

**IN THE MAORI LAND COURT
OF NEW ZEALAND
TAIRAWHITI DISTRICT**

A20030005596

UNDER Section 289, Te Ture Whenua Maori Act 1993
IN THE MATTER OF Lot 11 DP 4091
PERA EDWARDS
Applicant

Hearing: 1 November 2004
(Heard at Gisborne)

Judgment: 16 January 2006

RESERVED DECISION OF DEPUTY CHIEF JUDGE W W ISAAC

Background to the Application

[1] This is an application by Mr Pērā Edwards to partition .3513 shares from Lot 11 DP 4091 Rural Sections 3 & 4 Mahia and Part Section 18 Block V Mahanga Survey District.

[2] The land is situated on the Mahia East Coast Road with extensive sea views looking back to Gisborne.

[3] The area proposed to be partitioned by Mr Edwards contains 3.1000 hectares and includes his house, implement shed and driveway.

[4] A site inspection was completed of the block on 24 June 2005. This showed the land to be mainly undulating and similar in most respects.

[5] There appeared to be one other house site in the area proposed to be partitioned and two house sites with access, in the balance area.

[6] The block is vested in an ahu whenua trust, with the Māori Trustee being the responsible trustee. The Māori Trustee has consented to the partition of the block as proposed by Mr Edwards.

[7] The land has been leased to Mr Edwards since 1986. The current lease is for ten years from 1 October 1996 to 30 September 2006 with no right of renewal.

The Law

[8] The jurisdiction of the Māori Land Court to make a partition order is contained in Part XIV Te Ture Whenua Māori Act 1993. Section 289/93 gives the Court the power to make a partition order, however the Court has no power to exercise its jurisdiction under s289 unless it is satisfied that the provisions of s288 have been met. Section 288 provides as follows:

“288 Matters to be considered

(1) [In addition to the requirements of] subsections (2) to (4) of this section, in deciding whether or not to exercise its jurisdiction to make any partition order, amalgamation order, or aggregation order, the Court shall have regard to—

- (a) The opinion of the owners or shareholders as a whole; and
- (b) The effect of the proposal on the interests of the owners of the land or the shareholders of the incorporation, as the case may be; and
- (c) The best overall use and development of the land.

(2) The Court shall not make any partition order, amalgamation order, or aggregation order affecting any land, other than land vested in a Maori incorporation, unless it is satisfied—

(a) That the owners of the land to which the application relates have had sufficient notice of the application and sufficient opportunity to discuss and consider it; and

(b) That there is a sufficient degree of support for the application among the owners, having regard to the nature and importance of the matter.

(3) The Court shall not make any partition order, amalgamation order, or aggregation order affecting any land vested in a Maori incorporation unless it is satisfied—

(a) That the shareholders of the incorporation to which the application relates have been given express notice of the application; and



(b) That the shareholders have passed a special resolution supporting the application.

[(4) The Court must not make a partition order unless it is satisfied that the partition order—

(a) is necessary to facilitate the effective operation, development, and utilisation of the land; or

(b) effects an alienation of land, by gift, to a member of the donor's whanau, being a member who is within the preferred classes of alienees.”

[9] This section was considered by the High Court in *Brown v Māori Appellate Court* [2001] 1NZLR87 (High Court). The High Court found that if the requirements of ss288(2) and 288(4) are met the court, in deciding whether or not to grant the application for partition is required to have regard to the considerations in s288(1). Even then the Court has a discretion under s287(2) whether or not to grant the application.

[10] The Court's discretion is further restricted by the preamble and Section 17 which requires the Court to take into account the retention of Māori land in the hands of its owners, whānau and hapū and its utilisation; facilitating the settlement of disputes; protecting majority and minority interests against unreasonable positions; ensuring fairness in dealing with owners; and promoting practical solutions to problems arising in the use or management of land.

[11] The main issues for the Court to consider in this case arise from sections 288(2) and (4)/93.

Consideration of s288(2)(a)/93

[12] This section requires the owners of the land to receive sufficient notice of the application.

[13] In this case the applicant has canvassed the views of the owners. He has filed with the Court 25 forms signed by those owners setting out their views of the partition application.

[14] There has also been a meeting of owners on 26 November 2004 called by the Māori Trustee as responsible trustee to consider the application. This meeting was attended by 19 persons both owners and non owners. There have also been 2 Court sittings on 1 December 2004 and 3 August 2005 both of which were advertised in the National Pānui. As well as this there was a site visit on 13 June 2005 to which 19 owners were invited.

[15] It is also noteworthy that no owners have stated that they have not had sufficient notice of the application.

[16] Having regard to the above I am satisfied that the owners have had sufficient notice of this application in terms of s288(2)(a)/93.

Consideration of s288(2)(b)/93

[17] There are 69 owners in this block. 14 owners support the partition representing 20.29% of the owners. 8 owners oppose the partition representing 11.59% of the owners.

[18] In respect to shareholding support, .52044 shares representing 52.64% of share holding support and .12086 shares or 12.09% of the shares are against this application.

[19] It should be noted that of the 8 owners opposing the partition that 7 would consent if Mr Edwards only sought to partition the area around his home and implement shed. This was put to Mr Edwards at the Court sitting on 25 August 2005 but he refused to reduce the area sought.

[20] As to what constitutes a sufficient degree of support was considered by the Māori Appellate Court in Part Kairakau 2C5B12 (Takitimu Appellate MB 6) and Re Te Karu O Te Whenua (19 Waikato Maniapoto Appellate Court MB 40).

[21] In those cases the Appellate Court considered that in general terms support would need to outweigh the opposition before a proposal could proceed. This support could be demonstrated by both shareholding support and support by actual owners.

[22] In *Brown v Māori Appellate Court* [2001] 1NZLR 87 at 102 the High Court found that the issue of sufficient support depends on the circumstances of the case. It stated that because of s2 and s17 greater support than a straight majority either in shares or numbers may be required. This was considered to be a matter for the Māori Land Court in the assessment of the circumstances of the case.

[23] In this case it is clear that of those owners that have responded to this application there would be almost unanimous support if Mr Edwards only sought to partition an area around his house and implement shed.

[24] As stated Mr Edwards has refused to reduce the area sought and as a result 7 owners have withdrawn their support. That is considerable when one bears in mind that 22 owners have responded in total.

[25] Furthermore, one must bear in mind that Mr Edwards only has a slight majority of 52.64% shareholding support and only 20.29% support from the actual owners.

[26] Having regard to the weight of opposition to the existing proposal I find that Mr Edwards does not have a sufficient degree of support for the application.

Consideration of s288(4)(a)/93

[27] To find that Mr Edwards has a sufficient degree of support is made even more difficult when one takes into account the reasons he has given for the partition application.

[28] As stated in his application, Mr Edwards wants to provide house sites for his children. Further, in his evidence, he stated he wanted to retain an association with the land.

[29] This property is situated on an elevated location on Mahia Peninsula with expansive sea views.

[30] Mr Edwards has a house already on the block and he has the lease of the land. Whilst there was no evidence before the Court on the matter, Mr Edwards will in all probability obtain a further lease if he so desires.

[31] Therefore, Mr Edwards will not lose his connection with the land and as stated he already has a house situated on the land. Therefore, it would be difficult to find that the existing partition is necessary for the effective operation, development and utilisation of the land in terms of s288(4).

[32] Also having regard to the locality of the block, the wishes that other owners have in respect to their future use of the blocks becomes important when considering the present partition application and can not be overlooked.

[33] As a result of the above discussion, I find as follows:

- (i) In the circumstances of this case Mr Edwards does not have a sufficient degree of support pursuant to s288(2)(b) to partition an area of 3.1000 hectares.
- (ii) The partition is not necessary for the effective operation, development and utilisation of the land pursuant to s288(4)/93.

[34] As a result, the existing partition application of Mr Edwards must fail and is accordingly dismissed.

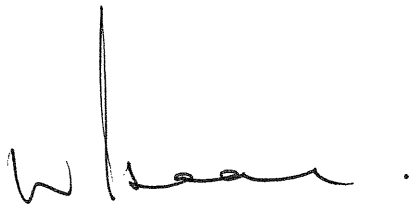
Alternative Partition

[35] Notwithstanding the above finding, if Mr Edwards were to amend his application to partition out an area to include his house, implement shed and drive way I would look favourably on such an amended application.

[36] This is on the basis that there would firstly be a sufficient degree of support from the owners for this proposal and also that the partition would be considered necessary for Mr Edwards to secure his existing house site for its future use and development.

[37] Accordingly if Mr Edwards files with the Court an amended plan which includes the area immediately around his house, implement shed and drive way by 31 March 2006, the case manager is to set this amended application down for the next Wairoa Court and give notice to the owners for whom we have addresses.

[38] A copy of this decision to go to all for whom we have addresses.

A handwritten signature in black ink, appearing to read 'W W Isaac', with a small dot at the end.

W W Isaac
DEPUTY CHIEF JUDGE