

The Pouakani Report 1993

Appendices

9 Report of Native Land Court on Petition No. 73/1940 of Pouaka Wehi and others re Maraeroa C Block.

The subject of this petition came before the Court for inquiry at Te Kuiti on the 10th and 11th July, when Mr Elliott appeared for the Native owners and Mr Meredith and Mr Darby appeared for the Crown. On the second day, at the conclusion of the hearing, I inspected the two points of interest, Ngahuinga and Ngaherenga, in company with Mr Elliott and several of the Native owners, but without any representative of the Crown. As a result of the hearing and the inspection, I have reached a definite conclusion that the petitioners are not entitled to the relief they claim.

A brief history of this matter is that in 1891 the title to the Maraeroa Block was investigated by Judge Puckey. Three subdivisions of the block were claimed, Maraeroa C being one of them. This was ultimately awarded to the Ngati Rereahu Tribe. At the conclusion of the hearing as to the C subdivision, Pepene Eketone, who acted for the claimants, furnished a written statement in his own handwriting, of the description of the C subdivision. This appears on the file, and the translation is as follows:-

"Starting at Ngahuinga (at Te Taumata) and running southwards to the source of the Paruho River and then following the river until it reaches the Ongarue and thence by this river until it strikes the west line of the block and then northerly by that line to the starting point."

This description was prepared by Eketone, after a conference with his constituents, and it bears a marginal note by the Judge, in these words:-

"These boundaries to be entered in minute-book to ensure correctness hereafter."

I have not been able to find in the minute-book a transcription in the precise words given by Eketone, but in Waikato minute-book 28/118, the following description, apparently in the handwriting of the Court Clerk, appears:-

"As to a small division of Maraeroa proper, Pepene gave boundaries, viz Ngaherenga, a hilltop on the road on the west boundary, thence south to the source of the Paruho Stream, thence by that stream to the Ongarue Stream, thence by that stream to the west of the boundary, thence north to the commencement."

If this is intended to be a description of the boundaries given by Eketone, it apparently contains a mistake in that Ngaherenga is named as a point in the minute-book and Ngahuinga as the point in Eketone's written description. Eketone, during the course of

the proceedings, admitted that he did not know the land and that the boundary points were given to him by the owners.

For the Judge's assistance, Eketone indicated as well as he was able, and with no pretension of accuracy, on the plan of the block where the points of the boundary were, and these were indicated in pencil and were subsequently used by the Survey Department to produce an office plan showing Maraeroa C. This office plan, which was apparently produced by the aid of a protractor, was handed to the Surveyor, Mr Ward, with instructions to survey. When he went on to the land with this sketch and indicated where he proposed to survey, the Native owners immediately objected, and as a result, the question of the accuracy of the sketch and the position of the boundary points came before Judge Gilfedder in 1907, whose record of the matter is contained in minutebook Ot.47 page 178 et seq. Mr Earl was acting for the Native owners, and he called as a witness, Pepene Eketone. Mr Ward, the Surveyor also gave evidence. Judge Gilfedder found that the sketch did not show the proper boundaries, and he recommended that the Surveyor should survey strictly in accordance with the boundaries accepted by the Court in 1891. Mr Ward thereupon proceeded to survey, the Native owners acting as guides, the principal one being Tutaki Ringitanga. He completed the survey and produced Plan 7478 upon which a title has been issued. This plan gives an area of 13,727 acres, whereas it was anticipated that the area of the C subdivision might be 3,000 acres or 4,000 acres, although no attempt had been made to define the area.

On the completion of this survey, the Crown objected, apparently for the reason that it contained too large an area. The real reason appears to have been that the Crown had acquired, by purchase, adjoining portions of the Maraeroa Block and found that they were substantially short of the purchased area if the C subdivision was properly shown as containing 13,727 acres. The inquiry into the correctness of the plan came before Judge Browne in 1910 and he reported on the 17th March 1910, recommending that the plan be accepted as correct.

At this hearing, Mr Earl again represented the owners and Pepene Eketone again gave evidence. The main question in dispute at this hearing was as to the position of the source of the Paruho Stream. The boundary-line commenced from Ngahuinga and ran in a straight line to the source of the Paruho Stream. No question was raised by the Native owners as to Ngahuinga being the correct starting-point.

No further question was raised as to the true boundary of the land until 1932, so that over twenty years elapsed from the adoption of Mr. Ward's plan to the first petition.

There is no doubt in my mind that there has been confusion between the two points, Ngahuinga and Ngaherenga, and that confusion appears to me to have existed in the minds of the Native owners themselves. There can be no doubt that when Pepene Eketone handed in his list and the written description of the boundaries starting at Ngahuinga, he was relying on information furnished by the Native owners as to Ngahuinga being the correct starting-point. Further than that, at the hearing before Judge Gilfedder in 1907, Wehi and Tutaki Ringitanga both gave evidence.

Wehi's description was this:-

I know Ngaherenga, a hillock in a clear place. The road goes over it. Waimiha Stream runs close to it.

Tutaki, who acted as Mr Ward's guide on the subsequent survey says:-

I met Mr Ward on the land. I pointed out the boundaries of the land. I showed him Ngaherenga, a low hill, over which the road goes. There is a totara post erected there by our elders as an old landmark or boundary.

That is why the boundary of Maraeroa starts there. The post was put in by our elders. It is on Ngaherenga, over which the Taupo Road runs. There is no other road between this road and Pukemako."

Now, it will be noticed that both Wehi and the Tutaki say that the road to Taupo goes over this hill. Mr Ward's field book, which was produced to me, shows that the old track went over Ngahuinga. From my inspection of the point, Ngaherenga, it is perfectly clear that the old Taupo Track did not go over Ngaherenga, but ran round the foot of it to the south, on the level. The only point fitting the description given by Wehi and Tutaki is Ngahuinga, and I judge the reason why the track went over Ngahuinga was that from the top of Ngahuinga there was a direct slope to the Waimiha Stream, which runs past Ngahuinga on the north side at its foot. The same stream runs also on the north side of Ngaherenga at its foot. The only point in Wehi's evidence which might indicate Ngaherenga, is the description. "a hillock in a clear place." On the top of Ngaherenga I found that an old totara limb had at some time been erected, but in the process of time had been broken off and was lying on the ground. It could not, however, be described as a post. On the top of Ngahuinga I found what is truly described as an old totara post. This is about 6 ft. high and about 9 in. to 12 in. through, and rounded, I should think, with an adze. This bears to this day certain compass markings giving the points of the compass, and Tutaki's description of Ngaherenga fits this point, Ngahuinga, exactly, both because of the totara post and because of the statement that the Taupo Track ran over it. There is no doubt in my mind that when Tutaki referred to Ngaherenga, he had in mind the point Ngahuinga, and this is borne out by the fact that when he acted as guide for Mr Ward the theodolite was set up on the top of Ngahuinga and directed by Tutaki himself to the source of the Paruho Stream. At the hearing before Judge Browne, Mr Ward recited in detail exactly what was done to get the Ngahuinga-Paruho line, which was fixed by Tutaki himself. I remark again that at the hearing before Judge Browne no question was raised by the Native owners as to the correctness of Ngahuinga as the starting-point and the whole argument, as mentioned by Judge Browne, centered upon the question of the place of the source of the Paruho Stream. For the foregoing reasons, my conclusion is that there was confusion in the mind of the Native owners as to the two points mentioned, and it is noticeable that it was not until after the death of Tutaki and the other elders that the matter was raised by petition.

Evidence was given before me at Te Kuiti as to the two points, but in all these cases I think the original record of the hearing is a far better record of the truth of these matters than evidence offered many years after, when the elders who gave the evidence originally have passed away.

Another matter that struck me at the hearing was that the plan produced by the Native owners showing their claim was prepared by a surveyor, Mr Carroll, of Te Kuiti showing the two points, Ngaherenga and Ngahuinga. In this plan a further point is introduced, called Pikiariki. By adopting this point, a further substantial area is included in the claim, so that the claim is not now limited to an area of land included within lines drawn from Ngahuinga to Ngaherenga and thence to the source of the Paruho Stream. I enclose a sketch [not printed] showing the land claimed before me, which also serves to show what would have been claimed had Ngaherenga been taken as the starting-point and the line run direct to the Paruho Stream. I can find nothing that justifies in any way the introduction of the new point. Pikiariki, and the introduction of that point does not in any way correspond with the boundaries laid down by Tutaki or the written description furnished by Pepene Eketone. To my mind, the introduction of this new point discredits the petitioners' claim.

I may say, in conclusion I am satisfied that at no stage did the elders of the Native owners, who gave the boundaries, consider that the point they now describe as Ngaherenga was the true starting-point of the boundary-line, but that all available evidence indicated Ngahuinga as the true starting-point, and that Mr Ward's Plan 7478 followed the boundaries laid down by the owners themselves.

For the foregoing reasons, I am clearly of opinion that the claim made by the petitioners has not been substantiated and that it has no real foundation. For that reason, I recommend that no alterations be made to the boundary of Maraeroa C.

E.M.BEECHEY, JUDGE
Source: AJHR 1942, G-6c

Waitangi Tribunal, Department of Justice, Wellington.