

IN THE WAITANGI TRIBUNAL

**WAI 949
WAI 686**

IN THE MATTER of the Treaty of Waitangi Act
1975

AND

IN THE MATTER of the Hauraki Inquiry Claims
District

AND

IN THE MATTER OF a claim by Taka o Te Rangi Taka
for himself and on behalf the Wi
Taka whanau of Ngati Koheriki
and such others of Ngati Koheriki
who may elect to join in this
claim

OPENING SUBMISSIONS OF COUNSEL FOR WAI 949
Dated this 5th day of May 2002

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MAY IT PLEASE THE TRIBUNAL

1. INTRODUCTION

- 1.1 THIS is a claim about hope.
- 1.2 THE hope of a people who have suffered dreadfully at the hands of the Crown.
- 1.3 DESPITE this suffering, and the fact that the consequences of that suffering endures to this very day, they feel a sense of hope. Hope that they have been given a chance by the Tribunal to be here, to be heard, and hopefully, a chance for past wrongs and injustices to be put right.

2. THE CLAIMANT

- 2.1 THE Claimant in this claim *is* Taka O Te Rangi Taka, a descendent of Wi Taka of Ngati Koheriki.
- 2.2 THE claim is brought by him for and on behalf of the descendents of the said Wi Taka and on behalf of such others of Ngati Koheriki who may elect to join this claim Wai 949 "the claimants".
- 2.3 THE claim is set out in the Amended Statement of Claim dated 15 April 2002 (Wai 686 # 1.46 (a) and Wai 949 # 1.1 (a)) and replaces the first Statement of Claim dated 24 October 2001.
- 2.4 THE claimant claims that he and descendents of Wi Taka of Ngati Koheriki have been and continue to be prejudicially affected by the various Acts, regulations, orders, policies, practices and actions taken, omitted or adopted by or on behalf of the Crown since 1840.

3. THE CLAIM

3.1 THIS claim seeks answers.

3.2 IN essence the claimants want to know the truth about what happened to Ngati Koheriki and why.

3.3 THEY also seek the opportunity, where wrongs were done, to put those wrongs right.

3.4 ONE of the witnesses poses a number of questions that he hopes will be answered as a result of this inquiry by the Tribunal. Questions such as:

- (a) Why did the Crown forces invade Ngati Koheriki lands in 1863.
- (b) Why did the Crown forces kill and wound so many of his Ngati Koheriki tipuna at East Wairoa and elsewhere.
- (c) Why were his Ngati Koheriki tipuna labelled as rebels when they were fighting to defend their own lands.
- (d) Why the Crown confiscated Ngati Koheriki lands at East Wairoa.
- (e) Why the Compensation Court and Native Land Courts failed to carry out a complete and proper investigation of the ownership of Ngati Koheriki lands.
- (f) Why Ngati Koheriki did not receive any compensation for the confiscation of their lands at East Wairoa.
- (g) Why Ngati Koheriki lands, outside of the East Wairoa confiscation area were given to non Ngati Koheriki Maori by the Native Land Court.

- (h) Why the claimant's great grandfather Hori Taka was arrested and charged with murder in 1865 for an incident in 1863.
- (i) Why the Crown awarded Ngati Koheriki 1,360 acres of land at Waikarakia when they had been earlier promised 5,200 acres of land.
- (j) Why almost all knowledge of their lands at East Wairoa and who they are as a people was lost from their oral history.
- (k) Why have they had to rely on pakeha historians to tell them their history.

4. THE ROHE

4.1 IT has become clear, especially from the Tribunal commissioned reports of Drs Rigby and Grilling, that the extent of the Ngati Koheriki interest extends beyond the East Wairoa block which is the subject of this hearing. The claimants appreciate however, that this hearing is only looking specifically at East Wairoa.

4.2 THE extent of the Ngati Koheriki interests in adjoining or neighbouring areas to East Wairoa is relevant in determining what the claimants submit are their very clear and significant interests within East Wairoa. It is appropriate that this context be considered by the Tribunal. Those blocks are set out in paragraph 13 of the Amended Statement of Claim.

5. THE EVIDENCE

5.1 EVIDENCE will be given by the claimant himself and a number of Ngati Koheriki in support of the Wai 949 claim. That evidence, in conjunction with the report by Dr Gilling (Wai 686 #T4 and Wai 949 #A2), and Dr Gilling's summary (Wai 686 #T4(a) and Wai 949 #A2(a)) will establish the following:

- (a) Ngati Koheriki exist as a separate and independent tribe;
- (b) Ngati Koheriki occupied an extensive area, including East Wairoa;
- (c) Ngati Koheriki were swept up in the Crown attack on the Kingitanga in the Waikato and without having committed any prior hostile act, were attacked by Crown forces;
- (d) Ngati Koheriki were killed and wounded when Crown forces invaded their ancestral lands at East Wairoa;
- (e) Ngati Koheriki were driven from their lands at East Wairoa by the Crown and forced into exile as refugees;
- (f) Ngati Koheriki were wrongly branded as rebels, while defending their own lands and kainga from external attacks by Crown forces;
- (g) Consequently, as 'rebels' Ngati Koheriki had their lands and resources in the East Wairoa Block confiscated;
- (h) Ngati Koheriki lost their Papakainga, urupa and waahi tapu. They were left with no place to stand;
- (i) Ngati Koheriki were left with no economic base. Not only were then-villages destroyed and/or lost, but also their many beautiful cultivations, groves of peach trees and many cattle and horses.
- (j) Ngati Koheriki were excluded from an inherently flawed Compensation Court process in 1865;
- (k) At the time of the Compensation Court hearing, the claimant's great grandfather, Hori Taka, was arrested, placed on trial and found guilty of murder. This was regarding an incident at Wairoa on 13 October 1863 and following the Crown attack at Otau in September 1863;

- (l) Ngati Koheriki received no compensation for the loss of their lands and resources at East Wairoa;
- (m) Ngati Koheriki did not, and to this day have not received any of their confiscated lands and resources at East Wairoa back from the Crown;
- (n) Through the implementation of an invalid promise made in the Compensation Court, Ngati Koheriki were then improperly excluded from the balance of their traditional lands in blocks bordering on the East Wairoa Block;
- (o) Ngati Koheriki have also lost a significant part of their cultural identity, a loss of Ngati Koheriki traditions and a dispersal of their people;
- (p) When the Crown finally decided to award Ngati Koheriki 5,200 acres out of the district at Waikaraka in the 1880' s, the Crown foiled for 40 years to complete the award. Further by a series of actions the Crown reduced that already small area by over two-thirds;
- (q) Ngati Koheriki has been forcibly separated from their lands and resources for what is now in excess of 138 years;
- (r) The Crown foiled to provide Ngati Koheriki with adequate lands for their present and future needs, or as Dr Grilling concludes:

"[Ngati Koheriki] have consequently been left with a minimal tribal heritage and a scant patrimony from which to create any economic or social base to stand on in the present or for the future" (Wai 646 #T4(a) para62 (c));

6. TREATY BREACHES

6.1 THE Crown acted in breach of the principles of the Treaty of Waitangi in that it:

- (a) Failed to actively protect the interests of Ngati Koheriki guaranteed by the Treaty to the fullest extent reasonably practicable.
- (b) Failed to take steps to ensure that they were not placed in a position injurious to their interests. As a result of the crown invasion, subsequent confiscations and operations of the Compensation Court and/or Native Land Court, Ngati Koheriki were left without sufficient land and resources for their present and future needs.
- (c) Failed to protect Ngati Koheriki's land tenure and relationships with other hapu, customary laws and the integrity of their life and culture and failed to actively protect Ngati Koheriki's rights and interests in land and other taonga.
- (d) Failed to act honourably, reasonably and on the basis of justice, sincerity and utmost good faith. The Crown took intentional and purposive steps to undermine Ngati Koheriki rangatiratanga through its invasion, confiscations and operation of the Compensation and Native Land Courts and acquired the resources within East Wairoa for its own benefit.
- (e) Failed to exercise its powers and responsibilities of Government, including the application of the law, properly and justly, without any underlying desire of benefit and without unfair discrimination between its Pakeha and Maori subjects.

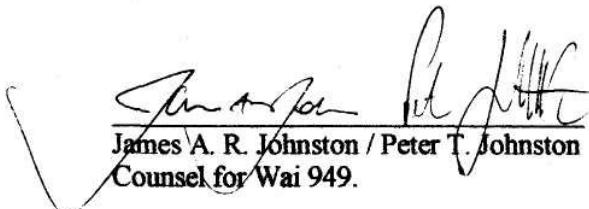
- (f) Failed to accord to Ngati Koheriki the rights of protection guaranteed to them as British citizens and further that the Crown deliberately took the legal action in breach of the principles of the Treaty of Waitangi, including the basic right to life.

7. CONCLUSION

- 7.1 NGATI Koheriki lands were invaded by the Crown and their people killed by those Crown forces. Ngati Koheriki were driven from their lands to become refugees. With the ensuing confiscation their tribal structures and very fabric were decimated. The suffering and pain endured by those Ngati Koheriki as they fled, leaving their dead and their lands is difficult to imagine and comprehend, especially when they did no wrong. When all that they were doing was "defending hearth and home".
- 7.2 THE whakama or shame felt by those today who suffer from the loss of knowledge simply makes things worse and is a further aggravating consequence of the Crown's conduct.
- 7.3 THE Crown got it tragically wrong as far as Ngati Koheriki were concerned. Indeed the story of Ngati Koheriki at East Wairoa was almost lost forever until the Tribunal itself sparked hope.
- 7.4 THE claimants hope that this Tribunal can help by bringing out the truth and, hopefully help to put things right for Ngati Koheriki.

Dated at Waiheke this 15th day of

May 2002


James A. R. Johnston / Peter T. Johnston
Counsel for Wai 949.

Date