

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

**A20130009242
CJ 2013/26**

UNDER Section 45, Te Ture Whenua Māori Act 1993
IN THE MATTER OF Maungakawakawa 6B, 6B1, 6B2, 6B3 and 6B4
CONCERNING TE IRIHAPETI POU AND TE RINGAKAHA
TIA-WARD
Applicants

Hearing: 6 July 2018, 2018 Chief Judge's MB 343-364
(Heard at Whangarei)

Judgment: 30 October 2018

DECISION OF DEPUTY CHIEF JUDGE C L FOX

Introduction

[1] Te Irihapeti Pou and Te Ringakaha Tia-Ward (the applicants) seek an order under s 45 of Te Ture Whenua Māori Act 1993 (the Act) to cancel or amend orders of the Court made at 1 Kaikohe MB 35-42 and 45-46 (31 January 1963) and orders at 14 Bay of Islands MB 126 (5 December 1934) partitioning Maungakawakawa 6B into Maungakawakawa 6B1, 6B2, 6B3 and 6B4.

[2] The applicants claim that the order drawn at 1 Kaikohe MB 45-46 was drawn incorrectly.

[3] The applicants state that they have been adversely affected because the order complained of changed the amount of land they were entitled to in Maungakawakawa 6B as uri of Whakatakakotoroa Hemi or Whakatangaroa Hemi.

Background

[4] The Registrar's Report and Recommendation (the Report) dated 3 July 2018 sets out the background to the application. The Report is reproduced in full as follows:

Introduction

1. This application, filed by Te Irihapeti Pou and Te Ringakaha Tia-Ward (the Applicants), seeks to cancel an order of the Court at 1 Kaikohe MB 35-42 and 45-46 (31/01/1963) cancelling orders at 14 Bay of Islands MB 126 (05/12/1934) partitioning Maungakawakawa 6B into Maungakawakawa 6B1, 6B2, 6B3 and 6B4.
2. The Applicants claim:
Our opinion is that the order drawn as per the minute of 1 Kaikohe 45-46 dated 31 January 1963 has been drawn incorrectly.
3. The Applicants claim they are adversely affected because the order has:
...changed the amount of land as uri of Whakatakakotoroa Hemi or Whakatangaroa Hemi hold/own in Maungakawakawa 6B.

History of order sought to be amended

4. At 13 Bay of Islands MB 281-285 (27/11/1911) the Court heard an application for partition to cut the shares of Kura Hemi out of Maungakawakawa 6. The partition was awarded on the basis of the dangerous friction that existed between two owners, namely Kura Hemi and Pouroto Hemi. The resultant partition saw the shares of Kura Hemi split out of the parent title and vested in Maungakawakawa 6A (with the boundaries taking into account Kura Hemi's

house). The residual owners and the remaining shares were vested in Maungakawakawa 6B as follows:

5. 13 Bay of Islands MB 285 (27/06/1933) Maungakawakawa 6 B

No.	Name	Sex	Shares
1	Pouroto Hemi	md	28
2	Whakatakotoroa Hemi or Whakatangaroa Hemi	fd	28
3	Hune Horima	fd	28
4	Kereihana Peka	md	9.5
5	Tanu Peka	md	9.5
6	Mere Peka	fd	9.5
7	Tio Peka	m	5.5
8			118

6. At **14 Bay of Islands MB 124 - 126** (05/12/1934) the Court heard an application for the partition of Maungakawakawa 6B into four separate parcels. The purpose of the partition was to consolidate each owner's interest into separate titles, so that they could occupy and work the land to the best advantage. The Court made orders partitioning Maungakawakawa 6B into the following blocks, Maungakawakawa 6B1, 6B2, 6B3 and 6B4. According to the evidence set out at 14 Bay of Islands MB 124 - 126 the partition was on a share basis, given the equal value of the land being partitioned. The ownership of each of these blocks was as follows:

7. **Historical record for Maungakawakawa 6b dated 05/12/1934**

Maungakawakawa 6B1 (area 12 acres 19 perches)			
	Name	Sex	Shares
1	Pouroto Hemi	md	10

Maungakawakawa 6B2 (area 12 acres 19 perches)			
	Name	Sex	Shares
1	Hune Horima	fd	10

Maungakawakawa 6B3 (area 12 acres 19 perches)			
	Name	Sex	Shares
1	Whakatakotoroa Hemi or Whakatangaroa Hemi	fd	1.00

Maungakawakawa 6B4 (14 acres 2 roods 30 perches)			
	Name	Sex	Shares
1	Kereihana Peka	md	9.5 out of 34
2	Tanu Peka	md	9.5 out of 34
3	Mere Peka	fd	9.5 out of 34
4	Tio Peka	m	9.5 out of 34

8. At 1 Kaikohe MB 35-42 and 45-46 (31/01/1963) the Court heard an application pursuant to Sections 184 and 387 of the Māori Affairs Act 1953 to cancel the partition orders made at 14 Bay of Islands MB 126. The application was lodged by the Bay of Islands County Council on the following grounds:
9. With regard to Section 184:
- i. The present condition of the land indicates that the land is unoccupied and has been neglected for some time
- With regard to Section 387:
- i. The land is unoccupied
 - ii. The land is not being kept properly cleared of noxious weeds, namely gorse, which in the Bay of Islands has been gazetted as such.
 - iii. That rates payable in respect of the land have not been paid.
 - iv. That the owners of the land have neglected to farm or otherwise manage the land with due diligence and that in consequence of their neglect the land is not being used to proper advantage.
10. At 1 Kaikohe MB 35-42 (31/01/1963) the Court made orders pursuant to Section 184 of the Māori Affairs Act 1953 cancelling the partition orders made at 14 Bay of Islands MB 126 with the land to revert back to Maungakawakawa 6B.

Court 1. Orders under Sec 184/1953 Cancelling Partition Orders dated 5.12.1934 constituting Maungakawakawa 6B1, 6B2, 6B3 and 6B4 respectively to the end and intent that the lands affected by the orders so cancelled shall to the extent of such cancellations again be held in common ownership in the same manner and in the same shares as if no such partitions had taken place.

11. The corresponding 184 Order drafted by Court staff distributed the shareholding of the block as follows:

Maungakawakawa 6B (20.6718 hectares)			
	Name	Sex	Shares
1	Te Apiata Komene	M	0.09
2	Te Aroha Tia Hohua	M	0.09
3	Te Auta Perana	M	3.334
4	Frederick Tei Mendoza	M	1.429
5	Te Hira Komene	M	0.09
6	Hoki Henare	F	0.09
7	Hone Evan Mendoza	M	1.429
8	Horace Horima Mendoza	M	1.429
9	Irihapeti Allison	F	0.09
10	Kereihana Peka	M	9.5
11	Marara Ratahi Tomuri	F	1.111
12	Marereira Perana	F	3.333
13	Meira Catherine Mendoza	F	1.429
14	Mere Peka	F	9.5
15	Meri Catherine Mendoza	F	1.428
16	Mihi Ratahi Tomuri	F	1.111

17	Ngaro Komene	M	0.09
18	Pere Hatara Komene	M	0.09
19	Pil Komene	M	0.09
20	Te Raupo Ratahi Komene	F	1.111
21	Ronald Ra Mendoza	M	1.428
22	Rui Komene	M	0.09
23	Sydney Richard Ataria Mendoza	M	1.428
24	Tanu Tia Hohua	M	0.09
25	Tanu Peka	M	9.5
26	Tio Peka	M	5.5
27	Whareoneone Komene	M	0.1
			55

12. A further order was made pursuant to Section 438 of the Māori Affairs Act 1953, constituting a 438 Trust and vesting the land in the Māori Trustee for the purpose of leasing the block to Pua Maihi.

Identification of evidence that may be of assistance in remedying the mistake or omission

13. The Applicants have provided a Submission (copy attached) and copies of documents from the Court record in support of this Section 45 application.

Court Research

14. Section 184(1) of the Māori Affairs Act 1953 clearly sets out:

184(1). Subject to the provisions of subsection two hereof, the Court may at any time cancel wholly or in any part any order made under this Part of the Act (whether or not that order has been registered under the Land Transfer Act 1952) and thereupon, unless another partition order is at the same time made in substitution therefor, the land affected by the order so cancelled shall to the extent of the cancellation again be held in common ownership in the same manner and in the same shares as if no such partition had taken place.

15. Given the intent set out in Section 184 of the Māori Affairs Act 1953, an error has occurred in the drafting of the Section 184 order by Court Staff. If the intent of Section 184 had been carried out the total shareholding of the block should have equalled 118 shares being the total number of shares in Maungakawakawa 6B prior to the 1934 partition orders. Rather the basis for the drafting of the orders seems to have been based on simply adding the shareholdings of Maungakawakawa 6B1, 6B2, 6B3 and 6B4 together for a total shareholding of 55 shares.
16. The current shareholding severely disadvantages the former owners of Maungakawakawa 6B1, 6B2 and 6B3 because the current shareholding is not a true reflection of the original owner's shareholding in Maungakawakawa 6B.
17. Given the intent of Section 184, the schedule attached to the order should have been drafted as follows to reflect the shareholding of Maungakawakawa 6B prior to the 1934 partition:

Maungakawakawa 6B (20.6718 hectares)			
	Name	Sex	Shares
1	Te Apiata Komene	M	2.54
2	Te Aroha Tia Hohua	M	2.55
3	Te Auta Perana	M	9.33
4	Frederick Tei Mendoza	M	4.00
5	Te Hira Komene	M	2.54
6	Hoki Henare	F	2.55
7	Hone Evan Mendoza	M	4.00
8	Horace Horima Mendoza	M	4.00
9	Irihapeti Allison	F	2.55
10	Kereihana Peka	M	9.5
11	Marara Ratahi Tomuri	F	3.11
12	Marereira Perana	F	9.33
13	Meira Catherine Mendoza	F	4.00
14	Mere Peka	F	9.50
15	Meri Catherine Mendoza	F	4.00
16	Mihi Ratahi Tomuri	F	3.11
17	Ngaro Komene	M	2.55
18	Pere Hatara Komene	M	2.54
19	Pil Komene	M	2.54
20	Te Raupo Ratahi Komene	F	3.12
21	Ronald Ra Mendoza	M	4.00
22	Rui Komene	M	2.55
23	Sydney Richard Ataria Mendoza	M	4.00
24	Tanu Tia Hohua	M	2.55
25	Tanu Peka	M	9.5
26	Tio Peka	M	5.5
27	Whareoneone Komene	M	2.54
			118

18. While it is apparent that an error existed in the drafting of the Court Order, it is an administrative matter.
19. The jurisdiction of Section 45 of Te Ture Whenua Māori Act 1993 does not extend to resolution of administrative matters.
20. The matter should be amended pursuant to Section 71 of Te Ture Whenua Māori Act 1993 and dealt with as an administrative error under Section 86 of Te Ture Whenua Māori Act 1993.

Details of subsequent Orders affecting lands to which this application relates

21. At 2 RW 138 (10/03/1978) where the interest of Apiata Renata Komene in Maungakawakawa 6B was vested in the Māori Trustee as Administrator.
22. At 2 RW 164 (122/06/1978) where the interest of the Māori Trustee as the Administrator of the estate of Apiata Renata Komene in Maungakawakawa 6B was vested in Rui or Sonny Komene, solely).

23. At 10 KH 286 (11/09/1978) where the interest of Mihi Ratahi Tomuri in Maungakawakawa 6B was vested in Pua Arepata Maihi (solely).
24. At 10 KH 268 (11/09/1978) where the interest of Marara Ratahi Tomuri in Maungakawakawa 6B was vested in Pua Arepata Maihi (solely).
25. At 10 KH 286 (11/09/1978) where the interest of Te Raupo Ratahi Tomuri in Maungakawakawa 6B was vested in Pua Arepata Maihi (solely).
26. At 10 KH 333 - 334 (04/05/1981) where the interest of Kereihana Peka in Maungakawakawa 6B was vested in Pua Arepata Maihi (solely).
27. At 201 ROT 50 (27/10/1981) where the interest of Mere Peka in Maungakawakawa 6B was vested in Inez Huia Hohaia (solely).
28. At 12 KH 80 (10/08/1981) where the interest of Inez Huia Hohaia in Maungakawakawa 6B was vested in Pua Arepata Maihi (solely).
29. At 3 RW 285 (17/11/1982) where the interest of Pua Arepata Maihi in Maungakawakawa 6B was vested in Wiri Piri Maihi as Administrator.
30. At 3 RW 285 (17/11/1982) where the interest of Pua Arepata Maihi in Maungakawakawa 6B was vested in Wiri Pua Maihi as Administrator.
31. At 15 AT 19 (08/03/1984) where the interest of Daniel Tanu Toti Hemi Roka Peka or Daniel Tapu Baker or Tanu Peka or Tanu Te Toi Peka in Maungakawakawa 6B was vested in Tera Wenerei Baker for life with remainder to Edward Wenerei Baker.
32. At 1 AT(s) 10 (25/11/1983) where the interest of Hira Komene or Te Hira Komene Takena in Maungakawakawa 6B was vested in Motau Hira Komene or Mrs Rudolph (solely).
33. At 3 RGTO 273 (24/03/1987) where the interest of Wiri Pua Maihi as the Administrator of the estate of Pua Arepata Maihi in Maungakawakawa 6B was vested in Wiri Pua Maihi (1/2), Annie Pua Keith (1/12th), Te Hokio Pua Tai (1/12th), Pua Arepata Maihi (1/12th), Gaylene Joy Maihi (1/12th), Donna Marie Maihi (1/12th) and Helen Ann Maihi (1/12th).
34. At 2 AT(s) 54 (06/09/1988) where the interest of Motau Hira Komene or Mrs Rudolph in Maungakawakawa 6B was re-vested in Te Hira Komene on the basis that they were still alive.
35. At 15 KH 380 - 381 (03/08/1987) where the interest of Te Auta Perana in Maungakawakawa 6B was vested in Colin Te Auta Perana (solely).
36. At 77 WH 152 (17/10/1994) where the interest of Colin Te Auta Perana in Maungakawakawa 6B was vested in Anne Shron Redpath (as trustee – Kaitiaki Trust).
37. At 70 WH 125 - 126 (10/12/1990) where the interest of Whareoneone Komene in Maungakawakawa 6B was vested in Raymond Roel Komene (solely).
38. At 7 REG 64 (26/03/1992) where the interest of Sydney Richard Ataria Mendoza in Maungakawakawa 6B was vested in Tahuri Kino Mendoza as executrix.
39. At 221 ROT 171 (26/03/1992) where the interest of Tahuri Kino Mendoza as executrix of the estate of Sydney Richard Ataria Mendoza in Maungakawakawa 6B was vested in Tahuri Kino Mendoza (solely).
40. At 10 WMN 105 - 106 (14/09/2010) where the interest of Ronald Ra Mendoza in Maungakawakawa 6B was vested in Donelle Leigh O'Neill, Laurine Gayle de Vreede, Shelly Kim Phipps and Kelvin Ricky Mendoza (in equal shares).

41. At 25 TTK 181 - 184 (21/06/2011) where the interest of Te Aroha Toa Hohua in Maungakawakawa 6B was transferred (s. 164/93) to Elizabeth Pou.
42. At 39 TTK 96 - 97 (05/04/2012) where the interest of Tanu Tia Hohua in Maungakawakawa 6B was vested in Elizabeth Pou and Te Aroha Tia (in equal shares)
43. At 55 WAI 246 - 249 (05/06/2012) where the interest of Tahuri Kini Mendoza in Maungakawakawa 6B was vested in Christopher Davies, Kelly Lee Baxter, Haley Jane Satherley, Robert Ronald Stent, Sharleen Theresa Fladgate (in equal shares)
44. At 93 WAR 197 (01/04/2014) –Sharleen Theresa Fladgate (amendment)
45. At 150 WAI 74 - 79 (06/10/2016) where the interest of Tera Wenerei Baker in Maungakawakawa 6B was vested in Edward Wenerei Baker (determination of life interest)

Details of payments made as a result of the Order

46. On 13 October 2014 correspondence was received from Te Tumu Paeroa regarding the distribution of funds to the owners for Maungakawakawa 6B. Since Te Tumu Paeroa was appointed as trustee to the block a total of \$19,959.17 has been made available for distribution to the owners. Of this \$9,778.38 has already been paid out, while the remaining \$10,180.72 is currently being held by the Māori Trustee pending the outcome of this application. The accumulation/distribution of funds from this block is set out as follows:

Maungakawakawa 6B (20.6718 hectares)					
	Client No.	Name	Current Balance	Funds held from affected block	Payments made from affected block
1	CLI-00190514	Annie Pua Kieth	0.00	0.00	361.61
2		Christopher Davies			
3		Colin Te Auta Perana			
4		Donelle Leigh O'Neill			
5	CLI-00145427	Donna Marie Maihi	0.00	0.00	361.61
6	CLI-00144403	Elizabeth Pou	15.19	12.52	52.41
7	CLI-00145428	Gaylene Joy Maihi	0.00	0.00	361.61
8		Haley Satherley			
9	CLI-00145428	Helen Ann Maihi	0.00	0.00	361.61
10	CLI-00211480	Hoki Henare	61.01	61.01	0.00
11	CLI-00211482	Hone Era Mendoza	992.46	982.99	0.00
12	CLI-00211482	Horace Tei Mendoza	992.67	983.20	0.00
13	Refer #6	<i>Irihapeti Alison is recorded as the same person by Te Tumu Paeroa</i>			
14		Kelly Lee Baxter			
15		Kelvin Ricky Mendoza			
16		Laurine Gayle de Vreede			
17	CLI-00189202	Maraeira Te Namu (Perana)	9,499.77	60.21	2,281.58
18	CLI-00114109	Maera Christina Kenny (Meira Catherine Mendoza)	710.45	710.45	239.46
19	CLI-00211492	Katherine Mary Hall (Meri Catherine Mendoza)	0.00	0.00	982.33

20	CLI-00211483	Ngaro Renata Komene	61.01	61.01	0.00
21	CLI-00107754	Perehatara Renata (Komene)	9.81	9.81	52.82
22	CLI-00144404	Pii Renata Komene	21.44	21.44	43.24
23	CLI-00116964	Pua Arepata Maihi	0.00	0.00	361.61
24	CLI-00145825	Raymond Roel Komene	0.00	0.00	2.42
25		Robert Ronald Mason Stent			
26	CLI-00211484	Rui Komene	118.02	118.02	0.00
27		Sharleen Theresa Fladgate			
28		Shelly Kim Phipps			
29	CLI-00211490	Aroha Tia Hohua	61.01	61.01	0.00
30	CLI-00107753	Te Hira Rui Komene	2.19	2.19	17.09
31	CLI-00116963	Te Hokio Pua Tai	426.41	426.41	0.00
32	CLI-00211485	Tip Peka	3,727.03	3,727.03	0.00
33	CLI-00190451	Tera Wenerei Baker	5,692.84	2,881.45	0.00
34	CLI-00211486	Willie Pua Maihi	0.00	0.00	4,236.14
35	CLI-00189577	Whareoneone Renata Komene	2.47	2.47	62.84
36	CLI-00190559	Motau Hira Rudolph	59.57	59.57	0.00

47. Any past payments made by the Māori Trustee are afforded the protection of Section 48(2) and therefore shall be deemed to be lawful.
48. The remaining funds which are currently being held by Te Tumu Paeroa pending the resolution of the current application, should be distributed following a recalculation based upon each owner's revised shareholding in the block, with the exclusion of those owners who have received any past payments from the Māori Trustee above the recalculation.

Consideration of whether matter needs to go to full hearing

49. Based on the information provided there is sufficient evidence to show that an administrative error has been made by Court staff in the process of drafting the Section 184 Order.
50. It is recommended that the matter be set down for hearing, in Whangarei, to afford the parties further opportunity to present evidence on the matters raised above.

Recommendation of course of action to be taken

51. If the Deputy Chief Judge is of a mind to exercise her jurisdiction, then it would be my recommendation that:
- a) The application be set down for hearing at the Whangarei Māori Land Court on **Friday 6 July 2018.**
 - b) A copy of this report be sent to all affected parties, for whom we have contact details for, to give them an opportunity to comment in writing or respond at the hearing.
 - c) That the application be amended to an application, pursuant to Section 71 of Te Ture Whenua Māori Act 1993, to an application pursuant to Sections 86 and 242, of Te Ture Whenua Māori Act 1993
 - i. Section 86, that the Registrar (Taitokerau District) amend the record accordingly as per the schedule attached; and
 - ii. Section 242, for payment of the funds held by the Māori Trustee, recalculating the distribution of the funds currently held, based upon

each owner's revised shareholding in the block, with the exclusion of those owners who have received any past payments from the Māori Trustee above the recalculation.

- d) That any consequential amendments be amended pursuant to Section 88(2) of Te Ture Whenua Māori Act 1993.

[5] On 21 June 2018 notice of the hearing and a copy of the applicant's submission was distributed to parties for whom addresses were known.

[6] The Report was distributed to parties on 3 and 4 July 2018 and there was no objection received to the report.

Discussion

[7] As there has been no opposition to this application, and the report of the Chief Registrar makes clear that an administrative error occurred by the district Registrar, the report recommendations are accepted.

Order and Directions

[8] Accordingly, I amend this application pursuant to s 71 of Te Ture Whenua Māori Act 1993 to an application under ss 86 and 242 of that Act.

[9] I direct the Registrar (Taitokerau District) to set this s 86 and 242 application down for hearing as a special fixture to be heard by myself on the 11th December 2018 following the last s 45 application to be heard that day.

[10] The Registrar (Taitokerau District) is directed to send direct notice of the hearing to all affected parties and he is to advertise the hearing by way of a Special Panui.

[11] The Case Manager is directed to distribute a copy of this decision to all parties and to the Registrar (Taitokerau District) immediately.

Pronounced at 11.35 am in Gisborne on Tuesday, 30th October 2018.

C L Fox
DEPUTY CHIEF JUDGE