept proceedings or other documents for filing. This includes instances where the application or documents do not comply with a requirement set out in the rules.⁵

4.10 Registrar may refuse to accept proceeding or other document for filing

- (1) A Registrar may refuse to accept for filing a proceeding or other document for any of the following reasons:
 - (a) it is illegible;
 - (b) if in electronic form, it cannot be opened;
 - (c) it does not comply with a requirement of these rules;
 - (d) it is not in the correct form;
 - (e) it is not accompanied by the prescribed fee;
 - (f) it is not accompanied by other information or documents required by these rules to be filed with it.
- (2) The Registrar must advise the person filing the proceeding or other document that it is refused and must state the reason for the refusal.
- (3) The party or person filing a proceeding or other document that has been refused for filing by the Registrar may apply in writing for the review of the Registrar's decision by a Judge, and a Judge must then determine the matter.

[15] Rule 8.2 sets out the requirements for an application to the Chief Judge under section 45 of the Act:

8.2 Application to Chief Judge under section 45 of the Act

- (1) ...
- (2) The following matters must be set out in the application:
 - (a) in respect of the order or certificate of confirmation that is the subject of the application, -
 - (i) the date of the order or certificate; and
 - (ii) a description of the land affected; and
 - (iii) the names of the owners affected or, in the case of succession, the name of the deceased;
 - (b) in respect of the mistake or omission sought to be corrected, -
 - (i) a statement of the nature of the mistake or omission, who made it, and how; or
 - (ii) if the mistake is an error of law, the nature of that error;
 - (c) in any case where whakapapa is alleged to be incorrect, the applicant's version of the correct whakapapa;
 - (d) details as to how the applicant or the person on whose behalf the application is made has been adversely affected by the order or certificate in question:

⁵ Māori Land Court Rules 2011, r 4.10(1)(c).

- (e) the names and, where obtainable, the addresses of those persons who might be affected if the application is granted.

Discussion

[16] The Registrar declined to register Mr Moore's application on the basis that it failed to comply with r 8.2(2)(b). The Registrar concluded that the application did not adequately set out the mistake or omission sought to be corrected in relation to the partition order made at 67 Taranaki MB 165 dated 27 February 1958.

[17] Rule 8.2(2)(b) provides that the application must set out "a statement of the nature of the mistake or omission, who made it, and how" or, "if the mistake is an error of law, the nature of that error".⁶

[18] Importantly, the Registrar's power to refuse an application under r 4.10(1) is an administrative "threshold decision" to determine whether an application complies with the administrative requirements of the Rules.⁷ It is not required at this point in proceedings that the applicant has provided sufficient information and a persuasive argument to make out his case, or even that his case is clearly set out. So long as the information required by r 8.2 is set out in the application, it should be accepted. It is then during the substantive hearing that the merits of the case can be heard.

[19] In his application and the subsequent information filed, Mr Moore recognised a number of orders made by both the Māori Land Court and Native Land Court which perpetuated what he claims to be a distortion of the ownership of the land resulting from an error made in a Crown grant in 1884. He specifically notes a partition order dated 27 February 1958 at 67 Taranaki MB 165. Mr Moore claims that, when granting these orders, the Court recognised and relied on ownership lists which included people who were not tangata whenua and had no connection to the land.

[20] In my view, this sufficiently explains the nature of the mistake or omission sought to be amended as one of reliance on alleged incorrect ownership lists, and attributes the alleged error to the Māori Land Court and Native Land Court.

⁶ Māori Land Court Rules, r 8.2.2(b)(i) and (ii).

⁷ *Perigo – Ruapehu 2 block* (2017) 366 Aotea MB 274 (366 AOT 274) at [16].

[21] I conclude that the information provided by Mr Moore meets the threshold required under 8.2(2)(b) and his application should not have been refused for filing on that basis.

Decision

[22] The application should now be accepted and referred to a case manager for the preparation of a Report and Recommendation to Deputy Chief Judge Fox who has been delegated the authority to preside over s 45 applications originating in Te Taitokerau.

A copy of this decision is to be distributed to all parties.

Dated at Wellington this 30th day of November 2018.

W W Isaac
CHIEF JUDGE