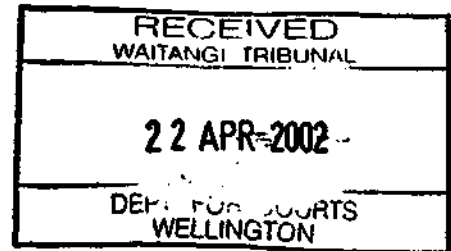


Wai686#T9

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BEFORE THE WAITANGI TRIBUNAL



WAI 810

COPY

BRIEF OF EVIDENCE OF MOANA TE AIRA TE URI KARAKA TE WAERO

Introduction

1. My name is Moana Te Aira Te Uri Karaka Te Waero. I am 37 years old, was bom in Auckland, and reside at 7C Albert Street, Waiheke Island, with my husband and three children. I am of Ngati Paoa descent. I am also the designated spokesperson for my whanau in respect of this claim.
2. The essential thrust of this brief is to chronicle the history of a certain block of land, namely that known as 'Te Huruhi', and specifically what is described as a two acre block which was the site of a church and cemetery (urupa).
3. The documents referred to throughout my brief are described in the footnotes, and are also attached and catalogued as such..

Land in Issue

4. The land that was the site of the church and urupa, as would be expected, were adjacent to each other, on approximately two acres of land. This land was set aside for the same when the Te Huruhi Block was further partitioned by the Native Land Court, Thames District, on 9 June 1897.

5. Both the church and the urupa are shown on survey maps of the era although there is a slight lack of consistency as to what portion of land they are attached. In the survey

map 1088A, dated 27 February 1912¹, it is clearly shown in Te Huruhi 13D, and in subsequent survey maps it is shown as 'boxed' between both 13A and 13D.

History of Te Huruhi 13

6. The land known as Te Huruhi has undergone a considerable degree of partition and transfer over the preceding century and a half. In this part of my brief, I will endeavor to outline the key aspects of that breakdown of the land, while maintaining the essence of my claim to the two acres that was set aside for the church and urupa.
7. To assist with this task, I have prepared two tables that are attached to this brief and which chronicle the main dealings over the early years with Te Huruhi² and then with the partitioned Te Huruhi Number 13A, also known as Hangaura³.
8. The first recorded reference to the Te Huruhi Block in this file is the purchase of 3,000 acres on 7 May 1838 by one Thomas Maxwell from the 'Native Chiefs'. This transaction is recorded as 'Deeds - No350' in the Private Land Purchases at page 1838.⁴
9. Just over 30 years later, on 27 April 1869, in the Native Land Court at Auckland, a Certificate of Title was granted for 2,100 acres, known as Te Huruhi, in favour of Harata Patene, Rawiri Henare Te Paura, Ropata Te Rou, and Tamihana Tukere. I am a direct descendant of Rawiri Henare Te Paura.⁵
10. On 3 May 1869, the Te Huruhi Block is the subject of action under the Native Lands Act whereby the names of some 61 persons are listed as 'persons found by the Court to be interested in the said parcel of land as tenants in common [use]'.⁶ In the succeeding years, as those persons named died, their descendants recorded the same and their subsequent interest in the land with Succession Orders under the provisions

¹ Survey Map 1088A, dated 27 February 1912.

² Headed 'Moana Te Waero -Te Huruhi Key Dates & Events'.

³ Headed 'Moana Te Waero - Hangaura Key Dates & Events'.

⁴ 'Deeds- No.350' in the Private Land Purchases at page 1838.

⁵ 27 April 1869, Native Land Court at Auckland document.

of the Native Land Court statute. In the interest of both brevity and clarity, I have not recorded all of these, with the exception of those that I have considered relevant to my claim.

11. On 20 February 1890, in the Native Land Court, Thames District, the first partition of the Te Huruhi block of land occurs. Te Huruhi No.1 of 354 acres is created with ownership vested in 20 listed persons. Almost exactly seven years later, on 23 February 1897, further partitioning of Te Huruhi occurs with the creation of Te Huruhi Nos.2 through to 13.

12. The partitioned blocks varied in size, and in ownership in terms of persons and shares, although there were instances where it would appear that the same person had ownership shares in several of the Te Huruhi blocks. The block that concerns this brief is principally that of Te Huruhi No. 13, consisting of 303 acres, and which was also designated as Hangaura. Five persons were listed for ownership purposes of this block.⁷ They were:

Meri Keepa	f	2 shares
Me Te Awhitu	f	1 share
Neho Keepa	f	2 shares
Wiremu Taumata Keepa	m	2 shares
Wiremu Maihi Hoete	m	1 share

13. The second table attached to this brief concerns the manner in which Te Huruhi No.13, Hangaura, was treated. As was referred to earlier, with the deaths of those initially named as owners, there were frequent Succession Orders.

14. On 7 August 1899, in the Native Appellate Court, the boundaries of Te Huruhi Nos.9, 12, and 13 were altered, and on 11 August 1899, in the Native Land Court at Auckland, a Partition Order on Te Huruhi No. 13 was granted which extended the ownership to seven persons. The owners were now listed as:

6 3 May 1869, Native Lands Act documentation.

⁷ Partition Order of the Native Land Court, dated 9 June 1897, and attached Schedule.

Huia Hoete (alias Titipo)	f	2 1/2 shares
Mihi Wiremu Te Hautaku	f	1 1/2 shares
Mere Keepa (alias Awhitu)	f	3 shares
Rawiri Takwiua	m	1 1/2 shares
Te Peneha Rawiri	m	1 1/2 shares
Wiremu Maehe Hoete (alias Keho Keepa)	m	3 shares
Wiremu Taumata Keepa	m	2 Shares

15. On 7 August 1900, in the Native Land Court, Auckland District, Te Huruhi No.13 was the subject of a Charging Order for the cost of survey instigated by Charles Caesar Otway, a surveyor, for the sum of £7. 19. 3.' It is noteworthy that in the Order the Court refers to Te Huruhi No.13 as being of 292 acres in size, and not the initial 303 acres. There is no apparent explanation as to the discrepancy in size in the documentation contained in the file.

16. On 11 March 1912, the Native Land Court at Auckland made a series of Partition Orders in respect of Te Huruhi No.13 (303 acres in total), creating Huruhi 13A of 28 acres¹⁰, Huruhi 13B of 142 acres¹¹, Huruhi 13C of 92 acres¹², and Huruhi 13D of 41 acres¹³. The ownership details for each block were:

13A:

1. Mihi Wiremu	f
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13B:

Wiremu Keepa	m	1 1/2 shares
Rangraki Te Whetu	f	1/2 shares
Makere Hoete	f	1/2 shares
Wiremu Taumata Keepa	m	1/2 shares
Huia Hoete (alias Titipo)	f	2 1/2 shares

⁸ Partition Order of the Native Land Court, dated 11 August 1899, and attached Schedule.

⁹ Charging Order of the Native Land Court, dated 7 August 1900. ¹⁰ Partition Order of the Native Land Court, dated 11 March 1912, and attached Schedule. ¹¹ Partition Order of the Native Land Court, dated 11 March 1912, and attached Schedule.

¹² Partition Order of the Native Land Court, dated 11 March 1912, and attached Schedule.

¹³ Partition Order of the Native Land Court, dated 11 March 1912, and attached Schedule.

13C:

- | | | | |
|----|---------------------------------------|----|--------------|
| 1. | Wiremu Maihi Hoete (alias Neho Keepa) | to | 3 shares |
| 2. | Wiremu Taumata Keepa | m | 1 1/2 shares |

13D:

- | | | | |
|----|----------------|---|--|
| 1. | Rawiri Takwuia | m | |
|----|----------------|---|--|

17. On 11 October 1915, there was a Charging Order against Te Huruhi 13A, in the Native Land Court at Auckland, by the Chief Surveyor at Auckland for the sum of £4. 0. 6, with interest to accrue from 9 November 1914.¹⁴ This: lien was released on 28 May 1925 following the subsequent sale of the block, which will be referred to in more detail later in this brief.
18. On 26 July 1921, the Native Land Court sitting at Auckland made a Succession Order on Huruhi No.13A, following the 1918 death of Mihi Wiremu, in favour of Te Kani Mihi Wiremu (alias Tuwhaka Koronga Te Rauroha).¹⁵ In late 1924, Te Huruhi No.13A was sold by the owner. Te Kani Mihi Wiremu (alias Tuwhaka Koronga Te Rauroha) to Anna Fannie Alison.
19. The terms of the sale were payment of £140 in exchange for 27 acres and two rood. The transfer of title was the subject of a Certificate of Confirmation issued on 18 May 1925 by the Waikato-Maniapoto District Maori Land Board.¹⁶ It is noteworthy that not all of the land known as Te Huruhi No.13A comprising of the 28 acres as at the time of partition in 1912 was sold to Mrs. Alison.
20. It would appear that the remaining piece of land, two roods, was that of the church and urupa. Following the 1924 sale of the majority of Te Huruhi No J3A, the land was subject to various transfers by way of mortgage, as is outlined in the Certificate of Title¹⁷.

¹⁴ Charging Order of the Native land Court, dated 11 October 1915.

¹⁵ Succession Order of the Native Land Court, dated 26 July 1921, and attached Schedule.

¹⁶ Certificate of Confirmation of the Waikato-Maniapoto District Maori Land Board, dated 18 May 1925.

¹⁷ Certificate of Title Under Land Transfer Act from the District Land Registrar of the Land Registration District of Auckland, Vol.408, folio 172.

21. There are specific issues relating to the sale of Te Huruhi No.13A in late 1924 by Te Kani Mihi Wiremu (alias Tuwhaka Koronga Te Rauroha) to Mrs. Alison. Wiremu is the subject of a Memorandum dated 17 October 1923 from the Native Trust Office to the Registrar of the Native Land Court¹⁸.
22. In the Memorandum, the Native Trustee advised the Court Registrar that 'Kani te Puhi' was 'committed to the Mental Hospital, Auckland, on the 23rd August, 1923', and he (the Trustee) was requesting a 'search' of the 'Huruhi, Lands, Waiheke Island, Blk.No.5D. Huruhi Block No. 13A.' The Native Trustee further states that 'the patient is also known [as] Te Kani Mihi and Tuwhakaronga Te Rauraha'.
23. There is no doubt that this is the same person named as selling Te Huruhi No.13A to Mrs. Alison. A review of the ownership of Te Huruhi No.5D reveals that it was the same as that for Te Huruhi No. 13A. The owner was Mihi Wiremu and upon his death, a Succession Order named Te Kani Mihi Wiremu, alias Tuwhakaronga Te Rauraha as his heir¹⁹.
24. The Registrar of the Native Land Court replies to the Native Trustee in a Memorandum dated 26 October 1923²⁰. The subject is again the blocks of land, Te Huruhi Nos. 5D and 13A, but the most interesting aspect is the reference by the Court Registrar, E P Earle, to 'Kani te Puhi alias te Kani Mihi Wiremu, alias Tuwhakaronga te Rauraha' as 'deceased'.
25. Clearly, there is a question mark over the sale of the land to Mrs. Alison in late 1924, given that the owner is variously described as being confined to a mental institution and/or deceased in 1923. It is interesting to note that there is an endorsement dated 12 December 1924 to the Memorandum of Transfer for the land from the solicitor acting, Mr. E Blomfield. The endorsement is recorded immediately below.

'Signed by Te Kani Mihi Wiremu, alias Tuwhakaronga te Rauraha' this 12th day of December 1924 in my presence and I hereby certify that the said Te Kani Mihi Wiremu

¹⁸ Memorandum dated 17 October 1923, originating from the Native Trust Office to the Native Land Court.

¹⁹ Succession Order of the Native Land Court, dated 26 July 1921, and attached Schedule.

²⁰ Memorandum dated 26 October 1923, originating from the Native Land Court to the Native Trust Office.

has a knowledge of the English language sufficient to understand and that he did understand the meaning and effect of the foregoing Transfer before signing the same'.²¹

26. It would appear that the sale of the land, insofar as title transfer, was not straightforward. A letter dated 12 March 1925 from Earl, Kent, Massey & Northcroft, Barristers and Solicitors of Auckland, acting on behalf of Mrs. K M Williams is attached.²²

27. As related background information, the 1915 Charging Order in favour of the surveyor Charles Otway, by way of mortgage, had been the subject of transfer with the effect that the current holder of the mortgage had endeavored to lodge an application for transfer of the land.

28. Due to the lodgment of the application by Mrs. Alison, there was a requirement for an additional disbursement of funds, which is accordingly outlined in the record of the same of the Waikato-Maniapoto District Maori Land Board Minutes of 7 April 1925. They state:

'Board will confirm transfer to A F Alison for 27a 2r 00p, i.e.. the area of the block less the urupa of 1/2 acre provided the sum of £315 be paid to the Board. Of that sum £175 is to be held by the Board until the question of disposal of the house is settled. If it is settled that Mrs. Alison takes the house the £175 will belong to the native Te Kani or Rehutai whichever is the true owner. If the house is removed the £175 is to be refunded to Mrs. Alison. To be kept in suspense a/c meantime.²³

29. The house referred to on the land is that of Rehutai Te Waero and Mihi Rawiri Puhata are my great grandparents. The letter dated 9 April 1925 from Parr, Blomfield & Alexander, Barristers & Solicitors, outlines the financial transactions, in that the land was valued at £140, and the house at £175, giving a total of £315.²⁴

²¹ Memorandum of Transfer approved by District Land Registrar, No.212, from Register-Book, Vol.408, folio 171.

²² Letter from Earl, Kent, Massey & Northcroft, dated 12 March 1925.

²³ Waikato-Maniapoto District Maori Land Board, Maori Land Administration Minutes, dated 7 April 1925.

²⁴ Letter from Parr, Blomfield & Alexander, dated 9 April 1925.

30. It is noteworthy that the same letter refers to the lack of equity in the house by the owner of the land, Te Kani, alias Wiremu, alias Te Rauroha, which statedly lay with the grandparents of Ms Te Waero. In any event, the house was moved and the endorsement of the Maori Land Board Minutes would indicate that £175 was refunded to Mrs. Alison. Both Rehutai Te Waero and Mihi Rawiri Puhata, the owners of the moved house, are buried in the urupa.
31. It is my understanding that the present-day owners of what was Te Huruhi No. 13 A are Mr. and Mrs. Johnstone.

Church and Urupa

32. The site of what were the church and the urupa comprises only two rood, and is fenced off and classified as Maori Land. It is surrounded by 'private land', and as such, my access and that of my whanau to visit the urupa is necessarily through the permission of the current owners, the Johnstone family.
33. It appears from the documentation that the church and urupa were allowed for in the Te Huruhi Block when it was the subject of action by the Native Land Court in 1897. Although there is inconsistency as to the site of the church and urupa as they appear on various survey maps of the period, there is a consistency in that the church and urupa are constantly shown as existing.
34. In this part of my brief, I discuss the size of the church and urupa referring to the main experts about the same from the Minute Books of the Native Land Court where there is repeated "evidence in both 1897 and 1899. The first substantial reference was in the evidence of W M Hoete who stated:

There is a church at Hangaura. It was erected by the people. W Keepa collected money to build it and used to preach in it too. Some of the money was given to Rev Pomare. It was proposed that two acres should be set apart for the Church site & cemetery. Puhata mother Ani Patene (Te Hapa) Matarika Ani daughter Te Waana a son of Tomika Pirika, Paretareru (of Taranaki & Kahungunu) were buried there Some bones were brought from

other places and buried there also. Te Whaua children, Hohepa Te Aramu, Rata, Komene Te Ua, my children, Ruka, Ngawhina & Te Hapimana were buried a little distance away from the Church.²⁵

35. Again, in evidence given in the Native Land Court on Tuesday, 8 August 1899, by Remana Nutana, he stated:

'That place contains two acres having been set aside as a church site some years back. That church was consented to by Te Kecpa and set apart (the land) by him.'¹⁶

36. The above comments, taken from the Hauraki Court Minute Books 44 and 51, are important and should be taken, in my view, at 'face value'. The comments are not exhaustive and there are many references to those buried at Hangaura.

The Claim

37. I contend that I have a verifiable claim in respect of both the two roods consisting of the known urupa site, and the extended piece of land, namely the two acres that initially made up the church and urupa.

38. I am a direct descendant of one of the original owners, and furthermore I have numerous tupuna buried on the land both in and around what is the current site of the urupa. In my view, the key question comes to this: what has occurred to the land that was formerly part of the church and urupa?

39. As previously outlined, the land for the church and urupa initially- comprised of two acres. Only two roods currently remain, which are 'land-locked' by private land ownership. The circumstances 'beg the question' of what has happened to the remaining one acre and two roods? Clearly, the land has been incorporated into the sale of either Te Huruhi Nos.13A or 13D. The evidence says, from my point of view,

²⁵ Hauraki Court Minute Book 44, page 104, evidence of W M Hoete on 2 March 1897. ²⁰
Hauraki Court Minute Book 51, page 46, evidence of Remana Nutana on 8 August 1899.

that the urupa is certainly wider than the currently fenced area of two roods that would obviously support the contention that the urupa was on two acres.

Conclusion

40. On the premise that the church and urupa bordering the blocks of land known as Te Huruhi No.13A and 13D was sited on two acres, it would certainly appear that there has been an encroachment over a period of time of the land. Somewhat inexplicably, the land has decreased in size from the two acres the early Maori landowners designated for church and urupa, to the current two roods that there was reference to in the 1924 sale documentation.
41. In respect of the issue regarding the selling of Te Huruhi No.13A there is cause for further inquiry on the aspect of the status of the seller in terms of his mental capacity to undertake a land sale, and/or whether he was in fact alive at the time. The endorsement of the solicitor Mr. Blomfield on the Memorandum of Transfer could convey the appearance of a self-serving statement, particularly given the contradictory information contained in the Memoranda of the Native Trust Office and Native Land Court of October 1923 regarding Wiremu.
42. Clearly, on the face of it, they are at variance, and it is open to the interpretation that either the endorsement or the memoranda are in serious error. The matter is further clouded by the documentation from the law firm Earl, Kent, Massey & Northcroft with reference to the insinuation that Wiremu was still alive in 1924 and 1925, although it is acknowledged he did not present personally to further the matter. This could give rise to the validity of the sale of lie Huruhi No. 13A, supposing that the 'missing' one and a half acres was incorporated in this sale (or even if it was not).
43. In addition to the further avenues of inquiry outlined that could be pursued in respect of my claim, I would venture to suggest that an archaeological survey as to the extent of the urupa is appropriate. An indication as to the extended size of the urupa would provide definitive corroboration of my evidence, and also enable an estimation of the

number of persons so buried, which in turn could only substantially increase the strength of my claim.

44. Finally, and of crucial importance is that the Crown has a clear obligation in terms of the Treaty to protect Maori wahi tapu, inclusive of which must be the preservation, and ready access to, of sites of substantive spiritual and cultural importance, of which this church and urupa site are clearly an important one.

45. The Crown has, I say, shown a certain disregard, in terms of preservation and access, to do this in respect of this sacred site of church and urupa, through failing to protect the same from the vagaries of land sale.