1920.

NEW ZEALAND.

NATIVE LAND AMENDMENT AND NATIVE LAND CLAIMS ADJUSTMENT ACT, 1919.

REPORT AND RECOMMENDATION ON PETITIONS NOS. 234/1919, 61/1918, 26/1919, AND 231/1919, RELATIVE TO TITLE TO TAHORA 2F.

Presented to both Houses of the General Assembly in pursuance of Section 34 of the Native Land Amendment and Native Land Claims Adjustment Act, 1919.

Office of the Chief Judge, Native Land Court, Wellington, 3rd September, 1920.

Re *Tahora 2f—Petitions 234/1919, 61/1918, 26/1919, and 231/1919.*

PURSUANT to section 34 of Act No. 49 of 1919, I herewith transmit combined report of Native Land Court on above petitions.

In view of that report, I have to recommend that no legislative action be taken as far as the titles are concerned.

Your attention is, however, called to the concluding paragraph of the report, in which it is stated that it appears the Crown obtained 803 acres more than it should have done.

R. N. JONES, Chief Judge.

The Hon. Native Minister, Wellington.

Native Land Court, Ruatorea, 23rd June, 1920.

Tahora No. 2f.

IN accordance with your reference under subsection (1), section 34, of the Native Land Amendment and Native Land Claims Adjustment Act, 1919, I inquired into the undermentioned petitions at the sitting of the Native Land Court at Wairoa on the 2nd February last and following days, viz.: No. 234 of 1919—petition by Haenga Paretipua; No. 61 of 1918—petition by Rutene Tuhi and others; No. 26 of 1919—petition by Hawea Tipuna and others; No. 231 of 1919—petition by Waata Kunaiti and others: and beg to report as follows:—

All four sets of petitioners make practically the same request—namely, that the investigation of Tahora 2F No. 2 be reopened in order that the names of persons alleged to have been wrongfully included in the title should be struck out, and that, consequent thereto, the relative interests of the owners should be redefined.

In addition, the petitions of Rutene Tuhi and others, Hawea Tipuna and others, and Waata Kunaiti and others allege that the area awarded to Tahora 2F was 22,556 acres, and that the area as surveyed is 19,965 acres only. They ask that an inquiry should be held to ascertain how the deficiency has arisen, and, if through the boundary between 2F and 2C having been wrongly surveyed, then that the matter should be adjusted. If, on the other hand, it is ascertained the deficiency came about through a mistaken estimate of the area of No. 2F, then that the Crown, which has purchased a portion of 2F, and has had its interests defined on the basis that the total area of the block was 22,556 acres, should bear a proportion of the deficiency, instead of the whole falling on 2F No. 2.

The block affected by the petitions is sometimes called therein "Tahora No. 2F" and sometimes "Papuni." It is really, however, Tahora 2F No. 2, being the residue of Tahora No. 2F after cutting out the Crown interests, and is vested in the East Coast Commissioner.

The title of Tahora No. 2, of which Tahora No. 2F is a part, was investigated by the Native Land Court at Opotiki in 1889, and the block was then partitioned into seven divisions. No. 2F was awarded to N'Hinganga. A rehearing was applied for and granted, and took place at Gisborne in 1890. The award of 2F to N'Hinganga was confirmed, and lists of the owners were read and passed without objection.

The persons whose names the petitioners ask should be struck out are those of the Wi Pere family and certain others, who it is alleged have been included through *aroha*. The Wi Pere family was not represented at the inquiry, nor were many of the others.

Taking the objection to the Wi Pere family first: Wi Pere was the conductor on the investigation, both before the Native Land Court and the rehearing Court, for the persons to whom the land was awarded. It was quite a common practice in the Courts at that time and since for the persons found entitled to a block of land to allot a certain number of shares to a successful conductor in lieu of money payment, especially if the conductor had a right to the land, or was—as is the case in the present instance—a descendant of the ancestor to whom the land was awarded, and to allow him to distribute those shares in any manner he pleased Wi Pere did not allege that he had any right to the land by occupation, and, as there was nothing before this Court to lead it to infer that he was paid for his services in any other way, the only conclusion the Court can come to is that he got a substantial allotment of shares as the consideration for his successful conduct of the case. He appears to have taken advantage of the practice before mentioned and to have distributed the shares amongst his friends and relations. It was stated by the petitioners that they had no objection to Wi Pere and his sons remaining in the title for the shares they have now, but desired the names of the others appearing in his list struck out. This would reduce the award to him very considerably without any apparent justification. The fact that they are prepared to allow him and his sons to remain in the title is, in the Court's opinion, an admission by the petitioners that they have some right there, and it is submitted that the persons who retained Wi Pere, who were present at the hearing, and who benefited by his skill as a conductor, were in an infinitely better position to estimate the value of his services to them than the present-day owners, whose one object appears to be to forget those services.

As regards the other persons objected to, many of them alleged before this Court that they had quite as good right to be included in the title as the persons objecting to them. As to the remainder who were not represented, if they have no right as alleged the original owners had no doubt quite sound grounds for including them, although those grounds are not apparent at this distance of time and may not be known now. The probability is, as is the general practice in the preparation of lists, they were for some consideration included by certain sections of the owners and given shares out of the allotments to those sections. The same thing has occurred in almost every investigation that has ever taken place in the Native Land Court, and if the investigation of this block is reopened on the grounds submitted, then the investigation of every other block in a similar position could be reopened with just as much reason.

If the objections had been made shortly after the investigation was completed they would have been entitled to every consideration, for the facts would have been easily available. But being made after a lapse of nearly thirty years, when the principal persons who had to do with the investigation are dead, and when most of the circumstances connected therewith are forgotten, a very strong suspicion is raised in the Court's mind that the accumulated rents in the hands of the East Coast Commissioner are at the bottom of the agitation. This suspicion is strengthened by the fact that some of the petitioners have no right to the land either by descent or occupation, but come in through succession, and that others were present at the investigation and made no objection, but acquiesced in all the proceedings. The Court is satisfied that if there were no accumulated rents there would be no money to pay the conductors, and consequently no agitation to have the matter reopened.

This title has stood so long now—over thirty years—that it would, in my opinion, be a mistake to reopen it on the very inadequate grounds submitted. And if it were reopened it would probably lead to an injustice being done by the striking-out of the names of persons who apparently have no right, but who have been included in the title by the original owners for (to them) good and sufficient reasons.

In addition there is this aspect of the case to be considered, viz.: (1) That the matters complained of have arisen through no fault of the Courts that investigated the title; (2) that they were solely the results of arrangements amongst the parties themselves, and could have been objected to before those Courts if there had been any grounds for objection.

If the Court had refused to sanction their arrangements, then the parties might have had a grievance, but the present-day owners certainly have no right to complain, because the Courts that ascertained the persons entitled gave effect to requests made by the elders and acquiesced in by all the owners, and included individuals now objected to in the title.

Under the circumstances, therefore, should it be decided to reopen the case, I think the country should not be called upon to pay the cost of any further hearings, but the expense should come out of the accumulated rents. And if the accumulated rents are not sufficient, then the parties wanting the case reopened should pay the balance. It appeared to the Court that a small section only of the owners were interested in the agitation, and that the bulk of them were indifferent, and only refrained from interfering actively because they thought they might benefit by the striking-out of some of the names, thus leaving further shares for distribution. I am satisfied, however, that if they were given the option of having the case reopened at their own expense a very large majority of them would prefer to leave it as it is.

As to the deficiency in area, 2F was the balance of Tahora No. 2 Block after the other divisions were partitioned off by the Court that investigated the title No area was mentioned then—in fact, it was impossible to specify any area until survey was made, as the boundaries of many of the

divisions were natural features. 22,556 acres was first stated as the area of 2F at the Court which defined the Crown interests. How this area was arrived at it is impossible now to say, but it could have been an estimate only, as the boundary between 2C and 2F, which followed natural features, had not then been surveyed. The petitioners, however, assume that the investigation Court intended the area of 2F to be 22,556 acres, and allege that the difference between that area and the present surveyed area—viz., 19,965 acres—has arisen through the dividing-line between 2F and 2C being wrongly surveyed so that a portion of 2F has been included in 2C. On the other hand, the owners of 2C contend that the line has been correctly surveyed. One side might just as easily be right as the other.

Arani Kunaiti, an owner in 2F, stated that shortly after the survey had been completed he inspected the surveyed boundary with another owner, Eria Raukura, and they decided it was not correct. He stated he brought the matter under the notice of the trustees, who told him they would direct the surveyor to amend the boundary. He added, he did not think, however, they did so. Under the circumstances it must be assumed that the trustees inquired into the matter and ascertained that there was no ground for interference. Any way, the owners of 2F do not appear to have taken any other steps, and this lends colour to the idea that the discrepancy, if any, must be slight, and that the impression that there is a discrepancy has arisen solely through the miscalculation in the area at the Court which defined the Crown interests.

There is, however, this to be said for the owners of 2F: that although the dividing-line between 2C and 2F as surveyed seems to follow the boundary laid down by the Court, it is impossible to say definitely that it does. And, further, although Land Transfer titles have been issued for 2C and 2F No. 2 on decrees of the Validation Court, the plans have never been approved by a Judge of the Native Land Court or by the Chief Judge, and probably, if they had been submitted for approval, the Judge or Chief Judge, before approving, would have ordered them to be exhibited for the information of the Native owners of both blocks, so that any objections might be made and dealt with.

The petitioners seem to have some ground for their complaint that on the definition of Crown interests the Crown obtained more land than it was entitled to. When the Crown interests were defined it was stated by the Land Purchase Officer, who appeared before the Court, that the area of 2F was 22,556 acres, divided into 403 shares, of which the Crown had acquired 125, equal to 6,996 acres, leaving 15,560 for the non-sellers. An additional 1,099 acres was added to the Crown award to cover the cost of survey. As the area on survey was found to be 19,965 acres, the proportion to which the Crown would be entitled would be 6,193 acres only, so that the Crown would appear to have obtained 803 acres more than it should, and for this the owners claim they are entitled to some compensation.

JAS. W. BROWNE, Judge.

The Chief Judge, Native Land Court, Wellington.

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