IN THE WAITANGI TRIBUNAL INQUIRY
Wairarapa ki Tararua District

WAI 863 & C.....
WAI 171

IN the Matter of

The Treaty of Waitangi Act 1975, as amended

AND

IN THE MATTER OF

Claims by Henare Matua Kani on behalf of himself, and all descendants of Henare Matua

Fully Particularised First Amended Statement of Claim

Dated 14 April 2003

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Fully Particularised First Amended Statement of Claim

Dated 14 April 2003

Ko Hautekohakoha te takitaki
Ko Rongomaraeroa te Marae
Ko Tapurutu te Whare
Ko Te Pooti Ririkore te Rohe

The Claimants

1. **THE named claimant Henare Matua Kani**, is a descendant of Henare Matua a principal stakeholder involved in the sale of the Tautane Block. Henare Matua stated he claimed his rights in the Tautane Block through his mother Hineikura[1] whom Henare Matua stated descended from Ngati Hamua and Rangitane [2].

2. **Ngaa Uri o Tipene Matua** are the descendants of Tipene Matua and Arapera Waipari[3] .

3. **Ngaa Ruahuihui** a hapu of whanau descended from Ruahuihui, the daughter of Tipene Matua (younger brother of Henare Matua) and Arapera Waipari. This hapu is based in Mangahei, east of Dannevirke and Porangahau, further northeast on the coast[4].

4. The claimants are whanau (pl.) who have whakapapa connections that enable them to maintain the traditional role of takawaenga covering the hapu boundaries between Ngati Kere of Porangahau, Ngati Parakiore inland and Te Hika o Papauma and Ngati Hamua of Wainui and south along the eastern coast. The whakapapa charts referred to above (ie footnote 1) show some of those connections.

5. In his intial Statement of Claim dated 16 November 1990, Henare Kani claimed as 'a descendant of Ngati Kahungunu' and also 'For myself on behalf of the sovereign descendants of the Tipuna and Hapu of Heretaunga and with the support of the Ngati Kahungunu ki Heretaunga of which I am a hereditary member"[5]. At the time of his initial claim (1987), Mr Kani did not have researched the material at his disposal today and aided by subsequent research and whanau hapu wananga has made the necessary changes to his claim. The Ruataniwha and Ruahine Blocks of the original claim also fall outside the area covered by the Wairarapa ki Tararua Inquiry District.

5.1 The claimants reserve the right to amend this Statement of Claim for the purposes of any future Waitangi Tribunal inquiry into the Ruataniwha and Ruahine land blocks.

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[1] The People of Many Peaks, NZDB, 1990, p43, para.2;
[2] see Whakapapa Chart 1, M Paewai, annexed to claimant report to be filed
[3] see above Whakapapa Chart 1, M. Paewai.
[4] History of Nga Ruahuihui, HM Kani, 1998, p4, to be included in Document Bank to Claimant Report to be filed.
[5] Heretaunga Traditional Rohe, HM Kani, 1994, to be included in Document Bank to Claimant Report to be filed.

6. THE CLAIMS

6.1 THE claims relate to the alleged first purchase by the Crown of the Tautane Block; the alleged second Crown "re-purchase" of the Tautane Block; the establishment by the Crown of the Tautane Native Reserve lands; the persecution by the Crown of Henare Matua for his political activities; the break up and eventual alienation of the Tautane Native Reserve lands, and the public works takings within the Tautane Native Reserve lands.

6.2 THE Claimants say that they are or are likely to be prejudicially affected by the Ordinances, Acts, Regulations, Proclamations, Notices and other Statutory Instruments; and the policies , practices, acts or omissions of the Crown, the particulars of which are set out in this Statement of Claim.

6.3 THE Claimants further claim that all of the Acts, Regulations, Proclamations, Notices and other Statutory Instruments; and the policies and actions taken, omitted or adopted by or on behalf of the Crown referred to are, and remain inconsistent with the terms and principles of the Treaty of Waitangi.

BY WAY OF HISTORICAL BACKGROUND the claimants say

7. Following the signing of the Treaty of Waitangi and a decade of leasing lands the Crown via principally its agent D McLean was following a land purchase policy of buying as fast and as cheaply as it could all the lands it could acquire from Cape Palliser up to Mahia.[6] The Ahuriri Purchase was negotiated and completed from April-December 1851.[7] The Waipukurau Purchase completed in mid-1851 saw 279,000 acres transferred for a fraction over 1 penny per acre; and finally the Castle Point purchases completed in the period `1852-June 1853 saw some 275,000 acres sold to the the Crown for just over two-pence per acre. After these big land blocks were taken the Crown turned its' purchase sights on the southern Wairarapa and by January 1854 had over 43 "Deeds" which saw some 1.5 million acres transferred from Maori ownership to Crown.[8]

7.1 THE Tautane Block estimated to comprise 70,000 acres lay to the south of Porangahau, but just to the north of the Tamaki Blocks, and was a land block which included the Tautane stream (from which it took its name), and which had as its principal drainage the Mangamaire river its

[6] doc A 36, p177, last para., pp184-185; p 186, 1st para; p189 last para.
[7] Te Whanganui-a-Orotu Report 1995, Waitangi Tribunal, pp42-54
[8] doc A48, Vol 1, Stirling, 2002, p125

tributaries which all flowed into the Porangahau river[9]. The Tautane lands prior to the arrival of Kahungunu peoples in northern Heretaunga and Ahuriri were populated by peoples who carried names such as Ngaai Tara, Tini-o-Toi.

FIRST CAUSE OF ACTION.

8. THE CLAIMANTS say **the First Tautane Purchase was on the Crown's part conducted in clear breach of the Treaty of Waitangi principles of sincerity, justice and good faith[10], in sum it was a fraud, done in bad faith with the intent of forcing the sales process upon the owners , in particular as follows:-**

Particulars

8.1 THE Tautane Block was first allegedly "purchased" by the Crown in 1854, the deed of sale dated 3 January 1854. Between 3 and 17 January the Crown at Wellington with the "seller" being Te Hapuku (and others) made four "secret" purchases, in that the deals were done without knowledge of the Maori living on the lands.[11] Tautane was one of these deals. The price to be paid for Tautane (then estimated at 70,000acres) was 1000 pounds. Two reserves were made, and the Deed also specified that five per cent as payable in the purchases at Wairarapa was also to be paid.[12]

8.2. THE Deed was signed on behalf of the Crown by Chief Land Purchase Commissioner Donald McClean. For the alleged sellers, Te Haapuku and 32 others signed all being persons affiliated to Ngaati Whatuiaapiti (Heretaunga) and Ngaati Kurukuru (Waimaarama)[13].

8.3. Almost immediately after signing the Crown agent, District Land Purchase Commissioner George Cooper reported serious and complete complaint as to the validity of this first "Tautaane" sale. He reported when arriving in the area to negotiate the Porongahau purchase ...,

> *When I at last got there, the first thing was a row about sales at Tautane and the Umuopua (Hori Niania's).*[14]

8.4. IN a later Native Affairs Committee enquiry sitting on 28 December 1887 which examined, inter alia, this first Tautane purchase Crown Agent Cooper gave evidence when asked if Te Hapuku and Hori Niania had any right to sell Tautane Block without concurrence of the various resident hapu , or even with their concurrence excepting as agents, Cooper

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[9] doc A 19, p 1
[10] BPP, NZ III, p39 {IUP p87], Lord Normanby's instruction to Captain Hobson, 14 August 1839, cited in doc A 63, pp18-19.
[11] see footnote 115, doc A 47,p51; doc A63, p86
[12] doc A 19, p4
[13] see text cited as footnote 116, doc A 48, p52
[14] ATL, MS Papers 32, Folder 227, Cooper to McLean, 19 April 1856, cited doc A 19 p5

replied "*Certainly not*".[15] When later asked the same question in a different way that is ...." *Do you know whether Tiakitai and Hori Niania had any right to sell the block (Tautane) without consent of the people residing on it* ?... he replied "*I'm sure they had not*".[16]

8.5 IN 1887 in a Native Land Court rehearing of the Porangahau Block at Waipawa, Henare Matua is recorded as telling the Court...

> *Hori Niania and the people of Wairarapa sold land to the south of this block in a clandestine way. When [Te] Ropiha heard of the sale by Hori & Hapuku he threatened to cut their noses of. Tautane and Wainui blocks are the ones I allude to.*[17]

TREATY BREACH

8.6 The Crown breached a Treaty duty not to use unfair means when dealing with Maori, this duty arising from from Article the Second of the Treaty, and the principle of the Treaty known as active protection.

8.7 The Crown owes a duty to protect preserve and promote the economic position of Maori. This includes:

(a) A duty on the Crown to ensure that Maori were and are left with sufficient land and other resources for their maintenance and support and livelihood and that each hapu maintained a sufficient endowment for its foreseen needs [*Orakei Report*, p 147].

(b) Such endowment is not just an endowment sufficient to survive but sufficient to profit and to prosper and includes the facility to fully exploit such land and resources [*Muriwhenua Fishing Report*, p 194].

SECOND CAUSE OF ACTION

9. The Second TAUTANE Purchase was a "completion" of the "First Purchase" and was therefore a continuance of Crown action done in bad faith and with no regard for the needs of the resident owners in particular as follows:-

9.1. The owners on 11 March 1858 signed a second Deed of Sale over Tautane lands

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[15] doc A 19 p14
[16] above, p15
[17] doc A 19, p13

with Donald McLean again signing on behalf of the Crown.[18] They were never offered the option of repudiation of the first sale.

9.2 The 1858 Deed specifically stated in its English text ....

> *Now this is the land which has been* ***set apart*** *for us. Te Wainui is the boundary on the South side, the sea side is another boundary, the other boundaries are to be decided by the survey which shall enclose an area of one thousand acres. This is the only portion* ***reserved for us*** *within this block. ..... Fifty acres have been added to the one thousand acres as a burial place for our dead and for cultivations also, making the total area of* ***our reserve*** *one thousand and fifty (1050) the boundaries of which fifty acres are to be defined by the survey. [emphasis added]*

9.3 The Maori language deed text uses the phrase ... *" Ko te whenua kua oti te whakarite hei nohoanga iho mo matou ..."* where English language set apart arises ; and in the maori language *"Heoi ano te wahi porotaka mo matou I roto I tenei kainga", and "hui katoa te whenua porotaka* " where the English language word *"reserve"* is used.

9.4 Henare Matua signed this second deed, and when the Tautaane Native Reserve came before the Native Land Court on 9 January 1867 Henare Matua is recorded as saying....

> *I recognise the land shown on the map produced. It is in the Tautaane Block, which piece of land was reserved by us out of the sale of the Tautaane block. I did not sign any paper when the first instalment of the purchase money was paid but on completion of the purchase, when the Reserve was made I signed the Deed of Sale. It was Hoera and I who applied to Mr McLean to have this reserve made. ....*

and later H Matua is recorded as stating ...

> *The men whose names are in the Deed are in my people. Their names were merely assenting to the sale - the Reserve was intended for us two only...*

9.5 The second Deed was signed in Hawkes Bay with a receipt for L500 issued stating as being for the *..." balance of the payment of our land which was sold by our relatives at Wellington on the third day of January in the year 1854.*". This second payment was therefore made more than two and half years after it was due, that delay in itself an injustice.

9.6 The five percents mentioned in the first deed were sold for an additional

[18] Turton, Maori Deeds, pp525-6, copies in AS Carlyle Supporting Documents, pp1-4

L500.[19] This "sale" and "purchase" of the 5%s was in itself a Crown action that even that time was an action which failed to have any regard for the future well-being of the hapu members who had sold all their interests in the Tautane lands.

TREATY BREACH

9.7 The Crown breached a Treaty duty not to use unfair means when dealing with Maori.

9.8 The Crown owes a duty to protect preserve and promote the economic position of Maori. This includes:

A duty on the Crown to ensure that Maori were and are left with sufficient land and other resources for their maintenance and support and livelihood and that each hapu maintained a sufficient endowment for its foreseen needs [*Orakei Report*, p 147]; and

Such endowment is not just an endowment sufficient to survive but sufficient to profit and to prosper and includes the facility to fully exploit such land and resources [*Muriwhenua Fishing Report*, p 194]; and

The Crown does not take advantage of the poverty of Maori, created at least in part by the Crown, to acquire land from Maori which Maori are selling just so that Maori can buy food and survive.

10. **BY OF THIRD CAUSE OF ACTION** the claimants say the Crown's allowance of Tautane Native Reserve lands to be alienated out of the ownership and control of the descendants of Henare Matua, was a removal contrary to the Treaty **in particular as follows**; and

10.1 D. McLean as Chief Land Purchase Officer in the 1854-1858 period at Hawkes Bay clearly intended to limit the acreage of native reserves. He recognised the Maori need for lands they customarily used and occupied. When he, McLean, used the term reserve he was referring to tribal or customary land that Maori wished to retain.[20]

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[19] doc A 19, p7

[20] Te Whanganui-a-Orotu Report 1995, WTR, p40, see also doc A47 last paragraph of 2.1.4

10.2 It is this claimant's case that what his tipuna meant by "Reserve", and in particular the word wording "porotaka" was that there was a prohibition as against any dealings with the Tautane Native Reserve they being lands reserved from the sale. This is consistent with the English wording surrounding the Tautane parent block sale that is the land was reserved from the sale, said lands becoming known as the Tautane Native Reserve. This then denotes the ongoing relationship that Henare Matua as a rangatira exercising rangatiratanga over the whenua then named Tauatane Native Reserve that is lands completely outside any Crown control over which he would exercise the fullest authority.[21]

10.3 The Claimants say that this "porotaka' was and is meant to indicate a high level of relationship to the land. In brief it was land over which mana, tapu were to be maintained. This was a clear view made known to the Crown in the contemporaneous negotiations the Crown was having with various rangatira over the Castlepoint land block.[22]

10.4 On 18 January 1867 the Native Land Court, Judge H Munro presiding, ordered that a Certificate of Title be made and issued to the Governor.[23] Following that order the Governor on 22 May 1867 issued a Crown Grant under the Native Lands Act[24] 1865 for the Tautane Native Reserve with the words added after the label "restrictions" ....

> *Inalienable by sale or by lease for a longer period than twenty-one years or by mortgage except with the assent of the Governor being previously obtained to every such sale lease or mortgage.*

10.5 Henare Matua died in early September 1894 and the Tautane Reserve in total was under lease, save for 100 acres excluded for Natives. Of this 100 acres part was an urupa, and the remainder was land containing the pah and cultivations surrounding the pah.

10.6. An abstract of registered dealings in the reserve was prepared on 15.8.1896.[25] That abstract confirms the leased land position but the initial lease numbered 5907 gave to the lessee *"to have first offer if Lessors desire to sell during term of lease."* .

10.7 On 7 September 1882 the existing lease was renegotiated to a higher rent of L 350 per annum and there is no mention of the right of purchase, and with retention of "A reserve of 100 acres excluded for Natives."

10.8 Prior to the partition order of 7 September 1899 the two brothers of Henare who, it seems clear were managing the family lands, sought a mortgage

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[21] Smith 2001(b):292 cited in doc A 36, p194
[22] doc A 6, p24 1st para, p26 esp. letters of Iria
[23] doc A 66, Supporting Documents, p7
[24] above, p8
[25] doc A 39 (a), Supporting Papers for Block Research Narratives of the Tararua, Vol XII, p5678

from the Public Trustee to rearrange the indebtedness to their stock agents (it seems L3500). By a letter dated 2 June 1897 by their solicitor [26] advised the Undersecretary of the Minister of Justice;

> *"...I have the honour to state that tipene and Heta Matua are sheepfarming on two other blocks of land viz.- Mangamairie and Porongahu No 1. That they are indebted to their agents, Murray Roberts and Co, upon these blocks and wish to clear off that debt or they may lose their sheep. The Public Trustee will not advance any money to Natives upon land unless it is leased to Europeans. That their only means of raising money therefore is upon Tautane –*

10.11 This letter of 2 June 1897 followed a petition to the Governor [27] with a letter from Coleman Phillips (the lawyer for Tipene and Heta) dated 15 May 1897 [28] seeking the Order in Council from the Governor (required by s.117 of the Native Land Court Act 1894) to let native land be treated as non-native land. The application was declined by the Governor.

10.12 0n 22 December 1897, the Crown passed into law the Native Land Laws Amendment Act 1897. Section 6 of that act established a formal procedure for raising a mortgage on Native land, and provided that on the application of any Maori owning land in severalty who desires to borrow money from an lending department of the government on mortgage of his land. The Native Land Court if satisfied of the fact may give him a certificate that irrespective of the land he proposes to mortgage he possesses other land sufficient for his maintenance, and upon such certificate being given the Governor in- Council may authorise such Native to mortgage the land to any such landing department.

10.13 The only way for Tautane Native Reserve could have severalty ownership was by a partition application to individuals before the Native Land Court. So it was that Tipene and Heta Matua, after succeeding to H Matua's interests in the Tautane Native Reserve applied for partition. The Native Land Court Judge's ordered the partition, all '**subject to the restrictions contained in the original Crown Grant** and recording in his minute ... "all the parties have agreed to a scheme of partition of this block as follows" [29];-

No 1 area 52 acres to be for Henare te Atua
No 2 area 50 acres to be for
Hape Rautu
Tuhurangi Rautu
Tira Rautu
Tete Rautu
in equal shares
and his Honour noted the boundaries as described to be cut off as to include the cemetery
No 3 area 50 acres to be for Heta Matua and Tipene Matua jointly

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[26] doc A 39(a), p 5690
[27] doc A 39 (a), pp 5673-5674
[28] above, p5690 & 5693
[29] doc A 39(a), p 5661

No 4 area 505.2.00 to be for the owners in 2 above equally
No 5 area 197.2.00 to be for Tipene Matua
No 6 area 197.2.00 to be for Heta Matua

10.14 That same day, one case later, the Judge issued certificates under s.6 of the Native Land Laws Amendent Act 1897 to firstly Tipene Matua and secondly Heta Matua for their solely owned lots in the Tautane Native Reserve.[30]

10.15 It is claimed the applications for partition and the creation of sole ownership titles(severalty) followed immediately by the s.6 certificate applications disclose a plan to have separate titles from which lease income is derived from European lessees to meet the lending criteria of the Public Trustee for a mortgage application by Heta Matua and Tipene Matua

10.16 There was a loan application to the Public Trustee by Tipene Matua, dated March 16, 1897, together with a petition to the governor for removal of the restrictions. The application offered as mortgage security land at Mangamaire and Poranghau No 1, which are noted as having Land Transfer title.

10.17 Tipene Matua who owned Lot 5 and Heta Matua who owned Lot 6 sought to arrange mortgage finance, (presumably from the Public Trustee) to clear some farming debts. Because of the alienation restrictions the consent of the Governor had to be obtained. Initially applications were made to the Native Land Court for a removal of the restrictions on alienation to mortgage Tautane lots 5 and 6.

10.18 The application was heard by the Native Land Court and the necessary orders issued: for Lots 5 and 6 on 3 August 1900. Yet the Order in Council permitting the owner "to mortgage the lands set out in the Schedule to a lending department of the government..." was duly published on 14 March 1900, that is some 5 months earlier.

10.19 There are separate Crown archival files for the two applications. Only the file for Tautane 6, the land of Heta Matua, retains the Memoranda note which has on it the note of Cabinet's decision to be advised to the Governor for his action. The file note of Cabinet for Tautane 6 records:

"*In cabinet, 5 July 1900, Approved for leasing only, money to be obtained from a lending dept of the Govt.*" (National Archives J1, 1900/254)

10.20 No further applications were made to the Native Land Court to permit sale. Nor were mortgages found in research enquiries

10.21 It is also notable that when the sale of Tautane Native reserve lots takes

[30] doc A 39(a) p5663

place in mid 1910s[31], a constant question arises from the sales being the absence of any reference to the alienation bar in the sales. Even the sales of lots 5 and 6, have no reference to the removal of the alienation bar despite the prior lengthy and time consuming action to have the bar removed for mortgage purposes.

10.22 While none of the Tautane lots have been the subject of application to the Court to remove the alienation restrictions (save for the applications for lots 5 and 6 which were concerned with mortgage finance), it may be that section 207 of the 1909 Native Land Act which provided that all existing restrictions on alienation of Native Land be removed, may have finally lead to the pito-whenua of the mother of H Matua finally being lost to her descendants.

TREATY BREACH

10.23 The acts and omissions of the Crown specified in the above paragraphs 10.1-10.22 display deliberate breach of the Treaty of Waitangi guarantee to the owners of the Tautane Reserve lands of the preservation of their customary title [*Te Runanganui O Te Ika Whenua Inc. Soc. v Attorney-General* [1994] 2 NZLR 20, CA 24; Orakei Report p 135].

10.24 The Crown, in breach of the principles of the Treaty established the Native Land Court, which as regards the Tautane Reserve lands:

(i) applied only pakeha concepts of land tenure;

(ii) used only the practice of applying pakeha concepts of succession; and

(iii) with the effect of taking away from Maori self determination of matters affecting their own land.

All contrary to:

(a) Maori Custom.

(b) Tino rangatiratanga a Henare Matua

(c) Tikanga and the principles of what is tika.

11. **BY WAY OF FOURTH CAUSE OF ACTION** the claimants say that the intent, and actual conduct of the Crown can only be construed as conduct designed to actively erode, diminish and subsequently usurp the

[31] doc A 66, paras 28-60

identity, customs, interests and rangatiratanga of Henare Matua such that this can only be seen as a deliberate effort to gain the property and to subsume the authority of Henare Matua over their lands; peoples and esteemed institutions while afflicting upon them the encumbrance of the Crown's will, **the particulars of** which are as follows :-

11.1 IN 1870 H Matua became actively involved in Native Land Act processes to the extent of being appointed as an assessor for the Maori Land Court [32]. The Court's use of the "ten-owner rule" meant that by 1873 nearly 4 million acres of Maori land in Hawkes Bay had been purchased by fewer than 50 Europeans since 1869.[33]

11.2 BY 1870 Henare Matua had became absolutely disillusioned with the failure of the Native Land Court process to protect the customary manner in which Maori held their lands and indeed perceived the real agenda as being Te Kooti Tahae Whenua[34]. He sought a political social solution to the then perceived threat and became the key founding person in a movement historically referred to as the "Repudiation Movement ". Over the next two years he assisted hundreds of local Maori to file petitions on a range of land questions[35].

11.3 Henare Matua wished to have all the early "purchases" back to 1850 investigated and, if found wanting as to fairness and equity, repudiated. [36] This of course made him and his associates target practice for Ormond (Superintendent of the Province), McLean and other "leading settler/politicians who had in reality established a "land ring" which saw them personally holders of vast Hawkes Bay estates, known locally as the "Apostles".

11.4 The Repudiation Movement received in 1872 the assistance of a pakeha settler H R Russell, owner of the local and vast estate "Mt Herbert", and a politician in his own right. He and H Matua established a newspaper "Te Wananga" which from 1874 they used to cause lengthy public debate with the "McLeanites" of Hawkes Bay-Wellington.

11.5 PARLIAMENT via a select committee endorsed the petitioners call for a Commission of Inquiry, and the Hawke's Bay Native Lands Alienation Commission was established but was, with its narrow focus, to be totally ignored by the Crown[37]. From July 1875- March 1876 with the reality of the Crown's Commission being seen as the wasted effort it was Henare Matua and others commenced organizing at further huge pan-tribal hui.[38]

11.6 Following the above hui, Kahungunu, Rangitane, and various rangatira met

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[32] "People of Many Peaks", NZDB, Vol 1, p44, para 4.
[33] "Agents of Autonomy, Maori Committees in the Nineteenth Century ", V O'Malley
[34] doc A 50 p23-24
[35] doc A 50 pp20-21
[36] "Kinds of Peace" , K Sinclair, p112-113, doc A 50 p25-26.
[37] doc A 50, p21, see specifically also AJHR 1872, H-11 cited in fn 59, doc A 50, last paragraph doc A 50, p26
[38] doc A 50, p40-45

and filed various petitions calling for annual Maori Parliament, and asking the Native Land Court laws and operations be examined[39].

11.7 Following above hui two petitions, with hundreds of signatories were sent to the Crown.[40] These petitions called for the Queen to appoint honourable men, with powers to report to her directly, sought the repeal of Native Representation Act, Native Land Act. The Native Affairs Select Committee recommended favourable consideration of the petition but it was ignored with the Crown passing the Native Land Purchase Act 1877, which strengthened the Crown's power to shut out competition from private land purchasers, and the passage of the Native Land Amendment Act gave the power to Crown to compulsorily refer land for Native Land Court investigation.

11.8 Henare Matua from 1877 until his death was to appear in numerous Native Land Court cases, drafted many of petitions to Parliament, and give counsel to numerous rangatira in what can only be described as a biblical epic struggle beyond the proportions of David versus Goliath[41].

TREATY BREACH

11.9 Henare Matua , as a rangatira exercising rangatiratanga for his whanau, hapu and iwi was , in accordance with Treaty of Waitangi guarantees to be protected not only in the possession of their collective property but in their right to control such property in accordance with their own customs and having regard to their own cultural preferences [*Motunui-Waitara Report* 2 ed. 1989 p 51] and to have protected to the fullest his exercise of te tino rangatiratanga being the full authority, status and prestige with regard to Maori possessions, interests, and self-governance [*Manukau Report*, p 67].

12. Fifth Cause of Action - Public Works Takings

THE Crown takings of lands for roads in the Tautane Reserve was not in the public benefit, and in particular those Tautane lands taken were not so used, was an abuse of power in **particular** as follows :-

12.1 IN 1904 the Crown agent, the Porangahau Road Board gave notice of intention to take just over 2 acres, and in 1905 the land was proclaimed by the Crown taken.[42] There had already been built over Tautane Reserve Lands a main road between Herbertville and Dannevirke, and a road on Tautane land to the north which was to be closed.[43]

12.2 The successors to Henare Matua's title objected to any road takings,

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[39] doc A 50 pp46-54
[40] doc A 50, pp53-5428.
[41] To be evidenced in Claimant Report to be filed
[42] doc A 32, 105
[43] doc A 32, pp105-111, see map at doc A 32, p112

never saw any notice to take, were unaware of any Proclamation, and even though their opposition was known it was ignored by the Crown.[44]

TREATY BREACH ;

12.3 A fundamental principle of the Treaty is the protection and preservation of Maori property and taonga: [*New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513, PC, 517].

12.4 The Crown under the Treaty owed a duty not to use any powers of compulsory acquisition of Maori land or resources without first consulting those Maori affected and without negotiating genuinely with them as to the purchase or, at least, paying proper compensation. [*The Ngati Rangiteaorere Report* pp 47-48; *Te Runanganui O Te Ika Whenua Inc Soc v Attorney-General* [1994] 2 NZLR 20, CA at 24].

13. Overriding Principles

13.1 An overarching principle of the Treaty is that the Crown should deal with Maori in an honourable and good faith way, and should ensure the protection and prosperity of Maori as a people including their economic, physical, spiritual and cultural well being.

13.2. In summary, it is the Claimants' contention that their tipuna Henare Matua, and they have been, are being and are likely to be prejudicially affected by the matters as set out in Section 6(1)(a) through (d) of the Treaty of Waitangi Act, and that such matters whether done or omitted by or on behalf of the Crown were, are, and will be inconsistent with the principles of te Tiriti.

Particulars of Prejudice

14. As a result of the breaches of the Crown set out in this statement of claim Henare Matua as a Rangatira and the peoples of and his constituent whanau and

[44] as above pp110-111, see maps at pp 112 & 113

hapu who adhered to the way in which H Matua exercised his rangtiratanga have : -

(a) Suffering the erosion of his and their right of self determination and the exercise of the prerogatives flowing from that right to ensure the wellbeing of their whanau and hapu and other esteemed institutions and possessions; and

(b) Being dispossessed and displaced from their ancestral lands and denied their customary interests in Tautane Native Reserve lands; resources; waahi tapu and other taonga tuku iho;

(c) Suffering the destruction or erosion of their economic base, social patterns and traditional leadership structures;

(d) Suffered and ARE suffering from unemployment and other adverse social consequences relating to their spiritual well being ; health; welfare and education;

Relief Sought

15. This Tribunal is therefore requested pursuant to the provisions of the Act to enquire into this claim and to report on the causes of action and in particular these claimants seek findings **which record as follows:-**

1. **The First Tautane "purchase" by the Crown was a fraud and as such was void ab initio, ie void from the outset, and was a breach of the Treaty terms and principles contained, inter alia, in Article the Second ;**

2. **The Second Tautane "purchase" by the Crown was a voidable sale and purchase, and was in clear breach of the Treaty in that the vendors were not willing sellers their participation in the second sale having been forced by the "First Purchase" payments;**

3. **The Crown's failure to protect and support the relationship and tikanga of the descendants to the Tautane Native Reserve lands was a deliberate breach of the "rangatiratanga /fullest authority" guaranteed by the Treaty**

and the negotiated terms within the deeds of sale whereby the Tautane lands were reserved from the sales process.

4. The Crown's deliberate and calculated attack upon maori political activism such as was displayed by the protests of many Hawkes Bay Maori, in particular those of Henare Matua was a deliberate breach of the Crown guarantee to respect the exercise of te Tino Rangatiratanga. This was all the more evident when the Crown failed to provide adequate redress to Maori even when it was found by a Commission of Inquiry at which Henare Matua was a leading advocate that the Court process had been conducted improperly and illegally.

5. The taking and retention of Tautane Native Reserve lands for public works without notice, adequate compensation that valued the lands in a manner that displayed regard for the high value such ancestral lands held to its owners, and the retention of lands no longer used for public work purposes were all an abuse of kawanatanga powers contained in the preamble and Article the First of the Treaty of Waitangi.

THE CLAIMANTS therefore seek :

A. An apology from the Crown for the failure to have regard for the "rule of law", which Henare Matua stood for, said "rule of law" being inclusive of regard for the laws and customs encapsulated in the way of life practiced by Henare Matua; and

B. The return of any Crown lands held within the boundaries of the Tautane parent block to the hapu, such as Ngaa Ruahuihui who hold and practice rangatiratanga there, plus an adequate compensation amount of monies which compensates for the loss of the Tautane lands;

C. **The immediate return of any Crown lands held within the boundaries of the Tautane Native Reserve Lands to a whanau trust established to receive said lands for and on behalf of the descendants of Henare Matua.**

D. **Costs**

E. **Such other relief as this honourable Tribunal deems fit and appropriate.**

THIS FULLY PARTICULARISED STATEMENT OF CLAIM is filed by Alfred Phillip Dreifuss of the firm Rishworth Wall & Mathieson, Gisborne, whose address for service in this matter is to Mr Paul Harman, Barrister, Wairoa.

Postal Service may be effected by posting to Mr P Harman, Barrister, P O Box 505, Wairoa.

Facsimile Service may be effected by dispatch to 06 – 8385073, with original to follow in Post.