

**IN THE MĀORI LAND COURT OF NEW ZEALAND
WAIĀRIKI DISTRICT**

A20130008237

UNDER Section 289, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Te Kaha 65 Block

PARATENE MATCHITT
Applicant

A20130010961

UNDER Section 330, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Te Kaha 65 Block

EDWARD MATCHITT
Applicant

Hearing: 29 January 2014, 91 Waiāriki MB 55-69
(Heard at Te Kaha)

Appearances: A Gallie, counsel for Paratene Matchitt
W Rika, on behalf of Edward Matchitt

Judgment: 16 September 2014

RESERVED JUDGMENT OF DEPUTY CHIEF JUDGE C L FOX

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Introduction

[1] The Māori freehold land block Te Kaha 65, near the township of Te Kaha in the Eastern Bay of Plenty, has been the subject of some history of dispute before this Court. That history has been related to certain tensions between the eight owners holding a total of 7 shares in this block comprising 3.252 hectares. The majority of the owners are siblings. The Court has previously dealt with other applications for partition completed in 2010 and 2012 respectively.¹ The history between the siblings was explained in the last of those judgments dated 6 November 2012 dismissing an application filed by Mr Edward Matchitt.² The Court has before it another two applications from this whānau, one for partition and the other for the amendment of four occupation orders.

Application for Partition

[2] The first is an application (A20130008237) for partition under s 289 of Te Ture Whenua Māori Act 1993 (“the Act”), filed by Mr Paratene Matchitt and received on 11 September 2013. The application if granted would effectively sever the block into two parcels.

[3] It was filed upon the grounds that “a hapu partition will allow the owners who collectively wish to develop their partitioned area to facilitate the effective operation, development and utilisation of the land” and that he and other shareholders wished to utilise the area to establish a marae and other communal facilities. The application acknowledges that there has been an extensive history before this Court. In an affidavit subsequently filed and dated 20 December 2013, the applicant deposed that:

“As the Court will be well aware there have been ongoing disputes for a long period of time between the owners of the Te Kaha Block. In general terms, these disputes have surrounded the issue of how the land might best be utilised with the disputes that have arisen exemplifying the different viewpoints that exist on this issue. I do not advance the mere fact that there have been ongoing disputes between the owners as establishing a ground in support of the Application for partition. I do however raise this in order to highlight the fact that there exists a polarisation of views amongst the owners of the Block as to how the land might be better organised for the benefit of future generations.”

¹ *Edward Matchitt – Te Kaha 65* (2010) 22 Waiariki MB 192 (22 WAR 192) dismissed by consent; *Edward Matchitt - Te Kaha 65* (2012) 65 Waiariki MB 120 (65 WAR 120) dismissed by reserve judgment.

² *Edward Matchitt – Te Kaha 65* (2012) 65 Waiariki MB 120 (65 WAR 120).

[4] He explained his proposal for partition:

“is to have the southern and flat part of the Block separated from the northern and contoured Block, which is the historic Pa Site. This would encapsulate the existing occupation orders within the partitioned southern Block leaving the northern Block representing predominantly the Pa Site as a separate title. My proposal in effect is largely along the lines of the partition proposal made by Edward back in 2012 however with the partition boundary slightly further to the south than that proposed by Edward in his earlier Application.”

[5] In terms of whether the application was necessary rather than simply desirable Mr Paratene Matchitt argued that the owners holding occupation orders at the southern end of the block, held opposing views on the nature of collective versus individual ownership and that there was a “wide gulf between the two models of ownership”. They are, he opined, simply incompatible. He continued:

“The fact that there does exist a dichotomy of views as relates to how our land should best be utilised and developed for the future has been the cause of much friction within the family and therefore the cause of considerable sadness. Insofar as a partition will accommodate the divergent views of the shareholders and allow each shareholder to pursue their own ideals as relates to the future use of the land, I do say that a partition is necessary rather than simply desirable. There is a need for us, as a family, to resolve these long standing differences and arrive at some form of enduring peace. I believe that a partition of the land, insofar as it will effectively recognise and cater for the development of the land, regardless of the point of view of any particular shareholder as to the use of the land, will go a considerable way towards achieving a reunification of the whānau over time.”

[6] He went on to describe his plans which were to develop the Pā Site by retaining its historic qualities administered by a Whānau Trust of those who support the application. They would also develop the house on site as a communal facility, subject to the views of the current occupier Mrs Hutchinson. Thus he concluded the partition was necessary to facilitate the effective operation and development of the land,

“to the extent that it will acknowledge and cater for the divergent views of the owners as to the appropriate use of the land, provide a vehicle by which we can put aside our differences once and for all and come together as a united whānau.”

[7] His application was accompanied by a valuation dated 11 February 2011. That valuation provided relative values for the Northern section or Pa Site at \$225,000 (1.730 hectares) and the southern portion of the block at \$330,000 (1.5220 hectares). He later produced an updated valuation report dated 21 January 2014.

[8] That latter report noted that the northern (approximate) half of the land contains a former Pa site including remnants of fortification trenches. It is currently served by one of two access driveways formed off the west and seaward side of State Highway 35 – and at the approximate midpoint of the holding. The land is adjacent to the coast and has some mature pōhutukawa trees. Any development of the area known as the Pā Site would require a sign-off from the Historic Places Trust. The relative valuations without survey for both parcels of land were set for the Northern section or Pa Site at \$225,000 (1.730 hectares) and for the southern portion of the block at \$330,000 (1.5220 hectares).

[9] There were also consents from four owners namely Mana Matchitt, Paratene Matchitt, Elaine Hutchinson and Roger Matchitt attached to the application. The remaining four owners Bert Matchitt, Edward Matchitt, Lisa Rose Henry and Peter James Mariu did not initially consent to the partition. They subsequently, with Roger Matchitt, amended their position to one of consent subject to the application for the amendment of four occupation orders being granted and that would include Roger Matchitt's area being accommodated within the Northern section or Pā Site area.

Application for Amendment to Four Occupation Orders

[10] The second application (Application A20130010961) was received on 13 December 2013 for orders under s 330 of the Act amending four occupation orders held in favour of Edward Matchitt for Lot 2 (currently 2003 square metres), Bert Matchitt for Lot 3 (currently 2010 square metres), Peter Mariu for Lot 4 (currently 2135 square metres) and Roger Matchitt for Lot 6 (currently 1975 square metres). A new plan was attached to the application depicting the proposed amended areas.

[11] On this proposal Lot 2 for Edward Matchitt would increase to 5836 square metres, Lot 3 for Bert Matchitt would increase to 3419 metres, Lot 4 for Peter Mariu would increase to 2155 square metres and Lot 6 that is in favour of Roger Matchitt would be substituted with Lot 5 for 2021 square metres. This means he would move from the Lot 6 of the plan filed with the application for an occupation order determined at 80 Waiāriki MB 51-56 in 2013 to a new Lot 5 created within the proposed partition area described above as the “Northern section – Pā Site” depicted in a new plan filed with this new application.

[12] The grounds for bringing the application were that certain owners had met and asked that their occupation orders be amended in terms of a new plan No 1007-3B-4 showing the amended areas as Lots 1-5.

[13] During the one and only hearing for both these applications held on 29 January 2014, Mr Edward Matchitt acknowledged that he had been occupying his Lot 2 and that he had placed a caravan on the Pā site.³

Relevant Law

Partition Application

[14] I have already traversed the law and legal principles that must be applied in the judgment I issued concerning the last application in 2012 for partition.⁴ I do not intend to rehearse those principles again.

[15] In terms of the test that must be applied for partition applications as a result of *Brown v Māori Land Court* (2001)⁵, I am satisfied that there was sufficient notice of the application and sufficient opportunity to discuss and consider it.

[16] The next issue is whether there is sufficient support having regard to the nature and importance of the matter for the partition. There is majority support for a proposal that will decrease the area to accommodate Mr Roger Matchitt into a new area “Lot 5”. Thus while all parties agree to a partition, they remain in dispute as to where the boundaries should fall. I cannot find in the circumstances that there is sufficient support for the proposal.

[17] That being the case, the application for partition should be dismissed. I also note that the grounds relied on for the application indicate nothing other than it is desirable for the partition, rather than it being necessary. The balance of Te Kaha 65 can be developed in the manner described by Mr Paratene Matchitt for the owners who do not have occupation orders.

³ 91 Waiariki MB 55 (91 WAR 55).

⁴ 56 Waiariki MB 125 (56 WAR 125).

⁵ [2001] NZLR 87-102.

[18] I deal with that below by finding a fair and practical solution to the issue by granting an occupation order in favour of the balance owners thus giving them some priority in the development and utilisation of the remaining land. I realise this has not been the subject of argument by the parties but I consider that given they have all received a section of the land, there is no inequity suffered as a result. Like are being treated alike.

[19] I also consider that issues of natural justice do not arise as the parties have said all they have to say on the occupation of this block. None of it is new to the Court and all of it is a repeat of the evidence and submissions previously heard. Obviously if any new matters are considered important enough, the parties may apply for a rehearing.

Amendment to the Occupation Orders

[20] I have reviewed the minutes of the Court hearings where these occupation orders were granted in 2010 and 2013.⁶ I note that Mr Roger Matchitt was particularly adamant that he wanted “Lot 6” as it was described then even though it was smaller than the old “Lot 5”. That was due to its proximity to the State Highway 35.⁷

[21] I fail to see how the extended areas sought can be justified or that there should be a movement of Mr Roger Matchitt to a new Lot 5. No logical explanation has been provided by Mr Edward Matchitt other than the affected owners have agreed among themselves.

[22] In my view the adjustments that are being sought are inequitable as against each other and as against the balance owners represented by Mr Paratene Matchitt. It is those inequities that have led to the attempt to have Mr Roger Matchitt shifted to the new “Lot 5”. That in turn would lead to an inequitable result for the balance owners.

[23] Some certainty is needed for all parties and I am not prepared to exercise my discretion in this case under s 330 in favour of the applicants just because they have changed their mind and want larger areas. That cannot be fair in terms of the Preamble, s 2 and s 17 of the Act.

⁶ 22 Waiariki MB 192 (22 WAR 192); 80 Waiariki MB 51 (80 WAR 51).

⁷ 80 Waiariki MB 55 (80 WAR 55).

Orders

- The Application for Partition is dismissed.
- The application for Amending Occupation Orders is dismissed. The owners retain their current rights pursuant to the occupation orders granted in 2010 and 2012.
- The Court on its own motion under s 37(3) of the Act will make an occupation order under s 328 (less current access arrangements) for the area described in the Partition Application as Northern section – Pā Site in favour of Mr Paratene Matchitt, Mana Matchitt and Elaine Hutchinson. The occupation order will not pass on succession and no compensation is payable.

Pronounced in Open Court at 3:00pm in Gisborne on the 16th day of September 2014.

C L Fox
DEPUTY CHIEF JUDGE