

Wai 1172 #1.1

Wai 900 #1.1.46

IN THE WAITANGI TRIBUNAL

IN THE MATTER OF

the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

**Luke Donnelly, on behalf of the Donnelly
whanau**

RECEIVED Waitangi Tribunal
10 MAY 2004
Ministry of Justice WELLINGTON

STATEMENT OF CLAIM

Dated this 5th day of May 2004

- 1 Preamble**
- 2 The Claimants**
- 3 The Claim Area**
- 4 The Cause of Action**
- 5 Legislation**
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1 Preamble

- A) This is the Statement of Claim of Luke Donnelly, who brings this claim on behalf of the Donnelly whanau of Ruatorea (“the claimants”).
- B) This claim covers the issue of land consolidation, and thereby the effective historic dispossession of the claimants’ and their forebears of their full entitlement to their tribal estate.
- C) In particular this claim focuses on the alienation of the claimant’s tipuna whenua despite the fact of their having descended from tupuna whom held the full interests in the lands in question.
- D) The Claimants say, in summary, that their lands were alienated from them by a system of land control that did not protect their interests. And this results from Crown acts and omissions after 1840.

2 The Claimants

- A) The Claimant in this claim is Luke Donnelly for and on behalf of his whanau.

3 The Claim Area

- A) The claim area relates to a block of Maori land located within the traditional rohe of Ngati Uepohatu, in particular to block of Maori land called Ahiateatua B (“the block”).

4 The Claim: The Cause of Action

The Claimants say:

A) That their claim falls within one or more of the matters referred to in Section 6(1) of the Treaty of Waitangi Act 1975 namely:

1. That they are Maori, and
2. That they have been and continue to be or are likely to be prejudicially affected by the various ordinances, acts, regulations, orders, proclamations, notices and other laws and by the various policies, practices and omissions adopted by, or on behalf of the Crown, their agents or their successors; and
3. That the aforesaid prejudices are inconsistent with the principles of the Treaty.

5 Succession

The Claimants further say:

A) Legislation significantly modified Maori customary rules of land tenure and the legislation did not reflect Maori tikanga when it ought to have.

Particulars: The Facts

1. On 30 January 1926, the Maori Land Court at Tikitiki gave the order to consolidate the block;

B) The claimants therefore allege that the legislation affecting land tenure such as the laws pertaining to land consolidation after 1840 as it affected Maori and therefore the claimants in this case was:

- (i) *Per se* unfair, in that of itself it derogated from the Maori custom (i.e. tikanga); and
 - (ii) Resulted in the claimants land interest in the block becoming uneconomical;
 - (iii) The claimants effectively loosing any real control over their tribal land, namely the block;
 - (iv) Resulted in the swapping of lands which resulted in the lose of ancestral tribal lands, namely the block;
 - (v) Provided no opportunity for the claimants to exercise any rangatiratanga over the block
- C) Wherefore it is further alleged that the Crown has failed to guarantee the claimants in this case, rangatiratanga and kaitiakitanga over the block, which they were entitled to by Maori custom (i.e, tikanga), and also thereby failed to actively protect their taonga, namely the block.

Particulars: The Treaty Breaches

- A) The Claimants say that, in terms of Section 6 (1) of the Treaty of Waitangi Act 1975, they have been directly or indirectly prejudicially affected by the following namely:

Section 6 (1) (a) Acts

- (i) Acts of the Legislature of New Zealand, to wit, the Native Land Act 1906 and the Consolidated Lands Act.

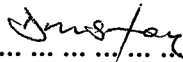
Particulars: Relevant Principles of the Treaty

B) That the aforesaid prejudices are inconsistent with the principles of the Treaty, namely by the Crown having;

- (i) failed to guarantee to the claimants the tino rangatiratanga over the block;
- (vi) breached its duty to the claimants to actively protect the tino rangatiratanga over, rights of ownership to and use of the block affected by succession in this instance;
- (vii) failed to facilitate the continuation of Maori law – the source of which is tikanga – concerned with and in respect of the block;
- (viii) failed to discharge its fiduciary obligation to them in respect of the block;
- (ix) breached its duty to act reasonably and in good faith towards them in respect of the block; and
- (x) breached its duty to consult with them in respect of the block.

6 Recommendations Sought

- A) The claimants seek the following from the Waitangi Tribunal;
- (i) A finding of the facts in their favour;
 - (ii) A finding that their claim is well founded;
 - (iii) A recommendation for an apology from the Crown;
 - (iv) A recommendation for monetary or other compensation.



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David Stone

Counsel for the Claimants

To: The Registrar

Waitangi Tribunal

To: Counsel for the Crown