

In the Maori Land Court  
of New Zealand  
Takitimu District

“A”

IN THE MATTER of an application under  
Section 161/53 to determine  
ownership of an area of  
Customary land situated in  
Part Blocks IX, X, XIII and XIV  
Ngaruroro Survey District and  
Part Block I Wakarara Survey  
District

DECISION: Delivered at Tauranga on 8 June 1992

Background

1. This application was preceded by an application under Section 452/53 by the Chief Surveyor to amend a partition order made on 11 May 1894 affecting the Awarua Blocks. That application involved a complicated historical investigation of the partition orders for these lands including an appraisal of the various survey plans on the basis of which those orders were made.
2. During the course of the above proceedings it was acknowledged by the Crown that there were two areas of land totalling 2561.8122 hectares which were regarded as Crown land but which were not actually included in the Crown title. These pieces of land adjoined each other and comprised one area of 5350 acres (2165.06 ha) and another of 988 acres.
3. The fact that it is conceded that the Crown has no claim on this land means that it is not disputed that the land is Maori Customary land. Application has therefore been made for the Court to investigate the title thereto and to determine the relative interests of the owners thereof pursuant to Section 161/53.

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Waitangi Tribunal

3 Feb 2020

Ministry of Justice  
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4. The application was widely advertised and hearings scheduled for Omaha (Hastings) on 23 September 1991 and Winiata (Taihape) on 25 September 1991. Judge H K Hingston presided over the hearing at Omaha but during the course of proceedings noted that his grandmother and great-grandmother were ancestral owners of adjoining lands. He therefore disqualified himself and I became involved in hearing the remainder of the application.
5. Both hearings were well attended. After the hearing at Winiata I indicated to those present that I had to await a transcript of the proceedings at Omaha and then consider the total submissions against background evidence from the record before I could make a decision.

#### The Land

6. As I have indicated, there were two areas of land, one of 5350 acres which I will call the large area, the other of 988 acres, I will call the small area. These two areas were bounded on the west and south by the Awarua No 1 Block, on the east by the Otaranga Block which was purchased by the Crown in 1857 and on the North by the Te Koau No 1 Block. The common boundary between the small area (its eastern boundary) and the Otaranga Block (its western boundary) was what was known as the Hay's Line along the summit of the Ruahine Ranges.

#### The Hearing

7. Submissions presented at the hearings were generally in accord - that the owners of this block should come from the neighbouring Awarua 1A, Te Koau No 1 and possibly the Otaranga Block. Within these submissions there were minor variations but the general theme was as I have indicated above. The basis of the claims was that the land should be awarded to the Ngati Hinemanu as per the Court's findings in respect of the Te Koau No 1 and Aorangi Awarua Blocks although Mr Graham Gummer in his submission contended that the land was difficult country and there could have been lots of people who used the land, not just the Hinemanu hapu.



8. During the first day of the hearing Judge Hingston asked the question of those present as to why the old people cut this land out and left it out of Awarua. Mr Richard Steedman in his submissions attempted to show that they did not intend to leave it out. He pointed to changes in location of place names leading to possible misinterpretation of evidence as to the boundaries of the blocks and which led to the Court adopting boundaries which were inconsistent with the territorial boundaries of the hapu.
9. This question has been the subject of considerable investigation and there is on the Court file and the file for the prior Section 452 application, detail of investigation on this very topic. The best that I can say is that nothing is conclusive. It is clear that during the period of investigation of title to the Awarua Block commencing in about 1884 and over the next ten years when subsequent partitions were undertaken, a variety of plans were prepared all showing different locations of the block's eastern boundary. Indeed, it seems that the location of that boundary could well have depended upon what plan the Judge of the day had before him at the hearing.
10. With the benefit of hindsight it must be pointed out that there was no attempt made by the Court to fix this boundary by reference to natural boundaries, adjoining titles or other adverse occupation. As Mr Steedman pointed out in his submissions, there was a wealth of evidence before the Royal Commission of 1890 that the Ruahine Range was the recognised tribal boundary between east and west Maori. Consequent upon this Commission the Hays line was surveyed and this constitutes the eastern boundary of the subject land.
11. It appears from the record that one of the persons most consulted over the eastern boundary was Winiata Te Wharo and various positionings of the boundary are attributed to him. It is noted that the eastern boundary fixed by the Court on 4 July 1890 was the Land District Boundary which made Awarua a considerably lesser area than that when the



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boundary was finally fixed on 4 July 1891. There is no doubt from the record that the Court in determining the boundaries of the Awarua Block at that time was also having regard to the existing provincial and land district boundaries. While this is only conjecture it may well have been that Winiata Te Wharo recognised the reluctance of the Court to extend the boundary to the summit of the Ruahine Ranges (the Hay's Line) and therefore compromised on the boundary to the extent that he thought would be acceptable to the Court.

12. Whatever the actual reason for the exclusion of this land from the Awarua title, I am convinced that naturally and physically the land subject of the present application formed part of the Awarua Block and could well have been included in its title. There is no evidence, either in the record or during the course of the hearings to suggest of any occupation of the land adverse to Ngati Hinemanu's claim. While I tend to agree with Mr Gummer that others beside Ngati Hinemanu will have used this land for various purposes, both primarily for hunting and as a food source, I believe the evidence clearly shows that Ngati Hinemanu were the predominant hapu and any other persons using this land could only have done so with the concurrence of Ngati Hinemanu.
13. It was not uncommon for land owners to allow persons whom they were on friendly terms with or members of related hapu, access on to wilderness lands for hunting and fishing purposes. Such occupation however did not give a right to those persons to claim ownership of those lands. In many instances however, when title to such lands were being determined, the predominant hapu did consent to others being included in the title.
14. This situation appeared to have been recognised by the Court in its judgment on the Awarua Block at 20 Whanganui Minute Book 472-474 on 16 July 1891. There the Court referred to the amicable state that existed among the hapu on the block and the inclusion with Ngati Hinemanu of certain other people in the award for Awarua No 1.




15. The recognition of Ngati Hinemanu as the predominant hapu for the subject land is reinforced by the Court decisions in respect of Te Koau A and Aorangi Awarua Blocks. Te Koau A is on the northern boundary of the subject land and Aorangi Awarua lies further west but was still adjacent to the former Awarua No 1 block. At Napier Minute Book 56/324 on 29 June 1905 the Maori Appellate Court affirmed the decision of the Lower Court that Te Koau was part of Awarua and the land belonged to Ngati Hinemanu. Lists were settled and agreed to by the Court on the behalf of Ngati Hinemanu who were in Awarua No 1 Block. The same lists were used in settling the lists for Aorangi Awarua when the Appellate Court at Napier Minute Book 64/226 on 20 September 1912 confirmed the Court's decision that this block be awarded to the owners of Koau.
16. This Court therefore determines pursuant to Section 161/53 that the owners of the subject land are the same persons as the owners of Aorangi Awarua as determined by the Appellate Court at Napier Minute Book 64/226. The Registrar is directed to update such list of owners by reference to subsequent successions pursuant to Section 167/53 and there is an order under Section 161/53 determining that the owners shall be in accordance with that list. The block is to be called Awarua O Hinemanu.
17. As regards the name, the name Te Herenga was suggested although this was not given real consideration as the owners had not then been determined. It seems to the Court that the name of the block should be considered by the owners and I have specified the above name merely to identify the block. The order is conditional under Section 34(8A)/53 as to the above name upon the owners or their trustees failing to advise the Court within nine months of the date of this order as to the selection of an alternative name at a meeting of owners. In the event of an alternative name being selected in accordance with this provision it shall be substituted for the above name.
18. Currently the Maori Trustee is trustee for the block under Section 438/53. It is appropriate that the owners now be given an opportunity to decide among themselves as to whether he





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should continue or alternative trustees should be appointed and on any other matters which might affect the land including the choice of name. At the expiry of the appeal period the file is to be referred by the Registrar to Judge Hingston for directions as to the calling of a meeting of owners to consider these matters.

  
G D Carter  
Judge