I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TE TAIRĀWHITI
In the Māori Land Court of New Zealand
Tairāwhiti District

A20210011408

WĀHANGA *Under*	Section 289, Te Ture Whenua Māori Act 1993
MŌ TE TAKE *In the matter of*	Whatatuna 11
I WAENGA I A *Between*	MARSHA WYLLIE Te Kaitono *Applicant*

Nohoanga:
Hearing
27 January 2022, 109 Tairawhiti MB 146-157
(Heard at Gisborne)

Whakataunga:
Judgment date
16 March 2022

TE WHAKATAUNGA Ā KAIWHAKAWĀ MATUA TUARUA C L FOX
Judgment of Deputy Chief Judge C L Fox

Hei tīmatanga korero
Introduction

[1] This application was filed pursuant to s 289 of Te Ture Whenua Māori Act 1993 ("the Act") by Marsha Wyllie on behalf of the Rāpihana Hawaikirangi and Makuini Waioira Wyllie Whānau Trust ("the Trust"). The Trust seeks a partition order over Whatatuna 11.

Kōrero whānui
Background

[2] Whatatuna 11 ("the block") comprises 13.3901 hectares of flat land located on the northern side of Papatū Road which is leased for the growing of organic maize. The block extends some 1551 metres to its northern boundary. The block is vested in the Māori Trustee as an ahu whenua trust and the land is valued at $1,373,000. The land is registered in the Land Information New Zealand Office under Certificate of Title GS3D/823. This Māori land block is situated 3 km west of Manutuke, a small settlement 17 km southwest of Gisborne. The Trust are seeking to build a papakainga on this land. The block is currently leased to De Costa Enterprises Limited. The lessee has been made aware of the application for partition and is prepared to adjust his lease should an order be granted.

[3] The Trust own 725.229 shares out of total of 5570 shares in the block but only seek an area of 1.4 hectares in line with the Valuation Eastland Report dated 29 October 2021 filed with the application.

[4] At a meeting of the trustees held on 5 April 2021, 20 April 2021, 26 April 2021, 6 May 2021, 29 May 2021 and 4 July 2021 the minutes record the position of those present:

> We are a four generation whanau, who are undertaking a Papakāinga because there is a housing crisis, and we need to provide for our uri. It is also a way of meaningfully connecting with this whenua.
>
> We have looked at partition because it enables us to fully control how we undertake these housing developments. Working through the current Trust over the entire Whatatuna 11 block brings in the other landowners and their rarurarau - noting that some of the whānau like to receive their rental monies and are not interested in housing.
>
> We will update our trusteeship, bringing in our next generation once the partition is agreed to and the current Trustees have settled our tikanga and kawa.

Marsha will oversee the project management of this mahi for the whānau (including keeping John informed), with regular whānau trust meetings to be held as we progress. The second meeting of the entire whānau will be held likely spring 2021.

We will start this project ourselves, investing our own money into starting the work, including the costs of research, applications to the Māori Land Court, valuation and survey. We will look at other options for investment development once partition is approved through government departments including Te Puni Kōkiri, Kainga Ora, and the iwi.

Our kawa

We have agreed as a whānau that, the whenua of Whatatuna 11 will be evenly distributed amongst the 8 children of Makuini Ria Te Ota, whom we inherit this whenua from. Our Puakanga whakapapa to Ngai Tāwhiri hapū of Rongowhakaata is why we are in Whatatuna 11.

The whānau trust shares equals 4 acres or 1.7434 hectares, so that amounts to ½ an acre each line or 2 x ¼ acre sections per line.

The trust will take responsibility for the installation of infrastructure including access onto and around the block, from within our 4 acres. We have also decided to go in from the other end of access for all the owners, to show we are not being unreasonable or inconsiderate of the other landowners.

John and Robin are in discussions on their sections. We have agreed as a whānau this is their business, and we will honour their decision, as long as the whenua remains with our uri.

We agreed that the whenua must never be lost outside of our whakapapa. In this regard, we also agreed to update our whānau trust to be more relevant to our future use of Whatatuna 11 for housing purposes. This requires that our trust order be amended to allow us to issue ourselves licenses to occupy the whenua, according to our kawa.

Our Whānau Trust has agreed that:

An application to partition our interests out of Whatatuna 11 be undertaken through the Māori Land Court and simultaneously, we will need to lodge an application to vary our Trust Order so that we can issue licenses to occupy

Moved - Marsha Wyllie, seconded Jody Wyllie, moved unanimously

Te Kooti Whenua Māori nohoanga
The Māori Land Court Sitting

[5] The matter came before the Court on 27 January 2022.[1] Lavinia Pohatu-Johnston was the only person present who indicated any concern regarding the application for partition. Her concern was she did not attend any of the meetings prior to the Court hearing,

[1] 109 Tairawhiti MB 146-157 (109 TRW 146-157).

although she had the opportunity to attend the second.[2] Other than expressing that she would have raised questions regarding the impact of the proposal on the remaining balance owners, she did not indicate any other issue that could be dealt with during the hearing of this application. I deal with her submissions to the Court in my analysis below.

Whakahāngai i te Ture
The Law and its application

[6] Where the Court is satisfied that it should partition any Māori freehold land, it has the power to make an order for the partition of any land into two or more defined separate parcels.[3] However, before proceeding to make such an order, the Court must also have regard to several matters listed in Part 14 of the Act. I turn to consider each of these below.

[7] Under s 288(1) of the Act the Court must consider:[4]

> (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.

[8] In this case, I am satisfied that sufficient attempts have been made to illicit the opinion of the owners and shareholders as a whole and that those who have participated in meetings and the Court hearing generally support the application. While I appreciate the numbers of shareholders providing support is low, the shares they hold along with those held by the Trust almost reach 50% of the total shares in the block. I also consider that the opportunity afforded to all the shareholders to participate was sufficient and that silence in this case amounts to either disinterest or tacit consent or a failure to maintain contact with the ahi kā in the district. All that could be done was done to illicit their views.

[9] Turning to the effect of the proposal on the interests of the owner (the Māori Trustee) and the shareholders. The Valuation Eastland report dated 17 June 2021, adjusted on the 29 October 2021, records that the impact is minimal in the circumstances:

---

2 109 Tairawhiti MB 146-157 (109 TRW 146-157) at 149-153.
3 Te Ture Whenua Māori Act 1993, s 289.
4 Te Ture Whenua Māori Act 1993, s 288(1).

Market Value of Whole Property	$1,373,000
Market Value of the Partition	$1,198,000
Market Value of the proposed 1.4-hectare partition	$ 175,000

[10] Concern was expressed by Mr Jody Wyllie that the valuation indicates that the Trust shares reduce down from 13.02% to 11.93% of the total value of the block. I have taken this concern into account but note that the Trust is receiving significant benefit from the partition as it is acquiring one of the prime areas available for housing.

[11] I further note the balance of the block will continue to be used for maize cropping that will generate income. No concern was raised as to whether that income was sufficient to meet the rates and administration costs. I note, however, that there are only a limited number of sites that may be used for papakainga development on the block and any area used in the future would have to run parallel to this site if partitioned. The Māori Trustee has limited capacity to pursue a papakainga development for all the shareholders of this block. It is my assessment that only a handful of shareholders wish to utilise the land in this way given the lack of participation in the application process. Nevertheless, the Māori Trustee does not appear to be in a position as trustee to progress papakainga development, having agreed to this application. Even if it were to be ready at some point in the future, there is sufficient land to accommodate all interests.

[12] I also note that the land is used for maize cropping. Clearly it has the potential to be a well-developed papakainga block, subject to Gisborne Council requirements. In that regard it is within a possible liquefaction area should a large earthquake occur, and it has a flooding overlay. The evidence during the Court hearing was that flooding only impacts the northern end of the block and that the block is considered prime real estate. I note that any major issues relating to the block can be mitigated through the building consent process.

[13] Therefore, I consider that the 1.4 hectare partition finalised in accordance with the 1.4 hectare sketch plan (filed with the application) will be the best overall use and development of land as it will provide the branch of the hapū represented by the Trust with the opportunity to explore the development of a papakainga for a large extended family that desperately needs housing accommodation.

[14] Moving on to s 288(2) of the Act. Under this provision the Court must not make any partition order unless it is satisfied:[5]

> (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.

[15] As to the issue of sufficient notice of the application, the office of Māori Trustee conducted two meetings of owners where the partition application was considered. These were held on 29 May 2021 and 31 July 2021. They circulated a survey to illicit the views of the shareholders, obtaining the consent of several as a result. The Māori Trustee sent 28 letters to owners for whom that office held addresses. The office also advertised notice of the application and the date of the Court hearing in the Gisborne Herald three times, including on 20 January 2022 and 22 January 2022. In addition, the Registrar sent out notice to 17 parties notifying them of the date of the Court hearing. Therefore, I am satisfied that the owner and shareholders received sufficient notice of the application and that they have had sufficient opportunity to discuss and consider the matter.

[16] In terms of s 288(2)(b), there must be sufficient support for the application. This does not require majority support.[6] Rather, the Court must ask whether there is sufficient support having regard to the nature and importance of the matter. Such an assessment turns on the circumstances of each case. In this case, I consider that there is sufficient support having regard to the nature and importance of the matter. The Māori Trustee, as the trustee of the block, supports the application. Only one shareholder, Lavinia Pohatu-Johnston, has demonstrated a concern regarding the application and that was because she may seek partition as well. Such a proposal is purely hypothetical at this stage. I further note that where a partition application is opposed, the general principle is that support must outweigh opposition, unless other factors are at play. The Māori Appellate Court has dealt with this point as follows:[7]

---

5 Te Ture Whenua Māori Act 1993, s 288(2).
6 *Neal - Taiharuru 4C3C* (2016) 132 Taitokerau MB 97 (132 TTK 97) at [30].
7 *MacDonald v MacDonald - Wairau Block XII Section 6C2C* [2016] Maori Appellate Court MB 259 (2016 APPEAL 259) at [62].

> [I]n most circumstances where an application for partition is opposed the support for the application will need to outweigh the opposition before there can be said to be 'sufficient support' for the partition in terms of s 288(2)(b). The principal circumstances where support might still be found to be sufficient despite those in support of the partition holding a smaller shareholding or being lesser in number to those opposed to it are where there are intractable differences between owners and a partition is the only means by which these differences might be overcome.

[17] In this case the majority of those who have responded to notice of the application have supported the proposal. Considering this result, the support for the application outweighs the opposition. Out of the 5570 shareholding there are 2754.734 shares in support, or 10 of 75 owners. The following shareholders supported the application:

(a) Anne Kiwha Vickers

(b) Thomas Pohatu Ria

(c) Mita Scotty Pohatu

(d) Janette Honey Waitai

(e) Mihimarino Bonnie Manukau

(f) Darcy James Ria

(g) Kay Walker

(h) Where Herehere Tikitiki

(i) Kay Aroha Ria

(j) Rongomaiwehea Peter Larkin

[18] I turn now to s 288(4) of the Act, which stipulates that the Court must not make a partition order unless satisfied that it:[8]

---

[8] Te Ture Whenua Māori Act 1993, s 288(4)(a).

(a) is necessary to facilitate the effective operation, development, and utilisation of the land

[19] Whether partition is necessary depends on what is reasonable, and it requires an applicant to demonstrate that the partition is essential rather than simply desirable or expedient.[9] When asked to explain why the partition was necessary in this case, rather than simply desirable or expedient, the answer was as follows:[10]

> Marsha Wyllie: So just on behalf of our whānau we've been meeting for the last year to talk about papakāinga but prior to that I'll just give a bit of context. We get the interests in this whenua through Makuini and through our Puakanga whakapapa, Ngāi Tawhiri, Rongowhakaata. Both Makuini and her son Tutekawa have been advisories with the first set of advisory trustees on this block in the nineties and around that time had entertained the idea of trying to get the block off Te Tumu Paeroa but were unsuccessful so the notion of us being self-determining with our whenua has always been a whānau objective.
>
> Most recently with the regional and national housing crisis, we are now looking at our mokopuna and having our own tino rangatiratanga for this whenua. The best thing we can do for it is to live on it. So passively we have received rental income off here and made Leaderbrand rich. That's always been a burning issue for our whānau. So now it comes back to practical need and what we need to do for our kids.
>
> We've got 19 whānau units, all who earn a rough income of like $50,000 and we've got no whenua. This is the last substantial piece of whenua we have as a whānau. We're the second largest shareholder because our mum and her sister Te Iwa, my cousin Lovey and Vivienne's mum, they did a trade on shares for our interests in another block called Kotaniwha C with the shares of Whatatuna. That's why we're the second largest shareholder. We also, in engaging with landowners via the Te Tumu Paeroa process which were two hui, we went out and did our own kanohi kitea engagement with the landowners and the largest shareholder told us, he's not interested in papakāinga. He's interested in passively receiving a rental income. We knew that the other landowners had approached us to do papakāinga but we knew there was an appetite not for everybody to do it so we can only control what we can control. This is why we want to partition our shares out and practically connect to the whenua in ways that are meaningful to us as a whānau. Yes, and that really is what we are trying to do here.
>
> Carol Leanne Wyllie: Your Honour, can I just add to that?
>
> The Court: Yes, please.
>
> C Wyllie: I've got a daughter, a son-in-law, a granddaughter and a great-grandson all living in a shed. My brother's got his children living with him so it's a need for our kids and our grandchildren. Housing is terrible now. They're having to stay in substandard housing so that's all I wanted to add.

---

9 *Brown v Māori Appellate Court* [2001] 1 NZLR 87.

10 109 Tairawhiti MB 146-157 (109 TRW 146-157) at 148-149.

> Robin Rapihana Wyllie: And to add to that Your Honour, I'm the other brother. I've got 12 staying in my house and out of the 12 is my daughter and her family. I'm like my sister and the rest of our family here. We need to build for our kids. I've got five children that are ready to build now, five teenagers - four daughters that are ready to build now with their families and my son who's just come back from Australia. He needs to build now and the only way we can do it Your Honour is through this land that belongs to my mum, so yes, just to add to that.

[20] Evidence was given by other members of the Wyllie family also demonstrating the necessity to have access to land to begin the process of building a papakainga.[11] Therefore, I consider the applicant has demonstrated that the partition is necessary rather than simply desirable or expedient.

[21] The Court must also be satisfied that to grant the application would be consistent with the purpose of Part 14 of the Act, which is:[12]

> [t]o facilitate the use and occupation by the owners of land owned by Māori by rationalising particular land holdings and providing access or additional or improved access to land.

[22] I am satisfied that granting the application for partition will facilitate the use and occupation by the owners of the land and that the rationalising of the title is necessary to ensure that they can do so. I note also that no owner or shareholder has lived on this land for a very long time.

[23] In terms of the Preamble and ss 2 and 17 of the Act, the Court must promote the retention of land, its utilisation and the control of that land as a taonga tuku iho by the owners, their whānau and their hapū. Partition will sever the connection of the balance shareholders to that part of the land that will be vested in the Trust. However, their income and access to the balance land will remain. That is to be weighed against the benefits that will be gained in granting the partition. For the beneficiaries of the Trust, representing a significantly large extended whānau, those it represents will be able to utilise and control their land and thereby enjoy the full benefit of their land as a taonga tuku iho.

---

11 See for example 109 Tairawhiti MB 146-157 (109 TRW 146-157) at 157.
12 Te Ture Whenua Māori Act 1993, s 286(1).

[24] Finally, as all beneficiaries of the Trust are of the same hapū as the balance shareholders, the provisions of s 304 of the Act will apply. That section of the Act imposes a restriction on how the land can be sold in the future.

Kupu whakatau
Decision

[25] The application is granted.

Ngā ōta
Orders

[26] The Court makes the following orders:

(a) Order pursuant to s 241 of the Act terminating the Whatatuna 11 Ahu Whenua Trust over that part of the Whatatuna Block depicted in the survey sketch plan filed with the application for partition, and revesting the shares owned by the Rāpihana Hawaikirangi and Makuini Waioira Wyllie Whānau Trust in the Trust but adjusted by the valuation report dated 29 October 2021 for 1.4 hectares valued at $175, 000.

(b) Orders pursuant to ss 289 and 304 of the Act for the partition of Whatatuna 11 in accordance with the survey sketch plan filed with the application depicting an area of 1.4 hectares and vesting that new severance in the trustees of the Rāpihana Hawaikirangi and Makuini Waioira Wyllie Whānau Trust in the Trust as the new owners. The new severance to be called Whatatuna 11, Section 1. The balance block will remain with the appellation Whatatuna 11.

(c) The order for partition is subject to full survey, with the cost to be met by the applicant.

[27] The case manager is directed to distribute a copy of this judgment to all parties.

I whakapuaki i te 4.00 pm i Turanganui-a-kiwa, tekau mā ono o ngā rā o Poutū-te-rangi i te tau 2022.
Pronounced at 4.00 pm in Turanganui-a-kiwa on this 16th day of March 2022.

C L Fox
DEPUTY CHIEF JUDGE