

1917.
NEW ZEALAND.

NATIVE LAND CLAIMS ADJUSTMENT ACT, 1910.

REPORT AND RECOMMENDATION ON PETITION No. 170 OF 1905, RELATIVE TO OKAHUATIU No. 1A BLOCK.

Laid before Parliament in compliance with Section 28 of the Native Land Claims Adjustment Act, 1910.

The Hon. Native Minister, Wellington.

Native Land Court (Chief Judge's Office), Wellington, 31st May, 1917.

IN pursuance of the provisions of section 28 of the Native Land Claims Adjustment Act, 1910, I have the honour to submit for your information the report of Robert Noble Jones, Esq., a Judge of the Native Land Court, on the petition (No. 170 of 1905) of H. te Kani Pere and others, alleging that they have been wrongfully deprived of their land, Okahuatui No. 1A Block, and praying for inquiry and restitution. Having perused the report, I am of opinion that, as stated in paragraph 11 thereof, the petitioners, as far as they can now be identified as belonging to the claimants' party, have no equitable grievance; and as, in any case, they slept on any rights they may have had for at least thirty years (1875 to 1905), I am of opinion that, for the reasons set out in the preamble to the Land Titles Protection Act, 1902, no further action should be taken in the matter.

JACKSON PALMER,
Chief Judge.

In the Native Land Court of New Zealand, Tairāwhiti District.—In the matter of the Okahuatui 1A Block, and of a reference under section 28 of the Native Land Claims Adjustment Act, 1910, for inquiry and report regarding a petition by Te Kani Pere and others (No. 170 of 1905).

THIS matter came on for hearing before Robert Noble Jones, Judge, at Gisborne on the 12th day of January, 1917, and the Court makes the following report:—

1. The Okahuatui Block, then said to contain 31,550 acres, as shown on Plan 13, came before the Court for investigation in 1875, Pimia Aata claiming the land for herself and ninety-eight others, members of the Whanau-a-Kai.

2. There were several counter-claimants, but this Court need only concern itself with those who were successful.

3. The Court, after hearing the parties, gave judgment on the 1st day of April, 1875, admitting as well as the claimants the counterclaim of Panapa Waihopi and party for an overlap estimated at about 536 acres. It likewise cut off 50 acres (1B) for Herewini Tamaihouia and party, and directed another portion not exceeding 400 acres (1A) to be cut off in a certain position. The persons admitted into this were Keita Waere (personally, for reasons given by the Court); Wi Mahuika and party (fourteen in all); Panapa Waihopi and party (twenty-two in all); and the claimant and party (ninety-nine in all), less Wi Mahuika's name, which was deleted. This made a total of 135 names in all.

4. There can be no doubt it was intended by the Court, when it gave its judgment, that the 1A block should contain 400 acres. This is borne out by the order of the Court dated the 21st day of May, 1875, as well as by a memo. endorsed on the plan, not signed, but no doubt put there by the Judge's direction: "Referred to Deputy Inspector of Surveys to show portions excluded and to be coloured yellow—viz., Okahuatui 1A, four hundred (400) acres, near the Waikakariki Stream; Okahuatui 1B, at Kowhai (50 acres); also that portion indicated on map, estimated at 536 acres, at Te Rere-o-Parai, area to be computed"—and these portions have been indicated on the plan by a yellow edging.

The memorial of ownership, however, only shows 108 acres 3 roods 30 perches, which coincides with a survey made about the 27th day of October, 1876, and the plan of which (No. 142) is noted as having been entered upon the memorial.

5. Legally speaking, an error was made in thus changing the area of the 1A block, and it is difficult to get a proper explanation of why it was done, since the people concerned are mostly deceased. However, the Court has endeavoured to gather from the records a slight history of the case.

6. When the land was being investigated the people concerned in the claims of Panapa Waihopi and Wi Mahuika represented by the award in the 400 acres set up that they became entitled by gift under their ancestors Hikaronga and Taupara, and, while the claimants did not altogether dispute the claim, they also claimed that the rights under that claim had been extinguished for want of occupation. Reading the evidence without having the advantage of hearing it first-hand it would seem the claimants' case had much in its favour. In any case it does not appear that the counter-claimants valued their claim at more than 200 acres. This latter claim was antagonistic to that of Pimia Aata and others, and it is hard to understand why that party was included with the counter-claimants. Possibly, as it was proposed to lease the block, it was intended to reserve something from the lease, and it is marked as "Reserve" on the plan.

7. That there would be dissatisfaction at including the two contesting parties was to be expected, and a sort of memorial was drawn up and signed by forty-two Natives, as follows: "Judge Rogan and those associated with him in adjudicating on land at Turanganui: Friends,—We, the persons in the decision of the Okahuatiu Block, ask that the decision in respect of the 400 acres may be reopened—that is, that the portion for the objectors be cut off for them alone. There are thirty-six of them; the acres for them to be 108. We do not wish to be included together with these people in that small piece lest there be trouble. Let them be apart with their portion. That is all. We whose names are hereunder written have agreed to this." The objectors referred to were no doubt those in Panapa Waihopi's and Wi Mahuika's lists, generally known under the name of Ngapotiki. The area would be arrived at by treating the owners as equal and giving them roughly 3 acres each.

8. There is no record of the Court having done anything in the matter, but some move must have been made, as there is a letter dated "Gisborne, 22nd September, 1875," to Judge Rogan, as follows: "SIR,—I have the honour to inform you that in accordance with your instructions I, in company with Mr. Woon (Clerk of Court) and Wikiriwhi, proceeded this day to Okahuatiu in order to adjust the boundaries of the proportion of that block adjudged to Ngapotiki. Almost all the principal owners of the Ngapotiki and Whanau-a-Kai were present, and the boundaries were after very little trouble amicably adjusted. I forward you a sketch of these boundaries—not as a survey, but simply as a record—in case any question should in future arise.—I have the honour to be, sir, your most obedient servant, LEOND. SIMPSON, Government Surveyor." A sketch showing a dividing-line between Ngapotiki and Whanau-a-Kai is attached, and the survey subsequently executed is evidently based upon this.

9. Apparently, then, the Judge, having seen the difficulty of keeping these people in one order, followed out the suggestion and allowed them to be separated; and perhaps, although not quite legal in method, no great harm would have been done had the Judge not overlooked one important fact—that, though he excluded the area for the ninety-nine persons, he did not, as the circumstances required, exclude these ninety-nine persons from the order, the result being that the thirty-six persons only got about, say, 25 acres instead of the whole of the No. 1A block.

10. The Natives from time to time protested that they did not know where the balance of the 400 acres had gone, and on each partition made they also protested and reserved their rights. Possibly had the Court made inquiry the position could have been ascertained and possibly rectified before the larger block passed out of the Natives' hands.

11. The Court has no means of knowing who the 163 petitioners are, but so far as they are persons belonging to the claimant's party of ninety-nine they have no equitable grievance, since they have as owners of the adjoining block, into which the missing area was thrown, received the same land. This would include, it is supposed, Wi Mahuika, whose name was in both blocks.

12. So far as the persons are those known as Ngapotiki, and including Keita Waere, they appear to have suffered an injustice, since the 108 acres were specially cut off for the thirty-six persons, which was, according to Mr. Simpson, agreed to by the principal owners or Whanau-a-Kai.

13. Okahuatiu 1A was partitioned into three blocks—1A 1, 1A 2, and 1A 3—the first of which has been sold. The aggregate net area of the three blocks was 94 acres. Treating the owners as equal in interest according to the decision of the Appellate Court, the thirty-six persons would have lost about 59 acres. The persons who got the benefit of this were the ninety-nine persons who remained in the order after its area was reduced. The fault was apparently the Court's, as, having drawn up and completed the order for memorial of ownership for 400 acres, it had no jurisdiction to alter the order if it accurately expressed the Court's decision.

The Chief Judge, Native Land Court, Wellington.

For the Court,
R. N. JONES, Judge.

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