IN THE MĀORI LAND COURT OF NEW ZEALAND
WAIARIKI DISTRICT

65 Waiariki MB 120
(65 WAR 120)
A20110010381

UNDER	Section 289, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Te Kaha 65
BETWEEN	EDWARD MATCHITT Applicant

Hearing: 24 January 2012, 48 Waiariki MB 65-77
(Heard at Te Kaha)

Appearances: A Gallie, for Paratene Matchitt
W Rika, for the applicant

Judgment: 6 November 2012

RESERVED JUDGMENT OF DEPUTY CHIEF JUDGE C L FOX

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Background

[1] Te Kaha 65 is situated on the coastal side of State Highway 35 approximately 65 kilometres east of Opōtiki. The block is 3.252 ha and has 8 owners with a total shareholding of 7 shares. The seven siblings in this block, are the children of Hubert and Harata Matchitt. They received their shareholding on 1 November 1979[1]. Although it has been suggested through prior Court hearings, there is currently no ahu whenua trust over this block.

[2] The Court has before it an application made under s 289 filed by Edward Matchitt on 14 October 2011. The applicant has 1/7th share in Te Kaha 65. The application is for a hapu partition. In support of the application, the following documents were filed:

- *Schedule of particulars for the application;*
- *Title Details report;*
- *Schedule of Owners and shareholding;*
- *Signed consents of five of the Owners to the partition;*
- *Valuation of the block dated 17 April 2010 and report completed by a Registered Valuer;*
- *Letter dated 23 November 2006 giving preliminary views of Transit New Zealand's requirements as to the access to the proposed partition off State Highway 35;*
- *Proposed Scheme Plan of Partition – 1007-3C:*
- *Notice to the Owners and minutes of Owners Hui dated 30 September 2011; and*
- *Submission to the Court.*

[3] The primary reason why Edward Matchitt has applied for a hapu partition is so that he, his brothers Bert and Roger Matchitt and their niece and nephew Lisa Rose Henry and Peter Mariu, can develop their part of the land. He contends that the partition is necessary so they can effectively utilise and develop the block as they see fit without the tension and interference of Edward's brother, Paratene Matchitt.

[4] The applicant is concerned that Paratene wishes to establish a marae on the block. This, he states is not the original intention for the block and he strongly

[1] 56 Opotiki MB 104-111 (56 OPO 104-111)

objects to such a prospect. So as not to prolong the machinations over this issue, he has pursued this partition application.

[5] Of the eight owners in this block, five including the applicant, support this application. There are three who oppose it in part. Their primary concern relates to the proposed boundaries of the partition application.

[6] Those who oppose in part, are Paratene and his two sisters Elaine Matchitt Korewha and Mana Matchitt. They oppose the partition largely because the residual land that would be left to them (as depicted in the plans produced by the applicant) represents:

- an inequitable division of the land; and
- the balance of the block that they would receive is difficult to develop.

Previous Court Applications

[7] In recent years there have been several applications involving this whanau including court hearings and a site inspection. Thus the Court is more than familiar with the block and all the owners involved.

[8] On 8 November 2010, the Court had before it applications for partition and injunction. There were also three applications for occupation orders filed for the benefit of the applicant, Bert Matchitt and Lisa Rose Henry. The Court granted the three occupation orders, but Edward's partition application was dismissed by consent. The injunction application filed by Paratene was also dismissed.[2]

[9] During the hearing held on 8 November 2010, the Court concluded as follows:

> "That is everything we can deal with today, but we look forward to getting a new application for partition from you Mr Matchitt, should you need it. I would ask you now to consider that the fact that you do have an occupation order, which can pass on succession and how difficult it is to get a partition

[2] 22 Waiariki MB 192 (22 WAR 192)

> order from the Court. It is not impossible, but it is very difficult and you should take legal advice on that."[3]

[10] Although occupation orders were made in favour of the applicant and two of his supporters, in this case he continues to contend that the partition of the block into several lots is necessary. In this regard, it was submitted on his behalf as follows:

> " Well Ma'am although there is consent at the present time to what is happening to Eddie's occupation and other occupation orders on the block, for any future development of their further shareholding in the block, they could come up with the same objections really, as what they have had over the years and they will never be able to facilitate any future development for their future children, generations".[4]

[11] This matter was reserved to Chambers for a decision on 24 January 2012, however it was not received from the case manager until 18 May 2012. Due to other Court commitments, and Waitangi Tribunal work, I have only recently been able to return to this matter.

The Case Made for a Hapu Partition

[12] The process that was used by the applicant to give notice to all the owners of the block was described in evidence and submissions. The Court was advised that a notice of a hui was sent to all the owners inviting them to Tukaki Marae on 30 September 2011 to discuss the proposal for a hapu partition. The applicant was the only owner who showed up, although he did hold proxies for each of his supporters. As he received limited responses, he then proceeded with the application.

[13] A meeting was then held on 19 September 2011 between Paratene and Edward Matchitt in Rotorua. No agreement was reached as to boundaries.

[14] The matter was before the Court on 24 January 2012 in Te Kaha. The Court heard submissions from Walter Rika for the applicant and Andrew Gallie, counsel for Paratene.

[3] 22 Waiariki MB 192 (22 WAR 192)
[4] 48 Waiariki MB 65 (48 WAR 65)

[15] As noted above, the main issue between the applicant and Paratene concerns the boundary lines for the partitioned lots of Te Kaha 65. The application seeks to divide the block in two. Lot 1 would be 1.7205 hectares (valued at $291,000) and Lot 2 would be 1.5315 hectares (valued at $227,000).

[16] On Edward's proposal for partition, virtually all the flat land would be incorporated into Lot 1 favouring him and his supporters. This would leave very little flat land for building development in relation to Lot 2, where the shares of Paratene and his two sisters would fall. However, Mr Rika noted that Elaine was living in the family homestead on the proposed Lot 2 and that this had not been taken into account to complete the partition proposal. That homestead was owned by all the Matchitt siblings, but he and his supporters would forgo their interests in the house so she could stay in the house, as well as maintaining a shareholding in Lot 2.

[17] By comparison, the geographical contours of the land were addressed by Paratene's alternative partition proposal. His proposal also addressed access arrangements, and it makes provision to overcome the possible development restrictions on a portion of Lot 1 that is an old paa site. That portion of Lot 1 has been recorded as a paa site and is protected under the Historic Places Act 1993.

[18] Both parties presented valuation evidence. The two valuations indicate that there is a difference in value between the two alternative Lot proposals. Paratene's proposal would result in Edward and his supporters enjoying a marginal advantage, with a proportional loss to him and his sisters. But there would be also be a resulting land loss for Edward's Lot 1.

[19] The case for the applicant, along with his supporters, was that they were already forfeiting some of their entitlements in favour of Paratene and his two sisters. They would not accept the alternative proposals for partition put by Paratene, as they were not prepared to surrender any more land.

Relevant Law

[20] Partitions are governed by the provisions of Part 14 of Te Ture Whenua Māori Act 1993. The principal purpose of Part 14 is to facilitate the use and occupation by the owners of land owned by Māori by rationalising particular landholdings and providing access or additional or improved access to the land.[5] The jurisdiction conferred on this Court under Part 14 is discretionary. It can refuse to exercise its discretion in any case where it is not satisfied that to do so in the manner sought, would achieve the principal purpose of this Part of the Act.[6]

[21] In considering whether to exercise its discretion on an application for partition, the Court must take into account ss.288 and 289. I must also consider the Preamble and ss 2 and 17 of the Act. The relevant sections of Part 14 are repeated for convenience below:

> **288 Matters to be considered**
>
> (1) In addition to the requirements of subsections (2) to (4), 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 Māori 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.
>
> ....
>
> (4) The court must not make a partition order unless it is satisfied that the partition order—

[5] TTWM, s 286
[6] TTWM, s 287(2)

(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.

289 Partition orders

(1) Where the court is satisfied that it should partition any Māori freehold land in accordance with this Part, it shall make a partition order, being—
(a) an order for the partition of any land into 2 or more defined separate parcels; or
(b) an order creating or evidencing the title to any 1 or more of such defined parcels.
(2) Every partition order shall, upon registration in accordance with section 299, constitute the title to the parcel of the several parcels of land included in it, without any transfer or other instrument of assurance being required.

[22] In the High Court decision *Brown v Māori Appellate Court* (2001)[7] that Court set out the approach this bench should take to hearing applications for partition. I set those out with the answers below. The Court must consider:

1. Whether in all the circumstances there was sufficient notice of the application and sufficient opportunity to discuss it? The answer to this question in this case must be yes as those in opposition have been able to provide a response to the application;

2. Whether there has been a sufficient degree of support for the application among the owners, having regard to the nature and importance of the matter? I note that all parties agree that there should be a partition. The only point of contention concerns the boundaries. The proposal by the applicant is supported by 5 owners holding 4/7ths of the shareholding in the land. Paratene Matchitt's proposal is supported by 3 owners, holding 3/7ths of the shareholding. While Edward Matchitt has the majority of owners in support, the margin in

[7] HC Wellington CP 428/98, 14 September 2000

terms of shareholding is slim. In the circumstances of this case, I do not consider that this is sufficient support.

3. While I have taken into account the numbers of owners in support of Edward Matchitt, I must also consider the relative weighting of shares in the land and the need to protect a minority against an oppressive majority as required by s 17(2)(d). I consider that this is a case where the majority are acting oppressively as they want the best portion of the block for residential development. I consider that the proposal put by Paratene Matchitt to be more reasonable, having regard to the nature and importance of the matter, the contours of the block, the fact that there is an old homestead on Lot 2 and a paa site and the need for well designed access arrangements. But that proposal lacks sufficient support as well, so I cannot adopt that option to progress the matter.

[23] Therefore, and after having regard to: (1) the opinion of the owners and shareholders as a whole, and (2) the effect of the proposal on their interests, I consider that the partition order should not be granted until the parties reach an amicable agreement over how to divide the block. This decision is consistent with the best overall use and development of the land, which given its characteristics, is residential use. The applicant and his supporters are not in any way prejudiced because they either have occupation orders or can apply for one to pursue their goal of building on and/or occupying the land.

[24] Furthermore, and in terms of s 288(4), the test is that the applicant and his supporters must demonstrate that the partition is reasonably necessary to facilitate the effective operation and development of the land. It has to be necessary rather than simply desirable or expedient. Even though the parties have agreed that the partition should take place, neither side has demonstrated to the Court why it is necessary. All I have been told is why they cannot get along. I do not consider that is grounds for contending that this partition is necessary to facilitate the effective operation and development of the land.

Orders

[25] The application for a partition order is dismissed.

[26] Given the manner with which the proceedings have been conducted, I consider that costs should lie where they fall.

Pronounced in Open Court at Gisborne on 6 November 2012.

C L Fox
DEPUTY CHIEF JUDGE