1911.

NEW ZEALAND.

NATIVE LAND CLAIMS ADJUSTMENT ACT, 1910

(REPORT AND RECOMMENDATION UNDER SECTION 28 OF THE), ON PETITION No. 611/1910, RELATIVE TO MANGAMINGI No. 1.

Laid before Parliament in compliance with Sub-section (4) of Section 28 of the Native Land Claims Adjustment Act, 1910.

Native Land Court (Chief Judge's Office), Wellington, 15th July, 1911.

Re *Mangamingi No. 1 (Petition No. 611/1911).*

PURSUANT to section 28 of the Native Land Claims Adjustment Act, 1910, the Chief Judge has referred this matter for inquiry and report. The report has been made, and is now forwarded for your perusal, and to be dealt with under subsection (4).

Personally, I am not quite in accord with the opinion expressed that the order referred to was within the protection of the Land Titles Protection Act, 1908, so as to preclude its being dealt with under section 50. To remove any doubts on the matter I would recommend that the Native Land Court be empowered to annul the order of the 13th June, 1890, appointing successors to Hone Pihama (deceased), and any subsequent order affected thereby, and to make a fresh order appointing successors to Hone Pihama (deceased), such power to be exercised subject to any existing valid contract of alienation of the block.

R. N. JONES,
Deputy Chief Judge.

The Hon. the Native Minister, Wellington.

SIR,— Native Land Court, Wellington, 21st June, 1911.

Case 397, New Plymouth Panui, *16th January, 1911.—Mangamingi No. 1.—Petition of Rangitaniwha Pihama* re *succession to the interest of Hone Pihama (deceased), referred by the Chief Judge for inquiry and report in terms of Section 28 of the Native Land Claims Adjustment Act, 1910.*

I have the honour to report that the above case was heard by me at New Plymouth on the 27th February and 24th March, 1911. Mr. Marshall appeared for the petitioner, and Mr. O'Dea for (1) Tama Ohungia, (2) Ngawini Karoro, (3) Tikapa Tama Ohungia, (4) Tuaiwa Kao, and (5) Tito Hanataua, who are the respondents herein.

The facts of the case are as follows:—

The title to a block of land known as Mangamingi, and containing an area of 8,300 acres, was investigated by Judge Heaphy, sitting at Patea, on the 15th July, 1880. The application for investigation of title was signed by Te Ratoi, Komako, Uerangi, Tuata, and Poki, on the 30th April, 1877, and at the hearing the claimants were represented by Tito Hanataua. After the latter had given his evidence on oath objectors were challenged, but none appeared. Hone Pihama then applied to have 100 acres cut off for himself and children. The claimants agreed to this, and left it to the Court to determine the locality. The Court thereupon ordered that a memorial of ownership of Hone Pihama of a parcel of land on the Patea River, in the District of Patea, containing 100 acres, and known by the name of Mangamingi No. 1, be inscribed on a separate folium of the Court rolls. On the same day a memorial of ownership for the balance of the land, and known by the name of Mangamingi No. 2, was ordered to be inscribed on a separate folium of the Court rolls, in the names of the following twenty persons—viz., Tito Hanataua, Ratoia, Tuata, Komako, Te Uerangi, Rangitupoki, Tauira Hemara, Rangihurumanu, Patohi, Ngahuinga, Te Weurangi, Karewa Ratana, Mihi Turi, Te Aorere Wilson, Korie, Pito Tahua, Nakora, Te Purei Hitarera, Te Rakete Hohaia, and Whanau Whaiao, as tenants in common with equal shares.

Hone Pihama died on or about the 1st April, 1890, leaving three daughters named respectively Te Onetu Pihama, Rangitaniwha Pihama (the petitioner), and Tekenui Pihama.

On the 18th of the same month (April), Nakora, Te Onetu, Ngaota, Tekenui, and Patohe applied to succeed to the interests of Hone Pihama in Mangamingi No. 1 (see *Kahiti* No. 21, of the 8th May, 1890, page 87), and on the 24th idem Ratoia, Ngaruru, Komako, and Poki lodged an application to succeed to the interests of Kaiti in the same land. (The date of Kaiti's death is given in the application as April, 1887, but there is nothing on the files, nor in any of the Court records, to show how Kaiti acquired his interests in this land.)

The application by Nakora, Te Onetu, and the others appears to have been dealt with by Judge Puckey at a sitting of the Native Land Court at Hawera on the 13th June, 1890 (M.B. 5/70), when the respondents were appointed successors to Hone Pihama. (The Court-minutes on the case give no information as to the reason why Pihama's daughters are excluded from the order, and the names of relatives, some of them remote, substituted in their stead.)

On the 24th March, 1899, Te Onetu Pihama, on behalf of herself and her two sisters, applied to the Chief Judge of the Native Land Court to have inquiries made into their claims, as they considered that, as next-of-kin to deceased, they, and not the respondents, were entitled to the land. The matter was referred to the Native Land Court for inquiry and report under section 39 of the Native Land Court Act, 1894, and Te Onetu's application was heard by Judge Mair at Hawera on the 18th April, 1899. Mr. Welsh appeared for the applicant, while Ngawini Karoro, one of the respondents, was present to oppose the application. After taking evidence, Judge Mair reported that no explanation had ever been made in regard to the omission of the daughters, and that as no objection was offered to the amendment of the order, which seemed to have been made in error, it appeared to him that the names of the three daughters of Hone Pihama should be substituted for the five names in the order.

The application, however, was dismissed by the Chief Judge, but it was seemingly not until 1910, when searching the title, that Pihama's daughters became aware of this fact, as they were under the impression that Judge Mair's report settled the matter in their favour. Finding that the order of 1890 had never been cancelled, and that it was still in existence, the daughters applied to the Chief Judge, under section 50 of the Native Land Act, 1909, to have the question referred to the Appellate Court, but the Chief Judge replied that nothing could be done, as the order was protected by the Land Titles Protection Act, 1908, and by section 432 of the Native Land Act, 1909.

Rangitaniwha Pihama thereupon petitioned Parliament, with the result that the claim, *inter alia*, was provided for by section 28 of the Native Land Claims Adjustment Act, 1910, which gave the necessary authority to have the matter inquired into and reported upon by the Native Land Court or by any Judge thereof.

In the recent inquiry Mr. Marshall contended that the minutes taken at the original investigation of Mangamingi Block were a correct statement of what took place at the hearing, that they showed that the claimants agreed to Hone Pihama's request to have the 100 acres cut off for himself and his children, and that it was left to the Court to cut off the quantity of land asked for. He argued that, had there been any trust, the order in favour of Pihama would have said so. None of Pihama's daughters were present at the bearing before Judge Puckey in 1890, and the minutes of the Court on that occasion are silent as to the reason for their exclusion from the order. Being followers of Te Whiti, they left matters in the hands of their uncle Patohe, who managed their affairs, to do whatever he considered right and proper in their interests; but they strongly deny that they had ever agreed or consented to give up their just rights in the land, and it was not until 1899 that they discovered they had been left out of the title and the land awarded to others. After the inquiry by Judge Mair in 1899 they were under the impression that their names were, in accordance with the Judge's recommendation, substituted for these in the order, and acting on his belief Tekenui, through her solicitor, Mr. Barton, of Hawera, lodged an application for a partition order in 1904. (There appears to be no record of what became of this application.) Moreover, Tekenui instructed a Native named Muranui to proceed to Mangamingi for the purpose of felling bush, and repairing boundary-fences to keep out trespassing stock belonging to European neighbours. A temporary building was also erected on the land, and during the season that Muranui was residing there he made certain cultivations thereon. Muranui's temporary residence was confirmed by William Edwards, who saw him on the land.

Mr. W. H. Skinner, Chief Draughtsman of the Lands and Survey Office, New Plymouth, testified to the high standing, character, and probity of Pihama, with whom he was intimately acquainted. He knew officially of the Mangamingi Block, both Nos. 1 and 2, and he always understood that No. 1 was Pihama's land, and he never heard of it being otherwise. His impression was that Pihama wished to retain it for himself and his family, and he was quite certain that if Hone Pihama had been merely holding the land in trust for other people he would not have kept it for himself and his children.

Mrs. Matthieson, custodian of the Native Hostelry at New Plymouth, and a relative of Hone Pihama, stated that the latter had informed her that he had "100 acres cut off for himself and children"—meaning by that expression his "daughters," and not Tama Ohungia, Kaiti, and Kao, for whom the respondents claim the land was intended. In the Pukengahu case an attempt was made by Marokopa, Te Whareaitu, and Patohe to get into that block, but principally owing to Mrs. Matthieson's efforts an order was made in favour of Hone Pihama's three daughters. It may here be mentioned that the records show that the applicants in the Pukengahu Block were the same applicants as those in Mangamingi No. 1. (See *Kahiti* No. 21, of the 8th May, 1890, page 87, file Wh. 90/478.)

It has already been stated that the daughters assert that they have never taken part in land matters before the Native Land Courts, and they strongly deny statements made to the contrary by other people. On perusing the files in connection with Mangamingi No. 1 and Pukengahu it will be seen that in the applications for succession to Hone Pihama the names of

Te Onetu and Tekenui were appended thereto. The Court records prove that Te Onetu is unable to write, and it was mentioned at the inquiry that neither of her sisters could write. In the application for Mangamingi No. 1 the signatures are stated to be as shown on Wh. 90/478, and a perusal of this file discloses the fact that only one person (Nakora) has appended his signature, the names of Te Onetu, Ngaota, Tekenui, and Patohe having apparently been written in by direction of Nakora, who was an uncle of the Pihama girls. Hence it would be seen that the statements made on behalf of the respondents, that the daughters gave their consent, may have possibly arisen through their names appearing in the said applications.

Mr. O'Dea, on behalf of the respondents, contended that prior to the investigation of the title to Mangamingi an arrangement was come to at a meeting held at Taiporohenui, at which Hone Pihama, Tito Hanataua, Ratoia, Pito Tuata, Te Uerangi, Rangohurumanu, Te Kau, and Patohe were present; that, as a result of that conference, Pihama was empowered to act for Tama Ohungia, Kaiti, and Kao, who were followers of Te Whiti and Tohu at Parihaka, and that he (Pihama) was instructed to ask the Court to have 100 acres of land set aside for the special benefit of these three persons. Instead, however, of carrying out those instructions, he applied to have the land given to himself and children. Ratoia, one of the only two surviving members of that conference, gave the following reason for the decision arrived at: He said that Tama Ohungia, Kaiti, and Kao were owners in the Mangamingi Block, and that they were entitled to have their names inserted in the title, but, as the block was sold to the Government, these three desired to have land instead of money. Hence the other owners at the conference decided that 100 acres should be severed from the block and set apart for the use of Tama Ohungia, Kaiti, and Kao. If this be the truth, the question naturally suggests itself as to why Tito Hanataua, who was present at the meeting, and who also appeared for the claimants at the investigation of title, did not object in Court when Hone Pihama requested the land to be set aside for himself and "children." These three persons were of the same generation as Pihama, and consequently could not, by the widest stretch of imagination, even to the Maori mind, be included in the term "children." There is another question that requires an answer, and that is, if the 100 acres was meant for Tama Ohungia and the others, why was it that Hone Pihama did not get a share in the No. 2 Block, seeing that his brother Patohe was included therein? The story told to the Court on behalf of the respondents is as follows: "Patohe and Pihama had entered into an arrangement whereby Patohe was to succeed to the lands of his father, and Hone Pihama into those of his mother, and that as Mangamingi came from the father it was only in accordance with the arrangement between the two brothers that Pihama's name did not appear in the title."

This reasoning is a very specious one, but, unfortunately for those who advanced it, no strong evidence was adduced in support of the claim. It was shown that Ngatitanewai came from the mother, and yet in spite of this fact it was found that Patohe was in the grant and Pihama absent therefrom. Besides, such an arrangement was never heard of by Pihama's nearest relatives, and, as the various titles do not confirm the statement, I am unable to accept the existence of any such agreement. Under the circumstances, therefore, the cause for the exclusion of Pihama from Mangamingi cannot be admitted.

Now as to Ratoia's evidence: He was very clear about the meeting at Taiporohenui, and also as to what took place on that occasion. If, then, his mind is certain about these things, it should also be as reasonably certain concerning the events which took place at or about that same period. For instance, under cross-examination he stated that he "wasn't in Court when the case was heard in 1880, before Judge Puckey (Judge Heapy)—*i.e.*, at the investigation of title. He was away in Patea when the case was heard, and was not aware of what was going on." Now, strange to say, the investigation in 1880 actually took place in Patea. So that if his statement is correct he had every opportunity of being present in Court. The probability is that he was referring to Judge Puckey's Court in 1890 at Hawera, and it is just possible that there may be something in Mr. Marshall's suggestion that the meeting mentioned by Ratoia and by Rangitupoki really took place some little time before the Court of 1890, and not before the Court of 1880. Again, Ratoia informed the Court that Tama Ohungia, Kaiti, and Kao wanted land instead of money, which the other owners were to receive for their shares in No. 2. If that was his opinion, it surely was not shared by some of those whom he mentions as being present at the meeting at Taiporohenui, because Rangitupoki and Patohe applied for a partition of Mangamingi No. 2 in 1889, nine years after the title was investigated. It may here be remarked that a perusal of the file of papers (N.P. 161) shows that these were not the only owners who applied to have the land subdivided. A further reference by him was his statement that "if Pihama had insisted on getting 400 acres there would have been no reservation of the 100 acres." Presumably he meant that if Pihama had got his share in No. 2 the land known as Mangamingi No. 1 would never have been set apart. If that is his line of reasoning, where then would Tama Ohungia, Kaiti, and Kao have come in? Ratoia also says that the land was never known as Hone Pihama's land. This clearly is in conflict with the original plan produced at the investigation of title on the 16th July, 1880, on which was printed the words "For Hone Pihama," which Mr. Skinner assured the Court must, in accordance with the office practice, have been placed there by the Surveyor himself.

Marokopa mentioned that after the tangi held over Pihama the widow and daughters went to Ngatiki to ascertain why he and Patohe did not attend the tangi. The daughters deny this; but, apart from that, it would seem very strange that the brother and nephew of the deceased would absent themselves from such an important function. It was certainly not in accordance with Maori custom. This witness admitted that during Judge Mair's Court in 1899 he and his party asked Tekenui Pihama to allow their names to be included in the order with those of himself and sisters, that the matter was discussed outside the Court, and it was for that reason he raised no objections to the amendment of Judge Puckey's order. Even admitting that the

daughters were present at Ngatiki as stated by Marokopa, and that Patohe had urged them to give Mangamingi back to their "papas," was not Patohe attempting to influence them to do that which, but for such consent, could not have been accomplished? He seems to have exercised great influence over his relatives, and the mantle of his dead brother would appear to have descended to him, for he appears to have been using the mana of his brother to obtain some advantage for himself and those who upheld his authority. Else why try to get into Pukengahu? Did he not succeed in getting into Ngatitanewai instead of his brother, contrary to the agreement alleged to have been made between them? We have it on the authority of Tutange Waionui that, in spite of Hone Pihama's injunction to him to look after his "tuawhines," he allowed Patohe to dictate to him as to what lands he should look after for the benefit of the daughters, and that they were to be Oeo and Waokena. Although this witness's evidence is viewed by the Court with the gravest suspicion, it must be remembered that he was speaking on behalf of the respondents.

The respondents were put into the order of 1890 on the ground that they were the nearest of kin to Tama Ohungia, Kaiti, and Kao. It was said that Patohe did this in order to rectify the wrong committed in 1880. The Court minutes are silent as to why the order was made in favour of the respondents and not of the daughters, and the reason for the exclusion of the latter seems inexplicable when it is recollected that the claim was sandwiched between the Oeo and Waokena cases, in which orders were made in favour of the daughters and their mother. Some further explanations are required in the following instances. Tama Ohungia was one of the original three men for whom the land was claimed. How came it, then, that his son was included on an equal footing with him in the order? Again, how did Tito Hanataua come to be included in the order, as he appears to be the same Tito Hanataua who conducted the case in 1880, and whose name is among the list of owners in No. 2? In proof of this, see Te Hikaka's *whakapapa*, which agrees with that given by Tito Hanataua in 1880. It is true that Te Hikaka was not a very satisfactory witness. He gave his statements hesitatingly, and it was at times difficult to get anything out of him, but no attempt was made by the respondents to discredit the *whakapapa* supplied by him.

Rangitupoki is another witness who claims to have been present at Taiporohenui, although his name is not mentioned by Ratoia. He confirms the latter's statement that the 100 acres was meant for Tama Ohungia and the others, but he goes a step farther and says that the suggestion emanated from Tito Hanataua and Hone Pihama. In light of Rangitupoki's subsequent conduct with reference to his application for the partition order, already mentioned, I am not prepared to accept this statement.

Mr. Marshall made a strong point on the claim for land set up on behalf of Tama Ohungia and others. He wanted to know whether the Court was to believe that these men desired to have 33⅓ shares each in preference to 400 each. Mr. O'Dea replied that the claim was entitled to receive as much credence as that of Hone Pihama's 100 acres instead of 400 acres. Mr. Marshall's explanation was that, as Hone Pihama owned thousands of acres and had been liberally treated by the Government, he wished to let his poorer relatives share in the larger block, whilst he retained only a small area for himself. Such an action would certainly be consistent with Maori custom, and has often been done by chiefs of high rank.

The respondents have not shown that they made any use of the land, nor do they appear to have ever exercised any proprietory rights over the same; and, although they have accused the petitioner of *laches* in allowing so long a time to elapse before taking steps to ascertain the position of the title, still, I think the petitioner has given a reasonable explanation for the cause of the delay. In any case I see nothing in this argument, because *a fortiori* the respondents are themselves to blame for neglecting to protect their own title by having the same registered.

Counsel for the respondents laid great stress on the case of Kereihi *v.* Duff (4 G.L.R. 496 (C.A.)), contending that as his clients had held the title to the land for a period of over twenty years, the presumption that all conditions precedent to the validity of the order were duly performed could only be rebutted by the petitioner bringing evidence of such an overwhelming nature as to make it absolutely certain that her contentions were correct. There appears to me to be sufficient rebutting evidence to prove the petitioner's case. No satisfactory evidence has been produced to show that the order made in favour of Hone Pihama was wrongly granted, and to do otherwise it would be necessary for me to read into the minutes taken in 1880, and again in 1890, facts which are absent therefrom, and which are now heard for the first time after a lapse of thirty years, and long after the parties who were chiefly interested therein have departed this life.

After reviewing the whole of the matters carefully, I have come to the conclusion that the equities of the case will be well served by the cancellation of the order now in the names of the respondents, and by making a fresh order in favour of Te Onetu Pihama, Rangitaniwha Pihama, and Tekenui Pihama.

I have, &c.,
T. Henry Wilson, Judge.

The Deputy Chief Judge, Native Land Court, Wellington.

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