IN THE MĀORI APPELLATE COURT OF NEW ZEALAND
AOTEA DISTRICT

A20160003247
APPEAL 2016/3

UNDER	Section 58, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	An appeal against a decision made on 28 October 2009 at 2009 Chief Judge's MB 319 in respect of OPAWA RANGITOTO 2G, 2D2 and 2D3B2 blocks
BETWEEN	ROBERT TE HIKOINGA HALLETT Appellant

Hearing:	2016 Māori Appellate Court MB 312-328 dated 10 August 2016 (Heard at Whanganui)
Coram:	Judge P J Savage (Presiding) Judge S R Clark Judge S F Reeves
Judgment:	21 September 2016

JUDGMENT OF THE MĀORI APPELLATE COURT

Introduction

[1] This appeal concerns a decision of the Chief Judge dated 28 October 2009 ("the 2009 decision") which amended the partition of Opawa Rangitoto 2D block made by the Court in 1938, and a resulting new survey plan.[1] The appellant claims the survey plan is incorrect as it should reflect the estimated original area of the block granted on partition in 1938. He also claims that he should have been included in the resolution of survey issues relating to completion of the new survey plan.

Background

[2] The background to this matter has a long history before the Court, commencing with the partition of Opawa Rangitoto 2 block in 1938. The appellant's great grandfather, Hori Te Mautaranui,[2] sought to partition out his shares in the block, together with other owners, for a site which would include his homestead. An order was made by the Court in 1938 and described the boundaries of the newly partitioned Opawa Rangitoto 2D ("the 1938 order").[3] The area was "estimated to contain 133 acres".[4] Our reading of the file is that in 1938 the Court relied upon a typographical plan, ML 15656, compiled in 1936.

[3] The survey for the partition was not completed until 1950 and it appears that the 1936 topographical plan was not before the surveyor at that time. When the 1950 survey plan, ML 16824, was completed, the area appeared to approximate to 133 acres; however the boundaries were not correct. Most notably, the south western boundary of the block was recorded as being the Wairere Stream instead of the Taimaro stream. As a consequence, the homestead of Mr Te Mautaranui was not included in the Opawa Rangitoto 2D block.

[4] Mr Te Mautaranui subsequently tried to correct the partition boundaries through further applications filed with the Court, including an application to gift the site containing his house to his son. Ultimately however, there was no resulting relief.

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1 *Hallett – Opawa Rangitoto 2C and 2G* [2009] Chief Judge's MB 319 (2009 CJ 319).
2 Also referred to in other Court documents as Hoori Te Mautaranui or Hori Te Mautaranui Hallett.
3 26 Tokaanu MB 267 (26 ATK 267).
4 At 267.

[5] In 1995, the appellant, Mr Hallett, filed an application to the Chief Judge to amend the 1938 order, pursuant to s 45 of Te Ture Whenua Māori Act 1993.[5] Further partitions of Opawa Rangitoto 2D had occurred since 1938 with the affected blocks now being Opawa Rangitoto 2D2, 2D3B2 and 2G.

[6] Upon receipt of the application and an initial report from a Deputy Registrar, Deputy Chief Judge Smith referred the matter to the resident Judge for directions and inquiry on 19 October 1998.[6] Court hearings were then held, along with meetings of owners, and a report from the case manager completed.

[7] In 2002, Deputy Chief Judge Isaac, as he then was, directed the matter be set down for inquiry and report by the resident Judge.[7] Following that, the application was the subject of several Court hearings before Judge Harvey, as well as meetings of the parties and reports. A land consultant, John Neal of Grayson Neal Limited, was also engaged by the Court to provide an opinion on the survey matters.

[8] At the conclusion of the inquiry, Judge Harvey issued a report to the Deputy Chief Judge on 30 April 2007.[8] In his report, Judge Harvey recommended, inter alia, that a remedial proposal provided by Mr Neal be adopted, where areas would be exchanged between the 2D2, 2D3B2 and 2G blocks, to conform to the true intention of the Court in 1938.

[9] Deputy Chief Judge Isaac issued a preliminary decision on 9 June 2008, concluding that an error had been made in the original partition and agreed with Judge Harvey's recommendation.[9] He considered however that certain matters required further input from the Court and directed the Registrar to conduct a meeting of the parties and owners.

[10] Subsequent to the holding of the meeting of affected parties and owners, and a further report of the Deputy Registrar, the Chief Judge issued his decision on 28 October 2009. In it he amended the 1938 order in accordance with Mr Neal's proposal and Judge

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5 Application A19990003155.
6 1998 Chief Judge's MB 273-277 (1998 CJ 273-277).
7 2002 Chief Judge's MB 386 (2002 CJ 386).
8 184 Aotea MB 184-197 (184 AOT 184-197).
9 *Hallett – Opawa Rangitoto 2C and 2G* [2008] Chief Judge's MB 143 (2008 CJ 143).

Harvey's recommendation.[10] He directed the Registrar to complete a further inquiry and report and to engage a surveyor to complete the required survey plan.

[11] As it transpired, resolution of the survey issues was complex, spanning the period between late 2009 and 2013. The final survey plan, ML 461320 ("the 2013 survey plan"), was eventually approved by the Chief Judge on 27 September 2013 and new titles issued on 11 September 2014.[11]

[12] Mr Hallett claims that the 2013 survey plan is incorrect as the area of Opawa Rangitoto 2D2 does not align with the area estimated on partition in 1938. Specifically he says 13 acres have been excluded. He also questions why he was not involved in the resolution of the survey issues prior to the survey plan being finalised. Accordingly, he now appeals against the 2009 decision.

Grounds of Appeal

[13] The appeal was filed on 20 May 2016 and Mr Hallett sought leave to appeal out of time. Directions were issued to the appellant on 8 June 2016 for him to provide full details of his allegations and to disclose any evidence in support.[12] Mr Hallett subsequently filed submissions in support of his application on 23 June 2016.

[14] Mr Hallett essentially relies on two grounds of appeal:

(a) That the 2013 survey plan of Opawa Rangitoto 2D2 is incorrect, 13 acres have been excluded; and

(b) That he should have been included in the process for resolution of the survey issues, prior to the final survey plan being completed.

[15] We consider the issue of leave to appeal out of time before proceeding to the substantive issues.

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10 *Hallett – Opawa Rangitoto 2C and 2G* [2009] Chief Judge's MB 319 (2009 CJ 319).

11 Part Opawa Rangitoto 2D2 – CFR 669465; Opawa Rangitoto 2D3B2 – CFR 669466; Part Opawa Rangitoto 2G – CFR 669467.

12 2016 Māori Appellate Court MB 284-285 (2016 APPEAL 284-285).

Leave to appeal out of time

[16] Mr Hallett's appeal in relation to this matter was filed well beyond the two month period specified in s 58 of the Act and r 8.8 of the Māori Land Court Rules 2011. The decision which the appeal relates to was issued on 28 October 2009 and this appeal was filed on 20 May 2016. The issue of the delay was raised with Mr Hallett prior to the appeal and at the hearing.[13]

Appellant's submissions

[17] Mr Hallett submitted that, although the decision was issued in 2009, it was subject to further survey, and the application largely sat idle for a period of four years, during which time he had no idea of the outcome of the survey. He first discovered the alleged error with the survey in 2013, when he visited the Court in Whanganui to check on the progress of the application and viewed a new survey plan.[14] He raised the issue with the case manager at that time.

[18] The Court records show that, following Mr Hallett's visit, two reports were completed by the Deputy Registrar dated 20 December 2013 and 13 March 2014. The reports highlighted Mr Hallett's issue for the Chief Judge and made a recommendation that a meeting be held between the land consultant Mr Neal and Court staff to discuss the survey issue. The Chief Judge issued directions for the meeting to be held with Mr Neal and Court staff and to include the surveyors.[15] The meeting was held on 9 April 2014 and a further report to the Chief Judge was completed by the Deputy Registrar on 13 May 2014, which concluded that the 2013 survey plan was correct. That report was distributed to Mr Hallett on 4 June 2014 and he was given 14 days to file a response.

[19] Mr Hallett filed his response on 19 June 2014, within the 14 day period. In addition, he filed a complaint with the Chief Registrar on 20 June 2014, and, following the advice of Court staff, lodged a further s 45 application on 7 July 2014.[16]

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13 2016 Māori Appellate Court MB 284-285 (2016 APPEAL 284-285); 2016 Māori Appellate Court MB 313-318 (2016 APPEAL 313-318).

14 The exact date of Mr Hallett's visit is not clear from the Court file.

15 318 Aotea MB 20-21 (318 AOT 20-21).

16 Application A20140008044.

[20] On 11 September 2014 Mr Hallett received copies of the new titles for Opawa Rangitoto 2D2, 2D3B2 and 2G blocks and was advised that his original application was completed.

[21] Mr Hallett then filed an initial notice of appeal dated 24 November 2015, which was subsequently returned to him.[17] It was noted that his further s 45 application was ongoing and he was told that the appeal would not be heard until that application had been dealt with. On 3 March 2016 his further s 45 application was dismissed.[18] The dismissal decision confirmed that the only avenue available to review a decision of the Chief Judge was an appeal to the Māori Appellate Court. Accordingly, Mr Hallett then filed these appeal proceedings against the 2009 decision, on 20 May 2016.

Legal principles

[22] The legal principles regarding the grant of leave to appeal out of time were recently considered by this Court in *Matchitt v Matchitt – Te Kaha 65 Block*.[19] There the Court referred to the Court of Appeal decisions *Robertson v Gilbert* and *Koroniadis v Bank of New Zealand*, which provide that the relevant considerations in determining whether to grant an extension of time include the following:[20]

(a) The length of the delay and the reasons for it;

(b) The parties' conduct;

(c) The extent of the prejudice caused by the delay;

(d) The prospective merits of the appeal; and

(e) Whether the appeal raises any issue of public importance.

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17 Application A20150006634.
18 *Hallett – Opawa Rangitoto 2D and 2G* [2016] Chief Judge's MB 88 (2016 CJ 88).
19 *Matchitt v Matchitt – Te Kaha 65 Block* [2015] Māori Appellate Court MB 433 (2015 APPEAL 433).
20 *Robertson v Gilbert* [2010] NZCA 429 at [24]; *Koroniadis v Bank of New Zealand* [2014] NZCA 197 at [19].

[23] The overarching consideration however, in determining whether to grant an extension of time, is where the interests of justice lie.[21]

[24] As the Court in *Matchitt v Matchitt* noted, these principles have been applied in recent decisions of this Court involving applications for leave to appeal out of time.[22]

Discussion

[25] We note from the Court file that Mr Hallett received a copy of the plan proposed as a remedy by Mr Neal in 2008, which showed the exchanges of areas proposed to occur. That plan was also included in the preliminary decision of the Chief Judge issued on 9 June 2008.[23] Arguably, at that point he was on notice of the plan and could have raised any concern at that stage. We questioned Mr Hallett on this point at the hearing.[24] In response he advised that it was not made clear that the areas would differ from the partition under the 1938 order, especially given that the proposed plan set the areas out in hectares as opposed to acres, when acres had always been used previously. He says it was not until 2013 that he actually became aware of the discrepancy and he then took action.

[26] We accept Mr Hallett's explanation. We also accept that it is not immediately apparent from the proposed plan prepared by Mr Neal that the area totals would deviate from the 1938 order and the original 1936 topographical map. This also does not appear to be made plain in either Judge Harvey's report or the subsequent decisions of the Chief Judge, as their focus appears to be on the exchanges of areas rather than the resulting total area. In fact, the Deputy Registrar's report of 20 December 2013 notes that the issue raised by Mr Hallett as to the difference in total areas escaped the attention of everyone, despite the proposed plan being before several owners' meetings.

[27] We are satisfied that at the point where Mr Hallett became aware of the possible error he took steps to address the issue, raising it on the spot with Court staff and responding to the report of the Deputy Registrar within the timeframe specified. He also

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21 *Robertson v Gilbert* [2010] NZCA 429 at [24]; *Koroniadis v Bank of New Zealand* [2014] NZCA 197 at [19]. See also *My Noodle Ltd v Queenstown-Lakes District Council* [2009] NZCA 224 at [19].

22 See *Davis v Mihaere – Torere Reserves Trust* [2012] Māori Appellate Court MB 641 (2012 APPEAL 641) and *Nicholls v Nicholls – W T Nicholls Trust* [2013] Māori Appellate Court MB 636 (2013 APPEAL 641).

23 *Hallett – Opawa Rangitoto 2C and 2G* [2008] Chief Judge's MB 143 (2008 CJ 143).

24 2016 Māori Appellate Court MB 314 (2016 APPEAL 314).

filed a further s 45 application, an option which was identified in the Deputy Registrar's report of 13 May 2014, and he objected to the resulting report to the Chief Judge. In addition, when he received the new titles with the 2013 survey plan attached, he filed an initial appeal shortly thereafter followed by the current appeal proceedings.

[28] Although there was a considerable gap between the issuing of the 2009 decision and late November 2015 when Mr Hallett filed his first appeal, we are satisfied that leave to appeal out of time should be granted. The 2009 decision of the Chief Judge was conditional upon the completion of a survey plan. Resolution of the survey issues was complex, through no fault of Mr Hallett's, and new titles did not issue until 11 September 2014. When Mr Hallett became aware of the perceived discrepancy he immediately took action. His actions included raising the issues with Court staff, filing a s 45 application, filing appeals, writing correspondence to the Court and filing a complaint with the Chief Registrar. Mr Hallett has been proactive in raising his concerns with the Court and there is certainly no disentitling conduct on his part. No significant prejudice will be caused by granting the delay. In the circumstances of this case we accept that it is in the interests of justice to grant leave to appeal out of time.

Substantive issues

[29] Having granted Mr Hallett leave to appeal out of time, we now consider the substantive issues he raises on appeal.

Appellant's submissions

[30] Mr Hallett submitted that the 2013 survey plan for Opawa Rangitoto 2D2 block is incorrect as it omits an area of 13 acres. Those 13 acres, he argued, are included in the two adjoining blocks; 11 acres with Opawa Rangitoto 2G and two acres with Opawa Rangitoto 2D3B2.

[31] Mr Hallett referred to the 1938 order, which provided for the Opawa Rangitoto 2D block to contain approximately 133 acres. However, when the land was subsequently surveyed in 1950, the area was correct but the boundaries of the land as described on partition were incorrect. Mr Hallett submitted that the intent of the 2009 decision of the Chief Judge was to amend the 1950 survey to correctly align with the partition granted in

1938. He accepts that the 2013 survey plan and title orders correctly mark the boundaries of the block; however the area is less than the total 133 acres referred to in the 1938 partition order.

[32] Mr Hallett also submitted that a further point of contention with the survey was the differing definitions of the "edge of the cliff", being one of the boundaries described in the 1938 order. Mr Hallett submitted that the original surveyor in 1950 defined the edge of the cliff from the point where if you step off you fall, in other words, the top of the cliff. The current surveyors however, appear to define the edge of the cliff as the base of the cliff.

[33] In terms of the process regarding the application, Mr Hallett submitted that he should have been consulted and had input into the resolution of the survey issues prior to completion of the 2013 survey plan. He says he did not receive formal notice of the survey being undertaken and did not receive a final copy of the survey until the new titles were issued in September 2014. Mr Hallett also noted that, despite the assertions of the surveyor, he did not walk the land with him and agree on the boundaries. His only contact with the surveyor was when he observed him on the land during the survey and gave him a starting point.

[34] Mr Hallett emphasised the fact he was denied the opportunity to attend a meeting with the surveyors, land consultant and Māori Land Court staff, to address the alleged errors with the 2013 survey plan, despite him being the one to raise those issues. The new titles and consequential orders were simply issued based on that 2013 survey plan without further input from him. Mr Hallett says that when he visited the Court in 2013 he questioned why he was excluded from the meeting with the surveyors, and was advised that it was "at the direction of the Chief Judge". He submitted however that nothing has been produced to him to confirm that he was not allowed to attend. He argued that he should have been consulted and kept informed regarding matters pertaining to the new survey, and asserted that his involvement may have resolved the issues now before the Court.

The Law

[35] Section 49 of Te Ture Whenua Māori Act 1993 provides that every order made by the Chief Judge can be appealed to the Māori Appellate Court:

> **49 Appeals**
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> (1) Every order made by the Chief Judge or the Deputy Chief Judge under section 44 shall be subject to appeal to the Maori Appellate Court.
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> (2) On the determination of any such appeal by the Maori Appellate Court, no further application in respect of the same matter shall be made under section 45.

[36] Previous decisions of this Court demonstrate that an appeal against a decision of the Chief Judge is dealt with in the same manner as a standard appeal in terms of ss 54 – 58 of the Act.[25]

[37] The jurisdiction afforded to the Chief Judge under s 44 of the Act is discretionary and used only in exceptional circumstances, given the need for certainty and finality of decisions. In *Kacem v Bashir* the Supreme Court noted the important distinction between a general appeal and an appeal in relation to the exercise of a discretion.[26] Where the decision involves the exercise of a discretion, it can only be overturned on appeal where there is an error of law or principle, where the Court has taken into account irrelevant considerations or failed to take into account relevant considerations, or where the decision is plainly wrong.

Discussion

[38] Mr Hallett agrees that the 1950 survey plan, carried out to complete the 1938 order, was incorrect. That part of the 2009 decision of the Chief Judge is not challenged. Rather, the appeal as put to us by Mr Hallett rests on the two issues set out earlier; whether the 2013 survey plan is correct and whether Mr Hallett should have been included in the resolution of the survey issues.

The 2013 survey plan

[39] We do not propose to comment upon whether the 2013 survey plan is correct or not. It may well be, but for the reasons we discuss below the process that was followed which

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[25] See *Tioro v McCallum – Estate of Ngapiki Waaka Hakaraia* [2015] Māori Appellate Court MB 483 (2015 APPEAL 483); *Trustees of Tauwhao Te Ngare Trust v Shaw – Tauwhao Te Ngare Block* [2014] Māori Appellate Court MB 394 (2014 APPEAL 394); *Tau v Nga Whānau o Morven and Glenavy* [2010] Māori Appellate Court MB 167 (2010 APPEL 167); *Mann – Pakohu 2B2AJ Block* (2000) 4 Taitokerau Appellate MB 234 (4 APWH 234).

[26] *Kacem v Bashir* [2010] NZSC 112, [2011] 2 NZLR 1. See also *Nicholls v Nicholls – Part Papaaroha 6B Block* [2011] Māori Appellate Court MB 64 (2011 APPEAL 64); *Muru v Te Aho- Maungatautari 4G Section IV Block* [2013] Māori Appellate Court MB 5 (2013 APPEAL 5).

resulted in new titles being issued in 2014 was flawed. The issue of the correctness of the 2013 survey plan must ultimately be determined by the Chief Judge after Mr Hallett has been given an opportunity to be heard on the matter.

Natural justice

[40] Mr Hallett's s 45 application was brought to correct errors in the original partition of the Opawa Rangitoto 2D block. Those errors were found in the 1950 survey and a new survey was ordered by the 2009 decision of the Chief Judge. It is clear therefore that any new survey being undertaken would be critical in addressing the issues raised by Mr Hallett's application and that he would naturally be effected by the resulting survey plan.

[41] As already noted however, Mr Hallett had minimal input in the resolution of the survey issues following the 2009 decision and was not given an opportunity to meet with Court staff and surveyors regarding the new survey plan, despite him pointing to possible errors in the survey. Ultimately, the Court concluded that the 2013 survey plan was correct and issued new titles without any further input from Mr Hallett, or the opportunity for him to present evidence and dispute the findings of the surveyors. We consider that this raises the issue of natural justice.

[42] The principles of natural justice were recently considered by this Court in *White v Potroz – Mohakatino Paraninihi No 1C West 3A2*.[27] In that decision the Court traversed relevant authorities in the context of applications to the Māori Land Court, the Māori Appellate Court and to the Chief Judge. It noted that a fundamental tenet of natural justice is that an affected party should be given adequate notice of proceedings and a reasonable opportunity to present their own case through evidence and submissions, and to challenge the case put against them. Further, while the requirements of natural justice must depend on the circumstances of the case, the courts are concerned with not only the "actuality" but also the "perception"; that decisions must be reached "justly and fairly" and be seen to be so.[28] In other words, the interests of justice are not only concerned with arriving at the correct outcome but also arriving at the correct outcome by the correct process.[29]

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27 *White v Potroz – Mohakatino Parininihi No 1C West 3A2* [2016] Māori Appellate Court MB 143 (2016 APPEAL 143).

28 At [52], referring to *Tioro v McCallum – Estate of Ngapiki Waaka Hakaraia* [2015] Māori Appellate Court MB 483 (2015 APPEAL 483).

29 At [68].

[43] In the context of applications to the Chief Judge, the Māori Appellate Court said:[30]

> [26] In relation to applications to the Chief Judge under s 45, the High Court has held that natural justice requires parties be given the right to be heard. In *Bennett v Māori Land Court*, Rodney Hansen J stated that the absence of a right to appeal a dismissal of such an application supports the implication of a right to be heard, and fairness required the applicant in that case be given the opportunity to be heard. The High Court held that the decision was made in breach of natural justice. It was quashed and remitted to the Chief Judge.
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> [27] Accordingly, the principles of natural justice apply to the Chief Judge as much as they do to the Courts of this jurisdiction. All affected parties before the Chief Judge are entitled to the right to be heard and procedural fairness, a touchstone of which is proper notice in accordance with the rules of Court. That has not happened in this case, the consequence of which is that there has been a breach of natural justice. Chief Judge Isaac was unaware that a breach of natural justice had occurred.

[44] In considering whether there was any breach of natural justice in relation to the resolution of the survey issues, it is necessary to set out a timeline of relevant events subsequent to the issue of the 2009 decision of the Chief Judge.

(a) 28 October 2009 – The Chief Judge's decision is issued amending the 1938 order. The order is made subject to the Registrar engaging a licensed surveyor to complete the required survey plan.

(b) 18 October 2010 – Surveyors engaged to complete required survey plan.[31]

(c) 6 September 2013 – The 2013 survey plan ML 461320 and consequential orders referred to the Chief Judge for approval. The plan was approved as to survey by the Chief Surveyor on 3 September 2013 and subsequently approved by the Chief Judge on 27 September 2013.

(d) Sometime in 2013 (exact date not recorded) – Mr Hallett visited the Whanganui office and spoke to the case manager and Deputy Registrar. He discovered the alleged errors in the new survey plan and raised this with the Court staff.

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30 *White v Potroz – Mohakatino Parininihi No 1C West 3A2* [2016] Māori Appellate Court MB 143 (2016 APPEAL 143) at [52] referring to *Tioro v McCallum – Estate of Ngapiki Waaka Hakaraia* [2015] Māori Appellate Court MB 483 (2015 APPEAL 483).

31 257 Aotea MB 232-233 (257 AOT 232-233).

(e) 20 December 2013 – Report of Deputy Registrar completed and referred to Chief Judge outlining the possible survey error raised by Mr Hallett.

(f) 3 February 2014 – The Chief Judge issued directions for the report to be sent to Mr Hallett and John Neal and for them to respond by 28 February 2014. Report then sent to parties on 4 February 2014.

(g) 10 February 2014 – Response from Mr Neal highlighting errors in the 1936 topographical map and suggesting that a meeting with appropriate Court staff would be beneficial to progress the matter.

(h) 12 February 2014 – Response from Mr Hallett and Ms Hoko. They confirmed that the Deputy Registrar's report of 20 December 2013 addressed their concerns.

(i) 13 March 2014 – Further report of Deputy Registrar completed and referred to the Chief Judge summarising the responses of the parties and recommending a meeting with Mr Neal and Court staff, following which a further report be completed. The report noted that a "meeting with the Halletts may at some time be required, but not until the issues are better explored and possible errors/solutions are more accurately identified".

(j) 21 March 2014 – Directions issued by the Chief Judge to proceed with a meeting with Mr Neal and to include the surveyors. Mr Hallett was not included in those directions.

(k) 9 April 2014 – Meeting held with Court staff, the surveyors and Mr Neal to discuss the alleged survey error. Report of meeting completed by the Deputy Registrar. The report concluded that the 2013 survey plan was correct.

(l) 15 April 2014 – The Court received a letter from the surveyors who concluded that the 2013 survey plan was an accurate representation of the 1938 Court order. On or about 16 April 2014 the Court received a letter from Mr Neal who reached the same conclusion.

(m) 9 May 2014 – Letters sent to Mr Hallett and Ms Hoko advising that, in accordance with the directions of the Chief Judge, a meeting had been held with the surveyors and Mr Neal to discuss the potential error in the 2013 survey plan. The letter advised that it was intended for a report to the Chief Judge to be completed detailing the events of the meeting, following which it would be sent to the parties for consideration and comment.

(n) 13 May 2014 – Further Deputy Registrar's report to the Chief Judge completed, concluding that the 2013 survey plan was correct. The report recommended that copies of the relevant reports and order be sent to the parties, that they may file a response within 14 days, and thereafter that the orders made by the Chief Judge in the 2009 decision be registered for new titles to issue.

(o) 4 June 2014 – Directions issued by the Chief Judge accepting the recommendations in the Deputy Registrar's report and directing that those recommendations be actioned. The relevant reports and order were sent to the parties, including Mr Hallett, advising that he may file a response within 14 days.[32]

(p) 16 June 2014 – Initial objection letter of Mr Hallett filed with the Court. Mr Hallett and Ms Hoko then visited the Court on 19 June 2014 and filed an amended letter objecting to the Deputy Registrar's report.[33] There is nothing on the Court file to indicate that the objection letter or visit by Mr Hallett was referred to the Chief Judge.

(q) 30 June 2014 – Mr Hallett and Ms Hoko meet with the surveyors to discuss their concerns about the 2013 survey plan.

(r) 1 July 2014 – Surveyors write to the Court confirming that a meeting took place with Mr Hallett and Ms Hoko on 30 June 2014. There is no

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[32] We understand that the relevant reports distributed included copies of the report of the meeting dated 9 April 2014 together with the further Deputy Registrar's report dated 13 May 2014.

[33] A subsequent e-mail from the Case Manager dated 20 June 2014 to the surveyor confirms the visit. She also records that Mr Hallett had been handed a copy of Mr Neal's and the surveyor's reports of April 2014, we assume, when Mr Hallett personally visited the Court.

information on the Court file to indicate that the letter was referred to the Chief Judge.

(s) 11 September 2014 – New titles with the 2013 survey plan attached distributed to parties including Robert Hallett.

[45] From this timeline of events, two matters are significant. The first point is that Mr Hallett raised the issue of what he believed to be a 13 acre discrepancy in the Opawa Rangitoto 2D2 area with Court staff in 2013. From the Court file, it is obvious that it was important to Mr Hallett to ensure previous errors relating to the partition were properly remedied and that, in a sense, history did not repeat itself by way of more survey errors.

[46] A Deputy Registrar had appeared to accept that Mr Hallett's position was correct, as outlined in a report dated 20 December 2013, and that report had been placed before the Chief Judge. Unbeknownst to Mr Hallett however, Mr Neal had in response to that report, contacted the Court and suggested a meeting with Court staff.

[47] Mr Hallett was not included in the subsequent meeting between the surveyor, Mr Neal and Court staff which took place on 9 April 2014. Nor was he aware of the views expressed by the surveyor and Mr Neal on 15 and 16 April 2014 when they wrote to the Court opining that the 2013 survey plan was accurate. Viewed from Mr Hallett's perspective it must have come as a complete surprise for him to have received a communication in mid-June 2014 indicating that both the Deputy Registrar and the Court had a change of heart.

[48] In this case it was incumbent upon the Court to get the process correct. Mr Hallett should have been given an opportunity to attend the meeting which took place on 9 April 2014, as it was at that meeting that the Deputy Registrar was persuaded to accept Mr Neal and the surveyor's position in preference to that of Mr Hallett. Mr Hallett was not given an opportunity to attend and challenge the views of the surveyors or Mr Neal or offer a contrary view. It was crucial that Mr Hallett be given an opportunity to attend the 9 April 2014 meeting, after all he was the person who drew the alleged error to the attention of the Court.

[49] It is clear to us that in the Deputy Registrar's final report of 13 May 2014, in which she opined that the 2013 survey plan was correct, she was persuaded to that view after meeting with the surveyor and Mr Neal and receiving further correspondence from them in mid-April. It was that final Deputy Registrar's report which made recommendations which were subsequently adopted by the Chief Judge.

[50] The second point is that the error in process was compounded by what followed. The final report of the Deputy Registrar was distributed to the parties on 4 June 2014, concluding that the 2013 survey plan was correct. Mr Hallett was given 14 days to file a response. He and his sister filed an initial response on 16 June 2014. They later visited the Court on 19 June 2014 and filed an amended response, objecting to the Deputy Registrar's report and survey plan. That objection was clearly filed within the 14 day timeframe directed. Nevertheless, we were unable to locate any evidence on the Court file to suggest that the objection of Mr Hallett was ever referred to the Chief Judge or considered by him prior to the new titles issuing. Thus it appears to us that Mr Hallett's objections were not taken into account and the reports of the surveyors and land consultant were simply adopted.

[51] We therefore find that there has been a breach of the principles of natural justice. We consider that Mr Hallett, as the applicant, should have been included in the resolution of the survey issues, which was after all the crux of his application. Specifically, he should have been given an opportunity to participate in the 9 April 2014 meeting.

[52] Mr Hallett properly made his objections within the Court's specified timeframe, and accordingly those objections should have been referred to the Chief Judge for consideration prior to the issue of the final orders and titles. Mr Hallett should then have been afforded an opportunity to be heard, to challenge the findings of the surveyors and land consultant in Court and, if he elected so, to present his own evidence in opposition. Mr Hallett was denied that right.

Decision

[53] The appeal is allowed. Pursuant to s 56(1)(b) and (e) of the Act, the orders made by the Chief Judge on 28 October 2009 at 2009 Chief Judge's MB 319-330 are revoked,

and the matter is referred back to the Chief Judge for a rehearing in relation to the 2013 survey only.

[54] The only issue for determination is therefore whether the acreage contained in the 2013 survey plan is correct or not.

This judgment will be pronounced at the next sitting of the Māori Appellate Court.

P J Savage **JUDGE** (Presiding)	S R Clark **JUDGE**	S F Reeves **JUDGE**