

CHAPTER 2

WAKAPUAKA: THE MOST ENDURING GRIEVANCE IN THE PETITIONS

The Maori people of Te Tau Ihu o te Waka a Maui have petitioned Parliament for redress of various grievances over the last 130 years. Two grievances stand out among the petitions because of their persistence and depth of feeling: first, the complaints about the action of Governor Grey in granting part of the Nelson Tenth's estate to Bishop Selwyn in perpetuity for the support of an Anglican school; and secondly the decision of the Native Land Court to grant Wakapuaka to Huriā Matenga in sole ownership. The former grievance has been dealt with by the evidence of M J and H Mitchell. It is the subject of a specific claim (Wai 104) and is also an issue under the wider Wai 56 and Wai 102 claims, but seems to have been resolved through direct negotiations between claimants and the Anglican Church.¹ The second grievance was the subject of 23 petitions between the years 1896 and 1948, and is worth some detailed consideration in this report.

The 'Wakapuaka block' was created as a legal entity by the Native Land Court in 1883. Wakapuaka is situated some miles to the north-east of Whakatu (Nelson). It was originally a site of Ngāti Tumatakokiri occupation, but was taken from them by Ngāti Kuia and their allies some time in the late eighteenth or early nineteenth centuries. After the conquest it was occupied by Ngāti Kuia, and then included by their ariki, Tutepourangi, in his tuku of land to Ngāti Koata in the 1820s. Ngāti Koata and Ngāti Kuia lived there together from the late 1820s until the mid-1830s, when Te Rauparaha led an attack on Tasman Bay. The Kawhia allies sacked Wakapuaka, although they were careful not to kill their Koata kin, and Tutepourangi himself was killed by a prominent Ngāti Tama warrior, Paremata Te Wahapiro (also known as Te Kioe). Ngāti Tama seem to have settled in Tasman Bay around this time and occupied Wakapuaka, perhaps alongside a continuing population of Ngāti Koata and Ngāti Kuia. The Ngāti Tama ariki, Te Puoho, seems to have favoured Parapara in Golden Bay as his South Island residence, but he also lived at Te Horo in the North Island, and had residences elsewhere. I have not been able to ascertain whether Te Puoho resided at Wakapuaka.²

In 1836, Te Puoho led a Ngāti Tama raid into Murihiku territory which led to his death in battle at Tuturu, and the capture of his nephew and stepson, Paremata Te Wahapiro, by Ngai Tahu. Te Puoho was survived by his widow, Kauhoe, and their son, Wi Katene Te Puoho. These two people were living at Parapara at the time of

1. Rama Rewi to Marama Henare, 11 October 1993, Wai 104/0 master file, Waitangi Tribunal

2. See pt 1, ch 2

the Murihiku expedition, but they moved to Wakapuaka at some time after 1836. The details of this relocation vary according to the versions recited in the Native Land Court and elsewhere, but are crucial to the decisions of that court in 1883 and 1937, which led to the vesting of title for Wakapuaka in certain individuals and whanau at the expense of others. This is the grievance which led to many petitions and forms of legal action. It is not the intention of the present author to express an opinion on whose claims to the block were 'valid', but merely to present the different versions of the story and the history of the petitions.

At some point between 1836 and 1842, Kauhoe and Wi Katene visited D'Urville Island and asked Ngati Koata for a gift of land on which to reside. According to some versions of the story, Kauhoe was enraged at the failure of Ngati Tama and Ngati Rarua to avenge her husband's death, and so went to Ngati Koata in order to offend her husband's closer relatives. Others suggested that Kauhoe and her son were insecure and needed land with a clear title on which to live. Some say that Kauhoe asked on behalf of herself and her family but others suggest that she asked for land for only one of her sons, Wi Katene. The Ngati Koata rangatira responded by gifting her with Wakapuaka, which was already occupied by Ngati Tama. Maori authorities disagreed about the meaning and significance of this gift, and in particular whether Ngati Koata retained any rights in the land.³

Some sources stated that Kauhoe and Wi Katene did not move to Wakapuaka until after the New Zealand Company came to Nelson, but others disagreed with this assertion. In any case, Kauhoe died there in 1843.⁴ She was survived by two sons: Wi Katene Te Puoho, son of her second marriage (to Te Puoho); and Paremata Te Wahapiro, son of her first marriage (to Te Puoho's younger brother, Te Taku). There was some rivalry between these half-brothers, and Te Wahapiro led strong opposition to the company's attempts to extend the boundaries of the Nelson settlement into Wakapuaka lands in the 1840s. He quarrelled with Wi Katene and may have lived more often in the North Island after 1845, where he died in 1854. Te Wahapiro was survived by four children from his first marriage (Tipene Paremata, Ripene, Wi Katene, and Heni Tipu) and two daughters by his second marriage (Atiraira and Ngawaina). Some of these children lived at Wakapuaka in the second half of the nineteenth century, along with a Ngati Tama community. Wi Katene Te Puoho was the acknowledged leader of this community, especially after the death of his half-brother, Te Wahapiro, in 1854.⁵

The whole Ngati Tama community at Wakapuaka resisted the sale of their land to the Crown as part of the Waipounamu purchase in 1855 and 1856. McLean was forced to accept its status as a reserve, but he did so only on a temporary basis, and he did not record it as a reserve in any of the deeds (although it is marked as such on the 1855 map). The block amounted to about 17,736 acres, which McLean remarked was no more than sufficient for the local community's needs.⁶ Parts of it were leased to European farmers in the 1860s and 1870s, including two leases to the relatives of Alexander Mackay, Native Commissioner and a personal friend of Wi

3. AJHR, 1936, G-6b, pp 5-10

4. Ibid

5. Ibid, p 45, passim

6. McLean to Colonial Secretary, 7 April 1856, *Compendium*, vol 1, p 302

Katene and his immediate family. Mackay witnessed the leases, and he maintained a special relationship with the family, which later influenced (according to Judge Harvey in 1936) his evidence as to the ownership of the Wakapuaka block.⁷

Wi Katene married Wikitoria Tatana Te Keha, the daughter of Golden Bay Te Atiawa chief Henare Te Keha, and they had one daughter, Huria. Wi Katene and his daughter were the leading rangatira at Wakapuaka in the 1870s, along with Huria's husband, Hemi Matenga, the brother of Wi Parata and descendant of a prominent Ngati Toa line. Wi Katene remained firmly opposed to the sale of any land, and he refused to take Wakapuaka before the Maori Land Court. This posed a problem when the Crown wanted to buy land for a telegraph station in the mid-1870s. Alexander Mackay negotiated with Wi Katene, but he was determined not to refer the land to the court, partly (as Mackay said) for fear of reviving the claims of his relations to rights over the land, as distinct from his own. The government had already obtained his reluctant agreement to the alienation of 10 acres for the station site, but now they needed to obtain a legal title to the land, which could not be done without its passage through the court. Mackay stated that Wi Katene's relatives (the children of Te Wahapiro) had 'proprietary rights' over 'certain portions of the estate' but that they were in a 'subordinate position' and their proprietary rights 'partake entirely of a secondary character'. Mackay must have known that such rights would have to be recognised by the court, but he advised the government that there was 'no question as to Wi Katene's title to the land'. He may have meant the title to the particular 10 acres by this statement, but that is not clear.⁸ Parliament solved the dilemma by the passage of a special law in 1877. The Wakapuaka Telegraph Station Site Act 1877 stated that the land was 'owned by' Wi Katene, Huria Matenga and Hemi Matenga (in right of his wife), but that the title had not been ascertained by the Native Land Court, therefore Parliament authorised the Governor to purchase the land from its owners without reference to the court.

This action on the part of the Crown must have strengthened the position of Wi Katene and his daughter and son-in-law. Wi Katene died in 1880 and the block was put through the Native Land Court soon after his death. Huria Matenga applied for a court hearing on 1 November 1882. The application was unsigned, and filled out in the handwriting of the two men who dominated the history of the block for the next thirty years, Hemi Matenga and Alexander Mackay.⁹ There is considerable evidence that Huria acted generously towards her relatives and favoured their interests during her husband's absences, but that he controlled her closely when he was present, and explained her occasional lapses as the result of a severe drinking problem.¹⁰ Under section 17(2) of the Native Land Court Act 1880, the application had to contain the 'name of the tribe or the names of the Natives admitted by the applicant to be interested therein', as Parliament assumed that very few pieces of land would not be held in customary terms by more than one right-holder. The applicants (Mackay and Matenga) listed Ngati Tama as the tribe on whose behalf Huria claimed Wakapuaka.

7. AJHR, 1936, G-6b, pp 24, 31–32, 37–38, 43–44, 56

8. Alexander Mackay, draft memorandum to Clarke, 1877, AJHR, 1936, G-6b, pp 20–21

9. AJHR, 1936, G-6b, p 10

10. *Ibid*, passim

The evidence suggests that a pre-hearing deal was made between Huria Matenga and her cousins (the descendants of Te Wahapiro) in 1883, shortly before the sitting of the court, to the effect that Huria would front the case and head the title, but that she would include the other descendants of her grandmother, Kauhoe, in the list of people to go into the title.¹¹ Judge Harvey accepted this evidence in 1936, but it did not come into the public arena until some years after the court decision in 1883, and will be dealt with later in this chapter during the account of the petitions. As far as the court knew in 1883, there was only one Ngati Tama claimant to the land, Huria Matenga, and Judge Harvey believed that the court had to act on the evidence before it. The other descendants of Kauhoe had a reason for not lodging their own claims, but it is not clear why other Ngati Tama residents did not come forward with claims.

The case was heard by Judge Mair on 15 November 1883. There were two cross-claims to that of Huria's: Meihana Kereopa and others on behalf of Ngati Kuia, Rangitane, and Ngati Apa, the ancestral owners; and Tepine te Ruruku for Ngati Koata. The Kurahaupo witnesses claimed that Tutepourangi had gifted the land to Ngati Koata, but that Kuia and Rangitane had continued to live there with Koata until the second gifting of land to Kauhoe, and some had stayed even after that. The Koata witnesses claimed through their receipt of Tutepourangi's gift, and the continued occupation of some of their people after the gift had been made to Kauhoe and Wi Katene. They also claimed that Huria had agreed to acknowledge a joint right with them in the block, but that her husband had prevented her from keeping her agreement.¹²

The case for Huria Matenga was presented by her husband, and Huria did not appear in court. He claimed the land for her as her sole right, on the grounds that Ngati Koata had gifted it to Kauhoe for Wi Katene and his descendants. The evidence which seems to have swayed the court was that of Alexander Mackay. He deposed that the former owners were not really 'Rangitane etc' but an unnamed tribe from Taupo, by whom he meant Ngati Tumatakokiri. Having disposed of the Rangitane–Kuia–Apa claim, he then stated that Tutepourangi's gift had not extended beyond Rangitoto, and that Wakapuaka had been allotted to Ngati Tama by Te Rauparaha in the 1830s. Ngati Koata's gift of land to Kauhoe was 'purely Maori ceremony' and had no practical meaning. Having disposed of Koata's claim, he then deposed that Wi Katene had had full and exclusive authority over the land since the 1840s, that he had successfully prevented its sale in the 1850s, and that he had leased parts of it in the 1860s and 1870s without ever having to consult anyone else or pay them part of the rents. Hemi Matenga supported Mackay's evidence in most respects, although he did state that Ngati Koata had continued to visit and take food from the land.¹³

On 17 November, the Ngati Kuia–Rangitane–Ngati Apa claim was withdrawn, apparently in response to a huge feast that Hemi and Huria Matenga had given in their honour the night before.¹⁴ The court delivered its judgment on 20 November 1883:

11. AJHR, 1936, G-6b, pp 29–32, 39–40, *passim*

12. *Ibid*, p 11

13. *Ibid*, p 12

14. *Ibid*

Wakapuaka: The Most Enduring Grievance

The evidence in this case has been perfectly clear. It appears that Wi Katene came into possession before the great sale [the Waipounamu purchase]. This land was reserved from sale at his instance. He and his heirs have enjoyed undisputed possession to the present time. Even Ngati Koata, who set up a counterclaim, admit the mana of Wi Katene. They argue that Huria ought to admit them, not that they have any right. With that aspect the Court has nothing to do with any promise she may have made. When Huria gets her title she is free to do with it as she will.

Therefore the Court makes an order in favour of Huria Matenga for the Wakapuaka block as shown in the map, excepting the 100 acres set apart for Ngati Koata and the 10 acres for the Cable Station. A certificate of title to issue upon production of an approved survey.¹⁵

The court's findings did not make any material difference to the situation on the ground, as Huria's other relatives (and I presume the wider Ngati Tama community) continued to live at Wakapuaka and farm the land. As far as they knew, and there did not seem to be any reason to doubt it, they had been included in the certificate of title alongside Huria Matenga. In 1886, Huria made a will which bequeathed the whole of her lands to her husband, Hemi Matenga. In 1895, she entered into an extraordinary arrangement, whereby she leased Wakapuaka to her husband for the rest of his natural life, in return for £100 per annum. On 29 May, the lease came before Judge Mackay in the Native Land Court and he confirmed it. Armed with the lease, Hemi started to evict the other members of Huria's family from the block. He killed their stock and even burnt down the house of Atiraira Nopera, a daughter of Te Wahapiro by his second marriage.¹⁶

The eviction of Huria's relatives led to the first of many petitions to Parliament for a rehearing of the title to the Wakapuaka block. In terms of legal remedies, an application for rehearing had to have been lodged within six months of the original court decision. Otherwise the only avenue for redress was for Parliament to authorise a special rehearing, usually through a catchall Act of Parliament called the Native (or Maori) Purposes Act, which tended to pass through the Legislature every year. In 1896, Wi Katene Paremata, son of Te Wahapiro and grandson of Kauhoe, petitioned Parliament for a rehearing of the Wakapuaka block, on the grounds that he and his relatives were entitled to shares in the block, and that Huria Matenga had promised to include them in the title, but that she had failed to keep her promise and they had been 'shut out of the same'.¹⁷

The Native Affairs Committee reported on the petition on 27 August 1896. According to Atiraira's counsel in 1904, the committee 'agreed that a rehearing should be allowed, but when Judge Mackay presented a statement to the committee the following day, the committee altered its first report and drew up another which was against the petitioners'.¹⁸ The petitioners had alleged that Huria Matenga (Wi Katene's heir) and Atiraira Mohi (on behalf of the other line of Kauhoe's descendants), had agreed to Huria presenting the case in court on her own, after

15. Ibid, p 13

16. Ibid, pp 28–29

17. 1896 no 60, AJHR, 1896, I-3, pp 10–11

18. Findlay, Dalziell, and Company to Minister of Native Affairs, 9 September 1904, AJHR, 1936, G-6b, p 43

which she would insert their names into the list of owners presented to the court. Mackay told the committee that he did not believe this story because Atiraira was the daughter of a second wife of low rank, and could not have presumed to have made such an agreement. He also denied their claim that they had not known about their exclusion until 1896, and added that they had occupied only by permission of Wi Katene and then of Huria. Mackay told the committee that Te Wahapiro had specifically sold Wakapuaka in 1853 as part of the Waipounamu purchase, but that Wi Katene had preserved it from alienation.¹⁹

The committee's final report was to the effect that Wakapuaka had been owned by both Kauhoe and her son, Wi Katene, but that her other son's (Te Wahapiro's) rights had been alienated to the Crown in the Waipounamu purchase of 1853 to 1856. If Te Wahapiro's rights could have been proven before the Native Land Court, therefore, they would have been the Crown's rights rather than those of his descendants'. As for the promise alleged to have been made by Huria Matenga, the committee noted merely that Huria denied having made such a promise. Furthermore, the petitioners had made no claim in 1883 and had waited 13 years to make one: 'Their absence from the Court and their delay in making a claim seems to confirm the view that Wahapiro's descendants did not think they had any claim to the land.' The committee concluded that the petitioners had not proven their case.²⁰ The committee's decision was very influential and was often reissued in later years in response to further petitions. In 1935, Judge Harvey concluded that the committee had relied too heavily on Mackay's opinions, and that his evidence had misled them into making an incorrect finding.²¹

According to H K Taiaroa, the Legislative Council's Native Affairs Committee also reported on the 1896 petition, but in a more favourable way than the House committee. In 1897, the committee 'were in favour of a rehearing, or, at all events, thought that it might be just as well to grant a rehearing'. It found that the petitioners:

had established a case for inquiry as to their claim to be registered as beneficial owners in the Whakapuaka Block, and recommended the Government to inquire whether action should be taken under subsection (10) of section 14 of 'The Native Land Court Act, 1894'.

This part of the 1894 Act had replaced the Native Equitable Owners Act 1886, which had been designed to allow for rehearings of land where Maori right-holders had been excluded from certificates of title by the Native land Court's 10-owner rule, or where there were other implied or concealed trusts in the granting of land to a small number of 'owners'. Taiaroa was led to believe, however, that this section of the Native Land Court Act 1894 was the wrong one, since the petitioners approached the Government on the matter, and 'were told this report was drawn up under a misconception as to the powers given under the clause mentioned by the committee'. The Government, therefore, refused to act on the committee's

19. Mackay to Native Affairs Committee, 24 August 1896, AJHR, 1936, G-6b, pp 29–31

20. AJHR, 1896, I-3, p 11

21. AJHR, 1936, G-6b, pp 31–32, 37–38

recommendation.²² Their objections may have been mistaken or based on a technicality, however, as the 1894 Act was held to apply to the case when the petitioners sought an Order in Council later in 1903.

In 1897, the two daughters of Te Wahapiro by his second marriage, Ngawaina and Atiraira, made a second petition to Parliament for a rehearing. The Native Affairs Committee of the Legislative Council considered this petition in 1898 and heard evidence from the petitioners' husbands. Judge Harvey considered that their evidence was sound, but this time the 'Committee chose to believe the Mackay version of things'. Its report simply repeated what Mackay had said (and the House's committee reported) in 1896. Judge Harvey suggested that the two committees had based their reports on 'half-truths' and were mistaken in their findings.²³

In 1899, Atiraira tried again with a third petition. Both Houses adjourned consideration of this petition for the next couple of years, until 1901 when Henare Tomoana moved in the Legislative Council that the Government be asked to inquire into the ownership of Wakapuaka. Tomoana told the Council that Te Wahapiro had been the main owner of the block under Maori custom, and that there had certainly been more than one owner of the land.²⁴ H Scotland supported the motion, arguing that it was very unlikely for such a large block of land to have had a single owner:

knowing as he did something about Native lands, it seemed to him highly probable that there might be in existence equitable claimants to this land. They knew, unfortunately, that the decisions of the Native Land Courts had not always given satisfaction to the Natives. Sometimes a Native Land Court would seem to have gone on the principle 'that those who did not ask did not want.'²⁵

Scotland went on to suggest that the time had come to replace a system of an English court and judges with a Maori one, just as they were giving Maori greater power through the new Maori councils. In any event, he hoped that 'justice, even though it were tardy justice', would be done to the petitioners.²⁶

George McLean and W Kelly objected on the grounds that the Native Affairs Committee had investigated the 1898 petition very carefully and rejected it, and that Judge Mackay's report would show the Council why this rejection had been fully justified. McLean also saw some danger in reopening the question, especially since the Government had purchased land from the 'man who was in possession' (referring, I believe, to the acquisition of the telegraph station site back in the 1870s). H K Taiaroa replied to the concerns of these councillors, and stressed the decision of the 1897 committee in favour of the petitioners, as opposed to the Mackay-inspired decision of 1898. He also pointed out that the 1899 petition had been adjourned so that the petitioners could bring more evidence, and that this opportunity had been denied them.²⁷ W Jennings of Auckland supported the Maori

22. 30 October 1901, NZPD, vol 119, p 873

23. AJHR, 1936, G-6b, pp 41-42

24. 30 October 1901, NZPD, vol 119, pp 871-872

25. Ibid, p 872

26. Ibid

27. Ibid, pp 872-873

members, adding: ‘It was one of these Maori questions of which it might be said, “Hope deferred maketh the heart sick”.’²⁸ W C Walker, the Minister of Education and Immigration, promised the Council that the Government would consider the question and reopen the inquiry if they felt that there were sufficient grounds. The Council passed Tomoana’s motion but the Government does not seem to have taken any action on it.²⁹

The House’s Native Affairs Committee finally reported on the 1897 and 1899 petitions in 1903. It concluded that there was ‘no reason why the decision arrived at in 1896 should be altered’.³⁰ The Council’s committee also considered the 1899 petition in 1903, and decided to reopen the question of whether or not Huria had made a pre-hearing agreement with Atiraira and her family. It asked the Minister of Justice to have Huria examined by a Nelson magistrate. Although the magistrate could not compel Huria to attend, she agreed to give evidence in November 1903. H W Robinson, a stipendiary magistrate, put the committee’s questions to Huria and she denied that she had ever promised to admit her relatives to the title. Huria’s evidence was unsworn and nothing seems to have come of this further inquiry.³¹

Atiraira and her family did not give up. They tried a further petition in 1903, which was held over for consideration until the following year. Having obtained nothing by way of petitions to Parliament, they consulted a law firm and then applied for an Order in Council in 1904. They asked for an order under the Land Titles Protection Act 1902, authorising the Native Land Court to inquire into the Wakapuaka title under the equitable owners provisions of the Native Land Court Act 1894. Section 14(10) of that Act allowed the court to ascertain whether owners named on certificates of title were in fact meant to be trustees for people who had not been included in the title. Under this application, the issue was not whether the customary title had belonged to more than just Huria Matenga, but whether Huria had promised to act on behalf of the others and to include their names in the list of owners presented to the court. Atiraira’s solicitors outlined their case in a letter of 9 September 1904, to which Huria’s solicitors replied on 26 June 1905, with affidavits from Alexander Mackay and his cousin, James Mackay. These affidavits were used not merely to combat the application for an Order in Council, but were also used as evidence against later petitions. Atiraira’s lawyers argued that Alexander Mackay was a biased and unreliable witness in this particular case, but this view (later upheld by Judge Harvey) was ignored. The Government declined to issue an Order in Council under the equitable owners legislation.³²

In the meantime, the House committee had considered the 1903 petition. On 18 October 1904, it reported that the committee, ‘having dealt exhaustively with the petitioner’s case in 1896, has no further recommendation to make’.³³ Having failed to obtain either a favourable report or an Order in Council, the family tried a further petition in 1906. This time the House committee reported that it had no

28. 30 October 1901, NZPD, vol 119, p 874

29. *Ibid*, pp 872, 874

30. 1897 no 358, 1899 no 283, AJHR, 1903, I-3, p 7

31. AJHR, 1936, G-6b, pp 39–40

32. *Ibid*, pp 42–46, 52

33. 1903 no 689, AJHR, 1904, I-3, p 28

recommendation to make 'because the petitioner has not exhausted his legal remedies'.³⁴ I am not sure what the committee meant by this, and reference to the unpublished committee minutes in the LE series (National Archives) would be necessary to clarify the matter, if the minutes for those particular hearings survive. It may be that the committee thought that further attempts could be made to reopen the court proceedings by obtaining an Order in Council.

Huria Matenga died in 1909 and her husband, Hemi, inherited the Wakapuaka block under the terms of her will. Wi Katene Tipu fronted a petition in the same year to try again for a rehearing. The House's Native Affairs Committee reported in 1910 that it simply had no recommendation to make to Parliament on the matter.³⁵ Hemi Matenga then tried to get the Maori Appellate Court to reclassify the block as European land, so that he could bring his estate out from under the cloud of a possible Native Land Court rehearing. The court refused his application, however, possibly because the judge believed that there may have been a trust associated with Huria's sole ownership of the block.³⁶ Hemi died two years later in 1912, and the land passed to two Pakeha trustees under his will, as Hemi had no children. Wi Katene tried yet another petition in the year of Hemi's death, but the House committee once again delivered a single-sentence report to the effect that it had no recommendation to make.³⁷

By 1912, the descendants of Kauhoe and her son, Te Wahapiro, had been petitioning Parliament for 16 years. They seem to have given up for the next 15 years. In the late 1920s and early 1930s, however, as special rehearings became fairly common through an annual Act of Parliament, there was another (and more successful) flurry of petitions. At this point a wider group of petitioners joined the fray, including Ngati Koata, and the representatives of a larger Ngati Tama group who were outside the immediate line of descent from Kauhoe. In 1928, there were two petitions: one from Reuben Stephens, whose identity was not clarified by the committee report; and one by Wi Katene, on behalf of the descendants of Kauhoe. The House committee reported simply that it had no recommendations to make on these petitions in 1928 and 1929 respectively.³⁸ In 1929, Wi Katene tried again but his petition was held over until 1933, when the committee made its usual one-sentence report.³⁹

Undeterred by this rebuff, Wi Katene submitted a third petition in 1933. This petition was held over until the following year, at which time it was joined by a petition from Waka Rawiri and Hoani Meihana on behalf of the members of the 'Ngati Tama Tribe' who had lived at Wakapuaka, and for whom the land had (so they argued) been set apart 'long before 1862'.⁴⁰ These petitions were considered by the committee in October 1934, when it finally changed the stance of the last 37 years and recommended that the Government inquire into the matter.⁴¹ The reports

34. 1906 no 360, AJHR, 1906, I-3, p 13

35. 1909 no 317, AJHR, 1910, I-3, p 11

36. AJHR, 1936, G-6b, p 57

37. 1912 no 186, AJHR, 1912, I-3, p 16

38. 1928 no 57, AJHR, 1928, I-3, p 6; 1928 no 56, AJHR, 1929, I-3, p 4

39. 1929 no 361, AJHR, 1933, I-3, p 3

40. AJHR, 1936, G-6b, p 2

gave no indication as to the reasons for this change of heart. As a result of the committee's recommendation, the two petitions were included in the schedule of the Native Purposes Act 1934 to be referred to the Maori Land Court for inquiry. The chief judge was empowered to take whatever remedial action he saw fit upon receipt of the court's report.

In 1935, Ngati Koata, no doubt impressed by this unexpected success, made a petition to Parliament on their own behalf as well. J A Elkington and others argued that Koata had given the land to Kauhoe for her son, and that they had continued in occupation alongside Wi Katene Te Puoho. The end of his line meant, they suggested, that the gift reverted to Ngati Koata as sole owners.⁴² The committee recommended that Elkington's petition be added to the schedule to the Native Purposes Act 1934, which was duly done by Parliament in 1935.⁴³

Chief Judge Jones referred the three petitions to Judge Harvey, who inquired thoroughly into the history of the block and the petitions, and made his report to the chief judge on 8 July 1935. By this time, about 6358 acres had been sold, leaving a residue of 11,381 acres which could still be made the subject of court orders for reallocation to the petitioners. Judge Harvey heard a great deal of evidence and legal submissions, as well as examining the historical documentation of the case. He concluded that the Native Land Court had made the only decision it could in 1883 upon the evidence before it, but that the witnesses had not relayed all the information that they could and should have given to the court. Harvey felt that more should have been revealed about the actions of the 'section of Ngati Tama' as a whole, who lived at Wakapuaka and who had joined Wi Katene Te Puoho in securing its reservation from sale. He found that Mackay's evidence on this point had been incorrect in ascribing the reservation solely to the efforts of Wi Katene. He also dismissed the argument that Te Wahapiro had sold any rights he might have had by signing the Ngati Toa deed of 1853. The judge held that this was no more a sale of Wakapuaka than the deeds signed by Wi Katene. In terms of occupation after the 1853 to 1856 Waipounamu purchase, the judge concluded that Wakapuaka was reserved for the Ngati Tama living there, which included both their leader, Wi Katene, but also the son of Te Wahapiro, Tipene Paremata.⁴⁴

In his assessment of the historical material, Judge Harvey also emphasised parts of Mackay's 1877 report to the Government about the sale of the telegraph station site, which seemed to demonstrate Mackay's knowledge that others besides Wi Katene had 'proprietary rights' in the block. He reviewed the evidence presented to Mackay as judge in the 1892 Nelson tenths case, and argued that this was the 'evidence that was not given and should have been given when the title to Whakapuaka was investigated'. Given the significance of this evidence and Judge Mackay's findings in the Nelson tenths case, Judge Harvey proceeded to demolish Mackay's arguments in his report to the Native Affairs Committee of 1896, and his affidavit of 1905.⁴⁵ He blamed Mackay for misleading the committee and

41. 1934 nos 262, 1933, 123, AJHR, 1934-35, I-3, p 7

42. AJHR, 1936, G-6b, p 2

43. 1935 no 329, AJHR, 1934-35, I-3, pp 9-10

44. AJHR, 1936, G-6b, pp 13-16

45. Ibid, pp 20-32, 41-46, 52, 56-57

subsequent committees, and endorsed the statement made by counsel for the petitioners:

I am amazed at the deadly persistency with which Alexander Mackay pursued these unfortunate people. Whenever and wherever they sought a way of relief they saw the massive figure of Alexander Mackay blocking the path. I am amazed at the tremendous efforts he made to establish Huria Matenga in the sole ownership of this land. I am amazed at his devotion to her cause and at the way he wrestled with the truth and sometimes overcame it. It is no wonder from his frequent appearances in this case the Maoris got the idea the decision against them was given by Judge Mackay. It was he certainly who killed every attempt they made to get a rehearing.⁴⁶

With regard to the alleged meeting and pre-hearing agreement, the judge was particularly impressed with the evidence of Mere Paaka, a friend of the deceased Huria. She testified that there were a number of people present at a meeting between Huria and Atiraira, and that they all agreed that Huria would present their case and respond to the Koata claim, and then include their names in the certificate of title. Huria's husband, Hemi Matenga, had not been at the meeting.⁴⁷ Harvey considered that there was sufficient evidence to support the story, and he firmly condemned the actions of successive Native Affairs Committees for reporting incorrectly on the facts, and for not uncovering what he considered to be a very obvious 'truth'. He reported to the chief judge that the petitioners on behalf of the descendants of Kauhoe had proved their case to his satisfaction.⁴⁸

Judge Harvey's decision did not consider the other groups of petitioners, Ngati Koata and Ngati Tama, with the same degree of depth and analysis. He concluded very briefly that Ngati Koata had not petitioned against the court's decision until 1935 (a lapse of 52 years), and held this to be sufficient evidence that their rights had not survived. The same was true of the wider Ngati Tama community, with the added argument that Ngati Tama had not contested the original court case either. Judge Harvey dismissed the petitions of J A Elkington and Hoani Meihana on these grounds.⁴⁹

The chief judge reported Harvey's 60-page decision to Parliament on 18 May 1936. He informed the Native Minister that:

the true facts were not sufficiently disclosed to the Court of 1883 to enable it to judge properly of the rightful ownership, and that, had the Court known the true history of the gift, it would have included Kauhoe's other descendants in the title.

Chief Judge Jones concluded that a prima facie case had been made for a rehearing of those parts of the Wakapuaka block which remained in Maori ownership.⁵⁰ Parliament accepted Jones's recommendation. Section 9 of the Native Purposes Act 1936 authorised the Native Appellate Court to rehear the Wakapuaka title with

46. Ibid, p 56

47. Ibid, pp 39–40

48. Ibid, pp 37–42, 57

49. Ibid, p 57

50. Ibid, p 1

reference to the petitions of 1933 to 1935. The Act empowered the court to admit other people to the title on the basis of their customary rights, to award compensation from the estate of Hemi Matenga, and to pay the legal costs of the new grantees from the Matenga estate. As usual, however, the court's finding would not affect land 'alienated for value'.

Having petitioned Parliament on and off for 40 years, and endured the expense of a full Maori Land Court hearing of their claim, the petitioners now had to submit to the expense of another hearing – this time in the Maori Appellate Court, but with the prospect that their costs might be paid from Hemi Matenga's estate. The three parties were heard by the Appellate Court in Wellington in July 1937. Judge McCormick was presiding officer, with the assistance of Judges Browne and Carr. The judges made a brief decision, which acknowledged their debt to the 'very full and careful report prepared by Judge Harvey'. Although stipulating that they did not necessarily assent to 'all the conclusions and inferences contained in it', they basically upheld Harvey's findings (with one important exception). Ngati Tama's tribal claim was weakened by the fact that 'no adequate reason has been shown for the long delay' in protesting the decision between 1883 and 1934. The judges felt that Ngati Tama could not show that they had conquered the area on their own, nor that their 'intermittent occupation' had been 'sufficient to establish a tribal right'. The Ngati Tama claim was dismissed on these grounds.⁵¹

The Ngati Koata case was considered to be stronger than the Tama one because they had argued a claim before the court in 1883, but the judges considered the failure to appeal or protest for 50 years was still strong evidence that the claim had lapsed. They found that Wakapuaka was generally recognised as belonging to Ngati Koata after the Kawhia conquest of the area, either because of Tutepourangi's gift or because of their alliance with Ngati Toa, and this was accompanied by 'intermittent' occupation. Nevertheless, the court held that 'all Ngati-Koata rights were given away' in the gift to Kauhoe and Wi Katene. In response to the Koata contention that they had ceded 'a mere right to occupy', the judges concluded 'that the Ngati-Koata chiefs made an absolute gift of the land and did not belittle the wife and son of a chief like Te Puoho by treating them in the manner that has been suggested'. The Ngati Koata claim was dismissed on these grounds.⁵²

With regard to the claim of Kauhoe's descendants, the Appellate Court judges were much more inclined to emphasise the importance of Wi Katene than Judge Harvey had been. They maintained that his was 'by far the strongest and most continuous occupation'. Te Wahapiro's family had occupied in an 'intermittent' fashion by comparison, and had spent much of their time in the North Island. They concluded that Wi Katene was the 'ahika [ahi kaa] of the family on this land'. They also rejected the idea that post-1840 developments could not be the primary determinants of title:

Any idea that the rights of members of a family become crystallised [sic] in the year 1840 has long been disposed of by judgments of this Court which has invariably

51. Wellington Maori Appellate Court minute book 6, 14 July 1937

52. Ibid

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for many years past taken into account happenings subsequent to that period. We, therefore, are of opinion that the right of Wi Katene must be held to be much larger than that of Te Wahapiro.⁵³

As a result of these views, the judges came to a decision quite different from that which Judge Harvey was likely to have made in 1935. They admitted the descendants of Te Wahapiro to the title, which was an important victory for the petitioners, but only to a quarter share of the remaining land; three-quarters of the estate would continue to be vested in Hemi Matenga's heirs.⁵⁴ It is important to note that M J and H Mitchell gave these proportions incorrectly in their evidence to the Tribunal, asserting that 75 percent of the title was awarded to the descendants of Te Wahapiro, and only 25 percent to Hemi Matenga's heirs.⁵⁵

The Maori Appellate Court's decision was followed by a further decade of petitions. There were four petitions in 1938: Turi Ruruku and others of Wakapuaka (whose iwi affiliation was not recorded, but who may have been Ngati Koata); Kipa Roera and others of Ohau (whose iwi affiliation was not recorded); Hoani Meihana and 16 others of Pihama (the Ngati Tama claim); and Hoani Meihana on his own. The petitioners asked Parliament to create a special court of appeal or inquiry to hear the Wakapuaka case again, or to enact legislation granting them a right of appeal from the Native Appellate Court's decision (presumably to the Court of Appeal). The House's Native Affairs Committee reported on the first three petitions in September 1938 with their usual one-sentence report that they had no recommendation to make.⁵⁶ Hoani Meihana's petition was considered in September 1939 and given the same report.⁵⁷

The process of petitioning was interrupted by the outbreak of war, and there were no more petitions until the end of the Second World War. In 1945, Pauline Selwyn and 16 others petitioned 'for legislation establishing their rights in Wakapuaka Block'. This marked a further effort by Ngati Koata, but the House committee rejected the petition with its accustomed decision not to make recommendations.⁵⁸ Ngati Kuia revived their claim to Wakapuaka in the same year, with a petition from F T Sciascia and 24 others of Porangahau. The committee seems to have been impressed with the Ngati Kuia case, as they recommended the petition to the Government for 'favourable consideration'.⁵⁹ Further research would be necessary in the LE files at National Archives to determine the reasons for the committee's decision. The Government does not seem to have taken any productive action on this vaguely worded recommendation.

Ngati Tama submitted two further petitions in 1946, both of them in the name of Hoani Meihana 'and others'. The first of these petitions was reported on in October 1946, with the usual Native Affairs Committee report of 'no recommendations'.⁶⁰

53. Ibid

54. Ibid, fol 255

55. Wai 102 ROD, doc A16(b), ch 8, p 153

56. 1938 nos 55, 61, 62, AJHR, 1938, I-3, pp 6-7

57. 1938 no 111, AJHR, 1939, I-3, p 3

58. 1945 no 26, AJHR, 1945, I-3, p 12

59. 1945 no 53, AJHR, 1945, I-3, p 13

60. 1946 no 53, AJHR, 1946, I-3, p 16

The second petition was withdrawn in 1947.⁶¹ The committee's report did not indicate the reasons for its withdrawal, but Hoani Meihana tried again in 1948 with seven other signatories. Their request for a 'reinvestigation of the rights of Ngatitama Tribe' was again rejected. The committee refused to make any recommendation to the Government.⁶² Pauline Selwyn and six others tried to reopen the Ngati Koata case again in the same year, but the committee refused to recommend action on their petition either.⁶³

By the end of 1948, therefore, there had been 10 petitions against the Native Appellate Court decision, a recommendation that the Government consider one of them (the Ngati Kuia one), and no other action on the matter. The Native Affairs Committee presumably considered that the judges had investigated the claims thoroughly in 1935 and 1937, and could see no grounds for reopening the inquiry in the 1940s, with the possible exception of the Ngati Kuia claim, which had not been put forward in the 1930s. Research would be necessary with the LE files, however, to show whether these petitions were investigated carefully and thoroughly, or whether the committee's investigation was pro forma. There were no more petitions to Parliament about Wakapuaka in the 1950s and 1960s.⁶⁴

The Native Land Court decision of 1883, and the subsequent process of petitioning and rehearings, remains a grievance with claimants before the Waitangi Tribunal. It has been raised in the evidence of M J and H Mitchell, for example, on behalf of the Wai 102 claimants, and has been included in Ngati Koata's statement of claim for Wai 566.⁶⁵ The Tribunal will need to consider:

- (a) the legislation which governed the hearing of northern South Island 'reserves' by the Native Land Court in 1883, and the process by which the court reached its decision to vest Wakapuaka in the sole ownership of Huria Matenga;
- (b) whether other parties had a legitimate claim as at 1883, and the processes by which those parties could have obtained a rehearing of the case;
- (c) the petitions and their investigation by the Native Affairs Committees of both Houses, 1896 to 1935;
- (d) the process of obtaining Orders in Council, and the failure of Atiraira Mohi's application;
- (e) the process of establishing a prima facie case for inclusion in special legislation, and the 1935 court hearing and decision of Judge Harvey;
- (f) the hearing and decision of the Native Appellate Court in 1937, and the restrictions upon its re-vesting of title; and
- (g) the petitions and their investigation by the Native Affairs Committee, 1938 to 1948.

61. 1946 no 76, AJHR, 1947, I-3, p 6

62. 1948 no 31, AJHR, 1948, I-3, p 10

63. 1948 no 32, AJHR, 1948, I-3 p 10

64. AJHR, 1949-69, I-3

65. Wai 102 ROD, doc A16(b), ch 8, pp 152-153; Wai 566 ROP, paper 2.1, p 3

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A consideration of these issues, which would require some additional research on the part of claimant and Crown historians, should enable the Tribunal to make findings upon the claimants' most enduring grievance in their petitions to Parliament.

