SESSION II.
1921.
NEW ZEALAND.

NATIVE LAND AMENDMENT AND NATIVE LAND CLAIMS ADJUSTMENT ACT, 1920.

EPORT AND RECOMMENDATION ON PETITION NO. 203/1920, RELATIVE TO TITLE TO NGAMOTU BLOCK.

Presented to both Houses of the General Assembly in pursuance of Section 32 of the Native Land Amendment and Native Land Claims Adjustment Act, 1920.

Office of the Chief Judge, Native Land Court, Wellington, 21st July, 1921.

Re *Ngamotu Block.—Petition 203 of 1920.*

ENCLOSED please find report of the Court herein.

I recommend that legislation be passed as follows :—

1. That section 5 of No. 25 of 1917 be repealed.

2. That the following orders of the Native Land Court in respect of the said block be declared ineffective :—

(*a.*) Orders of the 12th May, 1917, and the 7th October, 1920, partitioning the said block ;

(*b.*) Order dated the 12th September, 1919, made under the above repealed section.

3. The Court to be authorized to amend the original order of investigation of title dated the 31st August, 1892, by striking out therefrom the following names : Te Aira Akuhata, Hori Marena, Rewi te Nahu, Rora Pareke, Rapihana None, and Netana Tinohi, and by cancelling the definition of interests made thereunder.

4. The Court to be empowered to adjudicate upon and redetermine the relative interests of the remaining beneficial owners according to their several rights, and irrespective of any order heretofore made by the Court or by the Appellate Court.

5. The Court to be empowered at the same or any future time to partition the land among the beneficial owners named in the amended order on investigation, or their successors, as if they were the legal owners of the land, with power to define the relative interests with regard to any portion so partitioned if the Court thinks it expedient so to do.

6. For the purpose of exercising the jurisdiction of laying out road-lines or rights-of-way the land to be deemed to be legally vested in the beneficial owners.

7. Upon any partition order becoming matured the legal estate in fee-simple shall vest in the persons named in any partition order, freed and discharged from the provision of Part XV of the Native Land Act, 1909, and from the title of the Tairawhiti District Maori Land Board or any trust thereunder.

8. The District Land Registrar of Hawke's Bay to be authorized to issue certificates of title for the portions so partitioned to the persons named in the partition orders, and to cancel the present certificate of title as to the land contained in any such partition order.

9. Until any road-line is proclaimed a public road the Tairawhiti District Maori Land Board to hold the land comprised in such road-line in trust for all the beneficial owners subject to all rights of way thereon.

R. N. JONES, Chief Judge.

The Hon. Native Minister, Wellington.

In the Native Land Court of New Zealand, Tairawhiti District.—In the matter of the Ngamotu Block, and of a reference by the Chief Judge under section 32 of the Native Land Laws Amendment and Native Land Claims Adjustment Act, 1920, in respect of Petition No. 203 of 1920.

AT a sitting of the Court held at Wairoa, before Robert Noble Jones, Chief Judge, the above matter came on for hearing, and the Court submits the following report:—

1. The Ngamotu Block was investigated by the Court in 1892, and, after a prolonged hearing, an order was made vesting the block in 383 Natives, in the shares set out in the order.

2. This Court, with all due respect, has come to a very definite conclusion that the Court of 1892 admitted to the title many persons who were not entitled to ownership. It is not now necessary or wise to give reasons for arriving at that conclusion, since it is also of opinion that, after thirty years possession, it would not be right or just to exclude such persons from the title, unless it is admitted beyond all doubt that they are not so entitled.

3. The Court says this because most of the persons of doubtful ownership were either admitted by the rightful owners or fought their way into the title, and ample opportunity was given at a later Court in 1896 to reject those without right; in fact, objections of such a nature were specifically invited by the Appellate Court (Appellate Court, Vol. 10, folio 1). That was the proper occasion for testing the rights of the various parties, and if they neglected that opportunity the petitioners have now only themselves to blame.

4. After the Court decided in 1892 certain counter-claimants were to be admitted, the parties all lodged fresh lists, the claimants especially having a very large number of names in their list. The Court, being under the impression that the claimants were swelling their lists for the purpose of securing an undue proportion of the land, adopted a system of defining the relative interests, which gave to the recognized principal owners only $\frac{44}{99}$ths, or less than one-half, the block.

5. The claimants' side appealed, and the matter came before the Native Appellate Court in 1896. From the records it would appear that the claimants on that occasion were endeavouring to confine the counter-claimants to at least specific portions of the block. Eventually it was decided that all who were in the block should remain, and they should get what were called "equal shares"—that is, two shares for an adult and one share for a minor.

6. The Appellate Court gave its judgment on the 22nd October, 1896, awarding the block to 390 persons in the shares set out, and directed that a new order on investigation of title should be prepared accordingly, to bear date and take effect on the 31st August, 1892.

7. The next step in the title was the vesting of the block in the Tairawhiti Maori Land Board, under section 4 of the Maori Land Settlement Act Amendment Act, 1906. The Proclamation is dated the 10th February, 1908, and the land remains vested in the Maori Land Board under Part XV of the Native Land Act, 1909.

8. On the 28th May, 1917, the block, with the consent of the Maori Land Board, was partitioned into several parcels among the various equitable owners. There was an appeal against this, which was subsequently withdrawn or abandoned.

9. On the 31st October, 1917, the Native Land Amendment and Native Land Claims Adjustment Act, 1917, was passed, which contained, *inter alia*, clause 5:—

"The Native Land Court is hereby authorized and directed to reopen the question of the ownership of the Ngamotu Block in the Tairawhiti Native Land Court District, but only so far as to determine whether any names should be omitted from the title under an order of investigation dated the twenty-second day of October, eighteen hundred and ninety-six, and to determine the relative interest of the owners. This section shall not affect any valid alienation heretofore made of the land or of any portion thereof."

10. Although, doubtless, the intention moving the Legislature was that there should be a scrutiny of the title, and a rejection of those found not entitled, and that the shares should be rearranged accordingly, that intention is not so clearly expressed as it might be. It is to be noted that the section referred to ignores the fact that the legal ownership is vested in the Maori Land Board, in trust for the whole 390 persons; makes no provision for the position that the equitable estate had been partitioned among those 390 beneficiaries; incorrectly cites the date of the order of investigation, which should be the 31st August, 1892, and not the 22nd October, 1896; overlooks that the relative interests had already been determined by the Native Appellate Court; and, finally, makes no provision for deleting any names, or amending the title in any way.

11. The Native Land Court, assuming it had the power, heard the matter, and on the 12th September, 1919, made an order reciting the order of investigation as bearing date the 22nd October, 1886, and determining that the names of Te Aira Akuhata, Hori Marena, Rewi te Nahu, Rora Pareke, Rapihana None, and Netana Tinohi (six persons in all) should be omitted from the title of the block, and that the remaining owners are entitled beneficially to the Ngamotu Block in the relative interests as set opposite their respective names.

12. The partition of the 28th May, 1917, does not appear to have been cancelled or amended, but seems to have been treated as superseded, either by the Act of 1917 o the order of the 12th September, 1919.

13. An appeal was lodged against the order of the 12th September, 1919, but that appeal only affected the shares allotted to a particular section. An attempt was made to have it applied to the whole proceedings, but the other parties were not before the Court, consequently the appellants were confined to their grounds of appeal, and a slight readjustment of shares took place.

14. On the 7th October, 1920, the equitable estate of the beneficiaries was again partitioned, leaving out the six names referred to in paragraph 11, and treating the order of the 12th September, 1919, as defining the relative interests. The Court cannot find any record of a consent being given to this partition, as required by section 113 of the Native Land Act, 1909.

15. The present position of the title therefore seems to be—

(1.) The order of investigation of title of the 31st August, 1892, with relative interests defined, unaltered in any way. This is in the Land Transfer Office, and the land in that title is now vested in the Maori Land Board.

(2.) An order for equitable partition, dated the 28th May, 1917, founded on the order of the 31st August, 1892.

(3.) An order, dated the 12th September, 1919, purporting to be under the 1917 Act, striking out six names from the title, and redetermining the relative interests.

(4.) A further order, dated the 7th October, 1920, for equitable partition, founded on the order of the 12th September, 1919.

16. The petitioners complain that the order of the 12th September, 1919, was not arrived at after due trial, and that it does not properly define the relative interests of the beneficial owners. It is therefore necessary to refer to the proceedings before that Court.

17. The case started out by the conductor who represented the petitioners, on the 5th June, 1918, intimating to the Court that they claimed that 224 out of the 390 owners were objected to as without right, leaving 166 admitted owners. It is also apparent, though it was not so stated, that these 166 were not all of equal right. The ones objected to were admitted to be in most cases descended from the ancestor, but it was claimed that their particular branch had left the land in an earlier generation, and thus ceased to have any rights. Judging by the minutes, which are very sparse, some seventy-five of those objected to seem later to have been admitted as owners, but to have lessened rights than other owners.

18. At this stage the proceedings were adjourned and did not resume till the following year. The Natives say that a committee had been set up by the Court, consisting of four persons representing the acknowledged owners, four representing those objected to, and a chairman selected from the admitted owners. Presumably this committee submitted a general scheme of allotment, which, when brought before the Court, evoked some criticism. Among others objected to by the finding was the personal party of the conductor who had in the first instance brought the matter before the Court, and who now found his personal claims coming into conflict with his duty as conductor for those desiring exclusions. Under these circumstances he found himself compelled to cease to act as a general agent, and in declining to any longer so act he seems to have taken the only course open to him, and no blame is attachable to him.

19. This phase, however, evidently put the parties at a disadvantage, because there was no recognized head to champion the rights of the principal owners, nor does there appear to have been any attempt after this at any combination of groups to show any reasons why the persons first objected to were not entitled as alleged. Indeed, some evidence was given that those objected to ought not to be rejected altogether, but should be retained in the lists and get lesser shares; and eventually only six out of the 224 first objected to were absolutely rejected. The Court then went on to settle the relative interests.

20. This was done by calling for lists of the different groups, alloting shares to the groups according to the varying degree of ownership, ranging from four shares down to one share, according to their supposed rights, and then allowing the groups to adjust the total shares so allotted among its members.

21. If the Natives were given full opportunity of asserting their own rights and testing those of others, it may be possible that the scheme proposed would work out justly.

22. The Natives, however, claim that they did not on the hearing get that full scope and opportunity to have the matter threshed out that they claim they were entitled to, and that they were hampered by the Court procedure in their attempts to object to the various lists.

23. The Court cannot say how far this is borne out by the facts. The minutes apparently do not contain a full record of what took place, as both sides admit incidents not recorded, and where objections were recorded the evidence taken was either very meagre or else not fully recorded.

24. The actual allotment of the relative interests among twenty-one lists and several sublists, according to the minutes, took only about three days. On the 9th September the lists and whakapapas (genealogies) were handed in. On the 10th September list No. 1 was taken and shares awarded. On the 11th lists Nos. 2 to 15 had their shares allotted; and on the 12th lists Nos. 16 to 21 were completed. In an ordinary case, requiring allotment of shares among 390 persons, unless the people were practically unanimous it would be absolutely impossible to satisfactorily adjust the shares in so short a time. So far from being in agreement, it is apparent the feeling was all the other way. There had been a keen contest at the original hearing, lasting over a lengthened period. Much evidence had been given then, claiming occupations, and citing names, localities, and circumstances. Some of these were admitted and others warmly disputed. The parties had petitioned Parliament, claiming that over two hundred persons, not owners, were in the lists, and they had made the same claim at the beginning of the Court proceedings. The usual practice is for those objected to, to prove their occupation either by fresh evidence or reference to past evidence, and for the witnesses to be cross-examined in an endeavour to break down their evidence. Then, possibly, evidence in rebuttal might be called.

25. The only conclusion this Court can come to after weighing the probabilities is that, whatever the reason, the parties did not get that full and free scope to have their claims and objections heard in open Court which every Maori should have of right in the Native Land Court, if his rights are to be properly determined.

26. As the parties were practically unanimous in deciding the six names referred to in paragraph 11 were without right, it would seem that they could conveniently be dropped from the title without injustice.

27. It seems, too, that some steps are necessary to clear the title, that either the first or both partitions should be cancelled, and that some means should be taken to bring the original title into line with the Court's subsequent adjudications. If there is to be a redetermination of relative interests, probably it would be better to repeal section 5 of the 1917 Act and the work attempted under it. If it is not so decided, then authority should be given to amend the original title, and to adjust the trust accordingly.

28. The beneficial owners desire the block to be revested in them. It is understood the revesting is held over pending the disputes as to the names and shares of those in the title. If anything is done towards reopening, it may be found to be a convenient opportunity of revesting the land directly in the Native beneficiaries, as found by the Court.

Dated the 20th day of July, 1921. R. N. JONES, Chief Judge.

The Chief Judge, Native Land Court, Wellington.

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