

1911.
NEW ZEALAND.

NATIVE LAND CLAIMS ADJUSTMENT ACT, 1910

(REPORT AND RECOMMENDATION UNDER SECTION 28 OF THE), ON PETITION No. 272/1910
RELATIVE TO KAITI AND OTHER BLOCKS.

Laid before Parliament in compliance with Subsection (4) of Section 28 of the Native Land Claims Adjustment Act, 1910.

IN THE NATIVE LAND COURT OF NEW ZEALAND.

In the matter of Petition No. 272 of 1910, by Ruka Hinaki and others, regarding the succession to Paraire Whakaatere (deceased) in Kaiti and other blocks.

This matter having been referred by you to the Native Land Court for inquiry and report, I beg to report as follows:—

1. I held an inquiry in open Court at Gisborne on the 14th June, 1911.
2. From the facts then adduced and searches made in the Native Land Court records it appears that one Paraire Whakaatere died intestate about the year 1887.
3. He left no children him surviving, and according to the custom of the Gisborne district his surviving brothers and sisters and the issue of any brother or sister who predeceased him would be the proper persons to succeed to his interests.
4. On the 10th February, 1891, application having been made to succeed Paraire Whakaatere, evidence was given to the Court by Noa Whakaatere that deceased left no children, but left a brother (himself) and a sister (Erana Ahuahu) him surviving, and an order was accordingly made in favour of the two persons in respect of the deceased's interest in the Kaiti 336 and nine other blocks.
5. Noa Whakaatere admits that the children of one Katerina Whakaatere, a sister of deceased, should also have been included, and alleges that the mistake arose through the Court not asking, as it now invariably does, if any persons who would have been entitled to succeed had died leaving issue.
6. Erana Ahuahu, the other person to whom the order was granted, is now dead. Her proper successors would be Noa Whakaatere and the children of Katerina Whakaatere. Where these persons have succeeded the former loss of Katerina's children has been reduced to one-quarter—that is to say, on the original succession they would be entitled to one-third, and got nothing; the subsequent succession would have entitled them to half of Paraire Whakaatere's interest: they have only received one-quarter interest, and lose the other quarter.
7. Where there has been no alteration of the status of the parties the matter is capable of adjustment by simply adding the name of Katerina Whakaatere, each of the three to take in equal shares. Again, where Erana has not already been succeeded to, if its attention was called to the matter the Court must, on granting succession, do something to readjust the matter on an equitable basis by allotting the succession so as to restore the parties to their rightful position.
8. In other cases, however, Erana has been succeeded to. Where these successors are the persons mentioned in paragraph 6 and there have been no petitions or dealings, a readjustment by amendment of the shares could be effected without much difficulty, and would have the same effect. There are cases in which those persons were not appointed successors, while there are others in which the position has been so altered by partitions or dealings as to make it extremely difficult to place the parties in their rightful position without distinctly disturbing the rights of other persons. Possibly time may do something, as the parties are close relations, to place the injured parties on a better basis, but of course there is no guarantee that Noa Whakaatere may not exercise his rights of disposing of his interests. He, however, was perfectly frank in leaving it to the Court to do what was just in the matter.
9. If my opinion was asked as to the simplest way to deal with the matter I should say, to give the Native Land Court power to rectify the error by adjusting the shares where practicable as between Noa Whakaatere and the children or descendants of Katerina Whakaatere, but so as not to affect the rights of other parties.
10. By the industry of the Registrar of the Native Land Court at Gisborne I was supplied with a detailed account of the present position of the ten blocks affected, but I have not incorporated it with this report, as it would serve no useful purpose, except perhaps to accentuate the difficulty that confronts the Legislature in attempting to remedy the injustice of twenty years ago.

R. N. JONES, Judge.

To His Honour the Chief Judge, Native Land Court.

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