

The Pouakani Report 1993

Appendices

7 Report of the Royal Commission into the Tauponuiatia Block 1889

To His Excellency the Governor of New Zealand, &c.

We, the undersigned, appointed by a Commission, dated the 9th day of July, 1889, under the hand of the Governor, and sealed with the public Seal of the Colony, to inquire into certain matters connected with the hearing by the Native Land Court of the block of Native land called Tauponuiatia, respectfully submit for your Excellency's consideration the following report of our proceedings:-

We held our sittings at Kihikihi, as being the most convenient place for all parties concerned, and the meeting was attended by a large number of the Ngatimaniapoto Tribe, and by several of the principal chiefs of the Ngatituwharetoa, from Taupo.

We sat on seventeen days, and examined in all, twenty-six witnesses, whose evidence is recorded on two hundred and twenty-four pages of foolscap, which, with various exhibits, are transmitted with this report.

Much of the Native evidence given on both sides has been very conflicting, and often at variance with what had been previously sworn before the Native Land Court; and we have found it very difficult to determine which is the most reliable. We had the records of the Native Land Court before us, to which access was also given to all interested parties, who freely made use of them, and we permitted the utmost latitude in the examination and cross-examination of witnesses, and refused no evidence that was tendered to us. We decided not to allow Europeans to conduct the cases, making an exception, however, in Karawhira Kapu's case, which was conducted by her husband, Mr Moon, and defended by Mr W.H.Grace, he being the person chiefly interested on the other side. We believe that this decision gave general satisfaction to the Natives.

In summing up the evidence taken on the different issues remitted to us for consideration, we have referred to such points only as, in our opinion, are material to the issue, or to such as would lead to a clear apprehension of the case.

Waitangi Tribunal, Department of Justice, Wellington.

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7.1 Issue No. 1.

The first question referred to us by the Commission is as follows: "Whether the boundary of the said block of land called Tauponuiatia, as delineated on the said plan, and thereon coloured red, is the correct boundary thereof, or whether the said boundary is correctly delineated by the line coloured yellow on the said plan, or whether the correct boundary would be properly defined by an intermediate line between the said lines coloured red and yellow."

This is a question respecting the proper position of the boundary dividing the lands of the Ngatimaniapoto and Ngatituwharetoa (Taupo) Tribes.

In 1882 and 1883 many meetings of representatives of these two and of the Whanganui, Ngatihikairo, and Ngatiraukawa Tribes were held, at which it was ultimately resolved to fix the outside boundary, or Rohepotae, of the King country to include all the lands of four of the tribes, and a large part of those of the fifth, Ngatituwharetoa; and we were informed that Mr Bryce, then Native Minister, after this had been settled, agreed that, if they wished it, the block should be surveyed and investigated as a whole.

On the 31st October, 1885, the Ngatituwharetoa sent in a claim to the Native Land Court for the investigation of title to the land included within their Rohepotae, comprising a portion of the original block, and all their other lands, and setting forth their boundaries; and it was duly notified that a Court would sit for the hearing of this claim.

The Court accordingly commenced its sittings on the 14th January 1886, at Taupo, and, in consequence of objections made out of Court by some of the Ngatimaniapoto, Te Heuheu, on the part of Ngatituwharetoa, agreed to withdraw their western boundary further eastward; and on the 16th January he announced in Court the altered boundary, as claimed by the Ngatituwharetoa, and gave the names of places along the line, part of which ran along the western slopes of the Hurakia Range, and which names were marked and the line drawn on the map before the Court by one of the surveyors.

Eleven counter-claims were set up on that day - four of them by members of the Ngatimaniapoto, who said that they had been elected to represent the tribe, but who appear to have made their claims on personal grounds only.

On explanations and concessions being made by Te Heuheu all these counterclaims were withdrawn.

Taonui, who asserts that he alone was the chosen representative of the whole tribe, had been detained at Cambridge by subpoena from the Resident Magistrate's Court, and did not arrive at Taupo until the evening of the 18th January, when he was informed by the other members of his tribe that the boundary-line had been settled. He had a meeting with Te Heuheu before the opening of the Court on the 19th, and endeavoured to induce him to stop the hearing of the case, but Te Heuheu refused to consent to this, and Taonui, whose principal object was to prevent the sitting of the Court at all, appears to have taken but little interest at this time in the boundary-line. Imagining that the boundary question had been settled, he made no objection as he might have done, to its adoption before the 22nd January, when, there being no opposition, the Court gave judgment for the red line, as delineated on the map referred to in the Commission and attached to this report, which line was subsequently surveyed by Mr. Cussen.

A further objection was made by Taonui to the sitting of the Court a few days afterwards, and again on the 27 March, 1886, when the Court was proceeding to hear the Maraeroa Block, which is in the disputed territory; and he urged the Court's adjournment, stating that the hearing of Tauponuiatia was a violation of the promise made by Mr Bryce.

Major Scannell, one of the Judges at the hearing of Tauponuiatia, who was examined by the Commission, states that the presiding Judge, Mr Brookfield, explained the altered line to Taonui on the 19th January; and that the latter then only objected to Petania, which place proved to be on his own side of the boundary, and that he made no further opposition to the line, but protested against the sitting of the Court at all.

Taonui and other witnesses on his side assert that they were told by the Court that the red line, or altered boundary, ran along the summit of the Hurakia Range. Major Scannell said that the range was not mentioned till the hearing of Maraeroa; but he himself was mistaken as to the position of that range, which was very faintly delineated on the Court map, and imagined that a part of it formed the northern portion of the western boundary of Maraeroa; and it was only when he saw Mr Cussen's surveyed map, which was before the Commission, that he became aware of its true direction.

Taonui asserted that the yellow line was laid down as the Ngatimaniapoto boundary by Rereahu and three others of his ancestors eleven generations ago, and gave the names of the hills and places along it. On the other hand, Papanui, on the part of Ngatituwharetoa, swore that the red line was laid down by their ancestors, Tia and Tuwharetoa, fifteen generations ago, but could not specify any of their names.

This last statement is the least worthy of credence for their boundary, as given in their first application was in a different position, further west. They endeavoured to show, by tracing No. 2, that Taonui had also varied his boundary since he applied for a rehearing; but he was then including lands claimed through Raukawa. And in the tracing the divergences are somewhat exaggerated.

There was a great deal of evidence given on both sides to prove that Maoris living between the Pungapunga and Taringamotu Streams (the southern portion of the territory in dispute) belonged to their respective tribes. A great many genealogies

were recited, but these mainly proved that those residing there belonged to both sections - in fact, were a mixed race, who could give no exclusive rights to either party.

The red line, in the absence of any objection, was necessarily adopted by the Court; but if Taonui had at any time between the 19th and the 22nd January, 1886, when judgment was given, brought forward his objections to it, as he might have done, he would probably have obtained at least a partial adoption of his boundary, for there can be no doubt that a mountain-ridge is a proper and natural division between two tribes. He lost this opportunity for he was stubborn, and chiefly anxious to stop the sitting of the Court; but, taking into consideration that he understood no partial hearing of the original Rohepotae Block would be allowed, and that the map on which the altered boundary was shown to him was indistinct as to the position of the range, also that this was his first appearance at a Native Land Court, and that he was ignorant of its rules and customs:-

We find that the portion of the boundary-line between the Ngatimaniapoto and Ngatituwharetoa Tribes which is in dispute should be the red line from its junction with the Pungapunga Stream to Pakihi, which is the commencement of the range, and from thence along the Hurakia Range or water-shed to Pureora, and from thence to Tapororoa [sic], along the north-eastern boundary of the Maraeroa Block.

This line would not include the settlement of Tahorakarewarewa, which Taonui claims, but which is on the eastern slope, about two miles from the ridge and about ten miles from Lake Taupo.

Waitangi Tribunal, Department of Justice, Wellington.

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7.2 Issue No. 2

The second question remitted for the finding of the Commission, was "Whether the Native chief Hitiri te Paerata had suffered any injustice in consequence of his claim to a block of land known as Pouakani having, in consequence of some misapprehension, been unsatisfactorily dealt with, and whether he or his people have any just cause of complaint in relation thereto."

Hitiri te Paerata's complaint may be stated under the following heads:-

2A. That he was prevented by his absence in Cambridge, at the opening of the Native Land Court at Taupo, from setting up Raukawa as one of the ancestors through whom he claimed interests within Taupouuiatia, in addition to Tia and Tuwharetoa.

2B. That the Native Land Court had declared that the Ngatiwairangi, named as one of the eighteen hapus owning the Taupouuiatia West Block, was Ngatiwairangi-Parewhete, and that the Ngatiwairangi, to whom the Pouakani Block - a part of the said Taupouuiatia West Block - was awarded by the Court, did not belong to that section of the hapu.

2C. That the hapus Ngati te Kohera and Ngatiparekawa, whom he had set up in his counterclaim as having an interest in Pouakani, as well as the Ngatiwairangi, Ngatimoe, and Ngatikorotuhou, set up by the claimants, were wrongfully rejected by the Native Land Court from the main portions of that block.

2D. That his personal claim to be included as an owner in Pouakani was also wrongfully rejected by the Court.

2E. That Mr W.H.Grace, the Government Land Purchase Agent improperly interfered in the Court, and actively and openly supported the parties opposing him and his people in the above mentioned claims.

2A. With regard to No. 2A, Hitiri showed that, owing to his absence at Cambridge attending the Resident Magistrate's Court, he had not been in time to bring forward the Raukawa claim before the Native Land Court had decided that Tia and Tuwharetoa only could be ancestors giving title to the Taupouuiatia Block; but it was proved that during his absence he and his hapu were represented by their leading chief Te Takiwa, and that he had had the opportunity afterwards of bringing forward his claim through Raukawa when the question of "hapus" was before the Court, and that he and Tini Waata did set up that ancestor; further, that Tini Waata withdrew his case, admitting that Raukawa gave no title, and that he (Hitiri) also abandoned his claim, saying that Raukawa had never set foot on the land, and the Court gave judgment for Tia and Tuwharetoa only, not having been called upon to decide for or against Raukawa.

2B. To explain No. 2B it should be premised that at the fixing of hapus in the Pouakani Block by the Native Land Court the claimant Te Rangikaripiripia, set up three hapus - viz, Ngati Wairangi, Ngati Moe, and Ngati Korotuohu, and Hitiri in setting up a counter claim named the same three hapus, adding Ngati Te Kohera and Ngati Parekawa, without specifying any separate Ngati Wairangi, and afterwards admitted that the first three hapus had a claim. He himself never referred to the distinction either in his evidence sworn before the Court or in that given before the Commission, nor did he mention it in his application for rehearing, nor in his petition to Parliament. But the point was taken up by another witness, and was forcibly pressed by Pepene, the very clever conductor of Hitiri's case, who had seen it recorded in the books of the Native Land Court that the Judge had declared that Ngati Wairangi Parewhete was the Ngati Wairangi to be included amongst the owners of Tauponuiatia West. It was stated in evidence, and not contradicted, that the affix "Parewhete" was used for the first time at the Taupo Court; and even assuming that Ngati Wairangi-Parewhete only could claim, we are of opinion that Te Rangikaripiripia, after a variety of complex statements concerning ancestry, conquest, &c., including numerous genealogies, proved descent from Parewhete by the intermarriage of one of his ancestors with a descendant of hers, and we find that his claims were not invalidated by this objection of Hitiri's.

2C. With regard to No. 2C judgment was given by the Native Land Court in favour of Ngati Wairangi, Ngati Moe and Ngati Korotuohu, and the claim set up by Hitiri and others for Ngati Te Kohera and Ngati Parekawa was dismissed, as they could not prove occupation, and the Court had decided that occupation as well as descent was necessary, as all the hapus were descended from the same ancestor, Wairangi. Hitiri's evidence before the Commission was shifty and, in some parts, contradictory, and when challenged in cross-examination with having given contrary evidence, and with having set up two different sets of hapus for the same Pouakani Block before the Native Land Court, he admitted that what he had there stated was false, that he had deliberately made such wrong statements because he was suffering wrong and because his opponents also had been swearing falsely, and he only followed suit. On the other side contradictions were also proved, but these were of a comparatively minor character, and we consider their statements to be the more reliable; and we are of opinion that the Ngati Te Kohera and Ngati Parekawa hapus were rightly excluded by the Native Land Court from any interest in Pouakani except by intermarriage.

2D. Hitiri's personal claim to be inserted in the list of owners for Pouakani rests, in our opinion, upon his having resided at Waipapa, within the block, at different times since the year 1874. He claimed to have resided in several other places within Pouakani, but this was sufficiently and distinctly contradicted by the other side, who also showed that he had been but a visitor at Waipapa, living there for a time with his sister and brother-in-law, his own settlement, Te Papa, in the Tihoi Block, having been destroyed by Te Kooti. Judgment was given against his personal claim by the Native Land Court; but the Judge, Major Scannell, in his evidence before the Commission, stated that had he heard in time all the evidence given in a subsequent and similar claim by Te Takiwa, who was admitted as an owner in Hapotea, a subdivision of Pouakani, he would have decided in his (Hitiri's) favour also, as his claim was as good as that of the other. The Judge told Hitiri that he would support his application for a rehearing of this particular claim if he chose to make one, but he

failed to do so; and we are of opinion that, though he has lost a chance of proving a right, it is not from any unjust treatment by the Court.

2E. There is no doubt that Mr. W.H. Grace, the Government Land Purchase Officer employed to negotiate with the Natives for the purchase of portions of the Taupouiatia Block, did assist in Court the party opposed to Hitiri by suggesting questions and giving them advice; and being himself interested in the Pouakani Block, through his wife (a Native or half-caste), and by reason of his having made large advances to the claimants, amounting to over £600, on his own responsibility, and, further, by his desire to facilitate the sale to Government, it is more than probable that when out of Court he also aided and guided them in the course they should pursue; but the charges made against him by Hitiri and other witnesses of improper conduct were not corroborated by evidence, and we consider that they were mere suspicions, which have not been in any way substantiated. They accuse him of having interfered with the Interpreter in Court, of having tampered with witnesses, and of having made Te Heuheu drunk to prevent his giving evidence; and Hitiri even suggested, and that very plainly, that it was through Grace's influence that Judge Brookfield was removed from the Bench, because he was not sufficiently subservient to his wishes. Mr Grace positively denied these charges, and showed that Hitiri and his party had been assisted throughout by Mr. F.A. Whitaker as counsel, and by Mr Moon and Captain Blake as their advisers, the latter said to be the ablest conductor of Native Land Court cases in the colony. Whether Mr Grace, a Government officer, should have mixed himself up in any way with matters in dispute between the Natives themselves may be a question for the Government to determine.

Waitangi Tribunal, Department of Justice, Wellington.

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7.3 Issue No. 3

The following is the third matter referred to us by the Commission: "Whether Karawhira Kapu was induced by a Land Purchase Commissioner in the employ of the Government to forego large claims to land of her own and of her relations in consequence of promises made to her by the said Commissioner, which have not been fulfilled or carried out?"

We find that Karawhira Kapu was induced to withdraw certain large claims in the Pouakani Block, which had been made by Waraki Kapu on behalf of himself and other members of his hapu, the Ngati Ha, including Karawhira Kapu, by promises made to her by Mr. W.H.Grace, a Government Land Purchase officer, in an agreement (copy attached) drawn up and signed by the said W.H.Grace and Karawhira Kapu on the 24 March, 1887, whereby it was arranged by her, on behalf of herself and her section of the hapu, that all their claims in the said block should be withdrawn on condition that 7,200 acres should be awarded to the said Karawhira Kapu and eight others of her immediate relatives, she undertaking that the claimants Waraki Kapu (her brother) and Kapu te Kohika (her father), with their section of Natives, should cease and withdraw from all opposition to the settlement of the balance of the block.

In accordance with this agreement, to which there was no opposition when it was announced in Court, the Court awarded the 7,200 acres at Kaiwha to nine persons - namely, Karawhira Kapu, her brother, her two sisters, her halfbrother, her sister-in-law, her two children, and her niece, and they were at liberty to add the names of other members of the hapu if they thought proper, but the award was made to these nine only.

It was further provided by the said agreement that when a portion of the Pouakani Block, containing 65,000 acres, which was then under negotiation, had been sold to the Crown, Karawhira Kapu should receive a seventh part of whatever sum might be available for bonuses to chiefs for services rendered in connection with the sale thereof, and when the amount of individual shares, deducting the cost of survey, had been fixed and known, she was to receive a further sum of money equal to nine such shares.

We find that these further promises have not been, and indeed, could not have been, fulfilled, under the circumstances explained in the following summary of the case:-

On the 3rd January, 1887, Hitiri te Paerata claimed to be included among the list of owners, and Karawhira Kapu would have come in with him had his claim been successful; but it was dismissed.

On the 11th March Waraki Kapu, brother of Karawhira, and Areta te Miri, her sister, and others of the hapu, applied to be admitted as individuals to the list of owners.

On the 15th March Waraki Kapu handed in a list of six names saying that if he were admitted the other five would come in also. These and other similar claims were causing much delay and obstruction in respect of the purchase, for Mr Grace had already commenced his negotiations, and, to expedite matters, he proposed a compromise with Karawhira, and on the 23rd March announced in Court that an agreement had been come to and that Waraki Kapu and the others withdrew their claims and an interlocutory order was made in favour of Karawhira Kapu and eight others for the 7,200 acres at Kaiwha, which was confirmed and made final on the following day.

Notwithstanding the conditions of the agreement Kapu te Kohika, father of Karawhira, stated in Court on or about the 12th April that they intended to set up a case, and that Tini Waata, his brother, was going to give evidence, and on the 7th June Tim Waata and Te Rehina, the grandmother of Karawhira, neither of whom was among the nine owners of Kaiwha, brought forward a claim for admission to the main part of Pouakani, and on hearing of this Mr Grace at once notified to Mr Moon, the husband of Karawhira, that the agreement was being broken. Mr Moon came into Court and tried to prevent the claim from being proceeded with, but the Judge would not permit him to interfere, ruling that the Court could not suppress any evidence that was offered to it. The claim was therefore heard on its merits and was dismissed, the Court deciding that Kapu te Kohika, Tini Waata, and Te Rehina had no interest in the land. This decision, Karawhira says, would not have applied to herself, whose claims were derived through her mother.

When Mr Grace found on the 7th June, that the Court was going into the case, he wrote a letter to Mr. Moon (Exhibit D, attached), stating that, as the conditions of the agreement had been violated, it now became null and void.

Karawhira Kapu admits that she knew she was then at liberty to have brought her claims in Pouakani before the Court, or to apply for a rehearing; but she thought it better not to follow either of these courses, but to appeal to the Government for the fulfilment of the latter part of the agreement; and now she wishes the Court could hear her case over again, so that the Kaiwha award may be set aside, and that she may be able to renew her claims and those of her section of the Ngati Ha in the whole block.

None of the promised payments have been made to Karawhira Kapu, nor are they likely to be, for the negotiations for the purchase of the 65,000 acres have been suspended by the Government in consequence of these disputes, and, if the block is purchased, the violation of the agreement by some of her hapu will probably be held by the owners as sufficient reason for refusing to give her the nine shares, and the payment of bonuses for services rendered by chiefs has been repudiated by the Government.

With regard to the promise made by Mr. Grace of the payment of a bonus for services to Karawhira, he explains that, in the exercise of his discretionary powers as a Land Purchase officer, he has always considered himself empowered to make such payments under the head of "Contingencies," provided he does not exceed the price

per acre authorised by the Government to be paid for the land; that he has on several occasions exercised this power; and that these payments, appearing in his accounts under the head of "Contingencies," have never been questioned by the department.

All which we respectfully submit for your Excellency's consideration.
Given under our hands and seals, at Auckland, this 17th day of August 1889.

T.M.Haultain.

Hanita Te Aweawe.

Source: AJHR 1889, G-7.

Waitangi Tribunal, Department of Justice, Wellington.