

1920.
NEW ZEALAND.

NATIVE LAND AMENDMENT AND NATIVE LAND CLAIMS
ADJUSTMENT ACT, 1919.

REPORT AND RECOMMENDATION ON PETITION No. 293 OF 1919, RELATIVE TO VALIDATING ORDER OF ADOPTION MADE BY THE NATIVE LAND COURT ON 25TH APRIL, 1913, WITH REGARD TO NGAWHAREWITI TIWAI AND OTHERS.

Presented to both Houses of the General Assembly in pursuance of Section 34 of the Native Land Amendment and Native Land Claims Adjustment Act, 1919.

Office of the Chief Judge, Native Land Court, Wellington, 2nd September, 1920.

Re Ngamoni Ngawharewiti—Petition No. 293 of 1919.

PURSUANT to section 34 of Act No. 43 of 1919, I transmit report of Native Land Court on above petition.

I recommend that no legislative action be taken.

There are no such strong claims of merit or such exceptional circumstances as would, in my opinion, justify the Legislature in interfering with the ordinary course of justice or overruling the decisions of the Courts herein. Indeed, with regard to two of the children claimed to have been adopted I have strong doubts as to whether they were ever adopted according to Native custom.

It appears that while the Native Land Court was sitting at Chatham Islands in 1907 a Mr. A. Shand approached the Court and said he had "been requested by Ngamoni Ngawharewiti to ask that action be taken in respect of three children whom she wished to legally adopt. One of them had been with her from infancy. The other two are older, but had been previously whangai'd (adopted) by her parents, and she wished to continue the adoption. She has expressed a desire to get them included in titles to land, but he had told her it could not be done." The Court informed Mr. Shand that it had to discriminate between *bona fide* adoptions and adoptions merely for the purpose of putting children into titles to land; that that was the object in view when regulations were framed requiring a Judge's certificate prior to completion of registration. The Court had already stated that it recognized the difficulty of completing adoptions in places where a Court only sits at long intervals, had offered to put any statement on record, and advised the parties as to the necessary application to be lodged.

A statement was accordingly taken on the 22nd March, 1907. Ngamoni Ngawharewiti in the course of it described the two elder children as having been taken by her mother, who recently died, and that she desired to continue keeping the boys as her own *tamaiti whangai*. The youngest child, which she was then carrying on her back, was two years old, and she appears to have taken that child on the day she was born, the child's mother having died a week after confinement. She said, "I desire to adopt those three children, and wish them to succeed to my lands after my death as though they were my own children." A little later on, apparently in reply to the Assessors, she says, "I say that two of them were previously adopted by my mother, and I wish to adopt those three children so that they may succeed to my father's lands. . . . It is true that the children I am adopting are related to me on my mother's side, but I claim I have the right to dispose of my father's lands as I may think proper." (To Court:) "My desire to adopt these children began in the past and has continued to the present time. It was not through any ill feeling towards relatives on either side that I desired to adopt them."

The position with regard to the two is apparently that Ngamoni continued to perform the natural duty of looking after her infant foster-brothers, and there is no tangible evidence of actual adoption, although it is clear she wished them to succeed to her lands.

Objectors were called for, and one Inia Tuhata objected, apparently on behalf of his niece, who he claimed had been adopted by Ngamoni and her mother. The reply to this was that the girl lived with her father, and also with her grandmother and aunt, who looked after her, as her own mother was dead.

Having taken the statement, the Court left the question of granting a certificate *re the bona fide* nature of the adoption in respect of the three children to a future Court.

The application for registration of the adoption, and Judge's certificate as to its *bona fides*, being duly executed and lodged, Mr. Shand asked that it might be put down for the sitting of the Court at Wellington in February, 1908. During that sitting, starting in January, Mr. Shand seems to have appeared in Court in other matters, but there is no note of this matter being mentioned, although by subsequent correspondence he appears to have been aware that it was on the Wellington panui. The matter was then adjourned from time to time till the 30th March, 1910, when it appears to have been adjourned *sine die*, with a direction that it be taken at the Chatham Islands. As the Native Land Act, 1909, came into force on the 31st March, 1910, according to the Supreme Court decision it would then be practically impossible to complete the registration under the 1901 Act. In 1912, however, the matter was asked to be restored to the Wellington panui.

It must be obvious from this that with regard to the youngest child there was ample time to complete the registration under the 1901 Act, and even if not, then, between the passing of the 1909 Act and the death of Ngamoni Ngawharewiti, on the 12th August, 1916, there was ample time to apply for an order for adoption under the later Act.

The Hon. Native Minister, Wellington.

R. N. JONES,
Chief Judge.

In the Native Land Court of New Zealand, Ikaroa District.—In the matter of section 34 of the Native Land Amendment and Native Land Claims Adjustment Act, 1919, and in the matter of a reference by the Chief Judge for inquiry and report in respect of the petition of Ngawharewiti Tiwai and others regarding their adoption by Ngamoni Ngawharewiti (deceased).

At a sitting of the Native Land Court held at Wellington on the 17th January, 1920, inquiry was made into the merits of the above petition, and the facts appear to be as follows:—

1. Two Natives of the Chatham Islands named Ngawharewiti Kawhau and his wife Paranihia, who had a daughter (Ngamoni Ngawharewiti), adopted in accordance with Native custom two children called Ngawharewiti Tiwai and Mauna Tiwai, who were near relatives of theirs.

2. After the death of the adopting parents their daughter Ngamoni adopted the two children, as well as a third child, called Ngamoni te Ware, and in 1907 made an application to the Native Land Court for the registration of such adoption, in pursuance of section 50 of the Native Land Claims Adjustment and Laws Amendment Act, 1901.

3. Owing to the difficulty and inconvenience of coming from the Chatham Islands to attend the Court the application did not come on for hearing until the 28th April, 1913, and in the meantime there came into operation the Native Land Act, 1909, which repealed section 50 of the Act of 1901, and substituted therefor provisions for obtaining orders of adoption (see Part IX of the Act), and also made provision under section 433 for the continuance and completion of proceedings then pending in the Court, either under the corresponding provisions of the new Act or under those of the Act repealed.

4. The Court, after hearing the evidence and being satisfied that the three children had been adopted according to Maori custom, and that the adopting parent, Ngamoni Ngawharewiti, had ample means to support the children, ordered on the 28th April, 1913, that a certificate of adoption should be issued in pursuance of section 50 of the Act of 1901.

5. Instead of proceeding under the repealed section 50 of the Act of 1901 the Registrar prepared an order under Part IX of the Act of 1909, which was duly signed and gazetted.

6. On a case stated for the opinion of the Supreme Court under section 59 of the Native Land Act, 1909, the Chief Justice (Sir Robert Stout) decided that no order of adoption could be made in pursuance of section 433 of the Native Land Act, 1909, unless the provisions of Part IX of the Act relating to adoption could be complied with, nor could registration of adoption in pursuance of section 50 of the Act of 1901 be of any legal effect, because such registration was not effected before, and subsisting at, the commencement of the Act of 1909 (see section 161 of the Native Land Act, 1909).

It is therefore apparent that, owing to a change in the law between the date of the filing of the application and the hearing of the case, the children, though actually adopted in accordance with Maori custom, were deprived of their legal status and excluded from the succession to their foster-parent.

No objection was raised, nor was any opposition made, to Ngamoni Ngawharewiti in her endeavours to have the adoption recognized, registered, and legalized, and it was not till after her death that certain interested persons took steps to have the adoption set aside on legal technicalities.

I recommend that provision be made to enable the adopted children—Ngawharewiti Tiwai, Mauna Tiwai, and Ngamoni te Ware—to succeed to the interests of Ngamoni Ngawharewiti, their adopting parent.

The Chief Judge, Native Land Court.

M. GILFEDDER,
Judge.

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