

On the 23rd September, 1879, the case came before Judge Symonds at Matata, and the following minute appears in Opotiki Minute-book No. 1, page 249: "Kaingaroa No. 1.—List of names handed in acceded to by Ngatimanawa and accepted by the Court. List of names read out, as well as the list of names leased by the Government. A memorial of ownership was ordered by the Court."

An order for memorial of ownership in favour of Rawiri Parakiri and thirty others, bearing date the 23rd September, 1879, was drawn up and signed by Judge Symonds. The area shown in this order is 114,517 acres. By Order in Council dated 19th December, 1878, a rehearing was ordered by His Excellency the Governor, such rehearing to take place within one year from the 27th September, 1878. A later Order in Council, dated 4th February, 1880, ordered a rehearing to take place within one year from 27th October, 1879.

Rehearing commenced before Judge Symonds at Whakatane on the 27th October, 1880 (Whakatane Minute-book 1/1). Decision on rehearing was delivered on the 4th November, 1880, and order for memorial of ownership of Rawiri Parakiri and twenty-seven others made.

The rehearing Court did not deal with the whole of the land covered by the order of the 27th September, 1879. A memorial of ownership to Rawiri Parakiri and twenty-seven others, bearing date the 4th November, 1880, was signed by Judge Symonds and recorded in the Native Land Court Office. The memorial of ownership covered an area of 104,327 acres. This memorial of ownership has been accepted as the title until the present petition, which contends that this order on rehearing was not a final one, and not made in accordance with the provisions of the then existing Acts.

I propose to deal with the grounds of petition in sequence.

Clause 1 is merely a statement of fact, and is correct, with the exception that names in the memorial of ownership numbered twenty-eight and not twenty-nine.

Clause 2 is a statement of fact. The deed of sale is dated the 8th December, 1880. Twenty-seven of the persons in the memorial of ownership signed on the 4th December, 1880, and one on the 8th December, 1880. The whole of the persons named in the memorial of ownership have signed the deed. The consideration set out in the deed is £7,754 9s. 7d. The attesting witnesses are three in number—John M. Hall, Clerk, Resident Magistrate's Court, Ohinemutu; Herbert T. Way, J.P.; and William Arthur Thom, Licensed Interpreter. The deed bears the following certificate: "I, Theodore Minet Haultain, the Trust Commissioner under the Native Land Frauds Prevention Act, 1870, for the District of Auckland, do hereby certify that I have with respect to the within-written instrument and the alienation thereby witnessed made the inquiries directed by the said Act, and do certify that I am satisfied with the result of such inquiries.—T. H. HAULTAIN, Trust Commissioner. Dated at Auckland, this 26th day of April, 1881."

Clause 3 is also a statement of fact. Petitioners sought to show that the Crown bought before the order had matured, but obviously this fact could not invalidate the sale. Again the order was one on rehearing, and therefore final.

Clause 4: There can be no question that there must have been many other members of Ngatimanawa entitled to share in this block. On the Native Land Court files appear lists of many persons of Ngatimanawa. These lists, which are unfortunately not noted, were apparently handed into Court at the hearing before Judge Symonds on the 23rd September, 1879. The only list which is noted as "Accepted by the Court" is the list of thirty-one persons in whose favour the order for memorial of ownership was made. It is admitted that all the persons in this accepted list are Ngatimanawa, but it is stated they did not comprise all the *kaumatua* of Ngatimanawa. It is further stated that the list was in the handwriting of Captain Mair; but this is not so. There is no direct evidence to show how it was that these thirty-one persons were selected to go into the title, but, as I have stated, the only list noted by the Court is that for such persons. The evidence given by two witnesses called on behalf of petitioners relative to what took place at hearing and rehearing is contradictory, but both agree that land was awarded to the persons—some three hundred odd—in the lists handed into Court. The contention of the petitioners is that the lists of both the thirty-one persons in the original order and the twenty-eight persons in the rehearing order were selected by Captain Mair to go into such order. This contention is not proved. Wharehuia Heta says Parakiri, Harehare, Rawiri, and others selected the names to go into the title, while Harehare Atearea says no committee was set up. It is to be noted that the manuscript list of the twenty-eight persons in the rehearing order is in Captain Mair's handwriting with the exception of one name. This list is, however, signed by one of the leading Ngatimanawa—Peraniko te Hura; and Harehare Atearea under cross-examination admitted that it comprised the elders of Ngatimanawa. Failing satisfactory evidence to the contrary, the only inference to be drawn is that, as the Crown was purchasing the block, a limited number of representatives of the Natives entitled to share in the land were selected to go into the order to facilitate such purchase. (See Captain Mair's book, page 67). It is to be noted that even on rehearing the number of Natives in the order remained about the same—*i.e.*, twenty-eight in all. The latter part of clause 4 has no merit, as application for rehearing was lodged within the time prescribed by the then existing law.

Clause 5: The order of the Native Land Court made on the 4th November, 1880, was undoubtedly a final one, being made on rehearing.

Clause 6: This clause was not stressed. The deed of sale is all in order. Signatures are properly attested, and deed itself bears the certificate of the Trust Commissioner.

Clause 7: The member of Ngatimanawa here alluded to was Harehare Atearea—one of the witnesses called in the present proceedings. When the deed of sale was produced for his inspection he admitted that the signature "Harehare" thereon looked like his own. He also admitted that he received £2,000 of the purchase-money. If the price of £7,515 12s. 3d. (*sic*) was disputed it is incredible that each and every one of the twenty-eight owners in the memorial of ownership should have signed the deed of sale in which the price £7,754 9s. 7d. is clearly set out.

The petitioners stress the fact that in Captain Mair's book (page 64) appears the statement that the Kaingaroa Block, estimated to contain 120,000 acres, was dealt with by the Native Land Court