

**I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TE WAIARIKI**

*In the Māori Land Court of New Zealand
Waiariki District*

A20130008237

WĀHANGA Section 289, Te Ture Whenua Māori Act 1993
Under

MŌ TE TAKE Te Kaha 65
In the matter of

PARATENE MATCHITT
Te kaitono
Applicant

A20130010961

WĀHANGA Section 289, Te Ture Whenua Māori Act 1993
Under

MŌ TE TAKE Te Kaha 65
In the matter of

EDWARD MATCHITT
Te kaitono
Applicant

Nohoanga: 17 November 2020, 245 Waiariki MB 159-197 (245 WAR 159-
Hearing 197)
(Heard at Rotorua)

Kanohi kitea: J Koning for Paretene Matchitt
Appearances A Gallie for Edward Matchitt

Whakataunga: 13 April 2021
Judgment date

TE WHAKATAUNGA HUKIHUKI Ā KAIWHAKAWĀ C T COXHEAD
Preliminary Judgment of Judge C T Coxhead

Tēnā tātou i ngā āhuatanga o te wā. Tangihia ō tātou mate, rātou kua kapohia atu e te ringa kaha o aitua. Nō reira tukuna rātou kia okioki i te okiokinga roa. Ko tātou ngā waihotanga iho a rātou mā e takatū nei ki ngā mahi, tēnā tātou katoa.

Hei tīmatanga kōrero - Introduction

[1] There are two applications for partition for Te Kaha 65 currently before the Court. The first is an application by Edward Matchitt originally for amendment of occupation orders but since amended to be an application for partition and the second is a partition application by Paratene Matchitt.¹ The ongoing dispute between the owners have been the subject of three reserve decisions in this Court and two judgment of the Māori Appellate Court in the last 12 years.

[2] The parties seek a preliminary determination from the Court as to whether the statutory tests for partition have been met. This judgment confirms my view expressed in hearing that the required tests have been satisfied and also makes comment on the ongoing dispute between the parties relating to the boundary of the proposed partition.

Kōrero whānui – Background

[3] Te Kaha 65 is a block of Māori freehold land, 3.252 hectares in size, located near the township of Te Kaha in the Eastern Bay of Plenty. It was created by partition order at 56 Ōpōtiki MB 104-111 dated 1 November 1979 and 57 Ōpōtiki MB 33-34 dated 4 August 1980. There are currently ten owners, a majority of whom are siblings, holding a total of seven shares.

[4] The origins of these applications started in 2006 when Edward Matchitt filed an application for partition.² The partition application was dismissed on 8 November 2010 as was an injunction application by Paratene Matchitt but the Court granted occupation orders in favour of Edward Matchitt, Bert Matchitt and Lisa Henry.³

¹ For completeness I note that there is also an application for an occupation order by Paratene Matchitt made in the alternative if the Court does not grant the partition application.

² A20060005422.

³ 22 Waiariki MB 192-206 (22 WAR 192-206).

[5] On 14 October 2011, Edward Matchitt filed a second application for a partition order.⁴ It was dismissed by the Court on 6 November 2012 with Deputy Chief Judge Fox noting the partition should not be granted until the parties are able to reach an amicable agreement as to how the block should be divided.⁵

[6] Paratene Matchitt filed an application for a hapū partition on 10 September 2013.⁶ He advised that he and other shareholders wished to establish a marae on the partitioned land. Edward Matchitt filed an application to amend the occupation orders granted in 2006 on 13 December 2013.⁷ These are the present applications before the Court.

[7] A hearing was held before Deputy Chief Judge Fox on 24 January 2014.⁸ Paratene Matchitt filed consents from Mana Matchitt, Roger Matchitt and Elaine Hutchinson. Bert Matchitt, Edward Matchitt, Lisa Henry and Peter Mariu advised through their lawyer, Mr Gallie, that they did not consent to the proposed partition or said support was conditional on further consultation or conditions being met. The reserve judgment was issued on 16 September 2014.⁹ The Judge dismissed the partition application, saying the parties remain in dispute as to where the boundaries for the partition should be. The application for amendment of occupation orders was also dismissed, but the Judge evoked s 37(5) of Te Ture Whenua Māori Act 1993 to grant new occupation orders, vesting a 1.7300 hectare site on Te Kaha 65 in Paratene Matchitt, Mana Matchitt and Elaine Hutchinson for their exclusive use and occupation.

[8] On 1 April 2015, Edward Matchitt filed an appeal against the 2014 judgment. The Māori Appellate Court issued a judgment on 23 November 2015.¹⁰ The Court considered that evoking s 37(3) to make new occupation orders without prior notice to parties that this step was intended was inconsistent with natural justice and thus the Judge could not be satisfied of the requirement in s 329(2)(a) that the owners had sufficient notice of the proposal and a sufficient opportunity to discuss and consider it. On the partition application, the Court considered the decision to dismiss the partition application was informed by an

⁴ A20110010381.

⁵ *Matchitt – Te Kaha 65* (2012) 65 Waiariki MB 120-128 (65 WAR 120-128).

⁶ A20130008237.

⁷ A20130010961.

⁸ 91 Waiariki MB 55-69 (91 WAR 55-69).

⁹ 104 Waiariki MB 145-151 (104 WAR 145-151).

¹⁰ *Matchitt v Matchitt – Te Kaha 65 Block* [2015] Māori Appellate Court MB 662 (2015 APPEAL 662).

erroneous assumption there was a dispute over the internal boundary of the proposed partition and a rehearing was required to clarify that matter. The Māori Appellate Court therefore allowed the appeal, revoked the occupation orders made to Paratene Matchitt, Mana Matchitt and Elaine Hutcheson, and remitted both applications back to the lower Court for a rehearing.

[9] A teleconference was held on 4 August 2016 and the matter was adjourned as parties advised they were in negotiations to see if a settlement could be reached.¹¹ A further teleconference was held on 30 October 2017 and it was advised an amended application for the amendment of occupation orders application would be filed by Edward Matchitt alongside an application for special aid.¹²

[10] Edward Matchitt filed an amended application for A20130010961 on 16 February 2018 to include an application for partition and an order allotting interests in the Matchitt homestead under s 292(1). He also asked for a determination by the Court on the boundary of the proposed new allotments of Te Kaha 65A and Te Kaha 65B.

[11] A judgment was issued by the Court on these applications on 27 June 2019, dismissing the application for special aid. It noted a list of matters that owners agreed and disagreed on:¹³

[5] The amended application notes that the owners of Te Kaha 65 agree that:

- (a) Te Kaha 65 should be partitioned into new allotments, Te Kaha 65A and Te Kaha 65B;
- (b) The new allotment Te Kaha 65A be vested in certain persons as tenants in common in unequal shares and subject to the existing orders under ss 18(1)(a) and 328; and
- (c) The new allotment Te Kaha 65B be vested in certain persons as tenants in common in equal shares; and
- (d) The Matchitt homestead to be located within Te Kaha 65B.

[6] The matters that the owners have not been able to agree on are:

- (a) The location of the boundary between the two allotments of Te Kaha 65A and Te Kaha 65B; and

¹¹ 146 Waiariki MB 159-160 (146 WAR 159-160).

¹² 179 Waiariki MB 153-156 (179 WAR 153-156).

¹³ 215 Waiariki MB 204-211 (215 WAR 204-211).

(b) The value of the 4/7th share in the family homestead currently held by Edward Matchitt, Bert Matchitt, Roger Matchitt, Lisa Rose and Peter Mariu.

[12] On 17 October 2019, counsel for Edward Matchitt referred a registered valuation as expert evidence in support of the amended application, undertaken by Ōpōtiki Valuation and Consultancy Limited on 6 August 2019. A further registered valuation was undertaken by Bay Valuation Services on 28 April 2020. There were key differences between the two valuations in terms of the land value and valuation of the homestead.

[13] In a joint memorandum of counsel dated 10 November 2020, counsel confirmed the matters of agreement and disagreement as between owners set out in the 2019 reserve judgment still applied.

[14] A hearing was held on 17 November 2020 and I reserved my decision.¹⁴

Te Ture - The Law

[15] The statutory requirements that must be satisfied before I can consider granting a partition application are:¹⁵

- (a) That the owners have had sufficient notice of the application and sufficient opportunity to discuss and consider it;
- (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; and
- (c) That the partition is necessary to facilitate the effective operation, development and utilisation of the land.

[16] If I am satisfied that the statutory requirements have been met, I must also have regard to certain mandatory considerations. These are the opinion of the owners as a whole, the effect of the proposal on the interests of the owners, and the best overall use and development of the land.¹⁶

¹⁴ 245 Waiariki MB 159-197 (245 WAR 159-197).

¹⁵ Te Ture Whenua Māori Act 1993, ss 288(2)(a) and (b) and 288(4)(a) and see *Hammond-Whangawehi IB3HI* (2007) 34 Gisborne Appellate MB 185 (34 APGS 185).

¹⁶ Te Ture Whenua Māori Act 1993, s 288(1)(a)-(c).

[17] Lastly, even if I am satisfied as to these matters, before I can exercise my discretion to grant the application, I must also be satisfied that doing so would be consistent with the purpose of Part 14 of the Act:

... to facilitate the use and occupation by the owners of land owned by Māori by rationalising particular land holdings and providing access to additional; or improved access to land.

Kōrerorero - Discussion

Have the owners had sufficient notice of the application and sufficient opportunity to consider it?

[18] Counsel for Edward Matchitt submits partition applications have been before the Court since 2006 and the present applications before the Court since 2013. Paratene Matchitt represents himself, Elaine Korewha and Mana Matchitt, and Edward Matchitt represents himself, Lisa Henry, Peter Mariu, Bert Matchitt, Marcus Matchitt, Roger Matchitt, Gabrielle Matchitt-Vaka and the Ropata Roihana Matchitt Kaitiaki Trust. Therefore, all shareholders are represented and informed of the applications and alongside the length of time the applications have been in the court, they have all clearly had sufficient notice and opportunity to discuss and consider the applications.

[19] I am satisfied that the owners of Te Kaha 65 have had sufficient notice of the application and sufficient opportunity to discuss and consider it. The issue of partition has been before the Court since September 2006 with further applications in 2013 and all owners are represented in the two applications.

Is there a sufficient degree of support for the application among the owners?

[20] Counsel for Edward Matchitt submits there is unanimous support as all owners are represented by either applicant and no objections have been received.

[21] I am satisfied there is sufficient support for the proposed partition among the owners. Not only has there been support for partition in differing degrees since 2006, all the owners are in support of the current applications and this was confirmed in Court.

Is the partition necessary to facilitate the effective operation, development and utilisation of the land?

[22] Counsel for Edward Matchitt submits that there has been ongoing dispute since 2006 about the operation, development and utilisation of Te Kaha 65 and this is well recorded in Court decisions. Partition would allow each group of owners to develop and utilise their land in accordance with their wishes and prevent ongoing dispute. In hearing, Mr Koning submitted that paradoxically, separation would actually promote unification in this case and facilitate a better working relationship between the two groups of owners.

[23] Currently, the ongoing disputes make it problematic for anyone to utilise the land effectively. In my view, given the history of the matter and unique situation this whānau have found themselves in, a partition will provide the opportunity for both sets of owners on different blocks to actually do something with the land. In *Neal-Taiharuru 4C3C*, the Judge found partition was necessary to facilitate the effective operation, development and utilisation of the land as it would enable the applicant to utilise a defined portion of the land free from the disagreement and stalemate which had been a feature of his relationships with some owners for a considerable period of time.¹⁷ In the present case, as all owners are in agreement about partitioning the land, and while there may be physical separation of the land blocks, it appears partition will help to bring the whānau together and end the stalemate that has been in place for nearly two decades.

[24] In order to consider whether the partition is necessary I must also consider whether there are reasonable alternatives to partition. Such alternatives could include an occupation order or a trust order defining areas of use and occupation.¹⁸ It is noted that occupation orders have previously been granted with regard to this block. However, that has not resolved the underlying issues between the parties nor has it allowed for further utilisation of the land as is planned with a partition.

[25] I am satisfied that the prerequisite requirements for a partition have been met and now turn to the mandatory considerations.

¹⁷ *Neal-Taiharuru 4C3C* (2016) 132 Taitokerau MB 97 (132 TTK 97) at [46].

¹⁸ *Reid v Trustees of Kaiwaitau 1 Trust – Kaiwaitau 1* (2006) 34 Gisborne Appellate MB 168 (34 APGS 168).

What is the opinion of the owners or shareholders as a whole?

[26] As noted above, all owners are in support of the partition application and are represented by either Edward or Paratene Matchitt. No objections have been received nor any other steps taken by owners to indicate dissent. I am satisfied that the opinion of the owners as a whole is in support of the partition and this consideration is satisfied.

What is the effect of the proposed partition on the interests of the owners of the land?

[27] Mr Koning submits the proposed partition will have a positive effect on the interests of the owners of the land by allowing development that the different groups of owners desire. There is no detrimental configuration or reconfiguration of the land required, so no new allotments will be created that would adversely affect other owners or residue of the land.

[28] In hearing, Edward Matchitt confirmed Paratene's daughter, Maurita Matchitt has a container on the land and said if her father took interests in the northern block, the owners of the southern block would not object to her continued occupation despite her not being an owner.

[29] I am satisfied that partition will have a positive effect on the interests of owners in Te Kaha 65 by opening up development opportunities and there will be no adverse effect resulting from the proposed partition.

What is the best overall use and development of the land?

[30] Mr Koning submits that Deputy Chief Judge Fox had previously indicated the best use of the land was development for residential occupation and/or communal facilities. Partition will meet these as owners wish to develop the land and build a marae and partition will resolve a long standing dispute over the use of the land which has impeded development. The land was originally owned by the parents of the seven Matchitt siblings and in that sense, partition will promote ongoing occupation of the land by descendants. Partition would ensure fairness between the owners and provide a practical solution for the future use and management of Te Kaha 65.

[31] I agree with counsel that residential and communal occupation of the land is the best overall use and development, and partition will facilitate this by allowing each group of owners to develop the land as they wish and keep the land within the whānau unit.

[32] I am satisfied the mandatory considerations have been met. However, even if all of the threshold and mandatory requirements are met, the Court retains a discretion in deciding whether or not to grant a partition application. I can give a preliminary view that this would be a case where I would grant the applications for partition, as all the considerations have been met.

Remaining issues

[33] There is one remaining issue for consideration. This is where the internal boundary should be for the two new blocks of Te Kaha 65A and Te Kaha 65B.

[34] There are two different valuations before the Court and the registered valuers appeared at the hearing to give evidence. These different valuations have created questions on where the boundary between the partitioned blocks ought to lie.

[35] Mr Graham Hall of Ōpōtiki Valuation and Consultancy Limited provided a report on 26 August 2019. He valued the improvements on the land at \$137,000 and the land itself at \$574,000, giving it a total capital value of \$711,000. On the split of the valuation and proposed partition areas, Mr Hall valued the western portion of 1.882 hectares at \$361,000, being \$3000 for improvements and \$358,000 for the land. This area is 57.9% of the total area, or 50.8% of the total value (so four shares out of seven, or 57% of shares). The remainder northern block, 1.37 hectares in size, was valued at \$350,000 being \$134,000 for improvements (as it includes the homestead) and \$216,000 for the land.

[36] As clarified in hearing, Mr Hall included the dwelling, garden shed and power, fences and tracks as improvements and used a method of splitting the improvements out and aligning them to blocks of land. He did not inspect the interior of the dwelling and valued it based on comparable sales. He said he was not aware of any effect zoning may have on the valuation and said as there is currently a limited access highway, the partition could have two gateways. He said he allowed for the Pā site and considered it to be worth less noting a

steep contour. He said at best there would be three building sites on the proposed northern block and seven on the western block.

[37] Mr Kevin Allan of Bay Valuation Services Ltd completed valuations in 2014 and April 2020 and provided a supplementary variation in May 2020. In the variation, Mr Allan sizes the pā site (northern block) as 1.73 hectares and values it at \$350,000 and the southern (western) block as 1.522 hectares valued at \$450,000. He states the indicative value of the total block is \$800,000. He ascribes a value of \$65,000 to the house in the April 2020 report but notes his valuations are for land only.

[38] Mr Allan in hearing said he thought there were two potential house sites on the northern site (or potentially a third if the supplementary report is accepted) and seven for the southern site. On methodology, he said he viewed the land as devoid of the building and valued the land in the first instance and then added the value of the house that it gave to the Pā site. He said he looked at land for land as opposed to the equivalency of market value or shares. He thought the house had limited value as a long-term asset as it was positioned centrally on the northern block which would prohibit the best form of development. If removed there would be two buildable sections. In hearing, he said access was an important issue and vehicle access would need to be secured to the Pā site.

[39] In assessing where the internal boundary should lie it is clear that in reality, the parties are not very far apart.

Kupu Whakatau – Decision

[40] Given this matter has been before the Court, in different forms, since 2006, and the fact that the parties, as I have noted, appear to be very close in terms of finding an internal boundary acceptable to all parties I had thought options could be that:

- (a) I should refer the Parties to mediation on this discrete issue of the finding an internal boundary for partition;
- (b) A third valuation is obtained and it is either accepted or averaged with the other valuations; or

- (c) The middle area that cannot be agreed on where the boundary lies becomes a reservation or remains within trust.

[41] While these are potential options to resolving this matter, I am of the view that parties should have one more attempt on agreeing where an internal boundary should lie. I would hope that the parties can come together and compromise as this is the final outstanding issue before I can make orders for partition.

[42] I would think, taking into account both valuations, that a fair approach would be halfway between the boundaries proposed by each party. That may be too simplistic. It is however, a practical way of looking at it, and parties may see it differently, which is why I am giving them another opportunity to consider and discuss the issue.

[43] This matter has been in the Courts in some form or another since 2006. It is time for the whānau to come together and resolve this final issue of where the boundary should lie. I would encourage parties to come to a solution which will be sustainable long term rather than having the Court impose a decision that some may not like.

[44] Therefore, my decision is that:

- (a) I am satisfied the mandatory considerations for partition have been met.
- (b) Even if all of the threshold and mandatory requirements are met, the Court retains a discretion in deciding whether or not to grant a partition application. I can give a preliminary view that this would be a case where I would grant the applications for partition, as all the considerations have been met.
- (c) However, the granting of partition orders (subject to survey) is dependent on where the internal boundary should be for the two new blocks of Te Kaha 65A and Te Kaha 65B.
- (d) Parties are directed to meet to seek resolution on the one remaining issue for consideration that is where the internal boundary should be for the two new blocks of Te Kaha 65A and Te Kaha 65B.

Ka pānuitia te whakataunga i te Kooti i Rotorua a te 3:00pm karaka o te rā 13 o Paengawhāwhā i te tau 2021.

C T Coxhead
JUDGE