

**I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TE WAIARIKI**

*In the Māori Land Court of New Zealand
Waiariki District*

AP-20230000033270

WĀHANGA <i>Under</i>	Section 135, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Allotment 246D1 Waimana Parish Block
NĀ <i>BY</i>	OZGUIR DENIZ ISERI Te kaitono <i>Applicant</i>
ME <i>And</i>	KAREN POCOCK Te kaiurupare <i>Respondent</i>

Nohoanga: 19 March 2024, 312 Waiariki MB 191
Hearing 27 June 2024, 323 Waiariki MB 212
(Heard at Whakatāne)

Whakataunga: 19 December 2024
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ T M WARA
Judgment of Judge T M Wara

Hei tīmatanga kōrero*Introduction*

[1] Ozgur Deniz Iseri is the owner of Allotment 246D1 Waimana Parish, which is Māori freehold land. He seeks an order pursuant to ss 136 and 135 of Te Ture Whenua Māori Act 1993 (the Act) changing the status of the land from Māori freehold land to General land.

Ngā tāhuhu kōrero o te whenua*History of the land*

[2] The land, known as Allotment 246D1 Waimana Parish is 1.92 hectares of Māori freehold land located near Ōhope. The land sits within the rohe of Ngāti Awa.

[3] Ozgur acquired the land in 2020, but this was not without contest.¹

[4] The land was previously owned by Karen Pocock, who in 2019 applied to the court for a confirmation of alienation in accordance with s 151 the Act.² Ms Pocock had entered into an agreement for sale and purchase, to sell the land to Ozgur for \$760,000.00. Ozgur was not a member of the Preferred Class of Alienees (the PCA).

[5] The matter was considered by Judge Coxhead, who, in an interim judgment dated 4 December 2019, expressed concerns about notice as he was not satisfied that the PCA had been given reasonable time to exercise their right of first refusal.³ He directed that a further notice to the PCA be issued to allow for compliance with s 147A of the Act.

[6] On 13 March 2020, Judge Coxhead issued a final decision, being satisfied that the requirements under Part 7 and 8 of the Act were met.⁴ A certificate of confirmation was issued, and the land was transferred to Ozgur on 20 April 2022.

[7] Ozgur has applied to change the status of the land, on the basis that it can be better utilised as General land.

[8] This application is opposed by the former owner, Karen Pocock.

¹ 233 Waiariki MB 67-68.

² A20190005474.

³ *Pocock – Allotment 246D1 Waimana Parish* (2019) 255 Waiariki MB 151 (255 WAR 151).

⁴ *Pocock – Allotment 246D1 Waimana Parish* (2020) 231 Waiariki MB 273 (231 WAR 273).

Te Ture
The Law

[9] I have jurisdiction to make a status order declaring that any land shall cease to be Māori freehold land, changing its status to General land pursuant to s 135 of the Act in accordance with either s 136 or s 137 (the latter relating to land vested in either a Māori incorporation or a trust constituted under Part 12 of the Act). Section 136 provides:

The Maori Land Court may make a status order under section 135 where it is satisfied that –

- (a) The land is beneficially owned by not more than 10 persons as tenants in common; and
- (b) Neither the land nor any interest is subject to any trust (other than a trust imposed by section 250(4) of this Act); and
- (c) The title to the land is registered under the Land Transfer Act 2017 or is capable of being so registered; and
- (d) The land can be managed or utilised more effectively as General land; and
- (e) The owners have had adequate opportunity to consider the proposed change of status and a sufficient proportion of the owners agree to it.”

[10] In *Te Whata – Waiwhatawhata 1A2B6 Lot 1 DP 168554* (2008) 125 Whangarei MB 294 (125 WH 294), the Court comprehensively identified the relevant legal principles as follows:

- (a) The PCA is 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 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 the Act, 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; and
- (f) A mortgagee sale of the land does not result in an automatic change of status of Māori freehold land by operation of the law.

[11] The Court's discretion was discussed in *Apaapa - Te Pura No 17 Block* (2010) 6 Waikato Maniapoto MB 1 (6 WMN 1) as follows:

[42] In exercising its discretion, the Court must take into account the kaupapa of the Act 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, 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; and
- (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. In terms of the two-step process, although a change of status for the sole purpose of sale may satisfy s 136(d) of TTWMA, the major hurdle is the Court's discretion. The Court must exercise its discretion as far as possible having regard to the kaupapa of TTWMA. The primary objective of TTWMA is the retention of Maori land, sale of land is not an objective.

[12] In making my decision, I take these legal principles into account.

Me tuku au he ota hei panonitia te tūnga taitara?

Should I grant an order to change the status?

[13] The land is owned solely by Ozgur, whose position is that the land can be managed or utilised more effectively as General land.

[14] His desire is to develop the land for a holiday park/health hub with a large organic garden to provide respite for people and their families who are undergoing chemotherapy treatment. Ozgur obtained resource consent from the local council on 23 December 2023 to build five units on the park, however, he has faced financial difficulties and says he cannot secure further lending to finance the project without changing the status of the land.

[15] In support of his application is a letter from Kiwi Bank dated 22 December 2023, which states:

We reference our earlier discussions concerning your abovementioned property at Ohope. The said property is classified as “Maori freehold land”.

We advise that any further consideration to lending on this property will first require the land to be reclassified as “Freehold land”.

Unfortunately we will not be able to lend more than the 50% already allocated against this property. However if it was re-classified to normal Freehold title then we would consider lending up to 80% of the valuation of the property.

[16] This application is opposed by the former owner, Karen Pocock. Karen says that when the land was sold to Ozgur the following terms were negotiated:

- (a) The land will continue to remain as Māori freehold land; and
- (b) In the event that Mr Iseri decides to sell the property, he will offer it to the vendor, her family members and the PCA.

[17] These and other terms are contained in an unsigned memorandum dated 18 November 2019, the contents of the agreement have been confirmed by Ozgur. This memorandum was considered by Judge Coxhead in his decision to grant confirmation of alienation.

[18] Karen also refers to the judgment of Judge Coxhead who noted in his earlier judgment that the land would remain Māori freehold land:⁵

⁵ Pocock – Allotment 246D1 Waimana Parish (2020) 231 Waiariki MB 273 at [26].

[19] I acknowledge that the PCA will obviously be disappointed. However, there is consolation in the fact that the land does remain Māori freehold land and will, if put up for sale again, be offered back to the whānau.

[20] Karen also asserts that Ozgur's true intention is to sell the land, and has provided a text message sent to her from the applicant dated 21 December at 3:10pm:

*Hi Karen we have a potential buyer is coming to look at the farm house mid January.
Letting you know.*

[21] Ozgur accepts that he sent the text message and confirms that he approached a real estate agent. However, he now claims that the land is not for sale.

Exercise of discretion

[22] In exercising my discretion, I must take into account the kaupapa of the Act as expressed in the preamble, ss 2 and 17. In carrying out this exercise, I must balance a number of competing factors including Ozgur's right to develop against the rights or interests of whānau, hapū and descendants of the owners.

[23] While Ozgur asserts that the reason for a change of status is to obtain further lending for further development, I am not certain this is the case. His actions of approaching a real estate agent and informing Karen of a potential buyer are at odds with his claim. I find that there is real risk that the land will be sold, and beyond the reach of the PCA, if the status is changed.

[24] I am mindful of the weight given to the PCA in the previous decision of the Court, and the assurance that the land will remain Māori freehold land to be offered back to whānau and hapū. If the status is changed, then the protections in place for members of the PCA are lost, and this goes against the principle that Māori land is a taonga tuku iho and should be retained within the kin group.

Whakataunga

Decision

[25] For the reasons that I have outlined, I am not satisfied that the status of the land should be changed from Māori freehold land to General land.

[26] The application is therefore dismissed.

I whakapuaki i te 2:00pm i Rotorua, tekau mā iwa o ngā rā o Tīhema i te tau 2024.
Pronounced at 2:00pm in Rotorua on this 19th day of December 2024.

T M Wara
KAIWHAKAWĀ