

1927.
NEW ZEALAND.

NATIVE LAND AMENDMENT AND NATIVE LAND CLAIMS
ADJUSTMENT ACT, 1925.

REPORT AND RECOMMENDATION ON PETITION No. 107 OF 1925, OF TE WHARE PAORA
AND TWENTY-NINE OTHERS, RELATIVE TO OHUIA Nos. 3 AND 4 BLOCKS.

*Presented to Parliament in pursuance of the Provisions of Section 34 of the Native Land Amendment
and Native Land Claims Adjustment Act, 1925.*

Native Department, Wellington, 16th June, 1927.

Petition No. 107 of 1925.—Ohuia 3 and 4 Blocks.

THE matter of this petition was referred to the Court for inquiry and report under section 6 of the Native Land Amendment and Native Land Claims Adjustment Act, 1922.

The report of the Court is sent herewith. The Court recommends that no further action be taken on the petition. I am unable to concur in that recommendation, for the following reasons: (1) The proceedings in the original hearing show that the list compiled of persons entitled, handed in by Hamana Tiakiwai and accepted by the Court, was not exhaustive; (2) Judge Butler, in 1896, was convinced that many persons were wrongly excluded, and that an injustice was inflicted upon those persons; (3) the present Court says that it is evident that in many cases one member of a family was admitted into the title, while another was left out.

Under these circumstances there seems a *prima facie* case for the Court to be empowered to correct any injustice, if such has occurred, and I recommend legislation accordingly.

R. N. JONES, Chief Judge.

The Right Hon. the Native Minister, Wellington.

The Native Land Amendment and Native Land Claims Adjustment Act, 1925.

Wairoa Minute-book 37.

In the Native Land Court of New Zealand, Tairāwhiti District.—In the matter of the land known as Ohuia Nos. 3 and 4; and in the matter of a reference to the Native Land Court in pursuance of section 34 of the Native Land Amendment and Native Land Claims Adjustment Act, 1925, for inquiry and report as to the matters arising out of Petition No. 107 of 1925.

At a sitting of the Court held at Wairoa on the 8th day of February, 1926, and concluded on the 9th day of February, 1926, the Court made inquiry into the above matter, and reports as follows:—

The petitioners and respondents were well represented, and there was a large attendance of interested parties. At the outset the question was raised as to the scope of the inquiry, there being some suggestion that it was merely a preliminary one set up to decide whether or not the title should be reopened. The Court was very careful to point out that the proceedings might have a very much wider operation. Parliament, by its own Act, had already recognized that a further inquiry was called for, and for that reason the facts should be stated as fully as possible. It was not desirable to limit the proceedings in any way. The Court's function was to inquire and to report to a higher tribunal, which would take whatever action it deemed necessary.

The minutes taken fully record the proceedings, and disclose the earlier history of the block. A copy is attached for your information.

It is very evident that in many cases one member of a family was admitted into the title while another was left out.

Judge Butler's Court, in giving judgment on the 27th July, 1896 (M.B. 9/288), in respect of an application under section 11 of the Native Land Claims and Boundaries Adjustment and Titles Empowering Act, 1894, states, "The conviction has been forced upon us that many who have similar rights to those in the title, both ancestral and occupatory, have been wrongly excluded, whether intentionally omitted by the persons who appeared for them or by accident we do not pretend to say; but there has evidently been an injustice inflicted on these persons, and their only hope of redress is to make an application under subsection (10) of section 14 of the Native Land Court Act, 1894."

It was afterwards found that the last-named subject had no application to this case. It was probably this expression of opinion by the Court that encouraged petitioners to take the present action.

After careful consideration of the facts elicited, this Court has arrived at the conclusion that insufficient reason has been advanced to justify the disturbance of the title at this late juncture. The original hearing was commenced on the 22nd November, 1881. The case was contested. On the 28th of the same month the Court gave its judgment, which was that "the whole [of this block] belonged to those descendants of Tapuae who continued to occupy it at and immediately before the coming of Christianity and of law." On the 1st December, 1881, Hamana Tiakiwai handed in a list of names, and, "after much discussion, the Court said it would accept it and make the order."

It is particularly to be noted that no attempt has been made to prove occupation by the petitioners. Mr. McGregor, who acted for them, stated "There has not been a great deal of actual occupation on this block. Most of it is limited to occupation of eel-pas, &c." Later on he said, "I have not attempted to prove occupation by the persons named in my lists, but suggest that, if their brothers or sisters are in, they also should be included."

This Court is of opinion that descent from the ancestor set up is alone not sufficient to establish a right to the land. There are many other persons who can trace their descent from the same ancestor who have not claimed a right. It is also necessary to prove occupation, but the petitioners have not even attempted to do so.

One other aspect of the case should be remarked upon. One of the agents concerned handed in a list of persons whom he represented. Another pointed out that these people had brothers and sisters on whose behalf no claim was made, because they had not contributed towards the cost of the case. This surely goes to show that the Maori of to-day is hardly justified in charging with inconsistency his predecessor of forty-five years ago.

The recommendation of the Court is that no further action be taken in the matter of the petition.

Enclosed will be found a Land Transfer search of the title, two copies of the evidence taken and of the whakapapas and lists submitted, and also the Native Department file 1925/347.

As witness the hand of the Commissioner and the seal of the Court.

W. H. BOWLER, Commissioner.

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