

1925.

NEW ZEALAND.

NATIVE LAND AMENDMENT AND NATIVE LAND
CLAIMS ADJUSTMENT ACT, 1923.

REPORT AND RECOMMENDATION ON PETITION No. 328 OF 1922, OF WIREMU RIKIHANA, RELATIVE
TO THE APPOINTMENT OF SUCCESSORS TO THE INTEREST OF MIKAERA URUTUTU IN
OPANAKI 2k No. 1 BLOCK.

*Presented to Parliament in pursuance of the provisions of Section 31 of the Native Land Amendment
and Native Land Claims Adjustment Act, 1923.*

Native Department, Wellington, 5th August, 1925.

Petition No. 328 of 1922.—Opanaki 2k 1.

PURSUANT to section 31 of the Native Land Amendment and Native Land Claims Adjustment Act, 1923, I herewith forward the report of the Native Land Court hereon.

After perusing that report and its findings, and although I may seem to differ from them, there can be no doubt that the Native Appellate Court, upon the material before it, came to a proper decision in admitting the relative of the mother of the deceased into the succession order. The allegation that the *whakapapa* under which he was so admitted was a fabricated one is not touched upon by the reporting Court, and apparently there was no evidence given in support of it. The Native Appellate Court did not find that the deceased's right was ancestral. It found his next-of-kin were entitled, and hence included both parents' descendants. I think the reporting Court must have overlooked the recent decisions of the Supreme Court and of the Native Appellate Court to the effect that upon succession the Native custom which applied to gifts does not apply to land derived under will.

But in reviewing the evidence I have gone carefully into the matter, and I have come to the conclusion that there is a reasonable doubt as to whether the succession was correctly made in view of the material which was upon record. When the Opanaki Block was investigated it was by arrangement vested in Parore te Awha and Te Rore Taoho, and it is quite clear that was done for the purpose of facilitating dealings with the Kauri Bush. Parore te Awha readily admitted others besides himself were entitled, but Te Rore Taoho did not do so. Later the Court ascertained that Te Rore Taoho held his portion upon trust. Among those who claimed to be admitted into that portion as being part of the Opanaki Block were people in occupation upon Parore te Awha's portion. It was then stated that these claimants were placed on Parore te Awha's portion in recognition of their military services rendered on former occasions to Parore and his people. Probably if this section had urged their claims for inclusion in the title at the hearing an award would have been given. It may be that the will of Parore te Awha was therefore but a recognition of these rights and to confirm them in their occupation. If this be so, then there is some evidence to show that according to Native custom the deceased would derive this land through Urututu, as a member of the hapu entitled to such land, and not through his other parent. If so Hipiriona would be excluded from the succession. This question was not raised in the Native Appellate Court, although it is evident the petitioner has in his mind something akin to it in alleging that wrong *whakapapa* have been given.

It seems only right that an opportunity should be given to have the question tested, and I recommend that legislation be promoted empowering the Native Land Court to rehear the application for succession, and either confirm, cancel, or amend the order, or to make such order as the circumstances of the case may require, and with power to effect all necessary amendments in the title.

The Hon. the Native Minister, Wellington.

R. N. JONES, Chief Judge.

Opononi, 2nd May, 1925.

REPORT OF COURT.

Application 80.—Opanaki 2k 1.

REFERENCE by the Chief Judge to the Native Land Court, under section 31 of the Native Land Amendment and Native Land Claims Adjustment Act, 1923, for inquiry and report upon the claims and allegations made in Petition No. 328 of 1922, of Wiremu Rikihana, *in re* the succession of Mikaera Urututu (deceased).

The hearing took place at Opononi on the 2nd May, 1925, there being present Wiremu Rikihana, Rakuera Topia, and Hipiriona Topia; while the fourth and remaining successor, Poroa Puhipi, is dead.

Mr. John Webster represented the Hon. Wiremu Rikihana, M.L.C., the petitioner. Rapata Katete represented Hipiriona Topia.

After hearing the evidence and perusing the old records, the Court found it to be proved beyond all reasonable doubt that the right of Mikaera Urututu in this land was not ancestral at all, but that Mikaera was put into the title by Wiremu Rikihana out of *awoha*. The Court found it to be proved

that the *take* to this land originated in a gift from the original owner Parore te Awha to Te Rikihana, the father of Wiremu Rikihana, in return for services rendered by Te Rikihana in some tribal dispute in which Parore had been engaged. The facts of the tribal dispute, and of the assistance given by Te Rikihana, and of the gift from Parore te Awha to Te Rikihana, are admitted by all parties. It is further admitted that Mikaera Urututu and twenty-one others were included in the title by Te Rikihana's son Wiremu (the petitioner) out of *aro*ha, though Rapata Katete in his more recent evidence says they were included through "*aro*ha and money." The Court is satisfied that if Mikaera Urututu or any of the others included in the title paid any money to Wiremu Rikihana at time of such inclusion the amounts paid were very small, and were almost certainly paid in respect of their shares of the survey charges. Such payments gave no *take* to the land.

The Court is attaching to this report a full copy of the evidence taken at Opononi on the 2nd May, 1925, together with extracts from evidence in previous cases containing admissions as to the gift from Parore te Awha to Wiremu Rikihana.

The Court is satisfied that the full evidence was not brought under the notice of the Appellate Court at the hearing of the appeal in December, 1913, otherwise it could not have been held that the right of Mikaera Urututu was ancestral, and that the next-of-kin were entitled.

The Court, for record purposes, will give the Court Minute-book references in this case:—

- (1.) Kaipara Minute-book 5, folios 109–10: Succession order *re* Parore te Awha (deceased) was made 26/2/1889 in favour of Wiremu Rikihana and twenty-two others, including Mikaera Urututu, but with shares undefined.
- (2.) Kaipara Minute-book 6, folio 78: Date, 18/1/1892. Partition order was made in favour of Wiremu Rikihana and twenty-two others in equal shares.
- (3.) Kaipara Minute-book 12, folio 157: Date, 15/10/1910. Partition of adjoining land, Opanaki 2k 2.

The Court, after referring to the presence of Mate Anania, Ngakuru Pene, Rapata Katete, Niheta Puti, and Haratiera Noa, goes on to say, "They state that the whole block was left to Rikihana by Parore te Awha's will, and that he could have retained the whole of it if he had wished, but had admitted all the others through *aro*ha." Yet in 1913 and 1925 Rapata Katete is the principal opponent of Wiremu Rikihana's claim. He claims for his client in 1913 through occupation or ancestry, and in 1925 through "*money*" only.

- (4.) Kaipara Minute-book 12, folios 290–93: Date, 31/10/1911. Succession to Mikaera Urututu. Copy of the evidence is attached and marked "A." It shows the important admissions of Wiremu Rikihana's right by Pouaka Parore, a grandson of Parore te Awha. With regard to the terms of the informal will of Parore te Awha, referred to in the minutes, the Court is satisfied that Parore drew up the list of twenty-three names for inclusion in this title at the request of Wiremu Rikihana, and that these names owe their inclusion in the informal will solely to Wiremu Rikihana.
- (5.) Kaipara Minute-book 13, folios 38–39: Date, 3/9/1912. The Court made a succession order in favour of the following names, submitted by Wiremu Rikihana: Wiremu Rikihana, 3 acres 2 roods 38 perches; Poroa Puhipi, 2 acres; Rakuera Topia, 2 acres 2 roods: total, 8 acres 38 perches.

The Court rejected the claim of Hipiriona Topia. It will be observed that the Court adopted the proportions as well as the names submitted by Wiremu Rikihana, thus indicating that it was Wiremu Rikihana who allowed the others to share with him.

- (6.) Auckland Appellate Court Minute-book 9, folios 273–74: Date, 22/12/1913. The Appellate Court on appeal awarded Hipiriona a one-fourth interest, and held that the next-of-kin to Mikaera Urututu were entitled to succeed. A copy of the decision is on the petition file.
- (7.) Petition 328 of 1922 lodged with Parliament, and referred to Court for inquiry and report: The block affected should be 2k 1, and not 2E 1, as shown in the schedule to the Act of 1923.
- (8.) Inquiry at Opononi, 2nd May, 1925, Hokianga Minute-book 5, folios 319–28. Full copy of the evidence taken is attached hereto and marked "B."
- (9.) There are no alienations affecting the interest of Mikaera Urututu in Opanaki 2k 1. Opanaki 2k 1 was partitioned on the 16th July, 1919, into 2k 1A for Hipiriona Titaha, and 2k 1B for the other successors to Mikaera Urututu. This partition order should be cancelled.

Report.—The Court begs to report—

- (1.) That the right of Mikaera Urututu in Opanaki 2k 1 was not ancestral or occupational.
- (2.) That the *take* to this land came through Wiremu Rikihana solely, by virtue of a gift to Wiremu Rikihana's father from one Parore te Awha, the original owner, for services rendered.
- (3.) That this gift has been admitted by all parties to be the *take* to this land.
- (4.) That Mikaera Urututu was put into the title by Wiremu Rikihana out of *aro*ha.
- (5.) And that, as Mikaera left no issue of the body, the interest should go back to the source from which it came—*i.e.*, to Wiremu Rikihana.

Recommendation.—The Court begs respectfully to recommend that legislation be passed cancelling any succession orders heretofore made either by the Native Land Court or by the Native Appellate Court in respect of Mikaera Urututu's interest in the Opanaki 2k 1 Block, and cancelling also any partition of the interest of the successors, and directing the Native Land Court to issue a succession order in favour either of Wiremu Rikihana solely or in favour of such persons and for such shares as the said Wiremu Rikihana shall in writing appoint.

F. O. V. ACHESON, Judge.

[Extract from *Kaipara Minute-book*, Vol. 12, folios 290–93.]

Place : Dargaville. Present : T. H. WILSON, Judge.

MIKAERA URUTUTU (deceased).—OPANAKI 2K No. 1.

W. Rikihana's Application for Succession Order.

W. RIKIHANA : I stated to Court the other day that I was the *take*, or ancestor, to this land. This land was given to me by Parore te Awha.

POUAKA PARORE : I am grandson of Parore te Awha, and I would like to explain the position. I lived with my grandfather, and was fully acquainted with all the workings of his estate. I recollect time Rikihana came to presence of deceased, and also the occasion when Parore made a gift of the land solely to his *tamaiti* Rikihana. The gift was completed satisfactorily as far as could be seen. The gift was made over solely to Rikihana. Subsequent to that Rikihana prepared a list of names for the purpose of a will being prepared, and those names included. As far as I remember, and to the best of my knowledge, that land was for the sole use and benefit of Rikihana himself, and it was through Rikihana himself that the variation in the terms of the will was effected. I never once heard the old man state that Rikihana was to be trustee for himself and the others. If there is anything outside what I have said, then Rikihana can give it.

(The witness is sworn in.)

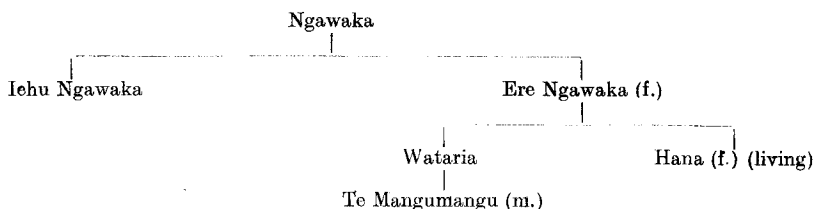
POUAKA PARORE : The statement I have given to the Court is the truth, and I swear its correctness.

WIREMU RIKIHANA (sworn) : I am one of the applicants herein. I heard Pouaka's statement, and I endorse all he has said. His grandfather stated that in the event of Opanaki 2K not being completed in his lifetime it was to be completed by Pouaka and vested in me. He said those words on the occasion when he gave the land over to me. I have the original will with me.

[Will of Parore te Awha produced.]

[Will gives, devises, and bequeaths unto Wiremu Rikihana, his heirs or successors according to Native custom all the land containing 205 acres (less 8 acres for road) in trust for himself and for Mikaera Urututu and twenty-one other Natives, as tenants in common. (See *Kaipara Minute-book* 6, pages 78 and 79.) Orders issued in terms of the will, each person named in the will getting $\frac{1}{23}$ share of the land called Opanaki K. The Court explains to witness that the deceased (Mikaera Urututu) has $\frac{1}{23}$ interest in the land, and that his nearest of kin are entitled to succeed.]

WIREMU RIKIHANA : I agree with the *whakapapa* given by me before Judge McCormick (page 192 herein), but would like to add a sister to Iehu Ngawaka—as follows :—



The children of Timoti Puhipi, so far as I know, are Riapo and Poroa (see page 263 herein). With respect to Rakuera Topia, I have no objection to him sharing in the estate. My opinion is that Rakuera is more entitled to Mikaera's interest. It is true that Rakuera showed kindness to the old man, which is more than the relatives did who are now trying to succeed to the estate. Under the circumstances I ask that this case be held over for further consideration, and that it be taken at Auckland.

(Case adjourned.)

[Extract from *Hokianga Minute-book*, Vol. 5, folios 321–28.]

Present : F. O. V. ACHESON, Judge. Place : Opononi. 1st May, 1925.

OPANAKI 2K 1.

Appellate Court dealt with matter and awarded interest to next-of-kin of Mikaera (see folios 273 and 274), four successors in unequal shares, including Hipiriona and Wiremu Rikihana. Wiremu Rikihana did not approve of this judgment, so he petitioned Parliament. He argues that, as the will was in his favour, and Mikaera died with issue, the interest should go to him. I refer Court also to *Kaipara Minute-book* 5, folio 110. The existing succession order now is in favour of—Wiremu Rikihana ($\frac{3}{16}$), Poroa Puhipi ($\frac{3}{16}$), Rakuera Topia ($\frac{3}{16}$), Hipiriona Topia ($\frac{1}{16}$). Of these, Wiremu Rikihana, Hipiriona Topia, and Rakuera Topia are present in Court. Poroa Puhipi is dead. I call—

WIREMU RIKIHANA (sworn) : I am the petitioner. I saw the will of Parore te Awha. I gave the list of successors to Parore te Awha before he made his will. Parore appealed to my father to help him in a quarrel with Paikea. My father, Te Rikihana, took three hundred men with him and went to Paikea, who soon made peace. Then, out of *aroha*, Parore gave some land to my father. I was a lad at the time. This is the land. My father had died by the time this list of names was handed in. It was after he died that I handed in the list to Parore. It was not handed in by my father. Parore did not make a will in favour of my father. It was I who selected the names for the list. Neither my father nor I have any ancestral claim to this land. Not one person in the list I handed in had any claim to this land. I made the list of people, and included the twenty-three people out of *aroha*. They were living with me at Kaihu or Opanaki. I strongly object to the claim of my opponents as next-of-kin to Mikaera. I ask that the interest of Mikaera be awarded to me solely.

Examined by Rapata Katete.] The people whom I included in the list paid me money, but I understood it was for payment of the survey charges. I am aware that these people were appointed successors. I included them out of *aroha*. I shared equally with them—that was my wish. If any of these successors die and leave issue I shall not ask for orders. I only ask to succeed where no children are left. I did not ask for the interest of Ngaro Petera when he died. I did not want it. If I had wanted it I should have asked for it. I asked for successors to be appointed to Pauro (deceased). I put in three names—my daughter, my sister, and an outsider—a woman. An order was made.

Examined by Court.] The quarrel between Parore and Paikea happened when I was a lad about twelve. I remember many canoes (six) going to that fight—war-canoes. Seventy fighting-men in each canoe—some with more. The canoe was so big that I could not see over the sides. The canoes went eight miles. The dispute was settled without fighting. My father was in command of that expedition. He was their principal man. Some time after the dispute Parore made a gift of this Opanaki 2k 1 to my father. In Parore's whare Parore explained to his grandchildren why he was giving this land away. I was a married man at that time. I was there. Mikaera had died by then. Parore said to me, "I made a gift of this land to your father, but as your father is dead I make a gift of this land to you." I cannot say if any ceremony was held when the gift was made to my father. The gift was made to me in the presence of Parore's grandchildren, one of whom (Pouaka) is still alive, and lives at Dargaville. I claim that this is a gift to my father (or to me) in old Maori custom, for services rendered. Mikaera Urututu left no issue. No will.

MR. WEBSTER: No other witnesses.

RAPATA KATETE (sworn): I am opposing this application. I represent Hipiriona Topia or Titaha, one of the present successors. He is present in Court. The present successors claim to be entitled to succeed through the *take* of money. Because the twenty-two other successors contributed money, Wiremu Rikihana included them in the list. I was present in Court, and heard it stated that all the twenty-three successors were to share equally, even if any of them had only subscribed 10s. The succession order was in favour of the twenty-three in equal shares. Some of the twenty-three have died, and succession orders have been made to their next-of-kin, and some of the subdivisions of this block have been alienated and sold to Europeans. Therefore I do not approve of Wiremu Rikihana's application. If he had been able to stop the alienation of this land by any of the successors I would not have said anything here to-day. I ask the Court to read my evidence before the Appellate Court.

Examined by Mr. Webster.] I did not set up my claim as "money" in the first Court. My claim then was through the *tupuna*. In Kaipara Minute-book 13, folios 38 and 39 (date 3/9/1912), I said that Hipiriona had no claim through a *tupuna*, but I was ignorant of the facts then. I explained, however, that Hipiriona was put into title on account of his whare on the land. The statement in Kaipara Minute-book 12/157, of 15/10/1910, is correct. I was there. The land dealt with then is a portion of Opanaki 2k. I agree with the statement that it was Rikihana who admitted the people through *aroha* and money. I did not say "money" then (in 1910)—I said "*aroha*." I object to Mikaera's interest going to Wiremu. We admit Wiremu Rikihana's claim to the hotel-site, but we object to his claim away from the hotel.

Examined by Court.] Mikaera's piece is a defined area of 8 acres odd, cut out of Opanaki 2k for himself alone. The source of Mikaera's interest was in Rikihana, but it was for money. The money was the *utu* for the *aroha*. I cannot say how much the money was. I think it was £5, but I cannot say. A man named Pehi Noho subscribed 10s. to be included in the title, and he received 8 acres for his payment; 10s. was hard cash, and the balance for his 8 acres was *aroha*. A man would not make a gift of land and also pay the survey charges. He would expect all the people to pay. In this case I think the twenty-three people all paid for the survey charges. I admit that Wiremu Rikihana's father led the expedition to the assistance of Parore. I admit that Parore made a gift of this land to Wiremu Rikihana's father. I don't admit that Wiremu Rikihana is entitled, but I will leave the matter in the hands of the Court. Pouaka Parore should be here to give evidence. He would know all the facts.

COURT.—Court quotes evidence of Pouaka Parore from Minute-book 12 (Kaipara), folio 291, which shows that Pouaka admitted that Rikihana was entitled solely to Mikaera's interest.

RAPATA KATETE: I cannot understand why the Appellate Court made its order then in favour of my client. He has a whare on this land. I will call—

PAIWIKO ANANIA (sworn): I know why certain people were put into Opanaki 2k. The books show the position. They were put into the block because of a certain fight. Parore showed *aroha* for Rikihana and the people. The interest of Mikaera should go back to Rikihana and the people. I don't know what money the people subscribed.

Examined by Mr. Webster.] I cannot say if the people subscribed to the payment of the survey. I was born in 1881. I don't know whether the survey was paid or not.

MR. HENRY LEEF: I rely on the records of the Court in this matter. I was to act for Hipiriona, but cannot call any fresh evidence.

COURT: Decision reserved—Court will need to go through all the Court references.

COURT: Court references examined, and Court will report in favour of Wiremu Rikihana's claim (see folios 332/34).

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