

CHAPTER 11

CONCLUSION

There is no quick or easy answer to the problem of how the Maori Land Court interpreted customary Maori land tenure. On the one hand, individual judges of the court appear to have understood the basic ‘principles’ of Maori land tenure. The court also appears to have tried to use this understanding to find the correct right-holders or ‘owners’ to particular blocks of land, remaining open to the possibility of regional variation or cases that went against the commonly-held principles.

However, the discussion presented in this report suggests that the process by which the Maori Land Court investigated the title to Maori land, and subsequent actions of the court should be separated into a number of distinct stages:

- (a) the investigative stage whereby a general group was awarded ‘title’ to the land;
- (b) the apportionment of individual interests in a block of land; and
- (c) the subsequent history of the land (for example, successions, survey liens, mortgages, reservation status, partitions, perhaps alienation by sale, or the inclusion in development schemes).

Points made under (c) have not been dealt with at all by this report. When considering (a) above, the probability that the court could ‘get it right’ when determining the general ownership of Maori land appears to have depended upon a number of variables:

- the thoroughness of the understanding of Maori land tenure held by individual judges;
- the fact that Maori did have a strong system of tenure which recognised a number of exclusive use-rights (although not the right of the individual to alienate land permanently);
- the position of the land in question in the wider tribal region (whether the land was disputed, or whether it was held securely by the group in question);
- any ‘out-of-court’ arrangements that may have been made; and
- any number of procedural conditions such as the publication of notices relating to different cases, the attendance in court of interested parties, the influence of European legal advice, the effects of indebtedness, and so on.

These latter variables have not been commented on in this report, except in passing.¹

1. See, for example, A Ballara, ‘The Pursuit of Mana? A Re-evaluation of the Process of Land Alienation by Maori, 1840–1890’, *Journal of the Polynesian Society*, vol 91, no 4, for further discussion. Many recent critiques have given much attention to these procedural questions. See also Geiringer (Wai 45, doc f10).

There is, of course, another level to the Maori Land Court – the intention(s) behind the legislation that established the court and any subsequent changes to this legislation. These intentions have been outlined in section 4 above and can be summarised as follows: the court sought to destroy what was considered to be the 'communitistic' nature of Maori social organisation by transforming complex use-rights into freehold title. In practice, though, the majority of title investigations created a quasi-individualism in which a number of owners were placed on a single certificate of title or memorial of ownership. Nonetheless, it appears that the imperative of destroying 'communalistic' tenure necessitated, in the court's mind at least, the simplification of a complex and communally-administered set of rights in the process of investigating and awarding title.

Furthermore, in practice, the court appears to have varied its approach to the question of tenure depending on the level to which the land was disputed. The court did not appear to be overly concerned with the nature of evidence on nondisputed land. This is perhaps understandable: the court could do little else if nobody challenged the evidence presented. But when disputes arose, the court tended to stress rights based on occupation and conquest, or make some entirely arbitrary ruling on other criteria. Moreover, such disputes often involved groups who held rights at different levels, and lesser right-holders often appear to have objected not to the rights held by the other group, but to their own rights being extinguished by the court. In some cases the court acknowledged the problem and insisted that the land was subdivided. In other cases, the court simply awarded disputed land to a single group.

Likewise, the court actively encouraged (and even directed) the settlement of differences outside of the court environment. Thus the court would typically collapse the ongoing history of any particular area of land into a once-off arrangement by which title was frozen in a legally-binding form. This in part reflected the court's inability to differentiate between different rights within single blocks of land. Indeed, the court freely admitted that it did not apportion individual interests (or rule in cases of succession) according to Maori custom.