

1929.
NEW ZEALAND.

THE NATIVE LAND AMENDMENT AND NATIVE LAND
CLAIMS ADJUSTMENT ACT, 1926.

REPORT AND RECOMMENDATION ON PETITION No. 222 OF 1926, OF RUTU HERE MOKENA, RELATIVE
TO KAIPHA BLOCK.

*Presented to Parliament in pursuance of the Provisions of Section 35 of the Native Land Amendment and
Native Land Claims Adjustment Act, 1926.*

Native Department, Wellington, 26th September, 1929.

Petition No. 222 of 1926.—Kaipha Block.

PURSUANT to section 35 of the Native Land Amendment and Native Land Claims Adjustment Act, 1926, I herewith transmit the report of the Native Land Court upon the allegations contained in the above-mentioned petition.

In view of that report I have no recommendation to make.

R. N. JONES, Chief Judge.

The Hon. the Native Minister, Wellington.

In the Native Land Court of New Zealand, Waikato-Maniapoto District.

Te Kuiti, 3rd October, 1928.

The Chief Judge, Native Land Court, Wellington.

Kaipha Block.—Reference by you dated 20th October, 1926, in terms of section 35/1926 for inquiry and report into allegations in petition No. 222 of 1926 by Rutu Here Mokena.

I MADE inquiry, as directed, at Te Kuiti on the 8th, 9th, 10th, and 15th June, 1927, and on the 28th September, 1928.

Mr. Withers appeared for petitioner, Rutu Here Mokena, and George Turner (Hori Tana) for the Turner family, the present owners of the land. The delay in completion has been that of the parties themselves.

It is not disputed that Here Mokena, the father of Rutu Here Mokena, was a brother of Ripeka Tangi, mother of the Tana family. Had the *take* under which the land was awarded on investigation been ancestral or otherwise under strict right according to Native custom there would no doubt be force in petitioner's contention that her father should have been included in the title, but, on the evidence as to occupation, certainly not to anything like the half of the land she claims. But there is no such *take*. These people are Ngatipou, of Lower Waikato, whose ancestral land extends, as far as my knowledge goes, from Whangape to about Tuakau. No satisfactory explanation has been given of their coming to the neighbourhood of Pirongia and settling in Ngati-Hikairo and Ngati-Ngawaero territory.

This occupation goes back over a century. Pita Tana, who possibly is not altogether reliable, stated that Ripeka Tangi and her brother, Here Mokena, were born at Te Tapu or Toroakapakapa, which is some little distance from Kaipiha, on the opposite side of Waipa River.

Aperahama Patene, the conductor for the Tanas in the investigation proceedings, declared that the Ngatipou were there long before Matakītaki. The Court, however, appears to have accepted the Ngati-Hikairo version, that Mihi Papene's family (the Turners) have been in occupation of Kaipiha from about the time of the fall of Matakītaki, in 1822 (? 1821). It is quite probable that they did in fact leave Lower Waikato through dread of the Ngapuhi.

Pita Tana in evidence before me stated that Ripeka Tangi went to Kaipiha when she married Tana, and settled there, but that Here Mokena, when he grew up at Te Tapu, returned to Ngatipou land at Whangape and remained there till the Waikato War, when "the pakehas drove him away," though prior to that he and his sister, Ripeka Tangi, occasionally visited each other.

This witness stated at the investigation that Mihi Pepene was born on Kaipiha. I am, however, satisfied that was not so. All the evidence, including that of Pita Tana himself, goes to show that the first settlement on Kaipiha was by Ripeka Tangi and Turner. But Mihi Papene, who is still alive, said to be 106 years of age, was not the child of Turner, but of Ripeka by her first husband, also a European, called by the Natives Kamupene. But Ripeka had twelve children by Turner. The eldest, Hare, it is said, would be nearly 100 if still alive. Hera Tana (still alive) is eighty-six, and it was stated there were several between her and Hare. Therefore the occupation was long prior to 1840.

With regard to Here Mokena, the position, in my opinion, disclosed by the evidence is this: Whether Here Mokena and Ripeka Tangi were born at Te Tapu, as stated by Pita Tana, or elsewhere, as I think probable, there can be little or no doubt that, while Ripeka settled at Kaipiha with her husband (Turner), Here Mokena returned to the Ngatipou lands at Whangape. There he remained, with occasional interchange of visits between himself and sister, till the Waikato War, when he was obliged to leave, being a follower of Tawhiao. He came to a place named Te Kotai—like Te Tapu, on the opposite side of the Waipa River from Kaipiha, from which it is distant about three miles. There he established, or re-established, a kainga for himself and others who followed him. He lived there for a considerable time, naturally enough paying frequent visits to his sister at Kaipiha, and no doubt also, as a follower of Tawhiao, often staying at that chief's well-known settlement of Whati-whatihoe, which is quite close to both Kotai and Kaipiha. He also lived at Otorohanga for a time. Later on he went away gum-digging and died at Auckland while on an expedition for that purpose.

It is beyond all doubt that Here Mokena never had any kainga of his own on Kaipiha Block. When he was there he always lived with his sister, Ripeka Tangi, or one of her sons. He was not there when the investigation took place. It is not disputed that his body was brought back and buried in an *urupa* on Kaipiha, but it was explained that this was an *urupa* in general use. In any case, having regard to the close relationship to Ripeka Tangi and her family, burial in their *urupa* would be natural enough, apart from any question of right to the land.

I will refer to some of the evidence given for the petitioner which bears out the opinion I have expressed.

Pura Tana, a grandson of Ripeka Tangi, aged about fifty, called for petitioner, said: I heard of Here Mokena; never saw him. I saw Ripeka Tangi, my grandmother; I was a boy at the time. I heard Here Mokena lived on the block with his sister when it was investigated (but witness did not know when investigation took place). I never saw Here Mokena living on this block (yet witness must have been nine or ten when the investigation took place). I discussed matter of Rutu being given some interest with Meri Tana (aunt, deceased). We did not go into question of *take*. It was through relationship and *aroha* that Meri and I thought Rutu should be admitted.

Tamati Tamihana, another witness for petitioner, said he was sixty-seven, and belonged to Ngati-Puhiawe of Ngati-Hikairo. He came from Kawhia about 1874 or 1875, which, of course, was long after the Waikato War, and saw Here Mokena and others of the elders living at Kotai, Kaipiha, Kōnokono. First said all these kaingas were in Kaipiha, but on being challenged said that Kotai was on the other side of the river. Later the witness said: "It is correct that Kaipiha was Ripeka's chief kainga. Here Mokena's chief kainga was Kotai, *pea*." Witness went on to say, "Here lived with Ripeka as brother with sister. I did not hear of any occupation prior to the time I saw him."

On cross-examination, the witness said: I cannot give any kainga of Here Mokena on this land. When I saw him he was with Ripeka *ma*. I saw him at Kotai. I saw Ripeka there at times, but she did not live there permanently. Kaipiha was Ripeka's home. I can't say that it was Here Mokena's permanent home, but I saw him there as well as at Kotai.

An important witness was Te Arai Mokena, son-in-law of Here Mokena, having married Parekuku, elder sister of the petitioner. He gave his age as seventy-six. He said he lived frequently with Ripeka. Knew Here Mokena long before the Waikato War (witness about twelve when that occurred). Here was living at Kaipiha when witness first saw him. (Kaipiha here means the kainga of that name, admittedly Ripeka's home.) Here lived at Tupeke, near Whangape. (On suggestion, corrected statement to Kaipiha.) Here went to Whangape before the war. I don't know how long before—a long time. He was at Kaipiha a long time before the war. He came back to Kaipiha after the war. I don't know how long after. I don't know when the war took place.

Not much can be made of this portion of the witness's evidence. But witness continued: When Here returned to Kaipiha he had no kainga of his own. He lived in his sister's kainga. Stayed

perhaps twelve months, then went away gum-digging. Came back; can't say when. Stayed with his sister a good while. His children were born there. Between the time of the Waikato War and the investigation of Kaipiha he lived at Kaipiha, but not all the time.

To myself, witness said he did not know when the war was nor when the investigation took place. Here Mokena and his children lived only with Ripeka, not anywhere else on Kaipiha. But Here was away a good deal with Tawhiao; he never had a home of his own. Did not see him at Kaipiha on any of my visits after my marriage. He was not at Kaipiha when the investigation took place. He had gone gum-digging.

On cross-examination witness stated: Kaipiha was Ripeka's home. There were two [*sic*] houses. One was Hone Tana's. One was Hare Tana's, and a kitchen. The big house belonged to the original Turner. Here Mokena lived at Tupekerua, Whangape, before the war. He had four children. I don't know where they were born (yet he had previously declared they were born at Kaipiha). Here Mokena came with other followers of Tawhiao during the war to Kotai. They started a settlement there, a number of them. Kotai was one of the chief kaingas of Ngatipou in this district. Here started that kainga for himself and those who followed him. He went to Kaipiha only on visits to his sister. He lived at Otorohanga for a time.

And on re-examination witness said: Ripeka never lived at Kotai. Both she and Here had interests at Whangape. I don't know of Ripeka going there. She went to Kaipiha before I was born.

Hera Tana, a daughter of Ripeka Tangi, who said she was born in 1841, was also called for the petitioner. She said all her brothers and sisters and herself were born on the block, but her half-sister, Mihi Pepene, was not: "She followed later."

I do not know why this witness was called. Her evidence does not help the petitioner in any way.

She said: I can't say if Here Mokena lived on Kaipiha before Waikato War. I do not know of any home of Here Mokena on this block. He was *noho noa iho* (the expression being used apparently as meaning a bird of passage). He moved from kainga to kainga. I visited Here Mokena's place at Whangape for a time. So far as I know, all his children were born there. His visits to Kaipiha were only casual visits. He lived with Ripeka. He lived with my husband and myself at Otorohanga during the war. He never returned to Kaipiha.

Possibly too much importance should not be attached to this witness's evidence, owing to her age. She was clear enough at first, but soon tired and was inclined to answer at random. But, for what it is worth, it accords with that of previous witnesses.

There were three other witnesses called for petitioner—the petitioner herself, her son, and a Ngati-Rora woman, Te Ata Hoani, of Te Kuiti.

I do not propose to traverse their evidence at any length. The petitioner's evidence, to my mind, was distinctly "coloured." One or two statements are in direct conflict with the evidence of other witnesses, and the records on investigation—*e.g.*, that Here Mokena was born on Kaipiha, and that it was his *kainga tuturu*, and that Here Mokena was asked by Tana and Kamupene for leave to run cattle on the block.

Petitioner's son, Hone te Whao, was also called. I do not know why. His principal answer was, "I don't know." But he declared that he knew Kotai and had heard it was his grandfather's kainga. At my suggestion he was not cross-examined.

Te Ata Hoani's evidence was that as a child of five or six years old she spent two years on Kaipiha with her aunt Atiria, who was married to Timi Tana. Had not been there since. The kainga where she stayed was called Konokono, and Here Mokena and family were there as well as Timi Tana and his wife. On the strength of her childish memories the witness was bold enough to declare that the house was Here Mokena's. Apart from the fact that her evidence is directly opposed to that of witnesses in a much better position to know, she broke down badly on cross-examination, and I consider her evidence worthless.

The case set up on investigation of title in 1886 on behalf of Mihi Pepene and her half-brothers and sisters, the Turner family, was a gift to their elders. Had the claim as made succeeded, Here Mokena would clearly have been entitled to inclusion. Even if that were so, however, the petitioner's case is that he would not claim because of his adherence to Tawhiao, and in such a position it would seem more than doubtful whether people who have been in possession for such a length of time and have greatly improved the block should be disturbed in their possession. Clearly, no Court would do it. But the question does not arise in this case.

The claim by ancestry and gift was found against by the Court—in my opinion, quite rightly. The evidence of gift was so vague and uncertain that no Court could find it established. The award of the Court was explicitly based on the fact that Ripeka Tangi was formerly placed at Kaipiha (together with her husband, Turner).

The record of this placing of Ripeka and Tana at Kaipiha is in the Court's judgment in Otorohanga Minute-book 2, page 64, and the award is on pages 67 and 69 of the same minute-book.

Under this judgment, therefore, the *take* is in Ripeka Tangi herself, and none of her collateral relations, however close, are entitled to come in under it.

The petitioner and her advisers have, in my opinion, entirely misconceived the position, and advanced their claim on the basis of an ancestral right which does not exist.

I need only refer to one other point. Much stress was laid on the fact that the existence of Here Mokena was not made known to the Court at the investigation. Aperahama Patene, the conductor, who had no personal knowledge of the facts, told the Court that, so far as he knew, Ripeka Tangi's family were the only living descendants of Tahora.

Pita Tana in giving his evidence traced only his mother from Tahora. His explanation to myself was confused and unsatisfactory.

It is, however, as you know, quite a common practice for a witness to give only his own line of *whakapapa*; and if Here Mokena would make no claim, as petitioner asserts, it was quite likely that witness would not mention him.

Be that as it may, and even if the existence of Here Mokena were wilfully concealed, I am unable to see that it makes any difference. He cannot come in under the *take* found by the Court, and under any other *take* neither Here Mokena nor Ripeka Tangi herself has any right.

I therefore am unable to recommend any action.

CHAS. S. MACCORMICK, Judge.

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