

WAITANGI TRIBUNAL

WAI 45

CONCERNING The Treaty of Waitangi Act 1975

A N D an application for remedies on behalf of
Te Rūnanga-ā-Iwi O Ngāti Kahu

**FINAL BRIEF OR EVIDENCE OF PROFESSOR MARGARET MUTU
DATED THIS 31ST DAY OF AUGUST 2012**



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MAY IT PLEASE THE TRIBUNAL

1. My name is Professor Margaret Mutu and this is the final brief of evidence that I should have to file in this remedies inquiry
2. I am filing this brief of evidence to reply to the evidence that has been filed by Nuki Aldridge, Pai Tahere and others in relation to Kohumaru Station and the Ōtangaroa forest block that is within the remedies hearing area.
3. Secondly to respond to the evidence filed by Dr John Yeabsley filed yesterday by the Crown. As outlined in my affidavit of 22 February I hold a Bachelor of Science in Mathematics (Pure and Applied) and taught mathematics in secondary schools and then at Auckland Institute of Technology (AIT) for 14 years.

Ngāti Kahu ki Whangaroa/Whangaroa/Nga Puhi hapu

4. I have reviewed the briefs of evidence filed by Nuki Aldridge (and Pat Tauroa), Pai Tahere and others and the brief of evidence in reply by Reremoana Renata and confirm that everything Reremoana Renata has said in relation to Ngāti Kahu interests in relation to the Kohumaru station and the Ōtangaroa forest block is true.
5. Further that the whānau and hapū of Ngāti Kahu would welcome the registration of their whanaunga to their hapū of Ngāti Kahu and the Rūnanga has always been completely supportive of that position as well as the position that the benefits of any assets that it may receive by way of remedy should be made available for all the hapū of Ngāti Kahu. That is what has occurred with the Fisheries funds that the Runanga receives and there is no reason why that should not apply to any other assets that it will or may hold. The Rūnanga is made up of the hapū and therefore that has been the decision of the hapū.

6. Further as a result of the evidence filed by the above, members of the Rūnanga met with the whānau and hapū of Whangaroa yesterday, in Kaitāia to discuss their concerns with the Ngāti Kahu remedies application and the returnable lands within it. Non Ngāti Kahu attendees included the following:

Nuki Aldridge

Pat Tauroa

Pai Tahere

Kana Pourewa

Mereana Robinson

Jean Jones

Ra Toa

Bryce Smith

Michael Peterson

Hinemoa Pourewa

Robert Waaka

Heather Chapman

7. At the hui, Pai Tahere advised that he was there to tautoko Ngāti Kahu but wanted to ensure that his connections to Ngāti Kahu were not forgotten. We reassured Mr Tahere that his connections were not forgotten by Ngāti Kahu.
8. Nuki Aldridge advised that he wanted Ngāti Kahu to leave Ōtāngaroa forest alone for now and to go for the whole lot together later. We advised him that we would prefer to keep everything together but that in this process the Tribunal had determined a hearing area and if we did not seek it now we may lose it for good and have to try and buy it back later.
9. Further, Reremoana Renata advised them that Kuia and kaumatua had fought for the return of Kohumaru farm for years

and many had died waiting. Matarahurahu wanted Kohumaru back now, both the farm and the forest and reiterated that the farm and the forest were to be shared with all hapu of Ngāti Kahu.

10. Pat Tauroa outlined a history of her involvement with matters relating to Kohumaru Station and Ōtangaroa forest and claims that had been filed in respect of these lands as well as outlining the boundary line for Whangaroa of Ōruaiti river. Anne Batistich of Matarahurahu responded with Kēnana's involvement with the very same lands and Reremoana Renata set out that she is from the Ngāti Kahu hapū Ngāti Ruaiti and that they come from the Ruaiti who was the daughter of Haititaimarangai. She then went through the whakapapa from Kahutianui to Haititaimarangai to Ruaiti and explained that that is where the river Ōruaiti got its name from - from the tupuna whaea Ruaiti after whom her hapū is named. In that regard Ngāti Ruaiti share Whakaangi with Ngati Aukiwa.
11. In any event the point is that Ngāti Kahu have sought to engage with their whanaunga over these lands (and this is not the first time) and are happy for our Whangaroa whanaunga to also recognize their whakapapa to Ngāti Kahu, encourage them to register with Ngāti Kahu so that they can benefit equally with our whānau of Ngāti Kahu.

Dr John Yeabsley

12. At various paragraphs throughout Dr Yeabsley's brief in reply to the BERL report, he complains about the reliability or accuracy of the estimate of the loss suffered by Ngati Kahu¹ and the lack of references to the land data and sales figures used in tables 2.2 and 3.1².

¹ Wai 45#R49 para 11.1

² Ibid para 17.3.1

13. It was I that provided the references to Dr Ganesh Nana and the following is the method by which I developed the land data.

14. The amount of land stolen by the Crown within the remedies area by 1865 was 66,411.54 hectares. The total remedies area has been calculated to be 94,842 hectares. Therefore 70% of Ngāti Kahu's lands had been stolen by 1865. We had a map prepared by cartographer, Huia Pacey to identify the land area within the remedies hearing area which is identified above. Annexed and marked "A" is a copy of that map along with the relevant land acreages identified on it. In addition, we asked Ms Pacey to map the land area within the 2011 DOPS area. Annexed hereto and marked "B" is a copy of that map which identifies 122,954 ha (303,825.91 acres). This exceeds the amount of Ngāti Kahu land identified as being seized by the Crown in the *Muriwhenua Land Report* which is unsurprising as I am not convinced that all land seized has been accurately recorded or documented.

I've arrived at these figures as follows:

I used the information provided in the Waitangi Tribunal's *Muriwhenua Land Report 1997* (the report) as listed and referenced in the tables on pages 5-7 of my brief of evidence of 13 July 2012 (Wai 45 # R18). I noted there at paragraph 13 that because only the blocks referred to in the 1997 report were listed, the tables were not exhaustive. The figures given were therefore approximate and provided on a without prejudice basis.

15. That table listed all seized lands falling within Ngāti Kahu's full territories. The total was 293,328.5 acres (which I corrected later in my brief dated 22 August 2012 but for the purposes of this calculation I started with the figures in the table). To calculate the extent of the seized land in the reduced remedies area the following deductions were made:

225 acres for Kaimaumu

1,482 acres for Ruatorara

13,555 acres for Wharemaru

86,885 acres for Muriwhenua South

2,482 acres for Ruatorara

16. For each of the Western Division – Kaitāia-Kerekere blocks which total approximately 32,165 acres (16,199 acres “granted” and 15,966 acres “surplus”), 23,563 acres was deducted. This was because some of blocks were in the reduced area while only parts of others were. To calculate the approximate portions of blocks that are in the reduced remedies area, the map for the reduced area was overlaid on the relevant map in the report, specifically the map provided at Figure 33 on page 156 of the report. The relevant portion of each block that was in the reduced area was then approximated resulting in the following approximate portions of each block being deducted from the overall area:
 - a. Kaitāia-Kerekere – the whole block (1727 acres)
 - b. Otararau and Waiokai – approximately half of “granted” area (~1240 acres) and approximately a quarter of the surplus (~170 acres).
 - c. Ohotu – approximately one quarter (~645 acres)
 - d. Okiore – approximately two thirds of the “Ford” part of the block (~1820 acres)
 - e. Awanui – approximately one tenth (~3000 acres)
17. This totals very approximately 8602 acres of the Western Division Kaitāia-Kerekere lands remaining inside the remedies area with the balance of 23,563 acres to be deducted.
18. For Kaiawe approximately three quarters of the block (~1030 acres) lies outside the remedies area.

19. Therefore by my calculations, 129,222 acres in total is to be deducted from 293,328.5 acres leaving 164,106.5 acres. This provides a figure of 66,411.54 hectares stolen as at 1865 based on the Tribunal report. These are the figures that I provided to Dr Ganesh Nana, these are the figures that Dr Nana has utilized for his report and as stated above they are derived from the *Muriwhenua Land Report* itself which clearly Dr Yeabsley has not bothered to read.
20. So we had 70% of our lands in the remedies hearing area, that the Tribunal were able to identify, stolen by 1865. On these figures we still had 28,430.46 hectares in 1865. I in fact think we held far less than that. However that is what the Tribunal report records.
21. In addition I point out that we have very approximately 13,000 acres (5,260 hectares) remaining today or about 5% of our original lands. So between 1865 and 2012 we have lost a further 25% of our lands.
22. Further Dr Yeabsley casts some doubt as to whether this land was in Ngāti Kahu land. Firstly, given that it appears clear that Dr Yeabsley has not read the *Muriwhenua Land Report*, he is certainly not qualified to or sufficiently informed to make any judgment on that basis. Secondly, I and all of Ngāti Kahu are in no doubt that these lands are Ngāti Kahu lands notwithstanding the assertions of other iwi and particularly within the remedies hearing area. Thirdly Ngāti Kahu are clear that they have mana whenua in the DOPS area and this view is certainly supported by the NZ Gazette Notice issued in 1945 provided as attachment "D" in my brief of evidence of 2 July (# R17) and referred to in Mr McBurney's report.
23. Therefore the position outlined by Dr Nana is more likely to be understated rather than overstated if anything.
24. I agree with Dr Yeabsley that remedies should comprise a combination of land and money. While the land is to be relinquished by the Crown as stolen property and made legally inalienable in perpetuity specifically so that it can never be stolen again, money is to be provided as compensation. For this reason we are seeking the maximum amount of compensation that the Tribunal can order for us

of at least 100 per cent of the value of the trees in the forest. We are entitled to this under the Crown Forest Assets Act.

25. We also seek, at the very minimum and by way of non-binding recommendations, freehold and unencumbered title to all those lands listed to be relinquished by the Crown in our (non-binding) Agreement in Principle and further specified in our Deed of Partial Settlement. These are all stolen properties and hence title should be transferred immediately and at no cost to Ngāti Kahu.
26. In this respect I note that the evidence of Adam Levy of 22 August 2012 at Schedule 3 a list entitled “Properties offered to Ngāti Kahu in a settlement package” which purports, at page 3, to list “any Crown-owned properties within (and outside) in 2008 claim area which the Crown has previously proposed to offer to Ngāti Kahu”.
27. I need to make it very clear that no settlement package as listed here has been offered to Ngāti Kahu. There are a number of properties listed in this schedule which were not made available to Ngāti Kahu by way of a negotiated settlement during negotiations and that the Crown arbitrarily deemed that several listed here were, by Crown fiat, “unavailable”.
28. As such we further seek by way of non-bonding recommendations freehold and unencumbered title to all these lands listed here that are in addition to those listed in our Deed of Partial Settlement and that title be transferred immediately and at no cost to Ngāti Kahu.

Professor Margaret Mutu

Date: 31 August 2012