

**IN THE WAITANGI TRIBUNAL
OF NEW ZEALAND****WAI 1750
WAI 203****IN THE MATTER** of the Treaty of Waitangi Act 1975**AND** claims in the North-Eastern Bay of Plenty Inquiry (Wai 1750)**AND** a claim by Tuiringa Manny Mokomoko, Pita Tori Biddle Karen Stefanie Mokomoko, and Takerei Peck on behalf of themselves and the descendants of the Rangatira Mokomoko (Wai 203)**AMENDED STATEMENT OF CLAIM****Dated 22 May 2024****RECEIVED**

Waitangi Tribunal

22 May 24Ministry of Justice
WELLINGTONDirector
Renika Siciliano
renika.siciliano@mccawlewis.co.nzSolicitor
Carmen Mataira
carmen.mataira@mccawlewis.co.nz**McCaw Lewis**
GOOD PEOPLE. GREAT LAWYERS.LEVEL 6, 586 VICTORIA STREET, PO BOX 9348
HAMILTON 3240, NEW ZEALAND
DX GP 20020, PH 07 838 2079
WWW.MCCAWLEWIS.CO.NZ**WACKROW PANOHO**
& ASSOCIATESLevel 5, 50 Kitchener Street
DX CP 20503
AUCKLANDCoral Linstead-Panoho / Raewyn Clark / Josi Witehira
Ph. (09) 379 5026, Fax (09) 377 6553E mail: coral@wpalawyers.co.nz / raewyn@wpalawyers.co.nz / josi@wpalawyers.co.nz

MAY IT PLEASE THE TRIBUNAL

1.0 NGĀ KAITONO – THE CLAIMANTS

1.1 This amended statement of claim is filed jointly by Karen Stefanie Mokomoko represented by McCaw Lewis and Takerei Peck represented by Wackrow Panoho and Associates, for and on behalf of the descendants of the Rangatira, Mokomoko (**Claimants**).

1.2 The Claimants are all descended from the Whakatōhea Rangatira Mokomoko as depicted in **Attachment A**. The claimants are Māori.

1.3 This amended statement of claim combines two claims previously filed by the late, Tuiringa Mokomoko, Pita Tori Biddle and Karen Stefanie Mokomoko, namely:

(a) the original Wai 203 claim filed in the Wai 894 Te Urewera District Inquiry dated January 2003; and

(b) the amended statement of claim (adding an additional cause of action only) filed in the Wai 2660 – Marine and Coastal Area (Takutai Moana) Act 2011 Inquiry dated 4 July 2018.

1.4 This amended statement of claim is filed for the purposes of the North-Eastern Bay of Plenty District Inquiry before the Waitangi Tribunal.

2.0 TE TONO – THE CLAIM

2.1 The Wai 203 Claim was lodged in 1991 to address the historical injustices including the wrongful execution of Mokomoko and the subsequent impacts on his descendants. The Claim raised several concerns, highlighting the breaches of Te Tiriti o Waitangi and the ongoing consequences for the descendants of Mokomoko. The Claim sought to bring attention to the miscarriage of justice in the case of Mokomoko.

2.2 The Claimants say they have been and continue to be prejudicially affected by that all the acts, regulations, orders, policies, practices, and actions taken, omitted, or adopted by or on behalf of the Crown, and therefore the Crown is in breach of the principles of Te Tiriti o Waitangi.

2.3 This claim specifically concerns:

- (a) The wrongful execution of Mokomoko on 17 May 1866 for the killing of Reverend Carl Sylvius Völkner. Underscoring the lack of due process, unfair trial procedures and the failure to adhere to principles of justice.
- (b) The multiple violations of rape, bayoneting and murder of the kuia tupuna, Kimohia by the colonial soldiers and the horrific abuse suffered by Mokomoko's wives and children following his arrest, and the subsequent hardships they endured.
- (c) The cultural impact and stigma as a result of the wrongful execution. The Claim outlines how this event led to a negative perception of the whakapapa and reputation of the descendants of Mokomoko, impacting their social standing in the community.
- (d) The confiscation of lands from Mokomoko at the time of his arrest (prior to trial/conviction and prior to confiscation of Whakatōhea land) included the land in and around Maraetotara, Ōhiwa Harbour, Paerata, Maraerohutu and Waiotahe; part of which were later given to Ngāti Awa as part of their settlement. The loss of land had long lasting economic, social and cultural effects on the descendants of Mokomoko.
- (e) The claim highlights the ongoing health and social well-being issues faced by descendants of Mokomoko as a result of historical injustices. This includes intergenerational trauma, socio-economic disparities, and other adverse effects stemming from the events surrounding the wrongful execution of Mokomoko.
- (f) The claim discusses the loss of mana (authority and prestige) suffered by Mokomoko and his descendants due to the false accusations and wrongful execution. The impact on their standing within the Māori community was considered a direct consequence of the historical injustices.

3.0 TREATY PRINCIPLES

3.1 The wrongful execution of Mokomoko is a poignant example of the injustices and breaches of Te Tiriti o Waitangi that occurred during that period. The claimants say

that the Crown has and continues to breach the following principles of Te Tiriti o Waitangi:

- (a) the principle of partnership and the duty of the Crown to act towards the Mokomoko whānau reasonably and with the utmost good faith;
- (b) the principle of Tino Rangatiratanga;
- (c) the principle of active protection of the Mokomoko whānau, the protection of their taonga, lands and waters to the fullest extent practicable; and
- (d) the principle of redress to remedy past breaches.

4.0 BACKGROUND FACTS

Mokomoko

- 4.1 Mokomoko was of Te Whakatōhea iwi with prominent whakapapa to Ngāi Tamahaua, Ngāti Patumoana and Te Ūpokorehe, however, Mokomoko also had links to all hapū of Te Whakatōhea, which was uncommon at the time. Throughout his lifetime, Mokomoko occupied pā sites throughout the Whakatōhea rohe including pa at Waiotahe, Paerata and Maraetōtara.¹ Other pā included at Whitiwhiti, Onekawa Te Māwhai, Ōhope, Te Okihanga, Ōhiwa, Maraerohutu, and Maraetotara. Many of these pā covered vast areas of whenua.
- 4.2 The area he protected was from Maraetotara to the west, encompassing the Ōhiwa Harbour through to Kutarere, Waiotahe and Paerata and of those lands, his last pā site was at Maraerohutu consisting of 3,000 hectares.
- 4.3 Mokomoko had three wives: Kimohia first wife and Horiana second wife, who were sisters with whakapapa lineage to Te Ūpokorehe. Hirotipa was his third wife of Tūhoe descent and a cousin to Kimohia and Horiana.²
- 4.4 By virtue of his whakapapa to Ruamoko, Mokomoko was a chief of importance and a prominent Rangatira leading up to the 1860's. He held the responsibility of

¹ Refer Wai 894, #A14 Johnston, E, *Wai 203 and Wai 339 Research Report*, Waitangi Tribunal, June 2002, p 28; and Refer Johnston, Ōhiwa Harbour, draft report pp 142 and 144.

² Wai 894, #A7, *Wai 203/339 Scoping Report*, November 2001 at page 11 2.2 line 9; Ūpokorehe Relationship with Whakatōhea and Tūhoe.

protecting the Whakatōhea western boundary, as did his tipuna before him. He was well-educated, an entrepreneur, a successful farmer and tradesman who cared for and supported the whole Iwi. Mokomoko was also a kaitiaki and protected Te Ūpokorehe and Te Whakatōhea interests in the Ōhiwa Harbour throughout his lifetime, being the western boundary for Te Whakatōhea.

- 4.5 Mokomoko was a leading figure within the iwi. Whānau oral traditions tell us that many parts of his lands were cultivated, not only did this provide sustenance and kai for his whānau, but he also utilised this to establish a source of revenue with many of his cultivated kai and goods being purchased by those outside of the iwi. These goods were then transported aboard his own trading ships.

The beginning

- 4.6 Between 1863-1864, colonial and imperial troops conducted military campaigns in the Waikato and Tauranga. On 8 February 1864, a contingent of Ngāti Porou, Ngāti Awa and Te Whakatōhea warriors left Ōpōtiki intending to attack Government troops in Tauranga.³
- 4.7 Even though the taua failed to reach Tauranga, Mokomoko, along with 13 Ngāi Tūhoe men and journeyed through to support those resisting Government troops in the Waikato.⁴ Mokomoko's actions were not driven by an intention to engage in mere combat; rather, they were a defensive response to Crown force.
- 4.8 Reverend Carl Völkner was a German missionary. He and his wife, Emma, lived in Ōpōtiki and were one of the few Pākehā families living in the area. In the beginning of his residence at Ōpōtiki, he reported positively about his interactions with local Māori.⁵
- 4.9 However, throughout the continued state of war in Taranaki and Waikato, local Māori began to feel suspicious of Pākehā, particularly missionaries, considering the likelihood that missionaries were reporting back to the Government, along with the

³ Refer Wai 1750, #A004, Gilling, B, *Te Raupatu o Te Whakatohea: The Confiscation of Whakatohea Land 1865-1866*, Treaty of Waitangi Policy Unit, 1994 (also recorded as Wai 87, #A3), p 22.

⁴ Wai 1750, #A30, Walzl, Tony, *War and Raupatu 1840 – 1871*, Waitangi Tribunal, 15 March 2023, at page 350.

⁵ Walzl, at page 376

history of land purchases by missionaries.⁶ As suspected, Völkner began to supply information to the Crown on developments in Ōpōtiki.⁷

- 4.10 Kereopa Te Rau was of the Ngāti Rangiwewehi tribe of Te Arawa. It is said that during the attack on Rangiaowhia by the Government forces, Kereopa's two daughters and wife were killed, and some whānau oral traditions say they were burnt alive in their whare. Kereopa became aware of Völkner's movements and it was later confirmed that he was a spy for the Government due to intercepted letters showing he had a map of Rangiaowhia. This information gave Kereopa motivation to kill Völkner. On 25 February 1865, a Pai Mārire contingent led by Wepiha Apanui of Ngāti Awa, arrived in Ōpōtiki, and Kereopa arrived one day later.⁸
- 4.11 Upon Völkner's personal visit to Governor Grey, tensions escalated. On March 1, 1865, Völkner came back to the Ōpōtiki wharf, despite locals cautioning him to stay away after discovering his correspondence.

Völkner's Death

- 4.12 On the evening of 1st March 1865, a decision was made, led by Kereopa, to execute Völkner.⁹ It is said that Mokomoko attended the hui when the Pai Mārire delegation arrived in Ōpōtiki. However, Mokomoko maintained that Te Whakatōhea had resisted demands to hand Völkner over to the Pai Mārire for execution and that Mokomoko disagreed with the Pai Mārire disciples and left the scene before the execution was conducted.
- 4.13 On 2 March 1865, the Reverend Carl Sylvius Völkner was killed.¹⁰ At the time of Völkner's death, there were large crowds surrounding the vicinity and eyewitness reports of the event were later deemed unreliable.¹¹
- 4.14 Te Whānau a Mokomoko maintain that Mokomoko was not present when Völkner was killed. Within Te Whakatōhea Deed of settlement, it says that at least three

⁶ Walzl, at page 376.

⁷ Walzl, at page 380.

⁸ Refer *ibid* p 28; and Refer Johnston #A14 p 30.

⁹ Refer Johnston #A14 p 31.

¹⁰ Refer Wai 46 Ngāti Awa Raupatu Report (1999) p 41.

¹¹ Walzl 478

witnesses said that Mokomoko was not present when Völkner was killed.¹² There is also a letter within an article which says that Mokomoko was miles away from Opotiki when the atrocious deed was committed.¹³

- 4.15 The news of the events of Völkner's death spread swiftly and the Government came under pressure to punish the perpetrator.

5.0 FIRST CAUSE OF ACTION – RAUPATU WHENUA

Particulars

- 5.1 On 4th January 1865 the Crown enacted the Peace Proclamation which ended the war in Waikato and Taranaki and prevented the Crown from confiscating land for acts of rebellion, nation-wide.¹⁴
- 5.2 The proclamation announced inter alia: ¹⁵
- (a) the end of the war;
 - (b) that no more lands would be confiscated on account of the war;
 - (c) an amnesty from prosecution except for those involved in the killing of Reverend Völkner and Fulloon;
 - (d) that the Crown was sending an expedition to the Bay of Plenty to arrest the murderers of Mr Völkner and Mr Fulloon; and
 - (e) that, if the murderers were given up to justice, the Governor would be satisfied. If not, the Governor would seize a part of the lands of those who concealed the murderers.
- 5.3 On 4th September 1865, martial law was declared in the districts of Ōpōtiki and Whakatāne. Martial law was not revoked until 12th January 1867.¹⁶

¹² Te Whakatōhea Deed of settlement page 50, point **2.117**

¹³ Newspaper article- The Case of Mokomoko 12th June 1866

¹⁴ Wai 1750, #A03, McLellan, John, *Raupatu and Compensation in the North-Eastern Bay of Plenty 1865-1874*, Waitangi Tribunal, July 2020, at page 73.

¹⁵ Refer Gilling #A53 pp 119-121.

¹⁶ Walzl, at page 858.

- 5.4 On 5th September 1865, a militia under the command of Major Brassey totalling 516 men, left Wellington bound for Ōpōtiki.¹⁷
- 5.5 The militia was under instruction from the Colonial Defence Minister to upon landing summon Whakatōhea iwi to surrender the murderers within a given time.¹⁸
- 5.6 Between 9th September 1865, and 30th October 1865, Government forces conducted a series of military operations across the Ōpōtiki district. This campaign included the tragic loss of Whakatōhea descendants, encompassing men, women, children, and elderly. Numerous villages and fortified settlements were devastated, with the destruction extending to cultivated lands and food stores.¹⁹
- 5.7 The Crown did not notify Whakatōhea or other Māori at Ōpōtiki of the impending military invasion, nor did they provide any opportunity for Whakatōhea and other Ōpōtiki Māori to surrender the murderers before the military invasion.²⁰
- 5.8 On 4 October 1865, prior to raupatu, the whenua and pā sites of Mokokoko at Paerata and Maraerohutu were seized by crown troops and the pā was destroyed, along with a voluminous number of food resources including potatoes, kūmara and wheat crops.²¹
- 5.9 The kōrero tuku iho of the descendants of Mokokoko and Kimohia is that at Maraerohutu several Crown troops raped, abused, tortured and killed Kimohia (the first wife of Mokokoko), her body was then mutilated and thrown over a cliffside.²²
- 5.10 By 30 October 1865, Mokokoko had surrendered to Government troops to protect his whānau from further punishment and to create a cease fire for all.²³ Furthermore, Mokokoko offered his aid in subduing those who remained in ‘rebellion’ as a means to further protect his whānau.²⁴

¹⁷ Refer ibid 858.

¹⁸ Refer Gilling p 68.

¹⁹ Refer ibid A53 pp 70-92 inclusive.

²⁰ Refer ibid p 77.

²¹ Walzl, p 737

²² Kōrero tuku iho (oral family traditions)

²³ Refer ibid A53 p 84.

²⁴ McLellan page 49.

- 5.11 Isolated and defenceless, the wives and children of Mokomoko were hunted like animals, treated like slaves, abused, raped and, in the case of Kimohia, brutally slayed by the militia.²⁵
- 5.12 After Mokomoko was taken, Tūhoe offered sanctuary to the women and children. The whānau escaped to the sanctuary of the people of Te Waimana Kaaku until they were relocated to their land now known as Hiwarau, on the Ōhiwa Harbour, the second of the two native reserves established by the government.²⁶
- 5.13 The women and children were enslaved by the colonial soldiers and forced to work the very land that they once so proudly protected.²⁷
- 5.14 Despite Mokomoko's surrender and aid to the Crown, his lands were still confiscated²⁸ and his whānau subjected to further abuse including being persecuted, raped, burnt, tortured and mutilated at the hands of the military troops.
- 5.15 On 17 January 1866, the Government proclaimed the Bay of Plenty confiscation district under the provisions of the New Zealand Settlements Act 1863.²⁹
- 5.16 The boundaries of the district referred to in that proclamation were amended by an Order in Council on 1st September 1866.³⁰
- 5.17 The Bay of Plenty confiscation district included the lands of the Ngāti Awa, Whakatōhea and Tūhoe tribes and their constituent hapū and whanau, including the lands of the Mokomoko whānau. The lands surrounding the Ōhiwa Harbour were incorporated into the lands confiscated.³¹
- 5.18 Ōpōtiki Māori, when engaging in conflict with Crown forces, were acting in defence of their lands.³² The confiscation was, therefore, disproportionate to what was necessary under the authorising legislation.³³

²⁵ *ibid*

²⁶ *ibid*

²⁷ *ibid*

²⁸ Walzl, at pages 468-478.

²⁹ Refer *ibid* #A53 p 122; and Refer the Ngāti Awa Raupatu Report (1999) p 65; and

³⁰ Refer *ibid* #A53 p 123; and Refer the Ngāti Awa Raupatu Report (1999).

³¹ Refer Johnston Wai 894 #A14 pp 51 and 52.

³² McLellan, at pages 77 and 86.

³³ McLellan, at page 86.

5.19 Subsequent to the raupatu, the remaining Whakatōhea people were forced to resettle in an isolated area, later appointed as the Ōpape Native reserve. Those considered rebels within the iwi, even if they had surrendered, were also moved to the reserve with limited resources.

Breach

5.20 In relation to the Raupatu Whenua cause of action, the Crown acted in breach of Treaty principles of active protection and partnership, by:

- (a) The failure to ensure that Whakatōhea, including Mokomoko, were aware of the terms of the proclamation of peace dated 4 September 1865.³⁴
- (b) The failure on the part of Major Brassey to adhere to the instructions of the Colonial Defence Minister to summon the Whakatōhea tribe and provide them with an opportunity to hand over those accused of the murder of Völkner.
- (c) The attacking and killing of Whakatōhea Māori.
- (d) The rape and murder of Mokomoko's first wife Kimohia.
- (e) The unwarranted attack on Mokomoko's pā at Paerata and Maraerohutu.
- (f) The indiscriminate destruction of Whakatōhea pā and kāinga, and the looting of Whakatōhea possessions including those of Mokomoko at Paerata and Maraerohutu.
- (g) The large-scale confiscation of lands, including those belonging to Mokomoko, whose land was confiscated prior to Whakatōhea raupatu.
- (h) The confiscation of land inflicted a multi-dimensional hardship on Mokomoko, his whānau, and the broader community. These hardships were economic, cultural and spiritual and have persisted through time to the present day.³⁵

³⁴ Refer Gilling #A53 p 73.

³⁵ Kōrero tuku iho (Whānau oral traditions) and Whānau lived reality

- (i) The confiscation of the best agricultural land of the district.³⁶
- (j) The destruction of customary Māori freehold tenure of all those lands included within the Bay of Plenty confiscation district.

6.0 SECOND CAUSE OF ACTION – FAILURE TO PROVIDE A FAIR TRIAL

- 6.1 In late December 1865, Mokomoko was to be tried by Court Martial at Ōpōtiki. This was based on the fact that the arrests had occurred during the proclamation of martial law.³⁷
- 6.2 However, the government (Attorney-General James Prendegast) then questioned the legality of the Court martial trials and recommended that civil hearings proceed instead.³⁸ This was ultimately agreed to by the government of the day.³⁹
- 6.3 Prendegast wrote to the Colonial Secretary about the Māori prisoners (including Mokomoko) saying:⁴⁰

There is no evidence as to the offence of treason but I suppose that such evidence is easily procurable...on the whole I think a sufficient case may be made out of one or other of those offences, murder...accessories to murder or receiving stolen goods...treason.

- 6.4 On 26 February 1866, the five accused of Völkner's murder were brought from Ōpōtiki to Auckland. On 9 March, the accused were brought before Magistrate Beckham at the Stockade to undergo a "preliminary examination".⁴¹ Witnesses who gave testimony during this "preliminary examination" included Thomas Samuel Grace, Joseph Jennings and Wepiha Apanui. Further witnesses were Pataromu Taiwawe and Wiremu Te Paki.⁴² There is no mention in the evidence that the witnesses were cross-examined or otherwise questioned in any way during the "preliminary examination".⁴³

³⁶ Refer Gilling #A53 pp 123 and 151.

³⁷ Walzl, p 817

³⁸ Walzl, p 817

³⁹ Walzl, p 818

⁴⁰ Walzl, p 817

⁴¹ Walzl, p 819

⁴² Walzl, p 819

⁴³ Walzl, p 819

- 6.5 On 12 March 1866, a Grand Jury was assembled to deal with “31 aboriginal native, who were charged with various offences”. The jurors were told that the cases related to “the murder of Völkner, the murder of Mr Fulloon and three other persons on board the ‘Kate’ and subordinate offences also attendant upon that charge”. Chief Justice Arney made a lengthy address to the jurors including an outline of the circumstances connected with the murder of Völkner. It is not clear from the evidence what the Judge’s lengthy address was based on given that only the “preliminary examination” had taken place up to this point (and neither the Judge nor the Jurors had been present at that).⁴⁴ Nevertheless, the very next day the jurors found “true bills” against the five accused, meaning they were to be formally charged with the murder. The evidence does not refer to the accused benefitting from any legal defence up to this point.⁴⁵
- 6.6 The Supreme Court trial for those charged with murdering Fulloon and others on the Kate was held mere days before the trial for Mokomoko commenced. The same lawyer, called Carnell, was the defence lawyer in both trials (thus having to defend 31 defendants from the charge of murder across two trials within a few days of each other, and only days after formal charges were laid).⁴⁶
- 6.7 The trial began on 27th March 1866 and Mokomoko, Paora Taia, Penitito, Hakaraia Te Rahui and Heremita Kahupaea were tried as a group.⁴⁷
- 6.8 The Crown called six witnesses, one of which only gave details of the crime scene with no mention of Mokomoko, and another who had been held captive with Völkner also made no mention of Mokomoko when giving his evidence.⁴⁸
- 6.9 Wepiha Apanui, a chief who exerted control over lands bordering Mokomoko’s, was called to give evidence.⁴⁹ Wepiha Apanui’s evidence placed Mokomoko at the 2 March hui, further stating that Mokomoko had taken orders from Kereopa.⁵⁰

⁴⁴ Walzl, p 819

⁴⁵ Walzl, 819

⁴⁶ Walzl, p 820

⁴⁷ Walzl at page 818.

⁴⁸ Korero tuku iho/ whānau oral traditions Te Whakatōhea Deed of settlement page 52, point 2.123 & 2.125

⁴⁹ Walzl at page 450.

⁵⁰ Walzl at page 451.

- 6.10 However, throughout their lifetime, Wepiha had made a nemesis out of Mokomoko due to Wepiha constantly shifting the white boulder that marked the boundaries between their land. Mokomoko would consistently replace the boulder to its original position.
- 6.11 Wepiha was also present at the murder of Völkner, however, after the act was committed, he fled, ensuring that his innocence would be noted by Governor Grey through writing letters distancing himself from the act. Wepiha, therefore, had motivation to lie in his evidence against Mokomoko.
- 6.12 The Court adjourned until 4 April 1866 when Mokomoko made a statement in open Court as to why he should not be executed.⁵¹ A guilty verdict was returned the following day. As Mokomoko was jailed, George Graham wrote to Governor Grey requesting clemency. Graham raised issues about witness statements given, including Wepiha's.⁵²
- 6.13 This request was declined for Mokomoko after Chief Justice Arney wrote to Governor Grey with his doubts about another witness statement, noting that this only had material effect on the two people accused of the murder. Governor Grey declined clemency to Mokomoko on this basis.⁵³
- 6.14 As Mokomoko stood at the scaffold, he sung a waiata accepting that he was going to be hung despite his innocence. This is attached as **Attachment B**.
- 6.15 Mokomoko was hung on 17 May 1866 and buried at the old Auckland jail and courthouse.⁵⁴ Prior to being hanged, Mokomoko asked that Ngāti Awa do not benefit from his death, however, his farm at Ōhiwa was later given to Ngāti Awa. His whānau also requested that his body be returned to them, they had been given assurance it would be. The body was not returned to the whānau and they were unable to grieve over him as per cultural traditions.

⁵¹ Refer Johnston, Wai 894 #A14 p 39.

⁵² Walzl at page 828.

⁵³ Walzl at page 833.

⁵⁴ Refer Johnston, Wai 894, #A14 p 40.

- 6.16 Mokomoko's remains were later exhumed and reinterred at Mt Eden prison in the 1890s.⁵⁵ Mokomoko was buried upright. An Irish tradition to ensure the deceased would never “be at rest” in the afterlife.
- 6.17 Along with Whakatōhea, the Mokomoko whānau suffered the social and economic devastation caused by the land confiscation, the loss of lives, loss of mana and loss of prospects for the future; in addition to that, the Mokomoko whānau uniquely suffered and endured:
- (a) the pain of bearing the shame and stigma of being a descendant of Mokomoko;
 - (b) the pain of being outcasts among their own people;
 - (c) the pain of having been held responsible for the punishment of Whakatōhea by the Crown; and
 - (d) the pain of being physically, sexually and mentally abused.⁵⁶
- 6.18 The Whānau were stigmatised, ostracised and persecuted as a result of wrongful arrest, conviction and execution of Mokomoko, including by their own people of Te Whakatōhea.
- (a) Members of Te Whānau a Mokomoko were blamed by their own people as being the “cause” of the raupatu. This view was perpetuated by the Crown.
 - (b) Those who continued to carry the Mokomoko name were stigmatised and continued to experience public blame and shame throughout the generations.
 - (c) The daughters of Mokomoko and Kimohia were also stigmatised throughout their lifetime because of their direct lineage to Mokomoko. Their wāhine descendants have lived with this associated stigma throughout the generations. By marriage, some members of the whānau who descended from the female lines had their names changed. This did not alter their whakapapa nor remove stigma, but instead aided in

⁵⁵ Refer *ibid* p 40.

⁵⁶ Wordsworth, R. (1996). *Better Deal for Mokomoko Whānau*. Pukaea. pp20

protecting future generations from the associated stigma. However, many whānau members were given names to commemorate the tragic events that had occurred. These names include Te Iriropi, Te Hereripine and Te Mamaerangi, among others.

- (d) Recent generations of Te Whānau a Mokomoko have been disconnected from their whakapapa as a result of the stigma suffered by the older generations, because of the wrongful accusation of Mokomoko.
- (e) Te Whānau a Mokomoko have suffered socio-economic deprivation as a result the stigma placed against them.
- (f) Te Whānau a Mokomoko have been disconnected from the lands of their tipuna, resulting in harm being caused to their wairua for lack of connection to their lands.

7.0 THIRD CAUSE OF ACTION - FAILURE TO PROVIDE REDRESS

Particulars

7.2 Throughout the years, Te Whānau a Mokomoko have maintained Mokomoko's innocence and have sought redress from the Crown. This has been memorialised in the Waiata a Mokomoko, as attached above.

7.3 In 1987, Mokomoko's descendants requested permission to exhume his remains from Mt Eden.⁵⁷ That request was granted in 1988 and Mokomoko's remains were reinterred at Waiaua Marae, Ōpōtiki, in October 1989.⁵⁸

Lead up to the Posthumous Pardon

7.4 By correspondence dated 17 July 1990, the Mokomoko whānau sought statutory recognition of Mokomoko's innocence from the Crown.⁵⁹ At the first instance, the whānau wanted an acquittal but were stonewalled by bureaucratic red tape. The only option given to the whānau was statutory acknowledgement via pardon. Te Whānau a Mokomoko sought redress similar to that provided in Te Rūnanga o Ngāti

⁵⁷ Wai 1750, #A11, Crocker, Dr Therese, *An Overview of Māori Political Engagement in the North-Eastern Bay of Plenty 1871-2017*, Waitangi Tribunal, August 2021, at pages 127-128.

⁵⁸ Refer Wordsworth p 43.

⁵⁹ Refer ibid p 44.

Awa Act, which included a Statutory Pardon for those who were involved in the events of 1865.

7.5 Statutory recognition of Mokomoko's innocence was sought on the following grounds:⁶⁰

- (a) Mokomoko was tried conjointly with four others, for murder. The charge carried with it the death penalty. Despite that, all five defendants were represented by one solicitor.
- (b) The length of the hearing was, in effect, one day.
- (c) One of the character witnesses called on behalf of Mokomoko was also a Crown principal witness.
- (d) The only statement made by Mokomoko was after the guilty verdict had been returned.
- (e) Major discrepancies between the evidence of Crown witnesses.
- (f) Crown witnesses were not cross-examined to anything like a standard which ought to have been appropriate. In particular, Wepiha Apanui, a longstanding enemy of Mokomoko and one of those present, and later named by Mokomoko as responsible for Völkner's killing, was not properly challenged.
- (g) Mokomoko constantly maintained his innocence both in his statement to the Court and later to George Graham.
- (h) The correctness of Mokomoko's version of events was later admitted by two co-accused, namely Heremita and Hakaraia.

7.6 The Crown responded on 11 December 1990 that the material submitted did not provide a sufficient basis on which an application for posthumous pardon could be entertained. Further information was supplied to the Crown throughout 1991.

⁶⁰ Refer Gilling #A53 pp 52-61 inclusive and Johnston #414 pp 38-42 inclusive.

- 7.7 The Waitangi Tribunal noted the Ngati Awa Act didn't go far enough as it didn't acknowledge that their ancestors were deemed rebels.⁶¹
- 7.8 In 1991, it was proposed to the Crown that they consider the issue within a Treaty context rather than criminal.⁶² The original Wai 203 Statement of Claim (Wai 203) was filed on or about 14 May 1991, seeking an acquittal and/or statutory pardon for Mokomoko. The acquittal is still the overall desire of the Mokomoko whānau.
- 7.9 In 1992, officials briefed the Minister on possibilities. One possibility presented to the Minister was a prerogative pardon granted by the Governor General not based on guilt or innocence. Another was Statutory Pardon as part of the settlement for Whakatōhea claims. Te Whānau a Mokomoko did not accept the latter option, as they maintained that their claims are distinct from Te Whakatōhea and would not be settled under any Whakatōhea wide settlement.
- 7.10 It was considered inconsistent not to grant a pardon for Mokomoko when others had been pardoned, and concluded that Mokomoko should be pardoned. However, this was not done on the basis of guilt or innocence but in light of the Ngāti Awa Act.⁶³
- 7.11 In June 1992, a pardon was drafted and hui was held with Te Whānau a Mokomoko where the Minister explained that the draft pardon 'effectively exonerated Mokomoko for the crime of murder'. The majority of the whānau did not see a draft nor final version of the pardon until the day the pardon was presented to them at Waiaua marae. There was no consultation with any members of the whānau prior to the pardon being signed by the Governor-General.⁶⁴
- 7.12 On 15 June 1992, the Governor General signed a posthumous pardon for Mokomoko, a copy of which is now attached as **Attachment C**.

Following the Posthumous Pardon

⁶¹ Crocker, at page 130.

⁶² Crocker, at page 132.

⁶³ Crocker, at page 133.

⁶⁴ Crocker, at page 134.

- 7.13 Te Whānau a Mokomoko considered the pardon did not restore the mana, character and reputation of their tipuna. Furthermore, the whānau were clear in their communications to the Crown that the pardon alone did not right the past wrong and that compensation needed to be considered.⁶⁵
- 7.14 Wai 203 filed an Amended Statement of Claim in the Tribunal noting that the pardon had failed to restore the character, mana and reputation of Mokomoko and his descendants.⁶⁶ As the Mokomoko whānau had not been consulted with during the drafting of the pardon, it didn't right the injustice of Mokomoko's wrongful conviction. Wai 203 was then treated as a fresh claim for the purpose of negotiation.⁶⁷
- 7.15 Nevertheless, the Crown persisted in considering that the Mokomoko whānau's claim had been resolved as a result of the pardon.
- (a) Crown officials met with whānau and advised that they viewed their claim as settled with the pardon, and any compensation discussions would happen within the wider Whakatōhea negotiations.⁶⁸
 - (b) The Minister stated that the issues the Mokomoko whānau were seeking compensation for were covered under the Wai 87 claim, and it would be up to the iwi to distribute any compensation.⁶⁹
- 7.16 However, the Mokomoko whānau continued to consider their claim distinct from Whakatōhea (particularly given their historical ostracization from Whakatōhea for the accusations against Mokomoko) and maintained that they had been excluded by the wider settlement process.⁷⁰

September 2011 Agreement

- 7.17 The whānau and the Crown entered into negotiations and came to an agreement in 2011. The agreement contained several clauses including the intention of the

⁶⁵ For example, meeting between the whānau and Crown officials on 16 June 1992 and statements of the whānau's counsel (Kevin Were) see Crocker, p 135.

⁶⁶ Crocker, at page 138.

⁶⁷ Crocker, at page 138.

⁶⁸ Crocker, at page 139.

⁶⁹ Crocker, at page 139.

⁷⁰ Crocker, at page 139.

agreement to contribute to the building of a good relationship between the Crown and the Mokomoko whānau parties and the agreement “*would not preclude...exploring the possibility of separate settlement negotiations between Te Whānau a Mokomoko and the Crown*”.⁷¹

- 7.18 The September 2011 Agreement led to Parliament passing the Te Ture mo Mokomoko (Hei Whakahoki i te Ihi, te Mana, me te Rangatiratanga) Mokomoko (Restoration of Mana, Character and Reputation) Act in 2013. The Act stated:⁷²

It is declared on and after the passing of this Act, the character, mana, and reputation of Mokomoko are restored and the character, mana, and reputation of his uri are restored.

Seeking Compensation and Direct Negotiations

- 7.19 Despite the passing of the Act and following the September 2011 agreement, the whānau maintained their position on direct negotiations. The whānau held fast to the fact that the Act and the agreement stated that the whānau were not prevented from seeking the settlement of their Waitangi claims.⁷³

- 7.20 The Crown appeared to further support the idea that it would enter into direct negotiations with the whānau:

- (a) In October 2011, OTS confirmed the Crown’s commitment to engage with whānau on the possibility of entering into separate settlement negotiations (albeit reiterating the Crown’s preference to negotiate with Large Natural Groupings).⁷⁴
- (b) In July 2012, TPK reaffirmed the Crown’s commitment to the September 2011 agreement and that they would be in touch with OTS to discuss the possibility of separate negotiations.⁷⁵

⁷¹ Crocker, p 144

⁷² Crocker, at page 148.

⁷³ Crocker, at page 150 -151.

⁷⁴ Crocker, p 146

⁷⁵ Crocker, p 147

- 7.21 However, later in 2012, the whānau were informed that they did not qualify for any funding options for entering into settlement negotiations with the Crown, either separately as a whānau, or as part of the wider Whakatōhea iwi settlement group.⁷⁶
- 7.22 In November 2012, OTS officials met with whānau representatives and confirmed that it would not negotiate a separate settlement.⁷⁷ This was not in keeping with the September 2011 Agreement, or the Act, which had led the whānau to believe that the Crown would enter into separate negotiations.⁷⁸
- 7.23 In 2017, the Chief Crown Negotiator for the Crown informed the whānau that Whakatōhea Pre-Settlement Claims Trust had mandate to represent all of Te Whakatōhea interests in negotiations with the Crown and directed the whānau to contact their pre-settlement hapū representative for questions.⁷⁹ Wai 203 was included in the mandate, despite the support of Tu Ake and the Trust Board for the whānau to negotiate separately.⁸⁰ Again, this was not an act upholding both the 2011 Agreement and the 2013 Mokomoko Legislation.
- 7.24 Crown officials did not mention the September 2011 agreement in advice to the Minister to accept the mandate (December 2016).⁸¹
- 7.25 An Agreement in Principle was reached between Crown and Whakatōhea Pre-Settlement Trust Board in August 2017.⁸² Again, the September 2011 agreement was not referred to as part of the terms of negotiation or AIP signed by the Crown and the Whakatōhea PSCT.⁸³ The Mokomoko whānau was simply sent pro-forma letters that their claims were to be settled by the Trust.
- 7.26 The Tribunal urgent inquiry into the mandate found that the commitment of the Crown to consider the possibility of separate negotiations under 2011 agreement narrowed to considering Mokomoko whānau individually under the broader

⁷⁶ Crocker, p 147

⁷⁷ Crocker, p 148

⁷⁸ Crocker, at page 137.

⁷⁹ Crocker, p 152

⁸⁰ Crocker, pp 151-152

⁸¹ Wai 2662 report, p 77

⁸² Crocker, at page 152.

⁸³ Wai 2662 report, p 77

Whakatōhea settlement.⁸⁴ In the course of the Wai 2662 inquiry, Crown officials acknowledged that 'the Crown has a lot of work to do to make [the situation] right' and that it is open to engaging in discussions with the whānau.⁸⁵

7.27 The Wai 2662 report found that the Crown's decision to recognise WPSCT was not fair and reasonable or made in good faith, and recommended that the Crown discuss with the whānau how specific aspects of the claim could be accommodated in the context of negotiations with the Crown.⁸⁶

7.28 However, no progress has been made in separate negotiations and Te Whānau a Mōkomoko continue to seek separate negotiations with the Crown for separate redress and settlement of their claims, including a full acquittal of Mōkomoko.

Breach

7.29 In breach of Treaty principles, the Crown has failed to provide redress in respect of the Wai 203 claim, particulars of which are as follows:

- (a) The failure on the part of the Crown to provide Mōkomoko a fair trial.
- (b) The failure on the part of the Crown to provide compensation for the confiscation of Mōkomoko's lands.
- (c) The failure on the part of the Crown to provide compensation for the rape and murder of Mōkomoko's first wife, Kimohia.
- (d) The failure on the part of the Crown to provide compensation for the inability of the whānau to mourn over and inter Mōkomoko's remains following his execution.
- (e) The consistent failure on the part of the Crown to apologise for the treatment of Mōkomoko, the rape and murder of his wife, the incessant abuse suffered by his uri and confiscation of his lands.

⁸⁴ Crocker, at page 153.

⁸⁵ Wai 2662, p 78

⁸⁶ Crocker, at page 153.

(f) The erasure of the voices, reo and mana of Te Whānau a Mōkomoko by not allowing descendants to have a voice when seeking redress.

- 7.30 The Crown was slow to respond and acknowledge the inadequacy of the 1992 pardon, thus perpetuating further suffering for the whānau following the issuing of the pardon. It took until the 2013 legislation for the Crown to come some way to rectify the issue of the pardon, despite being aware of the issues well before this time. In the meantime, the inadequate wording of the pardon only perpetuated the suffering of the Mōkomoko's descendants over this period.
- 7.31 Despite the Crown being informed that, as a result of the Crown's treatment of Mōkomoko, members of the Mōkomoko whānau continued to live in poverty down to the present day, the Crown continued to consider that the claim had been settled by the issuing of the 1992 pardon and there was no need to consider compensation to the whānau.⁸⁷
- 7.32 The Crown has ignored the whānau's insistence on the need for a separate settlement due and proper compensation. The whānau has been consistent and persistent in communicating to the Crown that it requires both compensation and a direct settlement, since at least 1992.
- 7.33 The Crown has failed to honour the spirit and intentions of the September 2011 Agreement with the Crown, which was intended to heal the relationship between the whānau and the Crown and which proffered the possibility that the whānau would be able to negotiate its own individual settlement with the Crown.
- 7.34 The Crown has chosen not to negotiate individually with Te Whānau a Mōkomoko, despite indications to the whānau that it would do so and despite acknowledging the special harm the whānau had suffered.
- 7.35 The Crown forced Te Whānau a Mōkomoko to negotiate under the banner of the Whakatōhea claim, despite the fact that a significant part of the harm they have

⁸⁷ Crocker, p 137, Crocker, p 138

suffered through the generations is as a result of being turned upon and ostracized by members of their own Whakatōhea whānau.⁸⁸

7.36 The Crown has not treated the Mokomoko whānau with the proper respect that was due following the September 2011 agreement, including through failing to mention or acknowledge this agreement as part of the Whakatōhea negotiations and by sending the whānau pro-forma letters to inform the whānau its claims were to be settled as part of Te Whakatōhea.

7.37 The Crown has ignored the findings and recommendations of both the Urewera and Wai 2662 Tribunals. Despite the whānau remaining continually vocal and active around these issues since 1992, the Crown has failed to properly recognise and redress the particular harm and hardship that te whānau Mokomoko has suffered due to the Crown's wrongful treatment of their tīpuna.

8.0 FOURTH CAUSE OF ACTION - HOKIANGA ISLAND AND HIWARAU RESERVES

Particulars

8.1 Following confiscation, Government Agent, John Alexander Wilson, made several "out of court" arrangements with separate groups within the eastern Bay of Plenty area.⁸⁹

8.2 In 1866/1867 Crown agent Wilson forced Te Upokorehe to be constrained to the two blocks of land at the newly created Hiwarau Reserve and Hokianga Island (Lots 189 and 134). These two lots together totalled just over 1000 acres, or just over 25 acres per head.⁹⁰ On 24 December 1866, Wilson reported that he had settled Ūpokorehe on a 1500-acre reserve known as the Hiwarau Block at Ōhiwa.⁹¹

⁸⁸ Crown was informed of this fact, e.g. see Crocker, p 148; Wai 2662 report, p 78: The Crown acknowledged that the reason the Mokomoko whānau wanted a separate negotiation and settlement process was because of the damaged relationship between the whānau and the iwi. The damage was the result of Crown actions, including the arrest and execution of Mokomoko and the subsequent raupatu.

⁸⁹ Refer Gilling #A53 pp 123 and 151.

⁹⁰ Wai 1750, #A12, *Luiten, Jane, Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty Part One: Raupatu lands, Waitangi Tribunal*, August 2021, p 173-183.

⁹¹ Refer *ibid* p 55.

- 8.3 In November 1874, Crown grants for Hiwarau and Hokianga Islands were gazetted. Both lots were granted under the 4th and 6th clauses of the Confiscated Lands Act 1867.⁹²
- 8.4 In June 1886, a Crown grant for the Hiwarau block was registered, being 1260 acres. The Hiwarau block comprised of steep land not easily cultivated or farmed and of marginal quality.⁹³ The greater part of the block was hillside, with a step ridge running the length of it, much of the flats below were swamp.⁹⁴ Only a small portion of the land was capable of cultivation.⁹⁵ Given the limited opportunities afforded by the reserves, most of the beneficiaries did not stay. By the mid-1890s only a handful of owners remained.⁹⁶
- 8.5 Confusingly, towards the end of 1871, the government revised the ownership list for the Hiwarau reserve. The new list has had an additional 26 beneficiaries.⁹⁷ Many Te Ūpokorehe, who were on the first list, were then excluded from the second list. Their applications for succession were dismissed as the Court found they were not an owner, despite being on the first list and residing on the land at the time.⁹⁸
- 8.6 Crown agent Wilson, and later in his role as Judge Wilson, continued to espouse the reserve as a provision for Te Ūpokorehe which led Te Ūpokorehe to hold the conviction that this reserve had been set aside for them.⁹⁹
- 8.7 However, the list of owners drawn up by the Crown was based more on the political exigencies of the day than any customary rights.¹⁰⁰ The list of beneficiaries by 1874 was “an eclectic collection of locals who had survived the war”. Unravelling the puzzle of entitlement to these reserves remains a contentious issue to this day.¹⁰¹

⁹² Refer *ibid* p 56.

⁹³ Refer *ibid* pp 60 and 62.

⁹⁴ Luiten part 1 p 188

⁹⁵ Luiten part 1 p 183.

⁹⁶ Luiten part 1 p 189.

⁹⁷ Luiten part 1 p 184.

⁹⁸ Luiten part 1 p 184.

⁹⁹ Luiten part 1 p 185

¹⁰⁰ Luiten part 1 p 175

¹⁰¹ Luiten part 1 p 175

- 8.8 The Hiwarau block (including Hokianga Island) was to be inalienably assured by grant to members of Te Ūpokorehe. Relative interests were not defined.¹⁰²
- 8.9 In March 1898, Te Warana Mokomoko brought an application for definition of relative interests in the Hiwarau block. He presented a list to the Court that claimed only 29 persons were entitled to full rights of ownership as being members of Te Ūpokorehe and that the remaining 26 persons had no interests, not being of Te Ūpokorehe.¹⁰³
- 8.10 The Court unfairly awarded three shares to each adult male, two shares to each adult female and a single share to each child listed in the 1874 gazette.¹⁰⁴ This was contrary to the Native Land Act 1873 which spelled out that the whole point of these reserves was that they were to be held 'in accordance with native custom and usage' meaning that the individual interests were deliberately left undefined.¹⁰⁵ The definition of relative interests was then immediately followed by an application for partition.
- 8.11 Judge Johnson held that the name "Ūpokorehe" was simply a collective name for the 56 persons named in the schedule of owners who lived at Ōhiwa/Waiotaha and that it was not contemplated there should be further inquiry with a view to the removal of any who could not claim to be ancestrally associated with Ūpokorehe.¹⁰⁶ However, this decision did not consider the oral history of the people of Ūpokorehe.¹⁰⁷
- 8.12 On 8 July 1935, Rahi Erana and nine others lodged a petition with Parliament stating that the original list of owners included several persons whose claim as Ūpokorehe

¹⁰² Refer *ibid* p 57.

¹⁰³ Refer *ibid* p 69.

¹⁰⁴ Luiten part 1, p 197

¹⁰⁵ Luiten part 1, p 197-198

¹⁰⁶ Refer *ibid* p 70.

¹⁰⁷ Te Ūpokorehe are those people who originally descended from Ngāti Raumoā, formerly known as Te Hapu Oneone, and are now referred to as Te Ūpokorehe. According to ancestral stories, a local figure named Taikurere set out to visit his grandchild near Ōhiwa Harbour or, in some accounts, to find a new partner. During his journey, Taikurere reached a point where he needed to cross the entrance of the harbour. Unfortunately, he became trapped in the changing tides and drowned. Locals discovered Taikurere's body washed ashore, revealing that fish had eaten away parts of his face (Reherehe). This incident led to the name Te Upokorehe, derived from "Te Upoko i reherehe," meaning "the head that was wrinkled."

was disputable. On 30 October 1946, the Native Affairs Committee reported that they had no recommendation to make regarding the petition.¹⁰⁸

- 8.13 On 10 August 1937, a petition was lodged by Henare Rako alleging that persons were included in the list of owners who were not entitled. The matter was referred to the Native Land Court who heard the petition on 19 July 1939. The petitioners claimed that two lists of owners had been submitted to JA Wilson in 1874, the first including 30 members of Ūpokorehe, the second 26 names being submitted by Hemi Kakitu from Tuhoe.¹⁰⁹
- 8.14 Judge Harvey, although finding that some persons were included in the list of owners who were from outside tribes, declined to reopen the matter.¹¹⁰ On 23 November 1944, the matter came before the Chief Judge of the Native Land Court. He recommended to the Native Minister that no further action be taken.¹¹¹
- 8.15 On 18 July 1946, Mautini Mokomoko wrote to the Native Minister on behalf of the descendants of Mokomoko, claiming that the Hiwarau lands were promised to Mokomoko prior to his execution and that those lands should be returned to the descendants of Mokomoko. On 23 August 1946, Mautini Mokomoko was advised that it was not possible to trace any record of such a promise to give those lands to the descendants of Mokomoko prior to his execution.¹¹²

Partition and Fragmentation of Hiwarau and the Māori Trustee

- 8.16 Throughout the 19th century, the Hiwarau block was partitioned on numerous occasions. By 1969, due to various partitions and successions, the original Hiwarau block had been greatly fragmented.¹¹³
- 8.17 In August 1969, the Māori Land Court amalgamated the majority of the partitioned Hiwarau blocks, cancelled their titles and created one title in substitution, namely the Hiwarau C block.¹¹⁴

¹⁰⁸ Refer *ibid* pp 71 and 72.

¹⁰⁹ Refer *ibid* p 72.

¹¹⁰ Refer *ibid* p 73.

¹¹¹ Refer *ibid* p 73.

¹¹² Refer *ibid* pp 73 and 74.

¹¹³ Refer Johnston Wai 894, #A14 p 77-79 inclusive; and Refer Boast #A101 p 162.

¹¹⁴ Refer *ibid* p 79.

- 8.18 Between 4 August 1969 and 1 December 1992, the Māori Trustee had the responsibility for the administration of the Hiwarau C block. On 1 December 1992, the Māori Trustee was removed as responsible trustee and the block was vested in five trustees, one of whom is the original claimant, Mr Tuiringa (Manny) Mokomoko.¹¹⁵
- 8.19 In enacting the Māori Trustee Act 1953 and the Māori Affairs Act 1953, the Crown permitted the Māori Trustee to carry out certain activities with respect to Māori freehold land.

Breach

- 8.20 The Crown acted in breach of Treaty principles active protection and partnership, full particulars of which are as follows:
- (a) Crown grants for the Hokianga Island and the Hiwarau block reserves were specifically created for members of the Ūpokorehe tribe and/or hapū. The lists of owners eventually decided upon included persons who were not from the Ūpokorehe tribe/hapu, e.g. Hemi Kakitu from Tūhoe.
 - (b) In drawing up the lists of owners for Hokianga Island and the Hiwarau block the Crown failed to ensure that all those who were listed as owners were members of the Ūpokorehe tribe/hapū.
 - (c) The Court and the Crown, despite being aware that outsiders had been included in the lists of owners, refused to ensure that the interests of Ūpokorehe were safeguarded by removing the interests of non-members of Ūpokorehe.
 - (d) Following confiscation and the creation of the reserves at Hokianga Island and Hiwarau, those two reserves in effect became the remaining tribal estate for the Ūpokorehe hapū and the Mokomoko whānau. By failing to remove non-members of Ūpokorehe, the Court and the Crown contributed to pressure and tensions upon the remaining tribal estate which exist until today.

¹¹⁵ Refer Johnston, Wai 894, #A14 p 117.

- (e) In creating the Hokianga Island and Hiwarau reserves on marginal, steep land, the Crown failed to ensure that the Ūpokorehe hapū and members of the Mokomoko whānau had a sufficient endowment of land for their present and future needs.

Partition and Fragmentation of Hiwarau and the Māori Trustee

- 8.21 Following the issue of Crown grants for the Hiwarau block it was subject to Native Land Court and later Māori Land Court legislation. This system of tenure permitted the fragmentation of title and the partition of the block originally created as a tribal reserve.
- 8.22 In creating the Office of the Māori Trustee, the Crown created a statutory body who could control, administer and alienate Māori freehold land in breach of the guarantee of tino rangatiratanga as contained in Article 2 of the Treaty.
- 8.23 Between 1969-1992 the Office of the Māori Trustee, a statutory body, failed to protect the interests of the owners of the Hiwarau block, in particular:
 - (a) They failed to collect outstanding rental from various lessees.
 - (b) They failed to enforce breaches of covenant contained in leases.
 - (c) They failed to re-enter and surrender leases.
 - (d) They failed to enforce judgments obtained against lessees.
 - (e) They failed to prevent the deterioration of the Hiwarau C block.
 - (f) They failed to negotiate a settlement of these issues between March 1996-July 2000, despite admissions of liability and a finding by the Maori Land Court on 1 December 1992 that the administration of the Māori Trustee had been poor.¹¹⁶

¹¹⁶ Refer Johnston, Wai 894, #A14 pp 107, 108, 109 and 117.

9.0 PREJUDICIAL EFFECTS

9.1 By virtue of the Crown's legislation, acts, omissions, practices, and policies referred to in the causes of action set out of above, the Mokomoko whānau have suffered the following prejudicial effects:

- (a) The stigma of Mokomoko being wrongly blamed for Völkner's death.
- (b) The stigma of Mokomoko being labelled a rebel and murderer.
- (c) The loss of mana, character, and reputation of their tipuna Mokomoko.
- (d) The loss of mana, character and reputation of their tipuna kuia throughout the generations.
- (e) Blame being levelled at them by both the Crown and a vast majority of Whakatōhea members for the raupatu of Whakatōhea lands.
- (f) The continued stigmatisation of the whanau throughout the generations by both the Crown and a vast majority of Whakatohea members, wrongfully carrying blame for causing the raupatu of Whakatohea lands.
- (g) The loss of spiritual connection to lands resulting in spiritual impoverishment.
- (h) The loss of ancestral lands and resources due to confiscation.
- (i) The inability to build an economic base on ancestral lands.

10.0 RELIEF SOUGHT

10.1 The claimants seek all or any of the following relief:

- (a) This is a well-founded claim.
- (b) Findings that the Crown breached the Treaty and principles of the Treaty as set out above.
- (c) That the Tribunal recommend a specific apology from the Crown to Te Whānau a Mokomoko for their breaches of the Treaty and the Treaty principles as outlined above, including the wrongful arrest, conviction and


execution of Mokomoko, the violations, abuse and killing of our tīpuna kuia Kimohia and the violations and abuse inflicted on the remaining whānau at the time, and throughout the following generations.

- (d) That the Tribunal recommend the Crown provide specific compensation to Te Whānau a Mokomoko in recognition of the specific harm and hardship that they have suffered, due to the Crown's actions in relation to Mokomoko and the stigma the whānau have carried as a result, down to the present day.
- (e) Full exoneration, an acquittal or something of equal weight given to Mokomoko acknowledge his innocence.
- (f) Any such other relief as the Tribunal sees fit.

DATED at Tāmaki Makaurau and Kirikiriroa 22 May 2024



Raewyn Clark / Josi Witehira
Counsel for Takerei Peck



Renika Siciliano / Carmen Mataira
Counsel for Karen Stefanie Mokomoko and Pita Tori Biddle

ATTACHMENT A: CLAIMANT WHAKAPAPA TO MOKOMOKO

Ko Maruwahakatipua – Ono

Ko Tawharanui – Hikona

Ko Hinetapairurangi – Takenui

Ko Hawea

Ko Te Rangihutini – Rangitawhenua

Ko Hikawharetoa – Hau o Te Rangi

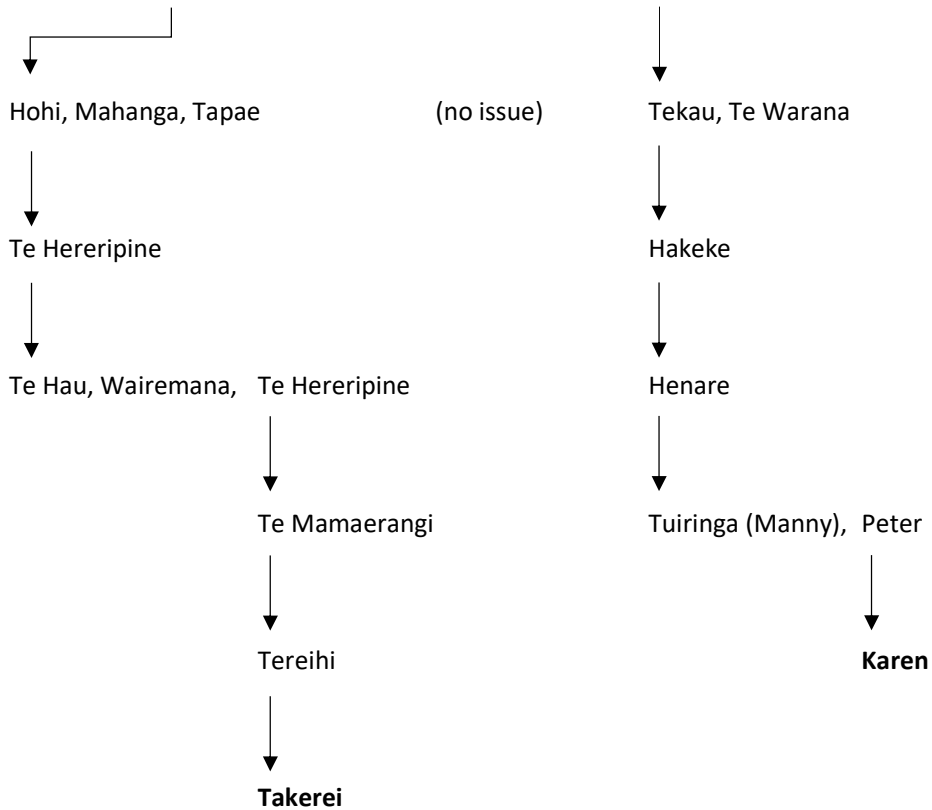
Ko Ruamoko – Kiteora

Ko Te Hikapakuranga

Ko Te Hapua

Ko Mokomoko

Mokomoko - Kimohia (1st Wife) - Horiana (2nd Wife) - Hirotipa (3rd Wife)



ATTACHMENT B: WAIATA A MOKOMOKO

Tangohia te taura i taku kaki, kia waiata au i taku waiata	Take the rope from my throat so I am able to sing my song.
Kore te tākiri e tute nei ki te moenga	Violent shaking will not rouse me from my sleep
Kei te hori te tangata tēnei kei te raweke	They treat me like a common thief
He pono te kī nei taku rauhia ki te moenga	It is true that I embrace eternal sleep for that is the lot of a man condemned to die
Koia kei te tangata mate kau au kia te Uira	Shielded from harsh light
Whakarewha te titiro te hukinga ia hau utiti	With confused view I reflect on the vengeance taken
He wareware noa te eke noa i te kaipuke	And question the reason why
He ahi mumura te pānga mai o te whakamā	Remember how I was taken on board ship
Me kawē ki tāwhiti hei homai mō te mekameka	Chained and shackled
Te rerenga o te rā, ko te Kāwana kei Ūropi	The memory of the shame burns within me so deep
Māna e kī mai me tau au ki te tauwati	That to be taken to a place afar
Hei tūtaki ake mō te kuaha o te pouaka	Right or wrong I am to die
Haere mai nei au ka turaki mate ki te moenga e	With the passing of time and the Governor of Europe
	They decided that I must hang
	With the closing of the lid on my box
	Only then will I get peace and eternal rest

ATTACHMENT C: FREE PARDON



Free Pardon

GOVERNOR-GENERAL

To all to whom these presents shall come:

WHEREAS on the 4th day of April 1866 Mokomoko was convicted in the Supreme Court at Auckland of the murder of Carl Sylvius Volkner and sentenced to death, and was subsequently executed:

And whereas the said Mokomoko was of ¹Whakatohea descent:

And whereas three other persons were also convicted with Mokomoko on the 4th day of April 1866 of the murder of Carl Sylvius Volkner, those three persons being of Ngati Awa descent:

And whereas section 11 of the Te Runanga o Ngati Awa Act 1988 restores the character, mana and reputation of the persons of Ngati Awa descent who were arrested, tried and labelled as rebels in or about 1865 and grants to them a full pardon in respect of all matters arising out of the land wars of 1865:

And whereas it appears that one of the incidents of section 11 of the Te Runanga o Ngati Awa Act 1988 is to pardon the three persons convicted with Mokomoko of the murder of Carl Sylvius Volkner:

And whereas it appears to me just and expedient that a pardon should also be granted to Mokomoko:

NOW therefore I, Catherine Anne Tizard, Governor-General of New Zealand, acting upon the advice of the Minister of Justice, do hereby in the name and on behalf of Her Majesty, grant to the said Mokomoko a free pardon in respect of the said crime.

A large, cursive handwritten signature of Catherine Anne Tizard.

Given under the hand of Her Excellency the Governor-General this 15th day of June 1992.

A smaller, cursive handwritten signature, likely of the Minister of Justice.

Minister of Justice