Supreme Court of New Zealand

19 May 2011

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

HARONGA v WAITANGI TRIBUNAL AND OTHERS
(SC54/2010)
[2011] NZSC 53

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

The appellant, Mr Haronga, is the Chair of the Committee of Management of Mangatu Incorporation. The Incorporation, which today numbers 5,000 owners, was established in 1893 to represent hapū awarded the Mangatu No 1 block by the Native Land Court in 1881. In 1961, Mangatu Incorporation sold 8,626 acres of this land to the Crown. That land comprises almost a quarter of the Mangatu State Forest.

In 1992, claims were filed with the Waitangi Tribunal which contended that the Crown in acquiring the forest land had breached the principles of the Treaty of Waitangi and sought as redress the return of that land to Mangatu Incorporation for its proprietors. These claims were later amended and included in the Waitangi Tribunal's district-wide Tūranga inquiry. The Tribunal, in its 2004 report, found the Crown's acquisition in 1961 to be in breach of the Treaty. However the Tribunal made no specific recommendations to the Crown as to remedy, notwithstanding its jurisdiction to make binding recommendations in respect of the licensed Crown forest land. The Tribunal suggested, rather, that all claimant iwi and hapū negotiate a single settlement for the whole Tūranga district and reserved leave to apply for further direction if necessary.

As negotiations between the Crown and claimants progressed, it became clear to Mr Haronga that the proposed settlement would not include specific redress to Mangatu Incorporation by way of return of the forest land to its owners. Instead, the owners would

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share in the overall settlement which included the option to purchase the whole or part of the Mangatu forest, including the land sold in 1961. Accordingly, in July 2008, Mr Haronga filed a further claim to the Tribunal seeking the return of the 1961 land to Mangatu Incorporation and applied for an urgent hearing before negotiations reached a district-wide settlement, to be given effect by legislation. His application for an urgent remedies hearing was twice declined by the Tribunal; by Judge Coxhead in August 2008 and by Judge Clark in October 2009. Mr Haronga then applied, unsuccessfully, for judicial review of the decision of Judge Clark in the High Court and Court of Appeal.

On further appeal, a majority of four judges of the Supreme Court (William Young J dissenting) has found that the Waitangi Tribunal is required to determine whether or not to make a binding recommendation for return of the forest land claimed by Mangatu Incorporation, having found the claim to be well-founded in its 2004 report. The Tribunal's statutory obligation of inquiry into every claim is not fully discharged by findings of Treaty breach. In such cases where the remedy sought is return of licensed Crown forest land, the inquiry must consider whether the land is to be returned and to which Māori or group of Māori. The Tribunal did not complete that inquiry, in respect of the forest land claimed, in its 2004 report.

If the appellant is to be heard on this matter, it is necessary that the Tribunal hear the claim with urgency. Under the proposed settlement with Te Whakarau, the owners of Mangatu Incorporation would suffer significant and irreversible prejudice as they will lose the right to adjudication of the claim.

The appeal is therefore allowed and the matter remitted to the Waitangi Tribunal with the direction that it proceed with urgency to complete its hearing of the claim.

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