

**Place:** Rotorua  
**Present:** C L Wickliffe, Judge  
I K Graham, Clerk of the Court  
**Date:** 12 July 2004  
**Application No:** A20020006365  
**Subject:** Tuapou B8  
**Section:** 18(1)(a)/93

### FINAL DECISION

#### Background

Tuapou B8 is a block of Māori freehold land situated within the Māori Land Court district of Waiariki. There are 110 owners of this block holding a total of 24,718 shares. The block is 22.6371 hectares in size.

#### Application

An application was filed on 14 November 2003 by Mrs Moana Gengalo under section 18(1)(a)/93 of Te Ture Whenua Māori Act 1993. The applicant claims ownership of a concrete foundation and septic tank that she and her husband placed on the land with their own resources. She further claims that she bulldozed and improved a road up to the site upon which the concrete foundation was laid.

The claimant wants \$5,000 to be paid over by the other owners to cover her costs for placing the concrete foundation and septic tank on the site. The foundation was constructed in approximately 1985.

There have been objections from other owners to the applicant's application recorded in the minutes of the meeting of owners held on 11 April 2003. In addition, opposition was recorded by Patrick Orupe and Sandra Tawhara before this Court at 83 Opotiki MB 45 and 46.



## **Maori Land Court Hearings**

This application came before the Māori Land Court for the first time on 6 October 2003. On that date the application was adjourned for two months to allow the applicant time to file evidence that she did expend \$5,000.00 on the concrete foundation and the septic tank.

The final hearing of the application was held on 8 December 2003 at 83 Opotiki MB 225-235. On that date the applicant produced a letter from a builder, Mr Ken Willetts. He confirmed that in 1985 he placed the concrete foundation and septic tank on the property. The cost of the floor was approximately \$2,500.00 and the cost of the septic tank was approximately \$2,000.00.

## **Issue**

This case concerns whether the concrete foundation and septic tank constructed by the applicant and her husband on this block are fixtures of the land or chattels. If the latter, the chattels remain in the ownership of the applicant and she should be compensated for them. If the items are fixtures, they have become the property of all the owners and no compensation can be granted.

## **Relevant Law**

Section 18(1)(a)/93 provides the Court with the general jurisdiction to hear and determine claims, whether at law or in equity, to the ownership or possession of Māori freehold land, or to any right, title, estate, or interest in any such land or in the proceeds of the alienation of any such right, title, estate, or interest.

The Māori Appellate Court has held that section 18(1)(a)/93 gives this Court the power to make a determination as to entitlement or ownership and to follow that by making an order under the appropriate section of the Act so as to give effect to that determination. (See *Re: An Appeal by Ngahuia Tawhai* [1998] NZAR 459, 471) What the Māori Land Court should do with such applications is to review and consider the particular circumstances of the case to determine such claims. (See for



example *Re: Okurupatu B4B2A Block* (2000) 13 ACTK 154 and see also *Re Waimanoni 1B3B2A* (1996) Kaitaia MB 227-235).

In this case Mrs Gengalo claims ownership of the concrete foundation and septic tank. In order for that claim to be upheld the Court must ascertain whether these items are chattels or fixtures. If they are fixtures, all the owners of Tuapou B8 are entitled to be recognised as owners. (See Alston & Ors *Land Law* (Brookers, Wellington, 2000) 8-12).

Whether or not the buildings are chattels depends on all the circumstances of the particular case and the degree of the annexation to the land. (See *Lockwood Buildings v Trust Bank* [1995] 1 NZLR 22 (CA)).

In reviewing the material currently before the Court, I find that the concrete foundation and septic tank are fixtures for the following reasons:

- (a) The concrete foundation and the septic tank are permanent improvements and assets;
- (b) The concrete foundation and septic tank have been affixed to the land and have not been described by the builder as re-locatable;
- (c) The concrete foundation and septic tank were erected on site, presumably with the intention of building a house;
- (d) No reasonable person considering the evidence could reasonably have thought that the concrete foundation and septic tank were to remain chattels;
- (e) The concrete foundation and septic tank are of sufficient permanence as to rightly be described as fixtures;
- (f) The year of construction was 1985. The concrete foundation and septic tank have been on the land for just under twenty years without the applicant making any moves to establish ownership through the Māori Land Court; and
- (g) It is likely that the concrete foundation and septic tank cannot be removed without some damage to the land. In such a case there is a presumption that it was intended to form part of the land.

I have found that the concrete foundation and septic tank are fixtures. Therefore there can be no compensation payable to the applicant.

This result may seem harsh but the reality is that any one who constructs structures on Maori land without legal authority, runs the risk of the Māori Land Court not upholding any claim to ownership. In this case, the applicant has not been able to succeed for the reasons given above.

### Orders

1. Order pursuant to section 86 of Te Ture Whenua Māori Act 1993 amending the Court minute 83 Opotiki MB 40 to substitute "*CL Wickliffe, Judge*" for "*PJ Savage, Judge.*"
2. Order dismissing the application.



C L Wickliffe

**JUDGE**