

WAITANGI TRIBUNAL

WAI 103

CONCERNING the Treaty of Waitangi Act 1975

AND

A CLAIM by Pauline Tangiora relating to
Roadman's Cottage, Mahia

To:

Minister of Maori Affairs

Minister of Justice

I report briefly on the above claim, though it has not been the subject of a hearing, to advise that the Tribunal will not be inquiring further into it, and to propose that the Minister of Justice refer it to the registrar of the Maori Land Court at Gisborne to consider certain action.

The claimants seek 'the return' of five acres at Mahia owned by the Wairoa District Council and formerly used as a roadman's cottage. They claim descent from Materua Te Ngaio and say that the land was originally hers, and that Materua gave it to her sister, Maraea, the wife of George Ormond, in order that Mr Ormond might then gift it to the Wairoa County Council for a roadman's cottage and stock paddock.

The Tribunal is aware that George Canning Ormond was a prominent settler who did much to arrange affairs for Maori people, and who, at about the time that the gift is said to have been made, was also chairman of the county. He married Maraea Wharekete, a Maori of Mahia.

The Tribunal is also aware of a common practice amongst Maori of that time to gift land for roadmen's cottages (and for other public purposes) in order to attract services to their communities, and employment.

It is common ground that the land has not been used as a roadman's cottage for many years. If the land was gifted for that purpose, and the purpose of the gift can no longer be sustained, then in the absence of a variation the termination of the resultant trust and the return of the land would seem appropriate.

The Tribunal's jurisdiction is to hear claims against the Crown. This claim relates to a local authority. It is open to the claimants to argue, however, a Treaty duty in the Crown to ensure the recovery of gifted land in such cases. That argument has not been heard and

determined however since initial investigations suggest the claim should not be taken further, at this stage, for other reasons.

The main concern is that preliminary research has failed to disclose that the land was ever owned by Materua, from whom the claimants descend. The record, it appears, is that the land was included in a very large block sold to the Crown by certain Maori in 1864. Later, the Crown sold various parts to settlers, and the block that includes what later became the roadman's cottage passed to certain New Zealanders of European descent.

Owing to the destruction of documents in the 1931 Napier earthquake the subsequent record is not clear, but it seems the block then passed to George Ormond, who is known to have been buying land in the Mahia area from at least 1885. Certainly it can be established that Mr Ormond owned the block as at 1914, when he approved a roading and subdivision plan. There is nothing to show that Materua had acquired the block before Mr Ormond, or that he obtained it from her, but then, as noted above, the record of documents is not complete.

Subsequently the land passed to the county. One cannot say precisely when, because of the same loss of documents, but in 1938, when it appears the county was endeavouring to prove its title, George Ormond signed an acknowledgement that he had gifted the land to the county for a roadman's cottage about 20 years before. He did not say that it was or had been his wife's land, or that of his sister-in-law, but then he had no need to so say if the object was simply to admit to the later title of the county.

There are then these certainties only, that the former ownership of the land by George Ormond has been established, but there is nothing discovered at this stage of the prior ownership of Materua or Maraea. The Tribunal cannot proceed with this claim without some evidence corroborative of the claimants' account.

It remains to be noted that George and Maraea Ormond had issue. Obviously, those issue would be the descendants of a Maori and, therefore, persons able to bring a claim to this Tribunal. The Tribunal is given to understand, however, that the county is now seeking to establish those issue and to negotiate the return of the land to them. It appears to the Tribunal that there is the facility in the Maori Land Court to assist that inquiry and to re-vest the land to suit. It also appears that the claimants in this case would have rights to be heard in those proceedings. If that is the case, there is no need for this Tribunal to intervene and, indeed, it does not generally do so if the matter can be determined in the general courts.

Accordingly, the Tribunal does not intend to inquire further into this claim. Leave is given, however, to any person interested, to revive the claim in the event of a land return not being proceeded with, or in the event of further information being discovered.

In the interim, it is respectfully suggested that the Minister of Justice refer the matter to the registrar of the Maori Land Court at Gisborne, who is sometimes able to assist the identification of Maori descendants from existing records and who is able to help with applications. That is not a formal recommendation, however, since no formal inquiry has been made.

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Dated at Wellington this 19th day of December 1990

Chairperson
Waitangi Tribunal