IN THE MAORI LAND COURT
OF NEW ZEALAND
WAIARIKI DISTRICT

A20060005422 & A20070001421

UNDER	Sections 289 and 19 of Te Ture Whenua Maori Act 1993
IN THE MATTER OF	Te Kaha 65 Block – Partition and Injunction
BETWEEN	EDWARD MATCHITT Applicant
AND	PARATENE MATCHITT Applicant

Hearing: 13 June 2007
(Heard at Opotiki)

Judgment: 28 March 2008

RESERVED JUDGMENT OF JUDGE CAREN L FOX

Introduction

[1] Te Kaha 65 is a block of Māori freehold land comprising 3.2520 hectares. It is situated approximately 65 kilometres east of Opotiki. It is owned by siblings of the same whanau and their names, as listed in the ownership schedule, are:

1. Bert Matchitt
2. Edward Matchitt
3. Elaine Matchitt Korewha
4. Mana Matchitt
5. Paratene Matchitt
6. Roger Matchitt
7. Sora Florence Matchitt

[2] There is one old homestead on the block occupied by Mrs Elaine Matchitt Korewha, her husband and the mother of the owners. The block also has an ancient paa site on the block. Mr Edward Matchitt has built a shed on the block without the consent of the other owners. Mr Paratene Matchitt's daughter (not an owner) is also

occupying the block in 'temporary' accommodation described as 'two containers not permanently fixed to the ground." (97 OPO 66). Power is being fed to these structures.

The Applications

[3] There are two applications before the Māori Land Court. The first application (A20060005422) is for a partition order under section 289 of Te Ture Whenua Māori Act 1993 filed by Edward Matchitt. His grounds for bringing the application were to enable him to build a house and have his own marked area of the block. He also argued that there can be provision made for all 7 members of his family to occupy approximately ½ acre each from the sea almost to State Highway 35. Mr Edward Matchitt owns 1 share out of seven shares in the block. If an order is granted the partition would be a hapu partition and subject to section 304/93. Mr Edward Machitt's application was supported by a valuation report. The second application (A20070001421) was filed by Paratene Matchitt seeking an injunction against Mr Edward Matchitt for injury to Māori freehold land through the removal of top-soil and the building of a shed without the consent of all the owners.

Court Directions

[4] On 15 March 2006 the Court issued directions with respect to the application for Mr Edward Matchitt to notify all owners/occupiers of the time, date and venue of the Court hearing. He was to also obtain the views of the Gisborne District Council and Transit New Zealand in relation to the proposed partition. A sketch plan was required and written consents from all the owners, as no consents from the other owners (his brothers and sisters) were filed in support. Finally he was directed to provide a letter on why a partition was necessary rather than desirable. These directions were not complied with immediately and on 14 November 2006, the Court issued further directions that Mr Matchitt should appear at a Court hearing or the application would be dismissed.

[5] The application for an injunction was filed on 17 January 2007. On 18 January 2007, His Honour Judge Savage declined to grant an interim injunction as there was no apparent urgency associated with the application. He directed that the

application for an injunction be served on Mr Edward Matchitt and that the matter be adjourned to Opotiki Court. Judge Savage opined that the prima facie position at law is that Edward Matchitt was a co-owner and as such he was entitled to build on and occupy the land.

Māori Land Court Hearings

[6] Both applications came before his Honour Judge Carter at Opotiki in March 2007 (95 OPO 280-292). It became obvious to him that the owners had not had sufficient time to discuss and consider the application for partition, nor was there sufficient support for it. Of the seven owners, five appeared to oppose it. Both applications were adjourned for three months to enable the family to meet to discuss the issues further. (95 OPO 292)

[7] The matter was back before the Court in June 2007 (97 OPO 60-69). At that hearing the Court noted the letter dated 7 February 2007 from Mr Edward Matchitt, setting out why the partition was, in his view, necessary rather than desirable. It was his view that he needed the partition:

- To obtain building consent to build his house; and
- To ensure that all issues were tidied up to ensure his next of kin did not suffer any 'negativeness' when they succeed.

[8] The valuation filed by Mr Edward Matchitt indicates the land is all flat in pasture apart from a building, excavated building site and Pohutakawa trees. The current rating valuation was given as follows:

Rating Valuation	
Date 1/09/2004	
Land Value	$41,000
Value of Improvements	$505,000
Capital Value	$546,000

[9] The valuation report indicates that there is room for seven building sites all with a similar value. The total area proposed totalled approximately 18,095 square metres which would give each site an area of approximately 2,585 square metres. All sites could, depending on Transit New Zealand's requirements, all access State Highway 35 from a jointly allocated driveway. An aerial photograph and a concept plan were filed setting out nine lots. The first seven were to be allocated among the owners, Lots 8 and 9 represent the balance of the land. Mr Edward Matchitt wants Lot 2 as his partitioned area. Approaches to Transit New Zealand indicate that a detailed subdivision plan is necessary before they could give their final comment on access on and off the site. The correspondence from Transit New Zealand and Opus International, their agents, indicates that some major work will be needed to satisfy safety measures before they would agree to access onto State Highway 35 from any of the Lots.

[10] Mr Edward Matchitt appears to be worried that with the growing number of nieces and nephews wishing to establish themselves on the block that any respect for each of the owners and their interests will become subsumed for the good of those who are not owners. (See for example 97 OPO 65) I accept his evidence that there is growing interest from the extended whanau in building on this block.

[11] The file was referred to the court for reserve judgment in August 2007.

Objections

[12] The Court has received written objections from five of the seven owners, namely:

1. Elaine Matchitt Korewha
2. Mana Matchitt
3. Paratene Matchitt
4. Roger Matchitt
5. Sora Florence Matchitt

[13] Their spokesman was Mr Paratene Matchitt and the basis for their opposition is that they wish to leave the land without any permanent buildings on it until they

develop their papakainga concept for the entire whanau. He also indicated that the whanau should set up a body to control and look after the land. (97 OPO 62)

Relevant Law

[14] Application for Partition: The relevant provisions of Te Ture Whenua Māori Act 1993 begin with section 289(1). That section provides that where the Court is satisfied that it should partition any Maori freehold land in accordance with Part 14 of the Act, it shall make a partition order.

[15] However, before the Māori Land Court can make a partition order the Court must be satisfied that it can indeed order partition of the land. To meet that test the Court must have regard to the purpose of Part 14 as expressed in section 286 and it must also consider sections 287 and 288.

[16] Section 286(1) makes it clear that the principal purpose of Part 14 is to facilitate the use and occupation by the owners of land owned by Maori by rationalising particular land holdings and providing access or additional or improved access to the land.

[17] Under section 286(2) where the Court is satisfied that to grant a partition order would achieve the principal purpose of Part 14, the Court may make such an order.

[18] Under section 287, the jurisdiction conferred on the Court is discretionary. Without limiting that discretion, the Court may refuse to exercise that discretion in any case if it is not satisfied that a partition order would achieve the principal purpose of Part 14.

[19] The Court must also turn its mind to the requirements laid out in section 288. The relevant sub-sections of that section require that the Court consider:

> *(1) [In addition to the requirements of] subsections (2) to (4) of this section, in deciding whether or not to exercise its jurisdiction to make any partition order, amalgamation order, or aggregation order, the Court shall have regard to—*
>
> *(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*

17

(c) The best overall use and development of the land.

(2) The Court shall not make any partition order, amalgamation order, or aggregation order affecting any land, other than land vested in a Maori incorporation, unless it is satisfied—

(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.

...

[(4) The Court must not make a partition order unless it is satisfied that the partition order—

(a) Is necessary to facilitate the effective operation, development, and utilisation of the land.]

[20] All the requirements above need to be addressed as discussed in a wide number of Māori Appellate Court decisions following the High Court decision *in Brown v Maori Appellate Court* [2001] 1 NZLR 87.

[21] In this case, I have considered the opinion of the owners as a whole, the effect of the proposal on the interests of the owners of the land and the best overall development of the land. In my view, though the land is a small block, it is prime real-estate and its best use and development for the whanau appears to be for residential or papakainga development. Already it is being used by one member of the extended whanau for this purpose, and the evidence indicates that more wish to build there. One sister and her husband are already resident on the block in the old homestead and more wish to settle on the land, including Mr Edward Matchitt. Given the nature and importance of the land to the whanau (all owners were born there), there must be an equitable method adopted for the use and development of the block. Mr Matchitt's subdivision concept proposal of 9 Lots seems to be the most equitable option for allocation.

[22] But I am not satisfied that allocation needs to be achieved by partition order at this time. It can be achieved by the establishment of an ahu whenua trust with the subdivision concept plan incorporated into the Trust Order. The Lots could be allocated on the basis agreed to by the owners and the trustees, with Mr Matchitt receiving Lot 2 unless there is some very good reason for him not being able to occupy it. This would seem an equitable compromise to explore for the owners.

[23] The other reason why I can not grant the application is because there is no sufficient support for the proposal to partition at this time. It is also not necessary to facilitate the effective operation, development, and utilisation of the land. I have considered the Preamble, sections 2 and 17. Both principles of retention and utilisation by the owners and their whanau can be achieved in this case with a little compromise on all sides. I remind all the parties that under section 17 the Court may protect minority shareholders against an oppressive majority or it may move to protect majority shareholders from an unreasonable minority. The Court must also ensure fairness in dealings with the owners of any land in multiple ownership and should promote practical solutions to problems arising in the use or management of any land.

Application for Injunction

[24] As I have decided to deal with the application for partition in the way described below, the application for an injunction is also adjourned for six months.

Decision

[25] The application for a partition is adjourned for six months. The Registrar is to organise and facilitate a meeting of owners to discuss whether the owners should constitute an ahu whenua trust, to name trustees and to discuss a trust order with power to subdivide into the 9 Lots described in Mr Edward Matchitt's concept proposal. If no application is made to constitute an ahu whenua trust within 6 months, the Registrar is to set this matter down for hearing again. If application is made, then these applications should be set down at the same time for hearing.

Pronounced at Gisborne this 28th day of March 2008

C L Fox
Judge