

IN THE MĀORI LAND COURT OF NEW ZEALAND
AOTEA DISTRICT

A20160003777

UNDER Sections 135 and 244 of Te Ture Whenua
Māori Act 1993

IN THE MATTER OF Palmerston North Māori Reserve Trust –
Variation of trust and change of status to
General land

BRUCE FARQUHAR
Applicant

Hearing: 25 August 2016
Heard at Wellington

Appearances: B Farquhar

Judgment: 31 August 2016

RESERVED JUDGMENT OF JUDGE P J SAVAGE

Copies to: Bruce Farquhar, Bisson Moss, PO Box 549, Napier 4140
brucefarquhar@bissonmoss.co.nz
Rebecca Elizabeth Mellish, 48 Woodwood Street, Featherston 5710
liz@ngahuru.maori.nz

Introduction

[1] This is an application to change status of lands from Māori freehold land to general land pursuant to ss 135/137 of Te Ture Whenua Māori 1993, (the Act), by the trustees of an Ahu Whenua Trust in whom the lands are vested.

[2] This application was discussed at a recent annual general meeting of the Trust and was overwhelmingly supported. No one appeared before me to oppose the application. The hearing before me was well attended and it was clear to me the beneficiaries were very concerned that this application succeed.

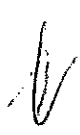
[3] The application is somewhat unique. I know of no other occasion where this Court has been called upon to rule on an application in the circumstances of this case.

[4] The first unusual matter is that the beneficial owners of this trust have no historical relationship in terms of tikanga Māori with the land.

[5] The land was vested in what were called the people of Waiwhetu by a series of transactions prior to the commencement of the Native Land Courts in the mid nineteenth century. They received these lands in consideration of lands taken in the Lower Hutt and Wainuiōmata and have held them in one form or another ever since.

[6] Of course an application such as this has the effect of extinguishing the preferred classes' right to first refusal on an alienation. A unique effect of the facts in this case is that in terms of the definition of preferred class in section 2 of the Act there are no former owners who might have descendants who are members of hapū associated with the land. Also, the beneficial owners are not members of a hapū associated with the land. In terms of the traditional ownership of Māori land, it is hard to imagine another case such as this. I do know however, that there is land on the south East Coast of the South Island and in the central North Island near Mangakino, where there is a comparable but slightly different situation.

[7] Another very different feature here is that the lands are commercial land or commercial residential land in central Palmerston North. All previous decisions of this Court in this matter have involved agricultural land or residential land. Some of the lands are developed commercial land. Some of the lands are bare commercial lands. Some is dilapidated housing with for example scrim behind the wallpaper and totally uninsulated. The trustees could not meet their obligations as landlords with



these houses which are only fit for demolition. Other houses have been demolished and recently there was a controlled burn of a house by the New Zealand Fire Service as a training exercise.

[8] It is clear that some of the lands are highly profitable, others produce no income. The trustees should have the ability to act in a conservative but nimble way if they are to fulfil their obligation to act in a commercially prudent manner.

The Pending Legislation

[9] It was clear to me that the trustees of this land are not happy with the proposed changes to the legislation relating to Māori land law. It was suggested in the pleadings that I might be influenced to grant the application for that reason. I made it clear at the hearing that I did not think it proper that this Court exercise its jurisdiction, and in particular, its discretion to thwart the legislature. I indicated at the hearing that I would put the terms of the Bill presently before a standing committee of the House entirely from my mind.

The Legislative Requirements

[10] The first matter to be considered is whether the Court can exercise its jurisdiction without any notice and in effect on an ex-parte basis in this case. This Court has always recognised that an application for change of status has the effect of destroying the right of first refusal under the Act and for that very reason notice must be given to the preferred class. There are many decisions in this regard and they are usefully listed and summarised by Judge Clark in *Apaapa – Te Pura A No 17*¹. I accept that the preferred class is entitled to formal notification but the unique history of this matter means that there is no preferred class.

[11] I then pass to the provisions of section 137 of the Act which require that;

- a) The land is vested in the trustees of a trust constituted under part 12 of the Act. This requirement is met.
- b) The title to the land is registered under the Land Transfer Act 1952 or is capable of being so registered. This requirement is met.

¹ *Apaapa – Te Pura A No 17 Block* (2010) 6 Waikato Maniapoto MB 1 (6 WMN 1).

- c) Whether the alienation of the land is clearly desirable for the purpose of a rationalisation of the land base or any commercial operation in which the trustees in whom the legal estate in fee simple is vested is a matter that I must now consider. From my description of the land it will be clear that the trustees of this large commercial operation outside their rohe will have to make substantial changes to maximise their return.
- d) In some cases they will want to sell, in some cases they will want to use lands as security, and in some cases they will want to lease. If the land is general land it is clear to me that their task will be substantially assisted and their returns will be substantially increased.
- e) A number of cases have stated that an applicant must demonstrate that specific plans for the land can be more effectively achieved if the land were general land. In a judgement of Chief Judge Williams² he considered what rationalisation meant and followed a dictionary definition:
- to eliminate unnecessary equipment, personal or processes from (a group of business, factory etc) to make it more efficient.*
- f) I do not accept that this is an appropriate definition in the circumstances of this case and prefer a definition from the 10th Edition of the Concise Oxford Dictionary namely:
- reorganise (a process or system) in such a way to make it more logical and consistent.*
- g) I do not accept for the purposes of this case that a specific plan is required. This is a highly organised efficient and conservatively managed trust which has to have the ability to act in a nimble manner in deciding in what land it will hold, what land it will sell and what land it will purchase. It clearly needs to be rationalised in that sense. I also do not accept that a trust such as this needs to come back to the Court again and again with a specific plan in relation to each specific block of land
- h) Whether the rationalisation referred to will involve the acquisition of other land by the trustees is a matter which I must consider. This trust has a "land for land" policy that I will refer to further which meets this requirement.
- i) The quorum and voting requirements are completely unworkable for this trust in relation to obtaining authority to authorise alienations as

² *Wero Karena and Taupiri Paea Pita Karena Trust v Tamaar Taupiri Karena* (2005) 102 WH 259-269.

referred to in section 137 (1) (c) of the Act. This requirement is met. This trust could never meet the voting thresholds for an alienation.

The Land Acquisition Plan

[12] This trust operates under a land management plan. It is annexed to the affidavit of Ms Mellish.

[13] That plan at paragraphs 3 and 4 say;

3. No General Land properties will be sold without the approval of a majority of the land owners present at a meeting called for that purpose.

4. The proceeds of any sale will only be used:

4.1 For the acquisition of other land, the trustees adopting the following criteria:

- a) A decision to purchase will be made by the trustees only after proper professional advice has been obtained and considered;*
- b) The objective will be in to obtain properties which will improve the financial return to shareholders and add value and standing to the Trust;*
- c) All purchases will be within the trustees' declared investment strategy current at the date of purchase; and/or*

4.2 For the purchase of lessees' interests in perpetual leases over properties the Trust wishes to acquire or already acquires;

[14] I have deleted paragraphs 4.3 and 4.4. I deleted 4.3 because it referred to using proceeds of alienation to effect improvements to existing properties. I am of the view that that does not involve the purchase of other lands. I deleted 4.4 because it referred to payment of debt. Payment of debt in a general sense could very well undermine a land for land policy. I have every confidence that these trustees will truly and prudently follow this plan. I cannot be sure that trustees for the future will have the same view of the matter. To that extent I intend to future proof what is now done. I accept paras 3 & 4 as edited above and I approve it so that the net proceeds of alienations must be held in trust for the purposes of acquisition of other land pursuant to that land acquisition plan. And the Orders which I intend to make are pursuant to section 137(2)(b), made conditional on the net proceeds on any

alienation of the lands being held in trust pursuant to the land acquisition plan now approved.

[15] The applicants have at this point met all the criteria of section 137.

Discretion

[16] Having reached this point it would be apparent that I intend to exercise my discretion and grant the application. A number of matters move me in that regard. I have had particular recourse to the Act in general and in particular the preamble and subsections 2 & 17:

[17] The rights and interests in this land do not really go beyond the beneficial owners for there is no preferred class. While the land is taonga tuku iho, in a sense it has come to this kin group outside the usual take whereby they would hold land. There is no opposition from anybody, in any way, before me. The trustees have a clear intention to purchase other land within their rohe with the proceeds of alienations and there is a considerable commercial advantage for the trustees in me granting this application.

[18] Quite recently one particular block of these lands was changed from Māori to General land and now is occupied by a large hardware and building supply store with considerable return to the trustees and therefore the beneficial owners.

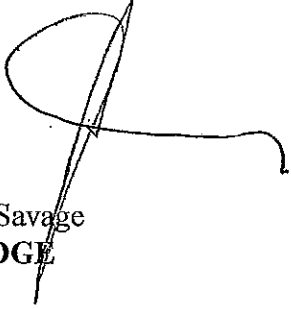
[19] I have always been hesitant, indeed reluctant, to change the status of Māori land to General land. This is because I am conscious of the kaupapa of the Act and the circumstances in which it became law. In my 22 years on this bench the occasions upon which I have done so could be numbered on the fingers of one hand. This is a unique situation and unlikely to be a precedent for any other Court. Indeed I do not intend it to be.

Decision

[20] Having regard to the statutory thresholds and the proper exercise of my discretion I now grant the application and change the status of the land referred to in

the application from Māori land to General land. The orders in each case are conditional as are referred to in paragraph 14 above. The land of course will have the status of General land owned by Māori.

Pronounced at 2 ~~am~~pm, in Wellington this 31st day of August 2016.



P J Savage
JUDGE