1924.

NEW ZEALAND.

NATIVE LAND AMENDMENT AND NATIVE LAND CLAIMS ADJUSTMENT ACT, 1922.

REPORT AND RECOMMENDATION ON PETITIONS Nos. 314 OF 1919 AND 265 OF 1922, OF WIREMU KARAKA AND OTHERS, AND HOROMONA TEO PAIPA AND OTHERS, RESPECTIVELY, RELATIVE TO MANGAHAUINI No. 7 BLOCK.

Presented to Parliament in pursuance of Section 55 of the Native Land Amendment and Native Land Claims Adjustment Act, 1922.

Native Department, Wellington, 4th August, 1924.

Petitions No. 314 of 1919 and No. 265 of 1922 regarding Mangahauini 7a Block.

PURSUANT to section 55 of the Native Land Amendment and Native Land Claims Adjustment Act, 1922, I forward herewith the report of the Native Land Court herein.

After perusal of the records on which the report is based I find myself unable to concur wholly with its findings. It is stated (p. 2) that "The Appellate Court held that it [Mangahauini 7A] was a separate block, and that the appeals relating to No. 7 did not affect it. No inquiry was therefore held by the Appellate Court of 1912 as to the ownership of 7A." I think the Court must have overlooked the fact that it was frequently mentioned in the Court of 1912 under the name of "Waiparapara"; that Colonel Porter claimed to act as respondent in Mangahauini No. 7A, and that after hearing him the opposing conductor expressly withdrew his opposition so far as No. 7A was concerned (Vol. 14, pp. 165, 166). This is confirmed by a reference to the judgment of the Native Appellate Court of 1912 (Vol. 14, p. 257): "Before us, Mr. Delamere, who acted for the opponents of Te Keteiwi, withdrew his appeal so far as it affected 7A (Waiparapara), and asked that it be considered merely in respect of the Maungatio claim of Te Keteiwi."

Unless there has been some grave miscarriage of justice brought about by fraud or neglect of the conductor, which is nowhere suggested—the most that can be urged is that the parties were confused and did not realize their rights under the rehearing by the Native Appellate Court in 1912—it would be setting up a bad precedent to reopen a matter so expressly mentioned and dealt with.

There is, too, another phase to be considered. The claims of the Keteiwi section for Maungatio in No. 7 and for 7A are to a certain extent inseparable. The main opposition to them was that the Keteiwi rights were wholly on the other side of the Mangahauini Stream. This was apparently the view taken by the original Native Land Court; but it must have been overruled by the Native Appellate Court of 1900, as it allowed the descendants of Keteiwi to participate in the No. 7 Block and cut off a separate portion called 7A for the same section. The latter claim was based on an alleged appropriation of the Waiparapara portion of Rerekohu, a descendant of Keteiwi, and that his descendants occupied ever since. With regard to the No. 7 portion, the Native Appellate Court of 1912 upheld this decision by the Native Appellate Court of 1900, and thus established the section on that side of the Mangahauini Stream. It is clear that if 7A should be reopened and the tribunal dealing with the matter should find that the Keteiwi section had been wrongly included, then it would at once raise doubts (the report suggests such a doubt) as to whether the decision in regard to No. 7 is correct, and encourage claims to be made, not without reason, that the No. 7 title should be reopened also. There would thus be no finality in the matter.

With regard to the claim under Petition No. 265, if this (Mahutahiterangi) section had a strong case it might have a legitimate grievance, inasmuch as, although their claims were rejected by the Native Land Court and they had appealed, the fact that the appeal was dismissed probably shut them out from the 1912 Court, on account of the ruling that it was only authorized by the section to rehear orders of the Native Appellate Court, and apparently not appeals that had been dismissed (Vol. 14, p. 139). However, the Mahutahiterangi case has been dismissed by two Courts, and apparently the report does not credit it with any merits. But should there be a reopening of the matter, then this claim, which comes under that of the opponents of the Keteiwi section, must also be left open for consideration.

Under the peculiar circumstances, however, I feel constrained to recommend that no legislative action be taken in the matter.

The Hon. the Native Minister, Wellington. R. N. JONES, Chief Judge.

Native Land Court, Wairoa, 29th January, 1924.

I HAVE the honour to inform you that the Court sitting at Tokomaru Bay on the 9th October, 1923, and the following days held the inquiry directed by you in pursuance of section 55 of the Native Land Amendment and Native Land Claims Adjustment Act, 1922, into the following petitions :—

(1.) Petition No. 314 of 1919, of Wiremu Karaka and nineteen others, praying for reinvestigation of the title of Mangahauini No. 7A Block.

(2.) Petition No. 265 of 1922, of Horomona Teo Paipa and others, praying that the decision of the Native Appellate Court *re* Mangahauini 7A be cancelled.

Mr. Delamere appeared to support the petition by Wiremu Karaka and others, and Horomona Teo Paipa that by himself and others, and Mr. Cooper in opposition to both petitions.

No fresh evidence was furnished by any of the parties, but voluminous addresses were given, and the Court was supplied with numerous extracts from the evidence adduced at the previous hearings for and against the respective petitions.

As a result of a careful perusal of the evidence and consideration of the addresses I beg to report as follows :—

(1.) *Petition No. 314 of 1919, of Wiremu Karaka and others.*

Mangahauini Block as a whole was investigated by the Native Land Court sitting at Tokomaru Bay on 1897-98, and Mangahauini No. 7 awarded to the Wh'a Kaipakihi—that is, to the descendants of the ancestors Maroro, Kopae, and Korongaungau. Within the boundaries of No. 7 were two small pieces called respectively Waiparapara (now known as Mangahauini No. 7A) and Maungatio, which were claimed as the ancestral lands of Keteiwi, the Wh'a Pakoko ancestor. The Native Land Court decided against the Keteiwi claim, and awarded the whole of No. 7 to the Wh'a Kaipakihi. This award was appealed against, and the Appellate Court in the case of Maungatio varied the order of the Native Land Court. Its decision is as follows :—

"The Court is of opinion that the evidence is not sufficiently conclusive to warrant it in making a specific award to the descendants of Keteiwi of the land claimed at Maungatio, but, as it appears open to doubt that these persons have not some right that would justify their inclusion in the order made by the Native Land Court, it has been decided to amend the aforesaid order in the manner by including the names of those descendants who were previously omitted who are entitled according to Native custom."

In the case of Waiparapara the decision of the Native Land Court was reversed and the land awarded to the descendants of Rerekohu, a descendant of Te Keteiwi. It was then called Mangahauini No. 7A.

Application was subsequently made under section 50 of the Native Land Act, 1909, for a rehearing of the appeals, and the Appellate Court sat in 1912 in pursuance of the provisions of section 10 of the Native Land Claims Adjustment Act, 1910. The minutes are not clear on the point, but it would appear that the Wh'a Kaipakihi, in referring to Mangahauini No. 7 in their appeal, included 7A, which they have always contended was not a separate block, but a part of No. 7. The Appellate Court, however, held that it was a separate block, and that the appeals relating to No. 7 did not affect it. No inquiry was therefore held by the Appellate Court of 1912 as to the ownership of 7A.

Mangahauini No. 7A, or Waiparapara, is perhaps one of the most valuable pieces of land in Tokomaru Bay. With the exception of 10 acres it is all flat, fronts the main road running round the bay, and is not only eminently suitable from a Native point of view for purposes of cultivation, but has a high prospective value. It was generally admitted that when the common ancestor Tamateakuhakauri divided his land amongst his children Paraheke and Turangakawa he made the Mangahauini River the boundary towards the coast, locating Paraheke to the south and Turangakawa to the north. From Paraheke came Keteiwi, and from Turangakawa came Maroro, Kopae, and Korongaungau. This Court cannot find that any explanation has been offered as to how Keteiwi came to acquire the two small pieces of land Waiparapara and Maungatio right in the heart of the Wh'a Kaipakihi territory. It was claimed that Keteiwi had pas on Maungatio, but no such claim was made with regard to Waiparapara. All the pas in the vicinity of that piece were admitted to belong to the Wh'a Kaipakihi. The Keteiwi pas were at a distance from it, and to retain their right by occupation and working his descendants would be compelled to travel over the Wh'a Kaipakihi land. It is true that the majority of the descendants of Keteiwi who claimed were also Wh'a Kaipakihi, but the intermarriages took place at a comparatively recent date only, and there must have been an interval of some generations when there was no connection of any kind between the two hapus, and it is quite possible, as claimed by the Wh'a Kaipakihi, that Keteiwi's descendants occupied only after the intermarriages.

Before the Native Land Court Wi Pewhairangi was the claimant and the witness who gave evidence as to rights of the descendants of Keteiwi, through Rerekohu, to the two pieces Maungatio and Waiparapara. He was probably the only claimant who was not a descendant of either Maroro, Kopae, or Korongaungau, the Wh'a Kaipakihi ancestors. He gave detailed evidence as to the occupation of Rerekohu's descendants on Maungatio, furnishing the Court with the names of the pas and cultivations and of the persons who occupied.

As regards Waiparapara, or 7A, he alleged that Rerekohu divided it amongst his four wives and his sister Mahana. He did not give any description of the boundaries of those divisions, nor did he even indicate their locality; and, beyond alleging that the descendants of Rerekohu worked on the land, he did not furnish the Court with the names of any of the cultivations. He himself was not living on Waiparapara, but just outside its alleged boundaries. He had his own home and a carved

house there, on land which he admitted belonged to the ancestor Maroro, and upon which he stated he was allowed to live by Hohaia te Wera. With regard to this the Court will here quote an extract from the decision of the Appellate Court of 1900 relating to the claims of two other chiefs to another portion of Mangahauiini. The remarks contained therein apply to Wi Pewhairangi's position also: "It seems a singular thing that both these men, who are admitted to have been of rank and influence, should have consented to have lived on their wives' property, especially when they both possessed property of their own in the immediate neighbourhood."

To this Court Wi Pewhairangi's case seems much more singular, for he was not even living on his wife's land, but on a stranger's, although there was land immediately alongside which he claimed was his.

Before the Appellate Court of 1900 no fresh evidence was offered by Wi Pewhairangi, and the Court itself called Hone Paputene, who had been living on Waiparapara for many years. This man is a descendant of Maroro and Kopae as well as of Keteiwi and Rerekohu. Before the Native Land Court he made no separate claim to Waiparapara under Rerekohu, but came in under the Wh'a Kaipakihi claim. He even persisted, against the desire of the Court, in giving the boundaries of the land in the Mangahauini Block which he asserted belonged to each hapu. To quote the minutes of the Court: "The Court explains that this hapu is one of those admitted by the claimants, and that there is no necessity for a fresh case; but the applicant seems to be afraid that the vast rights he has to the block may be lost sight of unless he is allowed to come forward and urge them personally, and the Court, after fully explaining the position to each hapu—he still being desirous of having an independent case—allows it."

He then gave the boundaries of the Wh'a Kaipakihi land, which are practically identical with the present boundaries of Mangahauini No. 7; but, although he was, and had been for a long period, living on the part which is now called 7A, he did not indicate to the Court then, or at any time during the investigation, that that part was a separate and distinct block of land held under a different right, or was otherwise than a portion of No. 7. His name was included in the Wh'a Kaipakihi list, and he did not appeal against the Native Land Court's decision, nor does he appear to have objected to it in any way until the Appellate Court called him as a witness.

Before the Appellate Court he shifted his ground of claim altogether, denied the right of the Wh'a Kaipakihi, and asserted that Waiparapara, or 7A, belonged to Rerekohu and his descendants. His explanation of this change, although it does not appear to this Court to be either clear or conclusive, was apparently accepted by the Appellate Court as satisfactory. In its judgment the Court stated: "With regard to Hone Paputene's occupation, the descendants of Maroro assert that it is not derived from Rerekohu, but from Maroro, through the intermarriage of Hinetokore, a descendant of Maroro, with Te Whawhaiti, a son of Rerekohu. Against this contention there is the peculiar circumstance to be considered that Hone Paputene is a descendant of both Te Keteiwi, from whom he claims, and also from Maroro, who the descendants of that *tepuna* assert he derives his right from. Assuming that he has ulterior motive to serve in denying his right from Maroro, it seems only fitting that the Court should decide in favour of the ancestral right on which the claim to the land is founded."

The "ulterior motive" seems to this Court to have been very apparent. It is quite a common practice in cases of the investigation of title to papatupu land, where there is an especially valuable part like this Waiparapara, for a small section of the claimants to set up a right to it separate and distinct from the right to the main block of which it is a part. This is for the purpose of confining the ownership to as few persons as possible, and keeping out persons who would otherwise have a right by occupation under the grounds of claim set up for the bulk of the block.

It was admitted in evidence that there were three Wh'a Kaipakihi pas just outside the alleged boundaries of Waiparapara, and that the occupants of these pas worked in common the maaras on that piece. Amongst them were many Wh'a Kaipakihi who were not descendants of Rerekohu. Wi Pewhairangi practically admitted this in his evidence, for he asserted that the pure Kaipakihi who lived permanently on these places (Maungatio and Waiparapara) had no right. This Court has no doubt that in the interval between the sittings of the Native Land Court and of the Appellate Court Hone Paputene came to realize that if Waiparapara were awarded to the descendants of Rerekohu alone it would be much to his advantage, inasmuch as Wh'a Kaipakihi not descended from Rerekou, who could otherwise prove a right by occupation, would be excluded from the title, and therefore when the Appellate Court gave him the opportunity he promptly changed his grounds of claim. He denied the correctness of much of the evidence given by Wi Pewhairangi before the Native Land Court, and where his and Wi Pewhairangi's conflicted the Appellate Court appears to have accepted his version and to have decided the matter on his evidence alone.

The Wh'a Kaipakihi, on the other hand, asserted that Waiparapara, or Mangahauini 7A, was a part of No. 7, and not a separate and distinct block of land, as claimed by the descendants of Keteiwi; that Keteiwi and his descendants, as such, had no interest in it; and that it was, together with the main block, owned by the Wh'a Kaipakihi under their right from the ancestors Maroro, Kopae, and Korongaungau. They gave detailed evidence as to the cultivations on the land and as to the persons who worked them. Their occupation was in fact admitted. It must be noted in the first place that, as stated before, Wi Pewhairangi and his family were the only claimants who were descendants of Keteiwi and Rerekohu and who did not at the same time belong to the Wh'a Kaipakihi; and, further, that the Appellate Court found they had come on to the land in 1880, and that therefore their occupation was only of a very recent date.

In cases of investigation of papatupu land it is just and proper to assume—(1) That if a family or section of Natives have been in occupation for some generations, that this occupation is founded on some right; (2) that if there are conflicting grounds of claim, to assume further that the ground

of claim which upholds the right of all the permanent occupiers is the correct one. Of course, both these assumptions are capable of being rebutted by evidence to the contrary. The Appellate Court does not appear to have acted on either of them, for it took it for granted, without calling for any proper proof as to how he came into possession of it, that Keteiwi was the ancestral owner of Waiparapara, and further, as a consequence, that the Wh'a Kaipakihi not descendants of Rerekohu who it was admitted had permanently occupied were there without right.

Taking all the facts into consideration, therefore, it seems to this Court that there is some doubt as to the correctness of the Appellate Court's decision, and that a further inquiry should be held by a competent tribunal to ascertain whether or not a mistake had been made, and, if one had been made, to rectify it.

(2.) *Petition No. 265 of 1922, by Horomona Teo Paipa and Others.*

This petition relates to a claim for a small piece of land under an alleged gift from Maroro, one of the Wh'a Kaipakihi ancestors, to Mahutahiterangi, the ancestor of the petitioners. The boundaries of the gift were not specified in the evidence in support of the claim given in the Native Land Court, but it was stated to be at Waiparapara, and was asserted to comprise an area of about 20 acres. The Native Land Court dismissed the claim, on the ground, it would seem, of want of occupation, and the Native Appellate Court, in supporting the decision of the lower Court, reviewed the evidence fully and gave a very exhaustive judgment in the matter. It decided that the gift was not an absolute one, and that any occupation the descendants of Mahutahiterangi might have had on the land was through intermarriages. Nothing was brought before the Court at this inquiry to lead to the conclusion that this decision was in any way wrong. It agrees with the conclusions of the Appellate Court that the occupation of the descendants of Mahutahiterangi on the land was attributable to other sources than the gift by Maroro.

One peculiar feature about the decision is that the Appellate Court remarked, with regard to this alleged gift by Maroro to Mahutahiterangi, "The Court is of opinion that an allotment appears to have been made to Mahutahiterangi, but it was not intended to be an absolute one, nor was it looked upon as such during the early generations."

It subsequently held in the same decision that Waiparapara belonged to Keteiwi. One naturally asks how, therefore, Maroro came to have authority to make the alleged allotment, seeing he was not a descendant of Keteiwi, but descended from a common ancestor, Tamateakuhakauri, through a collateral line and lived some two generations after him.

The Court has referred to Maungatio in this report for the purpose of illustrating the apparent inconsistency in the treatment of the two pieces by the Appellate Court. In the case of Maungatio, the evidence as to the occupation by the descendants of Rerekohu was much fuller and contained much more detail, and was probably just as circumstantial and reliable, as that affecting Waiparapara. Yet the Appellate Court in the case of Maungatio admitted the rights of the pure Wh'a Kaipakihi, while in the case of Waiparapara it rejected them.

JAS. W. BROWNE, Judge.

The Chief Judge, Native Department, Wellington.

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