I TE KOOTI PĪRA MĀORI O AOTEAROA
I TE ROHE O WAIKATO MANIAPOTO
In the Māori Appellate Court of New Zealand
Waikato Maniapoto District

A20200008027
APPEAL 2020/6

WĀHANGA *Under*	Sections 18(1)(h) and 131(a), Te Ture Whenua Māori Act 1993
MŌ TE TAKE *In the matter of*	Part Puketiti 2B2B 1 and Lot 1 Deposited Plan South Auckland 33533
I WAENGA I A *Between*	PHILLIP PEACOCKE, SUSAN PEACOCKE and CR REJTHAR TRUSTEES LIMITED Ngā Kaitono Pīra *Appellants*

Nohoanga: *Hearing*	10 February 2021, 2021 Māori Appellate Court MB 27-47 (Heard at Hamilton)
Kooti: *Court*	Judge C T Coxhead (Presiding) Judge S F Reeves Judge D H Stone
Kanohi kitea: *Appearances*	J Koning for Appellants
Whakataunga: *Judgment date*	26 March 2021

TE WHAKATAUNGA Ā TE KOOTI
Reserved Judgment of the Court

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He tīmatanga kōrero

Introduction

[1] In 1980, Part Puketiti 2B2B1 block was owned by Raimona Lee and Puku Doherty.[1] Raimona Lee held 44.8125 shares in the block and Puku Doherty held 9.1875 shares. Raimona Lee sold her shares to Ian Walsh. That sale was confirmed by the Māori Land Court per s 226 of the Māori Affairs Act 1953 ("the 1953 Act"). When that sale was registered under the Land Transfer Act 1952 ("the LTA"), the District Land Registrar ("the DLR") made a mistake. As a result, Ian Walsh became the sole owner of the block. The shares held by Puku Doherty were erroneously extinguished.

[2] Since the 1980 registration error, the block has been subdivided into two lots.[2] The block and the subsequent subdivided lots have been transferred several times. The land is now owned by the Totoro Trust.[3] That trust purported to sell the block in 2019. However, the E-Dealing pre-validation report from Land Information New Zealand ("LINZ") identified the block as potentially being Māori land. The trustees of the Totoro Trust therefore applied to the Māori Land Court for a determination that the block was General land. The Māori Land Court determined instead that the block is Māori freehold land.[4] The trustees appeal that decision.

He kōrero whānui

Background

[3] The facts are not in dispute. In summary:

(a) On 3 May 1976, the Māori Land Court issued a consolidated order recording that the block was owned in fee simple by Raimona Lee (as to 44.8125 shares) and Puku Doherty (as to 9.1875 shares).

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1 In the historical record, Raimona Lee is also known as Ramona Lee.
2 Record of Titles SA30/85 and SA30/84.
3 The trustees of the Totoro Trust are Phillip Peacocke, Susan Peacocke and CR Rejthar Trustees Limited. They are also the appellants.
4 *Peacocke – Part Puketiti 2B2B 1 Block and Lot 1 Deposited Plan South Auckland 33533* (2020) 205 Waikato Maniapoto MB 202 (205 WMN 202).

(b) On 6 June 1980, Raimona Lee and Ian Walsh entered into an agreement for the sale and purchase of rural land. The agreement provided for Raimona Lee to sell her shares in the block to Ian Walsh. It recorded Raimona Lee as a tenant in common as to 44.8125 shares out of a total of 54.0000 shares.

(c) On 9 July 1980, the Māori Land Court confirmed the sale and purchase agreement. The minutes of the hearing record that Puku Doherty was deceased, but attempts had been made to contact his widow. Raimona Lee indicated to the Court that she was sure that Ian Walsh would make further endeavours to contact Puku Doherty's widow.[5]

(d) Subsequently, on 6 August 1980, Raimona Lee and Ian Walsh signed a memorandum to transfer her 44.8125 shares. Consistently with the sale and purchase agreement, this memorandum of transfer recorded Raimona Lee as a tenant in common as to 44.8125 shares out of a total of 54.0000 shares.

(e) On 25 August 1980, the Māori Land Court confirmed the memorandum of transfer per s 226 of the 1953 Act. The Court therefore only confirmed the transfer of Raimona Lee's shares to Ian Walsh. It did not confirm the transfer of Puku Doherty's shares at all.

(f) By this stage, the block was not registered under the LTA. On 10 October 1980, the DLR entered the block into the Provisional Register and registered the 3 May 1976 consolidation order, which had vested the block in Puku Doherty (9.1875 shares) and Raimona Lee (44.8125 shares).

(g) On 31 October 1980, the 6 August 1980 memorandum of transfer was registered on the Provisional Register. On the same day, the DLR created a certificate of title for the block. It recorded Ian Walsh as the sole owner. This was a mistake. The certificate of title should have recorded Puku Doherty as an owner as to 9.1875 shares. It did not.

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5 98 Otorohanga MB 250-253 (98 OT 250-253) at 253.

(h) On 20 May 1982, Ian Walsh transferred the block to Falkirk Farms Limited. It was then subdivided into two lots in 1983. Those two lots were subsequently transferred to various parties, until they were acquired by Phillip and Susan Peacocke in 1992. In 2006, the lots were transferred to the Totoro Trust for estate planning purposes.

[4] After analysing these facts, the lower Court determined that the 1980 transfer between Raimona Lee and Ian Walsh did not take effect according to its tenor because the transfer was never intended to include Puku Doherty's shares. This violated s 226(2) of the 1953 Act.[6] Therefore, s 2(2)(f) of the 1953 Act could not be invoked. That subsection, which deems Māori freehold land to be General land in certain circumstances, was not intended to capture a situation in which a transfer did not take place in accordance with what was intended.[7]

[5] In the alternative and "somewhat tentatively", the lower Court questioned whether s 2(2)(f) of the 1953 Act could be set aside by exception. That section deems Māori freehold land to be General land, except where it appears on the face of the instrument of transfer that the land has remained Māori freehold land. The Māori Land Court opined that it was clear on the instrument of transfer that there was another owner and queried whether it was necessary to expressly record that the land was to remain Māori freehold land. The lower Court therefore reached the tentative conclusion that there was enough of an indication on the face of the instrument of transfer that, following the transfer of Raimona Lee's interests to Ian Walsh, the block would remain Māori freehold land.[8]

Ngā kōrero o ngā kaitono pīra

Submissions for the appellants

[6] Mr Koning made cogent and succinct submissions for the appellants. He accepted that the 1980 transfer from Raimona Lee to Ian Walsh was only intended to transfer 44.8125 shares (out of a total of 54.0000 shares). He also accepted that the Māori Land Court did not confirm or otherwise endorse the transfer of Puku Doherty's shares to Ian Walsh, which

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6 Above n 4 at [78].
7 Above n 4 at [81].
8 Above n 4 at [89].

only occurred through a mistake by the DLR. However, he respectfully disagreed with the lower Court's decision for the following reasons:

(a) The 1980 transfer from Raimona Lee to Ian Walsh did take effect in accordance with its tenor as per s 226(2) of the 1953 Act. When the transfer was confirmed by the Māori Land Court on 25 August 1980, its tenor was to transfer all of Raimona Lee's undivided share in the block to Ian Walsh. That was precisely what was confirmed by the Court at that stage.

(b) The provisions of the 1953 Act relating to the transfer of Raimona Lee's shares were otherwise fully complied with. The transfer was confirmed by the Court. The error in depriving Puku Doherty of his shares in the block was made by the DLR, not the Māori Land Court. The 1980 transfer from Raimona Lee to Ian Walsh remains valid under the 1953 Act. Accordingly, unless the exception applies, s 2(2)(f) deems the block to be General land.

(c) The exception in s 2(2)(f) of the 1953 Act did not apply. In accordance with the test set out in *Deputy Registrar v Te Bach 2007 Ltd – Ohawini* D8, "something unequivocal" was required to be set out in the instrument of transfer that the block was to remain Māori freehold land after the transfer of Raimona Lee's shares to Ian Walsh.[9] To start with, the instrument did not record that the block was Māori freehold land. Nor did it expressly state that the block was to remain Māori freehold land. Further, the factors on which the lower Court relied to tentatively conclude that the block remained Māori freehold land after the transfer from Raimona Lee to Ian Walsh were simply matters of conveyancing practice. Accordingly, there was "nothing unequivocal" on the face of the instrument of transfer that the block was to remain Māori freehold land.

(d) Sections 52 and 75 of the LTA confirm that the entries on the Provisional Register and the subsequent certificate of title for the block are conclusive

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9 *Deputy Registrar v Te Bach 2007 Ltd – Ohawini D8* (2010) 15 Taitokerau MB 3 (15 TTK 3), relying on *Succession to Nehe Kopua* (1978) 15 Ruatoria MB 238 (15 RUA 238).

evidence that, as at 31 October 1980, Ian Walsh was seised of an estate in fee simple in the block.

[7] We note that no appearance was made, or submissions filed, on behalf of descendants of Puku Doherty.[10]

Ngā take mo te pīra nei

Issues on appeal

[8] The issues to determine are as follows:

(a) Did the 1980 instrument of transfer take effect in accordance with its tenor?

(b) Does s 2(2)(f) of the 1953 Act apply to deem the block to be General land?

Te Ture

The Law

[9] The 1980 transfer of Raimona Lee's shares to Ian Walsh was governed by the 1953 Act. The starting point is that the block was Māori freehold land, which was relevantly defined in s 2 of the 1953 Act as:

> **Maori freehold land** means land other than [General Land] which, or any undivided share in which, is owned by a Maori for a beneficial estate in fee simple, whether legal or equitable:

[10] Raimona Lee was permitted to transfer her shares in the block to Ian Walsh per s 211 of the 1953 Act, which provided:

> **211 General provisions as to alienation of land by Maoris**
>
> (1) Subject to the provisions of this or any other Act, a Maori may alienate or dispose of any land or any interest therein in the same manner as a European, and Maori land or any interest therein may be alienated or disposed of in the same manner as if it were [General land].

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10 The lower Court appointed counsel to act for the descendants of Puku Doherty. However, counsel for those descendants did not appear before us.

> (2) The repeal by this Act of section 256 of the Maori Land Act 1931, shall not be deemed to have restored any of the prohibitions or restrictions on alienation referred to in subsection one of that section.

[11] Section 224 of the 1953 Act required the transfer to be confirmed by the Māori Land Court. It relevantly provided:

> **224 Alienations by Maoris to be confirmed**
>
> (1) Except as may be otherwise expressly provided in this or any other Act no alienation of Maori land [by way of transfer] by a Maori shall have any force or effect unless and until it has been confirmed by the Court.
>
> (2) An appeal shall lie to the Appellate Court from any decision of the Court to grant or refuse confirmation of an alienation or from any variation by the Court of the terms of any alienation.
>
> (3) In this section and in sections 227, 227A, 228, 230, and 318 of this Act, the expression alienation by way of transfer includes any agreement to alienate by way of transfer.

[12] The consequences of confirmation were set out in s 226(2) as follows:

> **226 Effect of confirmation**
> …
>
> (2) On confirmation being granted the instrument of alienation shall (if otherwise valid) take effect according to its tenor, subject to the requirements (if any) of registration under the Land Transfer Act 1952, as from the date on which it would have taken effect if no such confirmation had been required.

[13] A confirmed transfer took effect in accordance with its tenor, subject to any registration requirements under the LTA. In this respect, s 36 of the 1953 Act permitted Court orders to be registered under the LTA, but did not make such registration mandatory. That section provided:[11]

> **36 Registration of orders affecting title to land**
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> (1) Any order of the Court affecting or relating to the title to land may be registered against the title to that land either under the Land Transfer Act 1952 or the Deeds Registration Act 1908, as the case may be.
>
> (2) For the purposes of registration the order shall be transmitted by the Registrar of the Court to the District Land Registrar or the Registrar of Deeds, as the case may be; and the said District Land Registrar or Registrar

[11] A subsection 5 was inserted from 16 December 1983 by s 3(1) of the Māori Purposes Act 1983 which provided that no fee was payable in respect of any order of the Court pronounced before 1 August 1983.

of Deeds shall thereupon (subject to any other provisions of this Act) register the same accordingly. The production of the certificate of title shall not be necessary for the purposes of any such registration under the Land Transfer Act 1952.

(3) Until registration has been so effected, an order of the Court in respect of land subject to the Land Transfer Act 1952 shall affect only the equitable title thereto.

(4) Nothing in this section shall affect or modify any special provisions made elsewhere in this Act or in any other Act for the registration of any such order.

[14] A further potential consequence of a confirmed transfer of Māori freehold land was its conversion to General land through the operation of s 2(2)(f) of the 1953 Act. It provided:

2 Interpretation

…

(2) Unless expressly provided in this or any other Act with respect to any specified or defined area, and notwithstanding anything in the foregoing definition of the term "land" or in any of the subsidiary definitions included therein,—

…

(e) Maori freehold land which has been vested in any person by an order of the Court or of a Registrar for a beneficial freehold interest shall, except where it appears on the face of the order that the land has become General Land, be deemed to remain Maori freehold land until either—

(i) An order is made by the Court under paragraph (i) of subsection (1) of section 30 of this Act determining that the land is General Land; or

(ii) Any other order is made by the Court as a consequence of which the land becomes or is deemed to have become General Land:

(f) Maori freehold land the legal fee simple in which has been transferred otherwise than by an order of the Court or of a Registrar shall, except where it appears on the face of the instrument of transfer that the land has remained Maori freehold land, be deemed to be General Land until either—

(i) An order is made by the Court under paragraph (i) of subsection (1) of section 30 of this Act determining that the land is Maori freehold land; or

(ii) Any other order is made by the Court as a consequence of which the land becomes Maori freehold land.

[15] The import of s 2(2)(f) of the 1953 Act has been considered in a number of cases, which can be broadly considered in three categories. The first category deals with the effect of s 2(2)(f) when transfers have breached the 1953 Act.[12] The broad principle set out in those cases is that, although a transfer registered in breach of the 1953 Act passes indefeasible title, it does not automatically change the status of the land so transferred.

[16] The second category of cases concerning s 2(2)(f) consider what is meant by the express exception in that subsection. That subsection applies "except where it appears on the face of the instrument of transfer that the land has remained Māori freehold land". In *Deputy Registrar v Te Bach 2007 Ltd*, Judge Amber, relying on *Re Succession to Nehe Kopua*, made the following observation: [13]

> [37] I adopt Judge Russell's expression of the law. In order for the exception in s 2(2)(f) to apply, something unequivocal needed to be set out in the transfer. Furthermore, s 2(2)(f) contemplated that those completing transfer would take an *active* step to indicate that the land was to remain Maori freehold land. As far as the transfer from the Maori Trustee to Mrs Hati is concerned, that did not occur. Merely reciting the existing registered encumbrances was not enough. I agree with Mr Oliver that the reference to the 1977 status order was simply there as a matter of conveyancing practice.

[17] The third category concerns transfers of undivided shares in Māori freehold land. The general principle is that the transfer of an undivided share in Māori freehold land does not trigger s 2(2)(f) of the 1953 Act, meaning that the land remains Māori freehold land. The majority decision of the Māori Appellate Court in *Scott – Rangianewa 4C2C3E* made the following observation:[14]

> In our opinion what is necessary to have been vested is the land, the whole of the land in the title, and not merely an undivided interest therein. There are several reasons for our being of this opinion:
>
> 1. Wherever land is defined in s 2(1) it is the whole of the land which is referred to except where it is specifically made to include a share only of such land… Accordingly if the Legislature intended that the words "Maori freehold land" when used in another part of the same s 2 should mean not the whole of the land only but alternatively an undivided share therein it would have said so as it did in the definitions or it should have done so.

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12 See *Haddon v Rahui Te Kuri Inc – Pakiri R* (1994) 3 Taitokerau Appellate MB 178 (3APWH 178); *Deputy Registrar – Te Keti A2* (2011) 15 Taitokerau MB 76 (15 TTK 76); *Dobson – Ahipara 2B47 Block* (2014) 74 Taitokerau MB 139 (74 TTK 139); and *Moore – Part Oakura F2A* [2020] Māori Appellate Court MB 209 (2020 APPEAL 209).

13 Above n 9.

14 *Scott – Rangianewa 4C2C3E* (1968) 12 Whanganui Appellate MB 208 (12 APWG 208), at 209 per Chief Judge Jeune and Judge Brook.

[18] Then, in *Savage-Pickett – Section 15B3 Block VIII Tairua Survey District* the Māori Land Court said:[15]

> [21] Furthermore s 2(2)(f) of the [1953 Act] provides that where the legal fee simple in Māori freehold land has been transferred otherwise than by an order of the Court, the land is deemed to be general land unless it appears on the face of the instrument of transfer that the land has remained Māori freehold land. While the transfer from Lena Soutar to Alexander Savage is only of a share in the fee simple there is nothing to indicate that that share was Māori freehold land or should remain Māori freehold land. Nor was it noted or confirmed by the Court. **It would be very strange indeed if that share of the land was deemed general land while the rest of the land was Māori freehold land**.

[19] These principles were subsequently confirmed in *Taukiri – Parish of Karamu Lot 197A*.[16] The facts are pertinent. Four-fifths (80 per cent) of the undivided shares in the block were transferred in 1933 to a non-Māori owner. That transfer was confirmed and registered by the Māori Land Court in 1966. The other one-fifth (20 per cent) remained in Māori ownership. Judge Milroy referred to the earlier decisions in *Scott* and *Savage-Pickett* and found that the land did not become General land by virtue of s 2(2)(f), as only an undivided share was transferred:

> [34] In this case however the definition of Māori freehold land in s 2(1) of [the 1953 Act] continued to apply to Parish of Karamu Lot 197A because the residue of the title PR 259/107 was for an undivided share owned by Kaneri Hapeta, a Māori. The transfer of an 80% share of the land to Ultoh Johnstone, even though confirmed by the Court, was not sufficient to change the status to general land. Moreover the Māori Land Court continued to keep records for the block, including successions to Kaneri Hapeta.
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> [35] In my view, and based upon the statements made in *Re Rangiwaea 4C2C3E, Scott and Anor* case, the land did not become general land by virtue of s 2(2)(f) [of the Māori Affairs Act 1953] either. Only an undivided share in the land, although admittedly a large share, was transferred to Uloth Johnstone.
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> [36] It also follows from the comments made in the *Rangiwaea* case that the subsequent transfers of Uloth Johnstone's share in the land were not subject to s 2(2)(f) of the [1953 Act] and therefore the land remained Māori freehold land.

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15 *Savage-Pickett – Section 15B3 Block VIII Tairua Survey District* (2011) 30 Waikato Maniapoto MB 201 (30 WMB 201).

16 *Taukiri – Parish of Karamu Lot 197A* (2013 Waikato Maniapoto MB 294 (52 WMN 294).

Kōrerorero

Discussion

Te take tuatahi – Did the 1980 instrument of transfer take effect in accordance with its tenor?

[20] The lower Court determined that the 1980 instrument of transfer did not take effect in accordance with its tenor, which violated s 226(2) of the 1953 Act. The appellants argue that the instrument did, in fact, take effect in accordance with its tenor.

[21] Section 226(2) sets out the effect of confirmation by the Court of an instrument of transfer.[17] Until confirmation is granted, the instrument of transfer is of no force or effect per s 224. But once confirmed, the instrument of transfer takes effect according to its tenor.

[22] Section 226(2) is declaratory in nature. It simply brings into effect an instrument of transfer that is otherwise of no force or effect. It does not *require* the instrument to be given effect in accordance with its tenor. Therefore, if an instrument is not given effect in accordance with its tenor after the instrument is confirmed, that is not a breach of 226(2). It is a breach of the instrument itself.

[23] Of course, the confirmed transfer was not intended to transfer Puku Doherty's shares to Ian Walsh. That resulted from an error by the DLR following the Court confirmation process. As a result, ultimately the 1980 instrument of transfer had an effect that was contrary to its tenor. But that does not invalidate the Court's confirmation of the transfer.

[24] For completeness, we note that a confirmed instrument of transfer takes effect according to its tenor, subject to any registration requirements under the LTA. The short point here is that there were no such registration requirements in relation to the transfer of Raimona Lee's shares to Ian Walsh. Although s 36 of the 1953 Act permitted the transfer to be registered under the LTA, it was not a requirement.

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[17] Section 226(2) refers to an instrument of alienation, which includes (by definition of the term alienation) an instrument of transfer. Because we are dealing with an instrument of transfer, we use that terminology.

[25] We therefore agree with the appellants that the 1980 instrument of transfer did take effect in accordance with its tenor when it was confirmed by the Court, meaning that s 226(2) of the 1958 was not violated.

Te take tuarua - Does s 2(2)(f) of the 1953 Act apply to deem the block to be General land?

[26] Because the 1980 transfer took effect in accordance with its tenor per s 226(2), the transfer can be distinguished from transfers that breached the 1953 Act. The transfer between Raimona Lee and Ian Walsh was not in breach of the 1953 Act. It was permitted by s 211. It had to be confirmed by the Court per s 224(1). It was so confirmed per s 226(1), as a certificate of confirmation was written on the instrument of transfer, under the seal of the Court and the hand of the Judge by whom it was granted. Section 226(2) declared that it took effect in accordance with its tenor. The fact that the instrument of transfer took effect other than in accordance with its tenor after it was confirmed was due to DLR error, but that did not violate s 226(2). Accordingly, s 2(2)(f) applies.

[27] The tentative view of the lower Court was that the exception in s 2(2)(f) applied. We agree with this view.

[28] For the exception to apply, it must appear on the face of the instrument of transfer that the land has remained Māori freehold land. The Māori Land Court has indicated that "something unequivocal" must be set out in the instrument.[18] As an appellate court, we are not bound by this test. With respect, we have some reservations with it based on the following principles.

(a) The exception speaks of appearances, not express words. We do not read the reference to "appears" as requiring the express words to be written on the instrument of transfer. Instead, the instrument of transfer must give the appearance that the land has remained Māori freehold land.

(b) Unsurprisingly, the word "appear" is not defined in the 1953 Act. The Oxford dictionary definition is "give a specified impression; seem". The Oxford

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18 *Deputy Registrar v Te Bach 2007 Ltd*, above n 9.

thesaurus gives a number of meanings for "appearance", including "seem, look, give the impression, come across as".

(c) The reference to appearances encourages a more liberal, rather than literal, approach. With respect, it is difficult to reconcile the requirement to consider what "appears" to be the case with a test that requires "something unequivocal".

(d) The *Dictionary of New Zealand Law* defines the term "on the face" as:[19]

> The immediate and apparent meaning of something written; meaning to be given to a word or phrase upon first glance.

(e) Determining whether it appears on the face that the land has remained Māori freehold land requires consideration of the instrument of transfer as a whole. An unequivocal statement that the land is to remain Māori freehold land following transfer is clearly sufficient. But it should not be a requirement. For example, it may appear on the face of the instrument of transfer that the land is to remain Māori freehold land based on a number of cumulative factors, none of which may be unequivocal by themselves.

(f) It is clear that the Court cannot look behind the instrument of transfer. It is limited to considering what is "on the face" of the instrument. But what is on the face of the instrument may have broader import, particularly if it gives rise to or is based on a legal presumption. For example, we consider that the Court is able to take into account the legal implications of what is set out on the face of the instrument of transfer.

(g) Support for this wider inquiry can be found in a number of cases that consider the meaning of the words "on the face". Although these cases are fact specific, the principles that can be drawn from them include that the assessment must be undertaken from the viewpoint of an instructed reader familiar with the context to which the document relates;[20] that context is

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19 Peter Spiller *Dictionary of New Zealand Law* (online ed, Lexis Nexis).
20 *Holtite Limited v Jost (Great Britain) Limited* [1979] RPC 81 at 91.

relevant and can include consideration of other documents;[21] and that the court is not confined to reading the document without regard to its background or context.[22]

[29] Although we express some reservations with the test set out in *Deputy Registrar v Te Bach 2007 Limited – Ohawini D8*, we are reluctant to formulate an alternative test at this stage. Assessing what appears to be the case on the face of a transfer instrument is likely to be case specific. It is sufficient for our purposes to say that requiring "something unequivocal" is not the appropriate test and a more considered and nuanced approach is required in each case.

[30] Turning to the present case, there are a number of aspects of the 1980 memorandum of transfer that must be considered in this context:

(a) It expressly records that the transfer relates to Raimona Lee's 44.8125 shares out of a total of 54.0000 shares. It was clear on the face of the instrument that there was at least one other owner.

(b) It refers to the block as all of the land in a Partition Order of the Māori Land Court dated 19 May 1921. Although this is not an express acknowledgement that the block was Māori freehold land, it indicates that as a possibility, if not a probability.

(c) It refers to the agreement for sale and purchase dated 6 June 1980 that was duly confirmed by the Māori Land Court on 9 July 1980. Confirmation was only required if the land was Māori land.

(d) It contained the certificate of confirmation by the Māori Land Court. This certificate was issued under s 226 of the 1953 Act. Again, a certificate of confirmation was only required if the land was Māori land.

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21 *Auckland Regional Authority v Codelfa Construction Ltd* [1981] 2 NZLR 300, at 306.
22 *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, at [24].

[31] As further context, the definition of Māori freehold land in the 1953 Act included land in which any undivided share was owned by a Māori for a beneficial estate in fee simple whether legal or equitable. Mr Koning accepted that, under this definition, the block would have remained Māori freehold land if Puku Doherty's shares had not been extinguished by the DLR's error. This was the law at the time, as confirmed in the line of cases leading to *Taukiri – Parish of Karamu Lot 197A* establishing that the transfer of an undivided share in Māori freehold land does not deem the entire block to be General land per s 2(2)(f) of the 1953 Act. In that context, and as posited by the lower Court in the present case, it would not have been necessary to expressly record in the instrument of transfer that the land was to remain Māori freehold land. That was the effect by operation of law.

[32] An instructed reader, being familiar with the background and context and knowing that the transfer of an undivided share of Māori freehold land did not change its status, would have understood from the face of the 1980 memorandum of transfer that the land was to remain Māori freehold land. We therefore conclude that it appears on the face of that memorandum that the land was to remain, and has remained, Māori freehold land.

Whakataunga

Decision

[33] The appeal is dismissed.

[34] There is no order as to costs.

I whakapuaki i te 3.00 pm i Hamilton, rua tekau mā ono o ngā rā o Poutū-te-rangi te tau 2021.

C T Coxhead	S F Reeves	D H Stone
JUDGE	**JUDGE**	**JUDGE**