

**I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O WAIKATO MANIAPOTO**

*In the Māori Land Court of New Zealand
Waikato Maniapoto District*

AP-20240000002624

WĀHANGA
Under

Section 135, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Lot 41 Deposited Plan South Auckland 4295
(Katikati Parish of Lot 2A1)

I WAENGA I A
Between

DENNIS REGINALD COLLETT
Te kaitono
Applicant

Nohoanga:
Hearing

22 August 2024, 271 Waikato Maniapoto MB 160-166
21 November 2024, 275 Waikato Maniapoto MB 102-108
(Heard at Tauranga)

Kanohi kitea:
Appearances

S Gyenge for Applicant

Whakataunga:
Judgment date

6 May 2025

TE WHAKATAUNGA A KAIWHAKAWĀ A M THOMAS
Judgment of Judge A M Thomas

Kei ngā reo pāorooro o ngā pari kārangaranga puta noa i te rohe o Tauranga Moana, tēnā koutou. Mātua rā, e tika ana kia mihia rātou kua whetūrangitia rā i roto i ngā marama kua hori, kei te whatitoka o ngā whakaaro tonu rātou, moe mai rā. Tauārai o te pō ki a rātou, tītoko o te ao marama ki a tātou, tihei mauri ora. Ko te aumihi nui tēnei e rere atu nei ki a koutou, ki te hunga e whai take nei ki tēnei tono, tēnā koutou katoa. Ā kāti, ki te kēhi.

He kupu whakataki

[1] I te rā 23 o Hune 2023, i tukuna rā e Dennis Reginald Collett (“te kaitono”) tētahi tono kia whakarerekēhia te tūnga taitara o te poraka whenua e kīa nei ko Lot 41 Deposited Plan South Auckland 4295 (Katikati Parish of Lot 2A1) (“te poraka”) mai i te whenua Māori Herekore ki te whenua Tianara.

[2] Ko te kaitono anahe te kaipupuri whenua mō tēnei poraka whenua. He 0.0941 (ha) tōna rahinga. Nō te tau 1996, kua puritia e te kaitono tēnei poraka.

Ko te hātepe ture o te tono

[3] I te rā 10 o Āpereira 2024, i tohua e te Kooti kia tātarihia e te Rēhita te hītōria mō te tūnga taitara o te poraka, kia whakaritengia anō hoki tētahi rīpoata wehenga 40. I te rā 25 o Hūrae 2024, i whakatūria a Mr Lindsay Wilson kia whakahaerehia tēnei mahi, ka mutu, i tuku ia i tāna rīpoata i te rā 31 o Hūrae 2024. I

Introduction

[1] On 23 June 2023, Dennis Reginald Collett (“the applicant”) filed an application to change the status of the block known as Lot 41 Deposited Plan South Auckland 4295 (Katikati Parish of Lot 2A1) (“the block”) from Māori Freehold land to General land.

[2] The block is owned solely by the applicant. It is 0.0941 (ha) in size. The applicant has owned the block since 1996.

Procedural history

[3] On 10 April 2024, the Court directed the Registrar to inquire into the status history for the title of the block and to prepare a section 40 report. On 25 July 2024, Mr Lindsay Wilson was engaged to undertake this task and he filed his report on 31 July 2024. Copies were provided to the applicant by way of his counsel.

tukuna ngā kape ki te kaitono mā te tuku ki tana rōia.

[4] I tū tuatahi atu tēnei tono ki te Kooti i te rā 22 o Ākuhata 2024. I taua rā, i tukua rā ngā kupu whakahau mō te take o te tuku pānui tūmatawhānui ki te hunga e pai ana ki te whiwhi (“PCA”), kātahi ka whakaritea te tono mō tētahi anō kōtitanga motuhake.

[5] I te rā 12 o Oketopa 2024, kua tukuna tētahi pānui tūmatawhānui mō tēnei tono ki te New Zealand Herald me te Bay of Plenty Times. Kua tukuna hoki te pānui mā te tikanga a te Kooti, arā, mā te tuku i te Pānui ā-Motu. Kāhore te Kooti i whiwhi i tētahi inoi mō tēnei tono. E whakaae ana ahau kua whakatutukihia ngā herenga e tika ana mō te tuku pānui.

[6] I tū mai tētahi anō kōtitanga i te rā 21 o Noema 2024. I tae atu te kaitono ki ngā kōtitanga e rua, waihoki, i tukua ētahi kōrero taunaki. Whai muri i te kōtitanga, i whakatārewatia tāku whakataunga.

Ko te horopaki

[7] Kei roto i te rīpoata wehenga 40 i tukuna rā e Mr Wilson te katoa o te hītoria ā-poraka e whai ake nei.

[4] The application initially came before the Court on 22 August 2024. On that day, directions were issued in relation to public notification of the preferred class of alienees (“PCA”) and the application was to be set down for a further substantive hearing.

[5] On 12 October 2024, public notice of the application was placed in both the New Zealand Herald and the Bay of Plenty Times. Notice was also provided by way of usual Court practice, being the distribution of the National Pānui. The Court did not receive any enquiries regarding the application. I am satisfied that reasonable notice was given.

[6] A further hearing was held on 21 November 2024. The applicant attended both hearings and gave evidence to this Court. Following the hearing, I reserved my decision.

The background

[7] The following block history can be found in full, in the s 40 report provided by Mr Wilson.

[8] Ko Katikati Parish Lot 2A te orokohanga mai o te poraka, ā, kua whakawāwāhia ia i te rā 10 o Pēpuere 1959 e ai ki te wehenga 176 o te Māori Affairs Act 1953.

[9] I te rā 7 o Akuhata 1947, i tukua ai a Katikati Parish Lot 2A1 ki te Māori Trustee kātahi ka whakawāwāhitia ia ki ngā wāhanga rima tekau mā tahi (51), i a Deposited Plan South No.4295. Ko te katoa o te whenua i taua wāwāhanga ka noho ki ngā ringaringa o te Māori Trustee, ā, ka noho tonu hei whenua Māori Herekore.

[10] I te rā 13 o Mei 1967, i tukua ai tētahi ōta e whakaaetia nei kia panonitia ngā tikanga o te taratī e āhei ai te Māori Trustee te hoko atu ki ngā kairīhi o tētahi wāhanga, tētahi poraka e noho nei ki te wāwāhanga.

[11] I te rā 9 o Pēpuere 1996, i hokona atu tēnei poraka e te Māori Trustee ki a Dennis Reginald Collett.

[12] I te rā 5 o Hānuere 2020, hei wāhanga o te Māori Freehold Registration Project, i tukuna ai tētahi ōta e whakatauhia nei ko te tūnga taitara o tēnei poraka, he whenua Māori Herekore.

[8] The block was originally part of Katikati Parish Lot 2A which was partitioned on 10 February 1959 pursuant to section 176 of the Māori Affairs Act 1953.

[9] On the 7th of August 1947, Katikati Parish Lot 2A1 was vested in the Māori Trustee and on the 19th of February 1957, it was subdivided into fifty-one (51) lots on Deposited Plan South No.4295. All the land within the subdivision remained vested in the Māori Trustee and continued to be Māori Freehold land.

[10] On the 13th of May 1967, an order was made to vary the terms of trust to enable the Māori Trustee to sell to the lessee of any lot, the block comprised in the subdivision.

[11] On 9 February 1996, Dennis Reginald Collett purchased the block from the Māori Trustee.

[12] As a part of the Māori Freehold Registration Project, an order determining the status of the block to be Māori Freehold land was made by the Court on 5 January 2020.

[13] He toru ngā poraka o ngā poraka 51 e noho tonu nei hei whenua Māori Herekore, ko ngā wāhanga ko Lot 8, rātou ko Lot 41 ko Lot 48.

[14] E mea ana te tono, tērā pea ka puta tētahi hapa i te wā o te rēhitanga o te tūnga ōta. E ai ki ngā tāpaetanga a te rōia ki te Kooti, i tū pea tētahi whakarerekētanga taitara i mua, i te wā tonu rānei, o te hokonga atu o te whenua ki a Mr Collett. Engari, kāhore i tukua mai ngā taunakitanga ki te Kooti e whakaaturia nei i te wā i pērā ai tēnei whakarerekētanga. Ka mutu, i te Kooti, i whakaūngia tā te kaitono kī, kāhore ia i te whakahē i te horopaki hītōria nā Mr Wilson ki tāna rīpoata.

[15] E aro atu ana ahau ki te kōrero taunaki nā Mr Wilson i te rīpoata wehenga 40, ā, me taku whakaae atu ki tā te rīpoata e kī ai kāhore anō kia kitea tētahi rerekētanga ki te tūnga taitara. He whenua Māori Herekore te poraka.

Ko ngā take hei tautoko i te tono

[16] I whakawhirinaki atu te rōia o te kaitono ki ngā take i roto i te tono: ngā tāpaetanga i tukuna ai i te rā 16 o Noema 2024, ā, tētahi kōrero taurangi i tukuna rā i

[13] Three of the 51 blocks that are still Māori Freehold Land, and they are Lots 8, 41 and 48.

[14] The application states that perhaps there was an error in the status order registration. Counsel also made submissions to the Court suggesting there was a status change either prior to, or in conjunction with, the land being sold to Mr Collett. However, no evidence was provided to the Court showing when this change may have occurred. Furthermore, it was confirmed at Court that the applicant does not dispute the historical background provided in Mr Wilsons report.

[15] I rely on the evidence provided by Mr Wilson in the section 40 report and am satisfied that the report shows there has not been a change in status. The block is Māori Freehold land.

Grounds in support of application

[16] Counsel for the applicant relied upon the grounds filed in the application: submissions dated the 16th of November 2024, and an affidavit filed on the 13th of

te rā 13 o Tihema 2024 (tahi marama whai muri i te kōtītanga motuhake).

December 2024 (one month following the substantive hearing).

[17] Ka tīkina mai tētahi whakarāpopototanga o tō te kaitono tūranga mai i aua tuhinga katoa me te kōrero taunaki kua tukuna i ngā kōtītanga. Anei taua whakarāpopototanga:

[17] A summary of the applicant's position can be taken from those documents together with the evidence provided at the hearings. That summary is as follows:

- (a) At the time of purchasing the block in 1996, the applicant understood the land to be General land, not Māori Freehold land. Since the date of purchase, the applicant has dealt with the block consistent with that belief;
- (b) The applicant became aware of the status of the block in 2023 when attempting to change ownership details on the title. The applicant wishes to include his wife on the title of the land to reflect the true ownership of the land being a relationship asset owned jointly with his wife. She is not Māori;
- (c) The applicant does not have any Māori whakapapa and states that the requirements placed on him by the status of the land are illusionary;
- (d) The applicant wishes to have the ability to sell the land in the future, should he wish to do so;
- (e) There could be issues as to lending off the land, should they wish to do so in the future;
- (f) The land value will have been negatively impacted by the change of status and if orders are not granted, the applicant will suffer from continued financial loss;
- (g) The applicant is limited in dealing with the land freely, for example, sale or subdivision. He says that for these reasons the land can be managed or utilised more effectively as General land.

[18] Hei kī noa au i konei, i te wā o tēnei kōtītanga, i matapakihia tētahi kēhi o mua, i a tātou e whakaaro ana ki ngā huarahi hei whai mō te take o te mōtika kia whakahētia tuatahitia. I hāngai taua kēhi ake ki te whakarerekētanga o te tūnga taitara o Lot 49 mai i te whenua Māori Herekore ki te whenua Tianara. I tahuri a Mr Collett ki

[18] I note at this point, a previous case was discussed through the course of this hearing when considering potential pathways that have dealt with issues of rights of refusal. That particular case concerned the change of status of Lot 49 from Māori Freehold land to General land. Mr Collett refers to this case in his

taua kēhi i tāna kōrero taunaki, "...I note that ultimately that land was returned to General land status without any restrictions being noted on the record of title".

[19] Kāhore tērā i te tino tika. I whakaaro atu te Kooti ki ētahi tukanga hei whai, ā, i te mutunga iho i whakarerekēhia te tūnga taitara i runga anō i te herenga kia whakamanahia ngā Ōta Whata, kia whakatūria mai anō tētahi Taratī Ahu Whenua ki runga i te poraka e whakatauhia nei ngā kawenga me ngā takohanga ki te hiahia ngā kaipupuri whenua ki te hoko atu i te whenua ā tōna wā. I whakatūria taua taratī ki runga i te poraka, ā, ka tū tonu taua taratī i tēnei wā.

[20] I taua kēhi rā, i whai whakaaro te Kooti ki ngā take tōna rite nei ki ngā take i tēnei tono. Nā runga anō i tērā, i tuku atu te Kooti i tētahi tāima ki te kaitono kia whakaarohia taua kēhi me tāna matapaki i te take o ngā herenga. I te mutunga iho, i whakamārama mai te kaitono i ōna whakaaro, ahakoa te āhuatanga o te kawenata i runga i te whenua he herenga mana kore tērā ki tana āheinga ki te whakamahi i tana whenua me te whiwhi i ngā painga ka puta, waihoki ka rongohia i tētahi kikinotanga ā-putea ā haere nei te wā. I kī hoki ia, kotahi nahe te huarahi e

evidence stating that, "...I note that ultimately that land was returned to General land status without any restrictions being noted on the record of title".

[19] That is not quite correct. The Court considered a number of methods and ultimately agreed to the change of status conditional upon Whata Orders being made and the constitution of an Ahu Whenua Trust over the block setting out duties and obligations should the owners wish to sell in the future. That Trust was established over the block and remains today.

[20] The Court in that case considered similar issues to those that we are addressing in this application. It is for that reason the Court provided the applicant an opportunity to consider that case and discussions on encumbrances. The applicant ultimately advised the Court that even a type of land covenant would be an unreasonable restriction on his use and enjoyment of the land and there would be a lasting financial detriment to him. He further stated that the only equitable outcome is for the application to be granted without restriction.

tika ana kia whakamanahia herekorehia
tēnei tono.

[21] Nā runga anō i aua whakaaro o te
kaitono o runga, kāhore tōna rōia i whai i
te take rā, ka mutu, kāhore he take o taku
whai tonu mō tēnei whakataunga.

[21] Given the above position of the
applicant, this issue was not advanced by
counsel, and I need not consider this issue
further in this decision.

Te Ture

The Law

[22] Ko w 135 me w 136 ngā wehenga o
Te Ture Whenua Māori Act 1993 e hāngai
nei. E mea nei ā rāua kupu:

[22] The relevant sections of Te Ture
Whenua Māori Act 1993 are ss 135 and
136. They read as follows:

135 Change from Maori land to General land by status order

- (1) The Maori Land Court shall have jurisdiction to make, in accordance with section 136 or section 137, a status order declaring that any land shall cease to be Maori customary land or Maori freehold land and shall become General land.
- (2) The court shall not make a status order under subsection (1) unless it is satisfied that the order may be made in accordance with section 136 or section 137.
- (3) A status order under subsection (1) may be made conditional upon the registration of any instrument, order, or notice effecting a conveyance of the fee simple estate in the land to any person or persons specified in the order.

136 Power to change status of Maori land owned by not more than 10 persons

- (a) The Maori Land Court may make a status order under section 135 where it is satisfied that—
- (b) the land is beneficially owned by not more than 10 persons as tenants in common; and
- (c) neither the land nor any interest is subject to any trust (other than a trust imposed by section 250(4)); and
- (d) the title to the land is registered under the Land Transfer Act 2017 or is capable of being so registered; and
- (e) the land can be managed or utilised more effectively as General land; and

- (f) the owners have had adequate opportunity to consider the proposed change of status and a sufficient proportion of the owners agree to it.

[23] He maha ngā kēhi kua whakatakotohia ngā mātāpono taketake kia whakamahia i te wā o te titiro ki ngā tonono e hiahia nei ki te whakarerekē i te tūnga taitara o tētahi poraka mai i te whenua Māori Herekore ki te whenua Tianara.

[23] There are a number of authorities which have set out established principles to apply when considering applications to change the block status from Māori Freehold land to General land.

[24] I *Apaapa – Te Pura A17*,¹ i whakarāpopotonga aua mātāpono, e pēnei nei:²

[24] In *Apaapa – Te Pura A17*,¹ the principles are summarised as follows:²

- (a) The PCA are entitled to be given formal notice of the application and hearing;
- (b) The application is considered in two steps. First the Court must assess whether each of the five statutory preconditions set out in s 136 of TTWMA have been met. Once an applicant has satisfied the Court that those threshold requirements can be met, the Court must then consider whether to exercise its discretion in favour of the change of status. In doing so the Court will measure the application against the principles of TTWMA, in particular the Preamble, ss 2, 17, and the removal of the statutory right of first refusal reserved to the PCA;
- (c) Applications must be supported by full and cogent evidence. An applicant must demonstrate that specific plans for the land can be more effectively achieved if the land were general land;
- (d) Each application should be considered on its own merits. The Court must measure the personal situation and desire of the applicant in assessing the application;
- (e) The opposition or lack of opposition of the PCA is a factor to be taken into account. The financial ability, or lack of it, of the current generation of PCA to exercise the right of first refusal will not be determinative;
- (f) A mortgagee sale of the land does not result in an automatic change of status of Māori freehold land by operation of law.

¹ *Apaapa – Te Pura A No 17 Block* (2010) 6 Waikato Maniapoto MB 1 (6 WMN 1).

² At [41], citing *Te Whata – Waiwhatawhata 1A2B6 Lot 1 DP 168554* (2008) 125 Whangarei MB 294 (125 WH 294).

[25] Ka mutu, mō te take o tō te Kooti ake mana:³

[25] And further, with respect to Court discretion:³

In exercising its discretion the Court must take into account the kaupapa of TTWMA as expressed in the Preamble, ss 2 and 17. In particular:

- (a) Those with rights or interests in the land go beyond the beneficial owners themselves to whānau, hapū and descendants of the owners;
- (b) Māori land is a taonga tuku iho and should be retained within the kin group if possible;
- (c) Owners should as far as possible be empowered to develop, manage and utilise and control their own land;
- (d) A change of status is possible but only in a limited range of situations in which the application is in some material way outside the ordinary run of cases or that it is sufficiently distinctive;
- (e) An application for status change where the sole purpose is to sell the land or to achieve a better sale price will be difficult to achieve particularly when assessed against the kaupapa of TTWMA.

[26] Nō reira, mō tētahi tonu kia whakarerekēhia te tūnga taitara, me whai i ngā kaupae e rua. Ka tahuri au ki ērā.

[26] Therefore, an application for a change of status must be considered in two steps. I address those matters now.

He kōrerorero mō te wehenga 136

Discussion on section 136

[27] Kua tutuki i a te kaitono ngā paearu i rārangi mai ai ki w 136(a)-(c) tae atu ki (e) o te Ture. Ko te take nahe nei e toe ana kia whakautua, āe rānei kua whakatutukihia w 136(d). Māku e titiro, kāhore anō kia whakatutukihia.

[27] The applicant meets the preconditions set out in s 136(a)-(c) inclusive and (e) of the Act. The sole matter that needs consideration is whether s 136(d) is satisfied. In my view, it is not.

[28] E ai ki te Kōti Pira Māori i Orokawa 3B,⁴ “Applications pursuant to section 136 of the Act are serious matters

[28] As stated by the Māori Appellate Court in Orokawa 3B,⁴ “Applications pursuant to section 136 of the Act are

³ At [42].

⁴ *Regeling – Orokawa 3B Lots 4, 7 and 8* (2004) 6 Appellate MB 157 (6 APWH 157) at 164.

that require full and cogent evidence”. Kāhore te kaitono i te tuku pērā ki te kēhi nei.

[29] I tuku te kaitono i ētahi take hei tautoko i tōna tūranga e mea nei he pai ake tana āheinga ki te whakahaere, ki te whakamahi anō hoki i te whenua pena he whenua Tianara ia. Hei ko tāna, ka uaua ki a ia ki te hiahia ia kia whakawāwāhia te whenua ā tōna wā. Ka kī hoki ia, i heke te wāriu o te poraka i tana noho hei whenua Māori Herekore, ka mutu, tē taea e ia te hoko atu te whenua inā hoki he whenua Māori Herekore ia. Tuatahi ake, he hē tērā kī tē taea te hoko atu i te whenua Māori Herekore. Ka mutu, kāhore i tukua ētahi taunakitanga e whakaaturia nei te uauatanga ka pā ki te kaitono i ēnei horopaki me te hekenga o te wāriu. Otirā, i te wā o te uiui i te kōtītanga, i whakaū te kaitono i tana kore hiahia ki te hoko i te whenua, mutu atu. Ko āna tauākī, he whakaaro noa, he tirohanga noa.

[30] E whakapae ana te kaitono, tērā pea ka raru tāna whai i ngā tonu nama me te whakahaumarutanga ki te hiahia ia ā tōna wā. I kī hoki ia, ka whakataumahatia ia e te utu hekenga tonu. Heoi anō, kāhore tonu i tukua ētahi taunakitanga e whakaaturia nei i tana ngana, i tana whakataumaha hoki i te hekenga o tana utu nā runga anō i te noho

serious matters that require full and cogent evidence”. This has not been provided by the applicant in this case.

[29] The applicant advanced a number of reasons to support his position that the land would be better managed and utilised as General land. He states that he would face difficulty should he wish to partition the land in the future. He further states that the value of the block is less now because it is Māori Freehold land and that he cannot sell the land because it is Māori Freehold land. Firstly, it is incorrect to say that you cannot sell Māori Freehold land. Furthermore, no evidence was provided to the Court to show the difficulty the applicant would face in these situations or the decrease in the value of the land. In fact, during questioning at the hearing, the applicant confirmed he had no desire to sell the land at all. The statements made were simply future considerations and possibilities.

[30] The applicant suggests that he may have issue with lending and security should he wish to in the future. He also suggested that he would suffer from continued financial loss. But again, no evidence has been provided of any unsuccessful attempts based on the land being Māori

o tēnei whenua hei whenua Māori Herekore.

[31] E māraakerake ana te kite atu, i te kōrero te kaitono mō ngā tirohanga noa kaua mō ngā take ā-tinana. I *Ngarara West B3B*, i mārama te kī a te Kōti Pira Māori, ki te whakatutuki i te wehenga 136(d), me pēnei te kaitono:⁵

Demonstrate that specific plans for the land can be more easily or effectively achieved if it were general land... For that purpose there must be a firm proposal and the effect of the land remaining Māori land must have been tested to a reasonable level in the evidence.

[32] Hei toai noa i te kōrero o runga, i te wā o te uiui, i whakaū te kaitono i tana kore hiahia ki te hoko atu i tēnei whenua. Me whakaatu atu te kaitono i ana pērene tūturu mō tēnei whenua, i ngā raru tūturu ka rongoa ia inā hoki he whenua Māori Herekore te tūnga taitara. Kāhore i tukua ētahi taunakitanga e whakaatu nei i ērā.

[33] He whāiti, he kōrero tukituki anō hoki ngā taunakitanga. Kāhore i kitea ētahi taunakitanga whānui, ētahi taunakitanga mōhio tūturu e tautoko nei i ngā tauāki.

[34] Ka tahuri ahau ināianei ki te take e toe ana, arā ko te āheinga kore o te kaitono ki te rēhita i te ingoa o tana wahine ki te taitara.

Freehold land or any evidence showing the financial loss the applicant is suffering.

[31] It is clear that the applicant was only speaking of possibilities rather than actualities. The Māori Appellate Court in *Ngarara West B3B* was clear that in order to satisfy section 136(d), an applicant must:⁵

[32] As noted above, the applicant pointed out during questioning that he never intends to sell the land. The applicant must show that he has definite plans for the land and is encountering definite problems with its status as Māori freehold land. No evidence was provided to the Court to show this.

[33] The evidence is limited and, at times, contradictory. The statements made have not been supported by full and cogent evidence.

[34] I turn now to consider the remaining issue, being the applicant's inability to register his wife onto the title.

⁵ *Property Ventures Limited v Parata – Ngarara West B3B* (2007) 16 Whanganui Appellate MB 1 (16 APWG 1) at [34].

[35] E ai ki ngā tāpaetanga a te rōia, e mea ana te kaitono kāhore ia e āhei ana ki te tuku i tētahi hea o te whenua ki tana wahine, hei whakaatu atu i te puritanga whenua tūturu, nā runga anō i te tūnga taitara o te whenua hei whenua Māori Herekore. Ka kī hoki ia:⁶

The land being Māori Freehold land would cause the land to transfer in a way that isn't within what they would prefer to do, or at least what is desirable for a marriage of 20 plus years. And would go outside of what we would kind of, as a society, consider to be a normal operation of main home transfer on death of one of the spouses.

[36] Ko te kaitono i kī hoki:⁷

It would be highly prejudicial to my wife if our family home was deemed to pass to my children and would certainly open my estate up to a relationship property claim

[37] Tuatahi ake, ka kī ahau i konei, ehara i te mea ko te ōta whakarerekē tūnga taitara te tono anahe ka whāia rā e te kaitono e mana ai ētahi mōtika o tana wahine tērā pea e tū nei ki te kāinga, ki tāna paihere rawa whaiaro rānei. Kāhore au e mōhio ana pena kua tukua aua tono, kāhore hoki ahau i kite i ētahi taunakitanga e whakaaturia nei pena rānei i whai te kaitono i aua huarahi engari auare ake. I mārama te kite i ngā kōtitanga, i tukua noa ētahi o ngā tauākī, kāhore i rangahaua te tika o tērā tūranga, waihoki, te kōwhiringa ki te whai i ētahi atu huarahi. I tāku i kite ai, kāhore te kaitono i āta whakaaro ki ngā kōwhiringa kē atu, kāhore hoki i āta

[35] As counsel set out in his submissions, it is the applicant's position that the transfer of a share of the land to the applicant's wife, to reflect the true ownership of the land, is hampered by the status as Māori Freehold land. He further noted at Court that:⁶

[36] The applicant himself noted that:⁷

[37] Firstly, I note that a status order change is not the only application that could be pursued by the applicant in order to recognise any rights his wife may have to the home or his estate. I am unsure whether those applications have been made and I had no evidence before me to show whether or not the applicant had considered those avenues and been unsuccessful. It became clear at the hearings that a number of statements were made without any due diligence into whether or not that was a correct position or whether there were other options available to pursue. It appeared that the applicant had not traversed real options and

⁶ *Collett – Lot 41 Deposited Plan South Auckland 4295 (Katikati Parish of Lot 2A1)* (2025) 275 Waikato Maniapoto MB 102 (275 WMN 102) at 105.

⁷ Affidavit of Dennis Reginald Collett in Support of Application (13 December 2024) at [4(j)].

matapaki i te whakamahinga me ngā painga o te tuku tono e ai ki tētahi atu wehenga o te Ture. Kei mua i a au tētahi tono ki te whakarerekē tūnga taitara me te haere ngātahi o tētahi whakamātautau taupae me mātua whakatutuki. Nā runga i ngā taunakitanga i tukua mai ai, kāhore au e whakaae ana ki tā te kaitono kī ko te take o tana āheinga kore ki te rēhita i te ingoa o tana wahine ki te taitara o tēnei poraka hei whakamana i ētahi mōtika ā-whanaunga, he take tūturu ki te whakatutuki i te whakamātautau taupae e kīa nei he pai ake te whakahaeretanga me te whakamahinga o te whenua pena he whenua Tianara ia. Ka pēnei tāku kī nā runga anō i te whakaaro, ki te noho tonu te whenua hei whenua Māori Herekore, e taea tonu ana te whai i ētahi atu huarahi hei whakamana i te tūranga o tana wahine. Nā konā, i hē te tāpaetanga me whenua Tianara te tūnga taitara e ea ai tēnei wawata. Ka pēnei hoki tāku kī nā runga anō i ōku whakaaro ki te kaupapa o te Ture, e whai ake nei.

He kōrerorero mō te whakamahi i te mana ake

[38] Ki te whakatutukihia w 136(d), kāhore tonu au e whakamahi i tōku mana ake ki te whakamana i tēnei whakarerekētanga tūnga taitara.

neither had any discussion occurred on the operation and benefit of applying other sections of the Act. I have before me a status change application which carries a certain threshold requirement that must be met. I am not satisfied, based on the evidence provided to me, that the inability of the applicant to register his wife on the title for this block to recognise any relationship rights is sufficient grounds to meet the threshold test that the land can be managed or utilised more effectively as General land. I make this comment based on the fact that, should the land remain as Māori Freehold, the intention to have his wife recognised can be pursued through a number of different avenues and therefore it is incorrect to submit that the status of the land must be General land in order to achieve this. I also make this comment having regard to the kaupapa of the Act which I address below.

Discussion on exercise of discretion

[38] Even if s 136(d) were satisfied, I would not exercise my discretion and grant a status change.

[39] Ka whai wāhi mai ki ōku whakaaro te take o te PCA me te kore i tukua mai i tētahi whakahētanga. Kāhore tonu ahau e whakaae ana kia whakarerekēhia te tūnga taitara ahakoa kāhore rātou i tuku whakaaro mai.

[39] I take into account the fact that there has been no opposition from any PCA. The fact that the PCA have not expressed a view does not persuade me to change the status.

[40] I tuku te kaitono i tāna kēhi nā runga anō i te whakapae, i tana hokonga mai i te whenua i tika ōna whakaaro he whenua Tianara te whenua, ehara i te whenua Māori Herekore. I kī mai ia ki ahau, i te wā o te hokonga ehara i te mea i tino kōrero ngā rōia i te take o te tūnga taitara. Wairuatoa, kāhore e whai take ana te mōhiotanga o te kaitono mō te tūnga taitara o te poraka ki ngā take o te whakamātautau taupae e ai ki te Ture.

[40] The applicant argued his case on the basis that at the time he purchased the block, he believed on reasonable grounds that it was General land, not Māori Freehold land. He told me that the status of the block was never really mentioned by the lawyers when purchasing. Unfortunately, the applicant's belief on the status of the block is irrelevant for the purposes of the threshold test under the Act.

[41] E mea ana te kaitono, ki te noho tonu te whenua hei whenua Māori Herekore, he whakaaro mātāpono kore tērā nā runga anō i te kikinotanga ka pā ki a ia me tāna kī ake, kāhore he take o tana noho tonu hei whenua Māori Herekore.⁸

[41] The applicant states that it would be unconscionable for the land to remain Māori Freehold land given the detriment to him and that there is no reason for the land to remain Māori Freehold land.⁸

[42] Ka tiki ake ahau i te kaupapa o te Ture, i roto i te kupu whakataki, w 2 me w 17, hei whakaaro mā te kaitono, e mea nei:

[42] I draw the applicant's attention to the kaupapa of the Act as expressed in the Preamble, ss2 and 17, that say:

Preamble

Nā te mea i riro nā te Tiriti o Waitangi i motuhake ai te noho a te iwi me te Karauna: ā, nā te mea e tika ana kia whakaūtia anō te wairua o te wā i riro atu ai te

⁸ *Affidavit of Dennis Reginald Collett in Support of Application*, above n 8, at [3(e)] and [6(e)].

kāwanatanga kia riro mai ai te mau tonu o te rangatiratanga e takoto nei i roto i te Tiriti o Waitangi: ā, nā te mea e tika ana kia mārama ko te whenua he taonga tuku iho e tino whakaaro nuitia ana e te iwi Māori, ā, nā tērā he whakahau kia mau tonu taua whenua ki te iwi nōna, ki ō rātou whānau, hapū hoki, a, a ki te whakangungu i ngā wāhi tapu hei whakamāmā i te nohotanga, i te whakahaeretanga, i te whakamahitanga o taua whenua hei painga mō te hunga nōna, mō ō rātou whānau, hapū hoki: ā, nā te mea e tika ana kia tū tonu he Kooti, ā, kia whakatakotia he tikanga hei āwhina i te iwi Māori kia taea ai ēnei kaupapa te whakatinana.

Whereas the Treaty of Waitangi established the special relationship between the Maori people and the Crown: And whereas it is desirable that the spirit of the exchange of kawanatanga for the protection of rangatiratanga embodied in the Treaty of Waitangi be reaffirmed: And whereas it is desirable to recognise that land is a taonga tuku iho of special significance to Maori people and, for that reason, to promote the retention of that land in the hands of its owners, their whanau, and their hapu, and to protect wahi tapu: and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whanau, and their hapu: And whereas it is desirable to maintain a court and to establish mechanisms to assist the Maori people to achieve the implementation of these principles.

2 Interpretation of Act generally

- (1) It is the intention of Parliament that the provisions of this Act shall be interpreted in a manner that best furthers the principles set out in the Preamble.
- (2) Without limiting the generality of subsection (1), it is the intention of Parliament that powers, duties, and discretions conferred by this Act shall be exercised, as far as possible, in a manner that facilitates and promotes the retention, use, development, and control of Maori land as taonga tuku iho by Maori owners, their whanau, their hapu, and their descendants, and that protects wahi tapu.
- (3) In the event of any conflict in meaning between the Maori and the English versions of the Preamble, the Maori version shall prevail.

17 General objectives

- (1) In exercising its jurisdiction and powers under this Act, the primary objective of the court shall be to promote and assist in—
 - (a) the retention of Maori land and General land owned by Maori in the hands of the owners; and
 - (b) the effective use, management, and development, by or on behalf of the owners, of Maori land and General land owned by Maori.
- (2) In applying subsection (1), the court shall seek to achieve the following further objectives:
 - (a) to ascertain and give effect to the wishes of the owners of any land to which the proceedings relate:

- (b) to provide a means whereby the owners may be kept informed of any proposals relating to any land, and a forum in which the owners might discuss any such proposal:
- (c) to determine or facilitate the settlement of disputes and other matters among the owners of any land:
- (d) to protect minority interests in any land against an oppressive majority, and to protect majority interests in the land against an unreasonable minority:
- (e) to ensure fairness in dealings with the owners of any land in multiple ownership:
- (f) to promote practical solutions to problems arising in the use or management of any land.

[43] Kāhore ahau e whakaae ana kia noho mātamua ngā tāpaetanga a te kaitono i te kaupapa o te Ture, ka mutu, kāhore ahau e whakaae ana kia noho motuhake ngā āhuatanga o tēnei tono ki ērā atu kēhi e taetae mai nei.

[43] I do not consider the applicant's submissions in this matter outweigh the kaupapa of the Act. Furthermore, I do not consider that this application is, in some material way, outside the ordinary run of cases.

[44] Ka whakakorehia te mōtika pūmau ā-ture o te PCA kia whakahētia tuatahitia e tētahi whakarerekētanga tūnga taitara mai i te whenua Māori Herekore ki te whenua Tianara, ā, kāhore au i te whakaae kia pērā.

[44] Finally, a change of status from Māori Freehold land to General land removes the perpetual statutory right of first refusal reserved to the PCA and I'm not prepared to do that.

[45] Hāunga taku rongō i te taumaha o tō te kaitono tūrangā mō tēnei kaupapa, ki te tirohia ngā take e tika ana me tirotiro e au, kāhore e whakaae ana kia puta te ihu o tēnei tono.

[45] Whilst I have sympathy for the position the applicant finds himself in, this application when viewed against the matters which I must take into account, cannot succeed.

Te whakataunga

Decision

[46] Kua whakakorehia tēnei tono ki te whakarerekē i te tūnga taitara.

[46] The application for change of status is dismissed.

I whakapuakihia i te 4.00pm, i Levin, i te rā 6 o te marama o Mei i te tau 2025.

Pronounced at 4.00pm in Levin on this 6th day of May 2025.

A M Thomas
KAIWHAKAWĀ
JUDGE