IN THE MĀORI LAND COURT OF NEW ZEALAND
WAIARIKI DISTRICT

A20160002694

	UNDER	Section 135, Te Ture Whenua Māori Act 1993
	IN THE MATTER	Ngapuna A25
	BETWEEN	KEVIN YEOWARD, MARK YEOWARD AND SHA NOTTINGHAM Applicants

Hearing: 142 Waiariki MB 234-238, dated 8 June 2016
(Heard at Rotorua)

Judgment: 1 August 2016

RESERVED JUDGMENT OF JUDGE C T COXHEAD

Introduction

[1] This is an application seeking an order to change the status of Ngapuna A 25 block from Māori freehold land to General land to enable the block to be more easily sold.

[2] The three applicants hold shares in Ngapuna A 25 in equal thirds. The block adjoins a block of General land, Ngapuna A 26 block, which is owned by the applicants' father.

[3] On 18 April 2016 the applicants applied to the Court for an order to vest their shares in Veronica Butterworth, their first cousin, for $63,000.00. According to their application, the applicants wished to transfer the shares to Ms Butterworth in order to retain the whenua in the whānau. They stated that consultations undertaken with their immediate whānau had revealed no objections to the transfer.

[4] However, the transferee subsequently decided she no longer wished to purchase the property. The applicants then amended their application, seeking an order pursuant to s 135 of Te Ture Whenua Māori Act 1993 to change the status of the land.

[5] The applicants explained their position at the Court hearing on 8 June 2016.[1] Although the application relates to Ngapuna A 25, it seems that the applicants' broader intention is to sell this block together with the adjoining block of General land, Ngapuna A 26. The applicants say that together the blocks form a more attractive "package" because Ngapuna A 26 has a dwelling on it, while Ngapuna A 25 does not.

Applicants' submissions

[6] The applicants consider that both blocks are currently underutilised as no one currently resides there to take care of the land. The applicants argue that the blocks have great potential. Ngapuna A 25 is an ideal space for growing vegetables, which is how their parents used the block, while Ngapuna A 26 has a house on it. Both blocks back onto an area of bush, and native birds and fauna are a feature of the property.

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1 142 Waiariki MB 234-238 (142 WAR 234-238).

[7] At the hearing, I asked the applicants to explain how Ngapuna A 25 would be better utilised as General land. I noted that if the applicants' parents had previously used the block for a garden, then the land's Māori freehold status should not prevent that same use. The applicants agreed but argued that the problem is attracting people on the land in the first place. They explained that they had tried to keep Ngapuna A 25 in the whānau by offering it to whānau members, however nobody wanted to take it over. While Ms Butterworth had shown interest, ultimately she decided not to proceed with the proposed transfer.

[8] The applicants explained this reluctance to take on the blocks by reference to the fact that Ngapuna A 25 is Māori freehold land, while Ngapuna A 26 is General land. The applicants submitted that they preferred to see the blocks utilised together, however they argued that the differing land status of the two blocks is confusing and therefore unattractive to potential buyers. As a result, neither whānau members nor anyone outside the whānau want to purchase and reside on the land, so the blocks are left underutilised.

[9] I suggested that the applicants could address the differing status issue by seeking to change Ngapuna A 26 to Māori freehold land as opposed to changing Ngapuna A 25 to General land. The applicants responded however that, in the event that they could find no whānau member to transfer the land to, if both the blocks were Māori freehold land then they would be even less attractive to potential purchasers outside the whānau.

[10] The following line of questioning demonstrates the crux of the applicants' argument for a change of status:[2]

> **The Court:** … What is it about the status that needs to be changed?
>
> **K Yeoward:** I think it's making it more attractive to get more people there in the first place. If we keep the two under two separate titles, I think that will limit who it will be attractive to, to come and live there.
>
> **The Court:** And that's about it being attractive for sale – my other question is how will the change of status mean that it will be better utilised?
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> **K Yeoward:** By getting somebody in there in the first place.

[2] 142 Waiariki MB 238 (142 WAR 238).

M Yeoward: Nobody wants it and we don't want to do anything with it. None of our kids want to do anything with it or – and we've offered it to the whānau so it's just going to sit there and go back to scrub again. So, to me that's just a waste.

The Law

[11] The relevant provisions of the Act are ss 135 and 136, which state:

> **135 Change from Maori land to General land by status order**
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> (1) The Maori Land Court shall have jurisdiction to make, in accordance with section 136 or section 137, a status order declaring that any land shall cease to be Maori customary land or Maori freehold land and shall become General land.
>
> (2) The court shall not make a status order under subsection (1) unless it is satisfied that the order may be made in accordance with section 136 or section 137.
>
> (3) A status order under subsection (1) may be made conditional upon the registration of any instrument, order, or notice effecting a conveyance of the fee simple estate in the land to any person or persons specified in the order.
>
> **136 Power to change status of Maori land owned by not more than 10 persons**
>
> The Maori Land Court may make a status order under section 135 where it is satisfied that—
>
> (a) the land is beneficially owned by not more than 10 persons as tenants in common; and
>
> (b) neither the land nor any interest is subject to any trust (other than a trust imposed by section 250(4)); and
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> (c) the title to the land is registered under the Land Transfer Act 1952 or is capable of being so registered; and
>
> (d) the land can be managed or utilised more effectively as General land; and
>
> (e) the owners have had adequate opportunity to consider the proposed change of status and a sufficient proportion of the owners agree to it.

[12] The principles that apply to applications to change the status of Māori freehold land are summarised in *Manunui v Church – Lot 37-49 DP 34051*.[3] I adopt the reasoning set out in that decision.

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[3] *Manunui v Church – Lot 37-49 DP 34051* (2013) 313 Aotea MB 260 (313 AOT 260).

Discussion

Have the Preferred Class of Alienees been notified?

[13] In cases like this, where a change of status is requested, members of the preferred class of alienees must be formally notified of the application and the hearing, and the Court will strictly adhere to this requirement.[4]

[14] In this case there is nothing to indicate that the preferred class of alienees have been notified. While whānau were consulted about the application to vest shares, it is clear that with the quick application change, there has been a lack of notification to the preferred class of alienees regarding the application for a status change.

Can the land be utilised more effectively as General land?

[15] The applicants meet the pre-conditions set out in s 136(a) – (c) and (e) of the Act. The remaining condition is whether the land can be utilised more effectively as General land.

[16] The precondition in s 136(d), that the land can be managed or utilised more effectively as General land, is often the hardest to satisfy. The applicant must demonstrate, via sufficiently detailed and reasonably tested evidence, that specific plans for the land exist, which could be achieved more effectively if the land were General land.[5] The effect of the land remaining Māori freehold land must also be tested to a reasonable level in evidence.[6]

[17] The primary difficulty with the present application is that the applicants speak of possibilities rather than actualities. The Court can only grant a change of status when an application has definitive plans for the land and is encountering definitive problems with its status as Māori freehold land. That is not the case here. The applicants have not

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4 *Te Whata – Waiwhatawhata 1A2B6 Lot 1 DP 168554* (2008) 125 Whangarei MB 294 (125 WH 294) at [11]; *Cleave – Orakawa 3B* (1995) 4 Taitokerau Appellate MB 95 (4 APWH 95).

5 *Te Whata*, above n 4,at [14], [42]; *Craig v Kira – Wainui 2F4D* (2006) 7 Taitokerau Appellate MB 1 (7 APWH 1) at [10]; *Property Ventures Ltd v Parata – Ngarara West B3B* (2007) 16 Whanganui Appellate MB 1 (16 WGAP 1) at [34].

6 *Te Whata*, above n 4 at [14], [42]; *Craig v Kira*, above n 5, at [10]; *Property Ventures Ltd v Parata*, above n 5, at [34].

presented "full and cogent" evidence as required. There are no definitive plans for a sale, and they have only expressed their view that a status change is needed so that at some time Ngapuna 25A and Ngapuna 25B blocks can be sold together.

[18] The submission that the land will be more "attractive" for sales purposes if it is General land, is not supported by any evidence. In fact, the evidence is somewhat contradictory in that the applicant had a buyer who is willing to buy all the shares in Ngapuna 25A. This proposed sale supports the contention that the land can attract buyers as Māori freehold land. Although the sale subsequently did not proceed, there was no clear evidence put before the Court that the reason why the transfer did not proceed was becasue the land was Māori freehold land.

[19] I am not satisfied that there is any real difficulty in selling the land as Māori freehold land. As I say, at one time the applicant had a proposed purchaser for the block who was willing at that time to buy the block as Māori freehold land.

[20] A vague indication that the applicants wish to get people on to the land, and that it is not possilbe while the land is Māori freehold land, is not evidence enough. The applicant has not advertised the land for sale or put the land on the market, which would demonstrate a specific plan. As a result the effect of the land remaining Māori freehold land has also not been tested to a reasonable level in evidence.

[21] Further, an essential question in determining whether a change of status should be granted is whether such change would undermine the balance struck in the Act between landowners' right to engage with their land as they wish, and the wider hapū interest in land as a collective taonga tuku iho.[7] A change of status to more easily sell land or to achieve a better sale price will usually subvert the kaupapa of the Act and generally offers no reason to change status.[8] Only in exceptional circumstances – where the facts are well "outside the ordinary run of cases" – will an application based on sale succeed.[9]

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7 *Craig v Kira* above n 5, at [19].

8 *Te Whata*, above n 4, at [33]; *Hoko - Papamoa 2A1*(2002) 20 Waikato Maniapoto Appellate MB 167 (20 APWM 167) at 181; *Craig v Kira*, above n 5, at [24].

9 *Property Ventures Ltd v Parata*, above n 5, at [37]; *Craig v Kira*, above n5, at [44].

[22] This is not an exceptional case where there is an intention to sell part of the land in order to develop or better manage, retain or use the balance land. This is a situation where a change of status for the purpose of sale will not be consistent with and will subvert the kaupapa of the Act.

[23] The applicants have not demonstrated that the land can be utilised more effectively as General land. It remains open to the applicants to sell the land as Māori freehold land.

Decision

[24] The members of the preferred class of alienees have not been formally notified of the application. There is no substantial evidence that the land can be utilised more effectively as General land, nor is there evidence as to the status of the land being an impediment to sale. I therefore decline to make the orders sought.

[25] The application is dismissed.

Pronounced at 10.15 am in Rotorua on Monday this 1st day of August 2016.

C T Coxhead
JUDGE