

1947
NEW ZEALAND

**REPORT AND RECOMMENDATION ON PETITION No. 22 OF 1931, OF
RONGOWHAKAATA PERE AND ANOTHER, RELATIVE TO WAIHIRERE
BLOCK**

Presented to Parliament pursuant to Section 13 of the Native Purposes Act, 1936

Native Land Court (Chief Judge's Office),
P.O. Box 3006, Wellington, C. I, 18th August, 1947.

Memorandum for the Right Hon. the MINISTER OF MAORI AFFAIRS.

WAIHIRERE BLOCK

PURSUANT to section 13 of the Native Purposes Act, 1936, I transmit to you the report of the Court upon the claims and allegations contained in Petition No. 22 of 1931, of Rongowhakaata Pere and another, referred to the Court for rehearing of the investigation of the Waihirere Block.

In view of the Court's report, I have no recommendation to make.

D. G. B. MORISON, Chief Judge.

The Native Land Act, 1931, and the Native Purposes Act, 1936

In the Native Land Court of New Zealand (Tairāwhiti District).—In the matter of the land known as Waihirere, and of a petition No. 22 of 1931 by Rongowhakaata Pere and another, referred to the Court for inquiry pursuant to section 13 of the Native Purposes Act, 1936.

At a sitting of the Court held at Gisborne on the 27th day of April, 1937.

THE Court desires to report as follows :—

All parties interested were present and/or represented.

The petitioners claim a rehearing of the title to the Waihirere block, as far as it affects the relative interests of the owners, on the grounds that no consideration was given to a gift of part of the land to Whakahihipa, a child of Tutearitonga, and from whom petitioners descend.

The petition was opposed by the committee of management on behalf of the incorporated owners.

This gift was mentioned in 1881 at the hearing of the title to Kopaatuaki, a block adjoining Waihirere on the north. Mika Rore, who was a counter-claimant, claimed Kopaatuaki as a gift from Nonohe te Mahu, whose descendants down to himself lived there. Mika also spoke of a gift by Mahu (the first donee) to a foster-child, Whakahihipa, of the south end of Kopaatuaki. The Court did not give any decision on the several claims before it regarding Kopaatuaki as the parties agreed as to names for inclusion in the title. On the 24th March, 1881, an order for title issued in favour of fifty-four persons. No award was made in recognition of the alleged gift to Whakahihipa. The descendants of Whakahihipa were later successful in having the gift from Mahu recognized, and shares were allotted them in Kopaatuaki No. 2 following an inquiry held pursuant to section 6 of the Maori Land Claims Adjustment and Laws Amendment Act, 1906.

The claims for investigation of the title to Waihirere did not come before the Court until the following year (1882). The principal claimant was Wi Pere (the grandfather of one of the petitioners). He set up a claim through ancestry and occupation of the brothers Tutearitonga and Rongotuamaro, the former being the father of Whakahihipa, the donee in Kopaatuaki.

No claim was then made on behalf of the gift, although one of the counter-claimants on cross-examination attempted to lay down the boundaries of the land affected by the gift, but he could not complete it.

The Court upheld the ancestral claims set up by Wi Pere and party and Matenga Taihuka and party, and, after making awards for Waihirere Nos. 2, 3, and 4, a title issued to Matenga Taihuka and others for Waihirere (proper) to contain 1,750 acres.

The two petitioners are descendants of Tutearitonga, the father of Whakahihipa, and received 70 shares out of 1,200 shares allotted to Tutearitonga on definition of shares in 1919.

The petitioners now seek to extend the operation of the gift (that was successful in Kopaatuaki) across and into Waihirere. They ask for 230 additional shares for themselves and 100 shares for Apihaka Tawhiro, Mika Rore, Paora Kingi, and Rewai Hapu—all now dead—because these four people are descendants of Mahu (the original donee in Kopaatuaki) and because they lived on the land.

Dealing firstly with the last part of the claim (for the 100 shares), this would appear to be an afterthought as it was not mentioned in the petition. Apikara Tawhiao and the other three persons are already in the title to Waihirere as original owners, and an attempt to increase their ancestral shares on proceedings for the recognition of a gift cannot be entertained.

Before this Court the petitioners submitted that the boundaries of the gift covered all Waihirere proper with the exception of a small area to the north, but that they did not intend to claim at this stage all this area, but would confine the claim to additional shares (as set out above).

To successfully establish a gift claim the Courts have always held that, amongst other essential conditions—the reason of the gift must be known—the boundaries of the gift must be clearly defined and the donee must occupy exclusively.

Not one of these requirements have been fulfilled. At the Kopaatuaki hearing Mika Rore placed the gift at the south end of that block. Wi Pere placed it in the west; Paora Parau agreed with Mika. At the Waihirere hearing one witness could not complete the boundaries. At this hearing the petitioners enlarge the gift as applicable to almost the whole of Waihirere, but modestly content themselves with extra shares, at the same time ask for more shares for some of the original owners because they have occupied.

A gift of land cannot be satisfied with an award of shares to be held in common with the donors who remain in occupation.

This Court is of opinion that the claims of the gift as far as it affects Waihirere have little merit, and reports accordingly.

For the Court,

H. CARR, Judge.

The Chief Judge, Native Land Court, Wellington.

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