IN THE MĀORI APPELLATE COURT OF NEW ZEALAND
WAIARIKI DISTRICT

A20120013572
APPEAL *2012/12*

UNDER	Section 58, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	an appeal against an order of the Māori Land Court made on 8 October 2012 at 62 Waiariki MB 92 in respect of Te Ngae Farm Trust
BETWEEN	ARAMAKARAKA PIRIKA, HIWINUI HEKE, PIRIHIRA FENWICK AND WHARANGI WAETFORD Appellants
AND	TAI ERU AND RANGIMAHUTA EASTHOPE Respondents

Hearing:	13 February 2013 (2013 Māori Appellate Court ME 62-88) (Heard at Rotorua)
Court:	Chief Judge W W Isaac (Presiding) Judge L R Harvey Judge S R Clark Judge M J Doogan
Appearances:	M McKechnie and B Wall, counsel for the appellants C LaHatte and S Arcus, counsel for the respondents C Linkhom and B Martin, counsel for the Crown
Judgment:	28 March 2013

RESERVED JUDGMENT OF THE MĀORI APPELLATE COURT

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Introduction

[1] Te Ngae Farm Trust was established in 1994 as a whenua topu trust to convey approximately 148 hectares of land to Ngāti Rangiteaorere in partial settlement of its historical Treaty of Waitangi claims against the Crown.

[2] Clause 2 of the trust order provides:

> The beneficiaries of the Te Ngae Farm Trust are hereby declared to be the members of the Ngati Rangiteaorere hapu of Te Arawa iwi, such members being all the descendents of Rangiteaorere.

[3] On 23 August 2013 two of the trustees, Rangimahuta Easthope and Tai Em, applied to the Māori Land Court for a determination as to the correct interpretation of this beneficiary clause. In a reserved decision dated 8 October 2012, Judge Coxhead determined that the class of beneficiaries of Te Ngae Farm Trust are the members of the Ngāti Rangiteaorere hapū such members being descendants of Rangiteaorere.[1] He also found that the management of the land vested in the trust is to be undertaken on behalf of the Ngāti Rangiteaorere hapu.[2]

[4] The appellants are the remaining trustees: Aramakaraka Pirika, Pirihira Fenwick, Hiwinui Heke, and Wharangi Waetford. They appeal against the decision that the beneficiaries are restricted to members of the Ngāti Rangiteaorere hapū. They contend that this interpretation is unduly restrictive and fails to properly take into account the concluding words of clause 2 which qualify what would otherwise be the ordinary meaning of the term "the Ngati Rangiteaorere hapu of Te Arawa iwi". The words relied upon by the appellants are "such members being all the descendents of Rangiteaorere".

[5] The practical effect of this narrow issue of interpretation can be illustrated by brief reference to evidence filed in the Māori Land Court on behalf of the appellants. This includes a letter dated 21 May 2012, from the appellants' solicitors to the Minister for Treaty of Waitangi Negotiations.

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1 *Easthope v Pirika – Te Ngae Farm Trust* (2012) 62 Waiariki ME 92 (62 WAR 92).

2 At[45].

Relevant extracts include:[3]

> The Trustees are concerned that there is a misapprehension as to who the beneficiaries of the Te Ngae Farm Trust actually are.
>
> The Ngae Farm Trust is much broader than Ngati Rangiteorere. The Trust land was vested in an eponymous ancestor Rangiteorere the First. Consequent to that many hapu can attach themselves by way of whakapapa directly to that ancestor which takes in and includes the hapu of:
>
> - Ngati Uenukuku Kopaku
> - Ngati Teroro-O-Te-Rangi
> - Ngati Whakaue
> - Ngati Rangiwewehi
>
> as well as Ngati Rangiteorere.
>
> Ngati Rangiteorere are not the only hapu who can whakapapa directly to Rangiteorere the First.

[6] The respondents (with support from the Crown) argue that the Māori Land Court was right to construe the class of beneficiaries as being restricted to those individuals who belong to the Ngāti Rangiteaorere hapū and not to those of other Te Arawa hapū who can also whakapapa to the eponymous ancestor, Rangiteaorere.

[7] The issue for determination is whether the definition of the trust's beneficiaries used in the trust order includes or excludes members of other hapū of Te Arawa who may also whakapapa to Rangiteaorere.

Background

[8] *The Ngati Rangiteaorere Claim Report* was published by the Waitangi Tribunal in 1990. The Tribunal notes that Ngāti Rangiteaorere is one of the eight iwi of the Te

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[3] Letter from Brendan Wall, Sanford Partners (solicitor for appellants) to Christopher Finlayson (Minister for Treaty of Waitangi Negotiaions) regarding Te Ngae Farm Trust "(21 May 2012) (spelling as per the letter), annexure F of Affidavit of Hiwinui Heke; see also Affidavit of Aramakaraka Pirika, Hiwinui Heke, Pirihira Christine Fenwick and Wharangi Waetford "(28 October 2010) (annexure A-N), annexure E of Affidavit of Hiwinui Heke at [21].

Arawa confederation. Background context and relationships between the hapū of the Te Arawa confederation are set out in chapter 3.1 of the Tribunal's report.[4]

[9] In the context of competing claims, the Tribunal noted:[5]

> Te Ngae mission farm, the subject of this claim, fronted the Ngati Rangiteaorere blocks and was therefore within their tribal territory, though Ngati Uenukukopako and indeed other Arawa iwi could lay some claim to it by way of kinship connections.

[10] The Tribunal noted difficulties with the historical "sale" of the Te Ngae lands arising from the fact that most of the signatories to the deeds were from other Te Arawa iwi rather than Ngāti Rangiteaorere.[6] The Tribunal went on to make the following observation about this feature of the transactions:[7]

> By taking signatures from representatives of other iwi, no matter how remote their Ngati Rangiteaorere affiliations, the two missionaries were probably trying to conciliate them, with a share of the payment and access to future bounties, for locating the new mission station in Ngati Rangiteaorere territory. In any case they were probably quite happy to "sell" land they had only a remote claim to, a common occurrence in Maori land transactions with the Pakeha at this time. The apparent lack of signatures from resident Ngati Rangiteaorere must cast doubt on the validity of the sale, although this does not appear to have deterred the CMS in its later attempts to obtain a Crown grant, or the Crown in fmally issuing one.

[11] The Tribunal recommended that Te Ngae Farm be vested as Māori freehold land in the eponymous ancestor of the hapū, Rangiteaorere.[8]

[12] On 21 October 1993, the Ngāti Rangiteaorere claimants and the Crown entered into a settlement of the tribe's claims in respect of Te Ngae Mission Farm lands.[9] The parties to this settlement are the Minister of Justice on behalf of the Crown and "the trustees of Ngati Rangiteaorere for and on behalf of the people of Ngati Rangiteaorere

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4 Waitangi Tribunal *The Ngati Rangiteaorere Claim 1990* (Wai 32, 1990).
5 At [3.1].
6 At [3.2.5].
7 At [3.2.5].
8 At [3.10].
9 Final Agreement between the Minister of Justice on behalf of the Crown and the trustees of Ngati Rangiteaorere fopr and on behalf of the people of Ngati Rangiteaorere in relation to Claim Wai 32 (21 October 1993) annexure E of Affidavit of Tai Eru.

in relation to claim Wai 32".10· For the claimants, various individuals signed "[±Jor and on behalf of Te Ngae Farm Trust Board and the people of Ngati Rangiteaorere".l1 Clause 2 of the settlement agreement provides "[t]his claim was lodged with the Waitangi Tribunal on 5 April 1987 on behalf of the people of Ngati Rangiteaorere, a sub-tribe ofTe Arawa".

[13] Clause 8 of the settlement notes that implementation of the settlement has already commenced through the enactment of s 13 of the Reserves and Other Lands Disposal Act 1993, which vested Te Ngae Mission Farm in Rangiteaorere the eponymous ancestor ofNgati Rangiteaorere.

[14] Section 13 of the Reserves and Other Lands Disposal Act 1993 in tum records that the Waitangi Tribunal had recommended the land be acquired by the Crown and vested in Ngāti Rangiteaorere as Māori freehold land, free from existing trusts. The recitals conclude by recording that it is desired the lands be held as Māori freehold land for the general benefit of the descendants of Rangiteaorere and that special legislation is necessary to enable the transfers. Section 13(1) of that Act authorises the registered proprietor to transfer the land to Rangiteaorere (a male deceased). Section 13(4) authorises the Māori Land Court to appoint trustees and constitute trusts in respect of the land and to appoint any incorporated body as representative of the iwi as trustee of the land.

[15] Clause 9 ofthe settlement agreement records:

> The signatories of this agreement, for and on behalf of Ngati Rangiteaorere, confirm that they are the legitimate representatives of the people of Ngati Rangiteaorere and of the beneficial descendents ofthose persons who were affected by the original alienation of the land known as Te Ngae Mission Farm. They further confirm that they have consulted with the people of Ngati Rangiteaorere at hui-a-iwi and that they have a mandate to agree to this settlementon behalf ofthe people ofNgati Rangiteaorere.

[16] The Tribunal report and resulting settlement agreement both refer to and distinguish the iwi/hapu Ngāti Rangiteaorere from the wider Te Arawa confederation.

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10 At e11.
11 At e13.

The settlement agreement provides for the return of the land to the hapū Ngāti Rangiteaorere not to other hapu/iwi of Te Arawa confederation.

[17] On 2 November 1994, Te Ngae Farm Trust - a whenua topu trust - was constituted by the Māori Land Court and the original trustees appointed. Clause 2 defined the beneficiaries as "the members of the Ngati Rangiteaorere hapu of Te Arawa iwi, such members being all the descendents ofRangiteaorere". This has not changed in subsequent reviews of the trust order.

The appellants' case

[18] Counsel for the appellants, Mr McKechnie, referred to the Interpretation Act 1999 and to relevant case law emphasising the primacy of text, and interpretation in light of the purpose of the Act. Counsel maintained it was common ground that the trust, being a whenua topu trust, held the lands for the benefit of the particular iwi or hapū and not for individuals. At paragraph 4.1 counsel submitted:

> What is being contended by the Appellants has to do with the interpretation of the beneficiaries of the Whenua Topu Trust and does not involve a change in the nature of the Trust. Nor is it contended (reference paragraph 20 of the judgment) that the beneficiaries be of other hapu.

[19] In oral submissions, counsel for the appellants modified that position and confirmed that the beneficiaries include or could include other hapu.[12] He also argued that the beneficiary clause itself defined, or better defined, the hapū beneficiary class. At paragraph 4.2 of his written submissions he argued:

> The concluding words of the Trust Order define. who are the members of the Ngati Rangiteaorere hapu of Te Arawa iwi. It is not merely descendants of Ngati Rangiteaorere but rather *"such members being all the descendants of Ngati Rangiteaorere".* Those concluding words better define the hapu. They make it clear that the hapu consists of not some but all of the descendents of the eponymous ancestor Rangiteaorere. (emphasis in original)

[20] Counsel went on to say:[13]

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12 2013 Māori Appellate Court ME 73 (2013 APPEAL ME 73).
13 2013 Māori Appellate Court MB 75 (2013 APPEAL 75).

> It is not the position of the appellants that the interpretation ... [tendered] for would result in the hapū ceasing to be the beneficiary. That is necessarily the case. That cannot change. Rather it is a matter of interpretation as to who are members of the hapū. Somehow the judgment under appeal seems to suggest that the interpretation argued for would in some way involve the removal of the hapū entity. Now it might well involve a much wider and more extensive hapū than would conventionally be the case, but that, in my submission, is not a justification for restricting the interpretation which I contend is the correct interpretation.

The respondents' case

[21] Counsel for the respondents, Mr LaHatte, maintained that the interpretive issue before the Court required an analysis of the current trust order in light of the 1993 Treaty settlement between the Crown and Ngāti Rangiteaorere. Also relevant were the resulting application to the Courtto establish Te Ngae Farm Trust and subsequent orders varying the trust.[14]

[22] Counsel argued that the correct interpretation of the beneficiary clause is that the beneficiaries of the trust are the members of the iwi Ngāti Rangiteaorere who descend from Rangiteaorere. He used the term "iwi" rather than "hapl1".

[23] Furthermore, counsel submitted that notwithstanding some amendments to the original trust order, the beneficiary clause had not changed. He argued that the respondents' interpretation was also consistent with the 0bjects of the trust,. which relate to the promotion of the interests of the iwi Ngāti Rangiteaorere.[15]

[24] The respondents expressed their surprise that this issue of interpretation has arisen, and note that it is of some importance because of the current negotiation underway with the Crown to settle the remaining historical Treaty claims of Ngāti Rangiteaorere that were excluded from the 1993 settlement. Counsel for the respondents argued that the Crown made it clear that in its view the beneficiaries of the 1993 settlement are the members of the iwi Ngāti Rangiteaorere, and the comprehensive settlement now being negotiated is for the same beneficiaries.[16]

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14 Memorandum of counsel for respondents, 23 August 2013 at [7].
15 At [8]-[9].
16 At [11].

The position of the Crown

[25] In the Māori Land Court the Crown filed a notice of intention to appear, and was subsequently granted leave to appear and make submissions. No issue was taken with the Crown being heard on the appeal.[17]

[26] In written submissions, the Crown stressed that because the appellants appeared to have accepted that the beneficiaries are the hapū Ngāti Rangiteaorere rather than individuals who do not affiliate to that hapū or who affiliate to other hapū, the appeal was essentially moot, there being no factual finding in the Māori Land Court on the point.[18]

[27] However, when it became clear in the course of oral argument that the appellants were now arguing that beneficiaries could include members of other hapū of Te Arawa who also descend from the eponymous ancestor Rangiteaorere, the Crown responded by outlining their position which can be summarised as follows:

(a) The issue is one of interpretation of the trust deed, not a statute and therefore the Interpretation Act 1999 does not assist;

(b) Judge Coxhead was correct to find that the lands were held on trust as a tribal resource. This was consistent with the nature of the whenua topu trust which is a trust for community purposes rather than for individual purposes;

(c) It was common ground that other hapū could not have a beneficial interest as hapū because Ngāti Rangiteaorere was the only hapū referred to in the trust order. The beneficiary clause and references throughout the trust order were directed to advancing the interests of Ngati Rangiteaorere as a tribal group, and were not directed at any other tribal group;

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17 *Easthope* v *Pirika - Te Ngae Farm Trust* (2012) 62 Waiariki ME 92 (62 WAR 92) at [3]-[5].

18 Submissions for the Attorney-General from Crown Law, 26 September 2012 at [7]-[10] and [26]-[28].

(d) The idea that other hapii may have beneficial interests comes from reliance on the second limb of the definition of the class of beneficiaries, and in particular the meaning attached to the word "all";

(e) If, and to the extent that, "all" creates ambiguity by modifying the natural and ordinary meaning of the words "members of the Ngati Rangiteaorere hapu of Te Arawa iwi", then this Court can and should consider reference to extrinsic material in order to resolve any ambiguity;

(f) The Crown's primary submission is that the meaning of clause 2 is clear on its face and that Judge Coxhead was correct to conclude that the beneficiaries are restricted to members of the hapii Ngāti Rangiteaorere. If however the Court considers it necessary to refer to extrinsic material, the 1993 Waitangi Tribunal Report and resulting settlement are of particular relevance. They reinforce the fact that the beneficiaries are members of the hapū Ngāti Rangiteaorere and not members of other hapū of Te Arawa Iwi.

Discussion

[28] The Māori Land Court has exclusive jurisdiction to establish whenua topu trustS.[19] The Court is also given, in respect of the trusts it establishes and monitors, a jurisdiction equivalent to that of the High Court with respect to trusts generally.2o

[29] There was some debate between the parties as to the correct approach to interpretation. We take it as settled that the principles of contract interpretation now also apply to the interpretation of trust documents.[21] In the *Vector Gas* case Tipping J

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19 Te Ture Whenua Māori Act 1993, s 211.

20 Te Ture Whenua Māori Act 1993, s 237.

21 *Vector Gas* v *Bay of Plenty Energy* [2010] NZSC 5, [2010] 2 NZLR444; *Boat Park Ltd.v Hutchinson* [1999] 2 NZLR 74 (CA); *Investors Compensation Scheme Limited* v *West Bromich Building Society* [1988] I ALL ER 98; Garrow & Kelly *Law of Trust and Trustees* (6th ed, LexisNexis, Wellington, 2005) at 217.

summarised the relevant principles·(in the context of a contract interpretation case) as follows:[22]

> The ultimate objective in a contract interpretation dispute is to establish the meaning the parties intended their words to bear. In order to be admissible, extrinsic evidence must be relevant to that question. The language used by the parties, appropriately interpreted, is the only source of their intended meaning. As a matter of policy, our law has always required interpretation issues to be addressed on an objective basis. The necessary inquiry therefore concerns what a reasonable and properly informed third party would consider the parties intended the words of their contract to mean; The court embodies that person. To be properly informed thecourt must be aware of the commercial or other context in which the contract was made and of all the facts and circumstances known to and likely to be operating on the parties' minds. Evidence is not relevant if it does no more than tend to prove what individual parties subjectively intended or understood their words to mean, or what their negotiating stance was at any particular time.

[30] The clause at issue in this case reads:

> The beneficiaries of the Te Ngae Farm Trust are hereby declared to be the members of the Ngati Rangiteaorere hapu of Te Arawa iwi, such members being all the descendents of Rangiteaorere.

[31] The first part of the definition defines the beneficiaries by reference to "the members of the Ngati Rangiteaorere hapu of Te Arawa iwi". Ngāti Rangiteaorere is one of the eight generally recognised tribes of the Te Arawa confederation.

[32] A clear intention of clause 2 is to defme the beneficiary class by distinguishing the members of Ngāti Rangiteaorere hapū of Te Arawa iwi from the wider Te Arawa confederation, of whom they are part. The interpretive issue arises from the concluding words of the definition which allow, or allow argument as to the capacity of, other hapū (or members of other hapū) of Te Arawa iwi, such as Ngāti Whakaue, to qualify as beneficiaries by right of common descent from the ancestor Rangiteaorere. This issue can be resolved by reference to extrinsic evidence which is relevant to the question at Issue. This evidence places the trust order into the context in which it was originally made. We refer here primarily to the Tribunal report and the resulting settlement, which we reviewed in more detail at [8] and following.

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22 *Vector Gas* v *Bay of Plenty Energy* [2010] NZSC 5, [2010] 2 NZLR444 at [19].

[33] Counsel for the appellants maintained that there was no ambiguity; the word "all" is unequivocal.[23] On that basis, and in reliance on the judgment of Wilson J in the *Vector Gas* case, there was no relevant ambiguity that would justify resort to evidence extrinsic to the trust order. In that case Wilson J reviewed the exceptions to the general principle that the words of an enforceable commercial contract should be given their ordinary meaning in the context of the contact in which they appear:[24]

> The fIrst exception is that, if there is ambiguity within a contract because the words are not clear or because of internal conflict, resort can and indeed must be had to material outside the contract to resolve the ambiguity. Before this course is followed, however, it must be established to the satisfaction of the Court that there is genuine and relevant ambiguity; assertions by parties of possible different meanings will not suffice.

[34] We consider that the wording of the beneficiary clause does gIVe rIse an ambiguity and internal conflict sufficient to justify consideration of extrinsic material. The drafter's apparent intention to distinguish the beneficiaries from other hapū of Te Arawa iwi in the first part of the beneficiary clause is compromised by the addition of the words "such members being all the descendants ofRangiteaorere".

[35] Turning then to the issue for determination. What would a reasonable and properly informed third party consider those words to mean? In this case, we consider a properly informed third party would be aware of the facts and circumstances that gave rise to the creation ofTe Ngae Farm Trust, in particular the Waitangi Tribunal report and resulting settlement with the Crown.

[36] We have set out some ofthe relevant context at length in the Background section because it serves to highlight how an objective bystander in 1993 would approach the question as to whether the beneficiaries of the settlement were meant to be the people of Ngāti Rangiteaorere or the people ofNgati Rangiteaorere together with other hapū ofTe Arawa who may share common ancestry with Rangiteaorere, such as Ngāti Uenukukopako, Ngāti Teroro-O-Te-Rangi, Ngāti Whakaue and Ngāti Rangiwewehi. The answer would be that this was the settlement of historical grievances particular to Ngāti Rangiteaorere and not those of their neighbouring hapū or other tribes of the Te

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23 2013 Māori Appellate Court MB 87 (2013 APPEAL 87).

24 *Vector Gas* v *Bay ofPlenty Energy* [2010] NZSC 5, [2010] 2 NZLR 444 at [120] per Wilson J.

Arawa confederation. The benefits of that settlement are directed towards Ngāti Rangiteaorere exclusively. No other hapū is referred to in the available evidence.

[37] With that context in mind, it does not seem plausible that the drafters of the trust order deliberately set out to expand what would otherwise be the ordinary meaning of the words "the members of the Ngati Rangiteaorere hapu of Te Arawa iwi". The addition of the words "such members being all the descendants of Rangiteaorere" appear to have been added for completeness and in light of the fact that all members of the hapū Ngāti Rangiteaorere do indeed descend from Rangiteaorere. The vesting legislation and the settlement vested the lands in the name of the eponymous ancestor Rangiteaorere. A desire for consistency seems to us a more plausible explanation for the addition of the words "such members being all the descendents of Rangiteaorere".

[38] The appellants contend that the beneficiaries are not restricted to the hapū of Ngāti Rangiteaorere.[25] We do not accept that clause 2 of the trust order can be interpreted in this way. For the reasons stated we would dismiss the appeal.

[39] By way of observation we note that in terms of the way the argument developed before us the key practical question was answered correctly in our view at [42] (b) of Judge Coxhead's decision where he determined that: [26]

> The use and administration of the land vested in the trust is to be undertaken for the interests of the Ngāti Rangiteaorere hapū.

[40] We note this because there is evidence in the record of disagreement amongst the trustees as to the appropriateness of payments towards institutions and community purposes run by or serving other Te Arawa hapū. This is an important issue because the Court may only establish a whenua topu trust where it is satisfied that constituting the trust would promote and facilitate the use and administration of the land in the interests of the iwi or hapū. The land, money, or assets of a whenua topu trust must be held and applied for Māori community purposes "for the general benefit of the members of the iwi or hapū named in the order".[27]

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25 Notice of Appeal by Aramakaraka Pirika, Hiwinui Heke, Pirihira Fenwick and Wharangi Waetford (19 October 2012) at 2.

26 *Easthope v Pirika - Te Ngae Farm Trust* 62 Waiariki MB 92 (62 WAR 92) at [42].

27 Te Ture Whenua Māori Act 1993, ss 216 and 218.

[41] The hapii named in the trust order is Ngāti Rangiteaorere. Judge Coxhead was correct to find that the land is to be used and administered in the interest of or for the benefit ofNgati Rangiteaorere.

A Correction

[42] For completeness we note that at paragraph [42] (a) of the judgment of the Māori Land Court the words "all the" were omitted. The [mal part of the order should read: "such members being all the descendants of Rangiteaorere". Having regard to the fact that clause 2 is accurately recorded at [9] and [29] of Judge Coxhead's decision and also having regard to his reasoning it appears that the omission of the words "all the" at [42] (a) was an inadvertent error or slip.

[43] Accordingly pursuant to s 86(1) of Te TureWhenua Māori Act 1993, we authorise the judgment of Judge Coxhead dated 8 October 2012 at 62 Waiariki MB 92 to be amended by the insertion of the words "all the" before the word "descendants" in the third line.

[44] The power to amend pursuant to s 86(1) is expressed as applicable to both the Māori Land Court and the Māori Appellate Court (s 65), but for the avoidance of doubt the order is also made pursuant to s 56(1)(f) ofTe Ture Whenua Māori Act 1993, which confers on the Māori Appellate COUl1 the power to make any order that the Māori Land Court could have made in the proceedings.

Decision

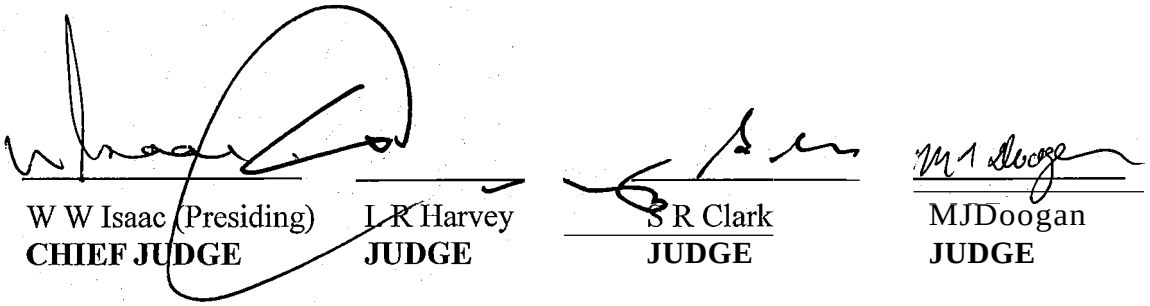
[45] Pursuant to s 86(1) and s 56(1)(f) of Te Ture Whenua Māori Act 1993 the following correction to the judgment of Judge Coxhead dated 8 October 2012 at 62 Waiariki MB 102 at [42] (a) is approved: the words *"all the"* is to be inse11ed before the word "descendants" in the third line.

[46] In all other respects the decision of.the Māori Land Court is affirmed. The appeal is dismissed.

Costs

[47] Counsel for the respondents is to file submissions as to the costs within 14 working days from receipt of this judgment. Counsel for the appellants is to respond 14 working days after that.

This judgment will be pronounced at the next sitting of the Māori Appellate Court.



W W Isaac (Presiding)	I R Harvey	S R Clark	MJDoogan
CHIEF JUDGE	**JUDGE**	**JUDGE**	**JUDGE**