1949

NEW ZEALAND

REPORT AND RECOMMENDATION ON PETITION NO. 29 OF 1947, OF KARENA TAMAKI AND OTHERS, CONCERNING CERTAIN LANDS IN NGAROTO PARISH

Presented to Parliament in Pursuance of the Provisions of Section 55 of the Maori Purposes Act, 1947

Maori Land Court (Chief Judge's Office),
Wellington, C. 1, 28th June, 1949.

The Right Hon. the MINISTER OF MAORI AFFAIRS, Wellington.

PARISH OF NGAROTO

PURSUANT to section 55 of the Maori Purposes Act, 1947, I transmit to you the report of the Court on the claims and allegations contained in petition No. 29 of 1947, of Karena Tamaki and others, concerning certain lands in Ngaroto Parish.

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

D. G. B. MORISON, Chief Judge.

Report for the CHIEF JUDGE.

Re PETITION OF KARENA TAMAKI, 29/1947, *re* WAIKATO CONFISCATION LANDS

I HAVE to report having held a special sitting to consider this petition. The sitting commenced on the 26th May and was then adjourned, and the hearing was completed on the 12th and 13th of this present month. Mr. P. H. Jones appeared in support of the petition, and Mr. P. Wright on 26th May, Mr. Meredith on 12th and 13th October, appeared to represent the Crown.

When the petition first came on for hearing in May last a preliminary objection was raised to the petition that all questions relating to the confiscation of land in the Waikato had been settled by the Waikato-Maniapoto Maori Claims Settlement Act, 1946, and the preamble to that Act and section 3 were relied upon as showing that the claims in the petition, arising as they did out of confiscation, were disposed of by that Act. Mr. Jones, for the petitioner, while admitting the force of this submission, contended, nevertheless, that the claim made was outside the scope of the Act and arose not through the original

confiscation of land, but through what was termed a further confiscation by the Crown granting to Europeans an area of 4,500 acres that had earlier been set aside especially for return to the Ngati-Apakura.

While I felt that the submission by Mr. Jones, however ingenious, could not prevail, I elected to allow the petitioner to present his case in the way that he saw it, and it thus became necessary for the Crown to inquire in detail as to the claims made by the petitioner. These claims appear in the ten paragraphs of the petition, the main one being paragraph 2, which contains the allegation that, of the total area of 314,364 acres stated to have been returned to the Maoris, the Sub-tribes Ngati-Apakura and Ngati-Puhiawe were entitled to an area of approximately 4,500 acres in the Parish of Ngaroto. Paragraph 3 of the petition then proceeds to state that several years after 1867 the Government resumed the ownership of these lands, which were returned to the sub-tribes mentioned, because they failed to occupy them. These are the principal allegations contained in the petition, and, if unfounded, the claim in the petition falls to the ground.

The area of approximately 4,500 acres is defined in the schedule of the petition, which sets out various allotments in the Parish of Ngaroto comprising a total area of 4,502 acres 0 roods 30 perches. The petitioner when asked to show why these particular allotments had been selected as the lands alleged to be set aside for the sub-tribes mentioned, was hopelessly at a loss to offer an explanation. The largest area in the schedule is called the Mangaotama Block, comprising 3,000 acres. This was defined by the petitioner in evidence as being comprised within certain metes and bounds deposed to, but the Crown was able to show that the block known as the Mangaotama comprised an area of 200 acres only. If there was a block known to the Maoris as Mangaotama containing 3,000 acres, it was certainly not known on the records of the Native Land Court by such name.

The Crown presented a list of the allotments comprising the 4,502 acres referred to which showed that they were all either granted to Maoris or were not set aside for Maori occupation and that the areas on the edge of Lake Ngaroto referred to in the petition were areas that were reclaimed land and were not surveyed until 1907, so that no possible claim to these reclaimed lands could have arisen in 1867.

One suggestion contained in the petition as to why these sub-tribes were not granted land is that the members of the sub-tribes were endeavouring to have the greater portion of the lands which had been confiscated returned to them, or compensation paid by the Government. At the hearing a further reason was suggested: that the sub-tribes were unaware that lands had been made available by the Government of the day for Maori occupation and grant to occupiers. It was suggested that the N'Apakura were completely dispersed and unaware of their rights, but as against this the Crown was able to show that in the investigation of the Puahue Block, which adjoins the confiscated land area, members of the Ngati-Apakura were well aware of the investigation and appeared and gave evidence. There can thus be little doubt that the members of that sub-tribe were well aware of what was going on in connection with confiscated land.

It is noticeable also that the N'Hikairo, another sub-tribe related to the N'Apakura and N'Puhiawe, were fully aware that lands had been made available for displaced Maoris, and they sought and obtained grants on the west of the Waipa River and elsewhere. It is a fair assumption that if this sub-tribe knew that lands were being returned, the same knowledge must have been shared by the N'Apakura. The probability, therefore, is that, although the N'Apakura knew all this, they withheld from sharing in the lands made available to them and others.

The Crown was also able to refer to a *Gazette* notice, 1879, page 1481, showing that an area of 764 acres, being Lot 37, Mangere, 1 acre, and Lot 73, Waipa Parish, 347 acres, and Lot 75, Waipa Parish, 416 acres, a total of 764 acres, had been returned to the Ngati-Apakura. This was disputed at the hearing, and it was alleged that the only area so returned to a member of the Ngati-Apakura was Lot 37, Mangere, containing 1 acre. The *Gazette* of 1879, however, if not a more reliable guide than the statement made to-day that the grantees were not members of the Ngati-Apakura, does show that it was intended the area of 764 acres should be for them and was thought to have been granted to them.

The Crown also produced copies of extracts from reports by Mr. G. T. Wilkinson, Government Native Agent, of 1883. These are contained in the Appendices to the Journals, House of Representatives, 1883, G–1, page 3, and 1886, G–1, pages 8 and 9. It does appear from Mr. Wilkinson's reports that the feeling amongst the displaced Maoris at that time, together with the effect of the King Movement, was the explanation for their apathy in accepting land offered by the Government for Maori settlement. Mr. Wilkinson does, however, refer to certain members of the Ngati-Apakura Tribe having expressed a desire to settle on unoccupied Government land in the vicinity of Alexandria and the Puniu River. Mr. Wilkinson's reports may to some extent explain why the Ngati-Apakura did not obtain any substantial grants of land from the Government.

In connection with the settlement of the Rohepotae Block, which is referred to in the Otorohanga Minute-book of the Native Land Court, Volume 4, page 71, the Ngati-Puhiawe obtained an award on evidence given by Hone te One.

From the evidence presented to the Court it does appear that the Sub-tribes Ngati-Apakura and Ngati-Puhiawe did lose substantially by the confiscation and that there were not any substantial Crown grants to them at a later stage. There is no doubt that prior to confiscation they were well settled at Rangiaohia, where they were working their land and growing wheat and pigs for the Auckland market. This land was not restored to them; but the failure of the N'Apakura to take advantage of the opportunities that were offered by the Government to both friendly and rebel Natives to have land restored to them for occupation resulted apparently from their own apathy and the feeling of bitterness and distrust they held towards the Government. It is well known that the Maniapotos made a gift to the N'Apakura of 1,000 acres in the Maniapoto district because they had been displaced and were to a large extent landless. Some of this land they hold to-day, but some of it they have sold.

Reverting again to the petition, it will be apparent from what I have said that the Crown has been able to show that the allegations set out in the petition are groundless and all that can be said to be the result of the hearing is that it is proved that the two sub-tribes did suffer as the result of confiscation to a greater extent perhaps than other sections of the Waikatos. No comparison was able to be made, however, as between these sub-tribes and the other sections of the Waikatos as regards their loss.

I regard it as hardly possible that the claims by these sub-tribes were overlooked by the various Courts and Commissions that have dealt with confiscation from time to time. Particularly would this be the case during the sitting of the Commission under the Chairmanship of Sir William Sim (referred to as the Sim Commission) which sat in 1926. After a full hearing by the able members of this Commission, they came to the conclusion that some compensation should be made for the confiscation of Waikato lands, and they recommended the payment of the sum of £3,000 per annum to be distributed amongst those who had

suffered. The report of that Commission contains information that is interesting and helpful. On the basis that confiscation was wholly wrong, the claim made for the Waikatos by their representative, Mr. Smith, was stated in terms of money at the sum of £358,666. That was arrived at by deducting from the total area confiscated the area returned. The Commission did not accept Mr. Smith's view that confiscation was wholly wrong, and made the recommendation referred to as being adequate for the wrong done.

Now this sum, if capitalized at 5 per cent., represented a sum of £60,000. Compensation provided for in the Waikato-Maniapoto Maori Claims Settlement Act is the annual sum of £5,000 per annum, one sum of £5,000, and the sum of £1,000 per annum for forty-five years.

If the annual sum is capitalized, the total amount of the compensation is thus £150,000. If the annual amount is capitalized on a lower basis than 5 per cent., it is increased proportionately. It will be noted also that in the report of that Commission an award of compensation had already been made of £22,987. Adding this to the amount of £150,000, the result is, in round figures, £173,000, or approximately half of the total claim made by Mr. Smith.

The relief sought by the petition, if granted, would give the following results:—

(1) A return of the land confiscated referred to as containing 4,500 acres.
(2) The gift of 1,000 acres by the Maniapotos.
(3) Grants of land from the Crown to the Ngati-Apakura and Ngati-Puhiawe, the extent of which I am not able to state in precise figures.
(4) Any share awarded to members of the two sub-tribes of the compensation, £22,987, referred to, although it is denied that any part went to members of either sub-tribe.
(5) A share in the Tainui Trust Fund.

It is impossible, I think, that the petitioners seriously consider that they are entitled to relief approaching the result stated above.

It appears from my inquiry that upon the settlement arrived at resulting in the Waikato-Maniapoto Maori Claims Settlement Act the sub-tribes N'Apakura and N'Puhiawe were represented by Karena Tamaki and Rore Erueti. Present also as representatives of these sub-tribes were Marae Erueti and Percy Moke, but the latter two took no part in the settlement as the only method of settlement they were prepared to accept was the return of the whole of the land confiscated. They, therefore, were not parties to the settlement of the compensation payable under the Act, but Karena Tamaki and Rore Erueti did agree to the settlement, and the amount of the compensation must therefore have included any amount to which these gentlemen considered the sub-tribes were entitled.

When the question was put to Rore Erueti as to whether he did not regard the settlement as final as between the sub-tribes and the Government, he ingenuously admitted that they hoped after the settlement to be able to make a further claim. If this is what he and the petitioner had in mind when they entered into the settlement, their attitude cannot be characterized as being either fair or helpful.

Now, as far as the Act itself is concerned, in my opinion it is abundantly clear from the wording of the preamble and section 3 that all claims, past, present, or future, arising out of confiscation of lands in the Waikato District were fully and finally settled and that no further claim can be made upon the Government in respect of the confiscation. This is the plain meaning of the

words of the Act. It is apparent from the evidence of Rora Erueti and Karena Tamaki also that the sub-tribes were party to the settlement as mentioned in the Act.

That being the case, my report on the petition must be, first, that the relief sought is completely barred by the terms of the Act, and that, secondly, the petition itself proceeds on a complete misapprehension as to what has taken place in the past and cannot be supported on any ground alleged.

The Court pointed out to the petitioner and his advocate that if the sub-tribes had suffered special damage as was alleged it would be for the Trust Board established under the Act to so administer the funds as to provide for the claim by the sub-tribes for that special damage. It is noticeable that in the recommendation of the Sim Commission it was proposed that the funds should be administered for the benefit of those who suffered under confiscation. No such provision is made under the Waikato-Maniapoto Claims Settlement Act, but it is hardly to be supposed that those who suffered most under the confiscation would not have the greatest claim upon the funds. The reply to this suggestion was that the petitioner and his people did not desire that the funds should be so administered as to deprive any other section of the Waikatos of the benefit of the fund. That, of course, is a matter for themselves.

If they elect not to make a claim for special consideration, it is no justification for asking for further relief when the relief they are entitled to has already been afforded.

My recommendation therefore is that, as petitioners show no grounds for relief, the petition be dismissed, first, because the relief sought is completely barred by the Act, and secondly, because the petition itself, apart from the Act, does not, in my opinion, disclose any merit.

It was evident at the close of the inquiry that the petitioner's advocate felt that the Crown's reply to the petition removed the grounds upon which the petitioner relied. I am satisfied, however, that the inquiry has done much to clear away, at least for the time being, many of the misconceptions upon which the petition was founded, and for that reason at least it has done much good.

It is proper that I should, in conclusion, record that the officers of the Lands and Survey Department in Auckland have gone to great trouble and done much research to present to the Court as full a statement as possible of the events following confiscation as they affect the claims in the petition. My thanks are due to them for so lightening my burden.

E. W. BEECHEY, Judge.

Approximate Cost of Paper.—Preparation, not given; printing (583 copies), £10.

By Authority: R. E. OWEN, Government Printer, Wellington.—1949.

Price 6d.]