EXTRACT OF MINUTES FROM 33 APPELLATE MINUTE BOOK FOLIOS 126 - 132

Appeal 1993/15

In the Maori Appellate Court
of New Zealand
Tairawhiti District

	In the Matter of	Tokata Roadline
	and	
	In the Matter of	An appeal by The Trustees of Te Rimu Trust against a final order of the Court at Gisborne on 8 April 1993 under Section 30(1)(d) of the Maori Affairs Act 1953 granting an interlocutory injunction in respect of Tokata Roadline.
Hearing	At Maori Land Court, Gisborne	
Date	10 am Wednesday 25 August 1993.	
Parties	Richard Turei Clarke and others (The Te Rimu Trustees) represented by Mr J C Egan - appellants	
	Raymond De Berdt Hovell Represented by Mr R Barber Respondent	
Coram	Judge N F Smith (Presiding Officer) Judges H K Hingston and H B Marumaru (Members)	

BACKGROUND:

On 15 July 1949 (117 Waiapu MB 142) the Court during the hearing of an application for a partition order Section 18 of the Native Land Act 1931 assumed further jurisdiction and layed off a road line 1 chain wide from the Road to Papaterata boundary and located half on either side of the common boundary between Tokata 4 and 5 and to be called Tokata Roadline.

The Roadline was completed as to survey by plan No ML 5805 in October 1967 and the formal order signed and sealed at a date after 1.4.1968.

Over the years a seven wire stock fence has been erected along the centre of the roadline and two deer fences erected across the roadline.

In addition, some of the roadline has been planted in grape vines.

On the 3rd March 1993 Raymond De Berdt Hovell a majority shareholder in Papaterata A2 Block, Maori freehold land, sought an injunction in terms of Section 30(1)(d) of the Maori Affairs Act 1953, prohibiting the obstruction of the Tokata roadline to enable him to obtain access to his land.

The application was heard at Ruatoria on 2 April 1993 (36 Ruatoria MB 94-124) when the Court reserved its decision.

The Court granted the injunction and the decision was promulgated at Gisborne on 8 April 1993 is contained in 36 Ruatoria MB Folio 126-132.

APPEAL:

The Te Rimu Trustees filed notice of appeal on 8 June 1993, Monday the 7 June being Queens Birthday and a Public Holiday.

The grounds relied upon by the appellant were as follows:

1 The Court erred in not following the decision of the Court in respect of the same matter dated 1 April 1968 and recorded at 135 Walapu MB 88-96.

2 The injunction granted is a permanent injunction when an interim injunction only was sought on intended.

3 There is no evidence that the Te Rimu Trustees or any of them intended to take steps to obstruct the roadline and the injunction is unnecessary and an inappropriate remedy if the objective is to clear Tokata Roadline of obstruction.

HEARING:

At the commencement of this appeal the question of the "Te Rimu Trustees" being properly the appellant was traversed and the Court agreed to accept the appeal as being made by Mr Clarke in his personal capacity.

The main thrust of Mr Egan's argument for the appellant was directed at the status of the Roadline and also sought to establish that the decision of the Court in 1 April 1968 determining the status of the roadline could not be revisited by the Court as the matter was res judicata.

The decision of the Court in 1968 was referred to wherein the Court held that sub sections (1) and (2) of Section 416 of the Maori Affairs Act 1953 were not intended to act retrospectively so as to make the Tokata Roadline open to public use.

Accordingly the Court in 1968 construed the order made on 15 July 1949 to limit access along the Tokata Roadline merely to those owners and occupiers of the various block, adjacent thereto and the those people dealing with them. "It did (and does) not confer any general right of user on the public at large."

Mr Egan also challenged the Courts jurisdiction under Section 30(1)(d) of the Maori Affairs Act 1953 to issue an injunction when there was no evidence of trespass or damage to the land. He submitted that the boundary fence had not been erected by the Trustees who should therefore not be directed to remove it, and the order of the Court is wrong.

Mr Barber for the respondent submitted that the appeal was ill conceived in that alternate remedy was available by way of an application to dissolve the injunction the fences were already removed and the roadway was in full use.

He questioned also the authority of the Trustees to bring the appeal when three of the Trustees supported the application to have roadline opened up.

On the question of re-opening the matters disposed of by the Court in 1968 Counsel for the respondents stated that different parties were before the Court in relation to different lands, ie Pipituangi Block. The question of Res Judicata did not apply.

Reference was made to a Matakana case 14 Waikato-Maniapoto ACMB 136-139 and recorded at page 134 of Tai Whati wherein it was held by the appellate Court, that unauthorised use of land justified the issue of an injunction upon the application of any person interested.

The obstruction of access along the roadline constituted grounds for the order made.

Reference was also made to Wetere v Batley (1980), 16 Waikato-Maniapoto ACMB 190 where the Maori Appellate Court held that the provisions of Sec 423 of the Maori Affairs Act 1953 did act retrospectively.

DECISION:

We have taken into account the very precise and learned submissions made by Counsel for the Appellants and the very helpful submission of Counsel for the Respondent.

We agree with Mr Barber and for the reasons given him, that we do not have before us a res-judicata argument.

We also agree with Mr Egans submission that:

a Wetere v Batley (1980) 16 Waikato ACMB 190 does not decide the question of whether Section 416/53 is retroactive: that was a decision where Section 423/53 was considered. Section 423/53 clearly authorises the Maori Land Court to deal with roadways laid off by the Court "before or after" the commencing of the 1953 Act.

and

b Section 414/53 does not effectively make Section 416/53 apply to orders made prior to the 1953 legislation. We are of the opinion that Section 414/53 merely ensures that all roadlines, rights of way etc ordered by the Court before 1953 shall, for the purposes of the 1953 Act, be deemed to be roadways.

We are of the view that Section 416/53 must be read as referring to roadways laid off after the commencement of the act because the very words of Section 416(i)/53 "laying out of a roadway" and Section 416(2)/53 "in any order laying out a roadway" contemplates a future laying out of a roadway in contradistinction to a roadway already laid out. We believe Section 417/53 is of like effect contrasted with Section 421/53 roadways laid out "under any former Act" and Section 423/53 roadways laid off "before or after the commencement of this Act'.

We consider the legislative intent is clear and unequivical and Section 416/53 does not burden roadways laid off before 1953 with a right of public use.

Having made this finding however does not in our view determine the matter before us which is the validity of the injunction ordered by the learned judges in the lower Courts.

The law reports often throw up Appellate Court decision whereby a Judge of first instance is found to have made the right decision for the wrong reasons and this matter falls into that category.

We believe the starting point in this enquiry is the order made by the Court in 1949. Both the witnesses (Noa Akuhata and Tame Henderson) wanted the Court to lay off a roadway "going up to the Papatarata boundary" and Mr Akuhata's observation that he did not oppose because Metcalfe (obviously a non Maori) was no longer a tenant, can only, in our view make sense if what those gentleman intended was the giving of roadway access to Papatarata block.

We believe that the Court then so intended because of it's invoking of Section 18/31 before making the roadway order. If the roadway was to serve only Koputu Tei Tei Akuhata's partition the Court had jurisdiction to lay it off pursuant to Section 477/31 but it saw fit to invoke (Section 18/31) further jurisdiction.

The order as drawn recited that Tokata 5A Block was without access but moves on to lay off a roadway up to the eastern boundary of Papatarata, thus in no way does the signed order derrogate from the order as pronounced in Court and explained by us.

The respondent, Raymond De Berdt Hovell, is the major owner and the occupier of Papatarata A2 block and therefore we find he had the standing to make the application for the injunction the subject of this appeal.

We also are of the opinion that the lower Court was justified in issuing the injunctions that it did.

We agree with Mr Barber that if the purpose of the injunction is exhausted, application can be made to the lower Court to have it dissolved.

For the reasons set out we dismiss the appeal.

In view of our findings and, notwithstanding this dismissal we believe the appellant was justified in pursuing this appeal and an order for costs against him would be inappropriate.

The Registrar is directed to refund the total security for costs and the cost of preparing the record paid to appellant's Counsel.

N F Smith (Presiding Officer)

H K Hingston (Judge)

H B Marumaru (Judge)