



## **COURT OF APPEAL OF NEW ZEALAND**

### **TE KŌTI PĪRA O AOTEAROA**

**MEDIA RELEASE – EMBARGOED UNTIL THURSDAY, 6 NOVEMBER 2025 AT 4.00 PM**

***Richard Te Pou Minhinnick v Attorney-General & Ors [2025] NZCA 584***

#### **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](http://www.courtsofnz.govt.nz).**

#### **Introduction**

The Court of Appeal today released a decision dismissing an appeal brought by Richard Minhinnick on behalf of Ngāti Te Ata concerning long-standing grievances of Ngāti Te Ata against the Crown and subsequent actions of New Zealand Steel. The respondents were the Attorney-General (the first respondent), New Zealand Steel Ltd and Waikato North Mining Ltd (the second and third respondents, together “NZ Steel”). In the High Court, Fitzgerald J dismissed Ngāti Te Ata’s claims.

#### **Background**

[1] Part of Ngāti Te Ata’s ancestral land lies on the Āwhitu Peninsula at Te Pūaha o Waikato, the mouth of the Waikato River. Maioro lies at the southern end of the Āwhitu Peninsula and on the northern bank of the mouth of the Waikato River. Central to Ngāti Te Ata’s concerns are four areas referred to as wāhi tapu (burial areas), which are all located within Maioro: Te Papawhero, Te Kuo, Waiaraponia and Tangitanginga.

[2] In November 1864, the Crown purchased from Ngāti Te Ata the North and South Blocks of the Āwhitu peninsula, including Maioro. This transaction was documented in the Waiuku Deed executed on 2 November 1864. The Waiuku Deed excepted a number of wāhi tapu, four of which are those in issue in these proceedings, and also provided that various lands (the habitation reserves) would be granted back to members of Ngāti Te Ata by way of Crown grants.

[3] One month later, the Crown confiscated lands in purported exercise of the powers granted to the Governor-in-Council under the New Zealand Settlements Act 1863 (the Confiscation). This occurred against the backdrop of the Waikato War which broke out in July 1863. The land confiscated was described in the Order in Council as the Waiuku North and Waiuku South Blocks.

[4] There was substantial overlap between the lands purchased and the lands confiscated. As a consequence of the Confiscation, Ngāti Te Ata lost its title to the confiscated lands, which were deemed by the New Zealand Settlements Act to be Crown land.

[5] Notably, the wāhi tapu were excluded from the Waiuku Deed, but among the lands confiscated under the New Zealand Settlements Act. Crown grants were ultimately made in respect of the wāhi tapu, initially in October 1865, but subsequently those grants were cancelled, and new grants were issued on 18 February 1878. The new grants were made to named members of Ngāti Te Ata subject to restrictions on alienation.

[6] In the early to mid-20th century, the four wāhi tapu were part of land taken by the Crown pursuant to the Public Works Act 1928 for sand dune reclamation and state forest purposes. In 1966, the land taken was set aside for ironsands mining purposes under the Iron and Steel Industry Act 1959. The Crown granted New Zealand Steel (NZ Steel) a 100-year mining licence over the land. The mining rights granted under the licence have since been exercised as the foundation of the ongoing mining and steel manufacturing activities of NZ Steel (and its subsidiary company, Waikato North Head Mining Company) at Glenbrook.

[7] Following two Waitangi Tribunal proceedings lodged by Dame Ngāneko Minhinnick, a kuia and leader of Ngāti Te Ata, negotiations and discussions took place between the Crown and representatives of Ngāti Te Ata about the land. On 24 September 1990, the Crown entered into a memorandum of understanding (MOU) with Ngāti Te Ata to the effect that the Crown would

remove the four wāhi tapu areas from the ironsands mining licence, and that Ngāti Te Ata would propose conditions under which mining could proceed on the balance of the Maioro land.

[8] NZ Steel commenced an application for judicial review. The Crown offered an undertaking that the Minister and the Government would not remove the four wāhi tapu areas from the licence and NZ Steel undertook not to mine within the wāhi tapu areas. Ngāti Te Ata counterclaimed and sought to enforce the MOU. In the following years, there were various inconclusive settlement discussions, including discussions with a view to settlement of Ngāti Te Ata's historical te Tiriti o Waitangi | the Treaty of Waitangi claims. This lengthy process came to an end when, in April 2013, Ngāti Te Ata negotiators rejected a settlement offer made by the Minister for Treaty of Waitangi Negotiations and commenced these proceedings in the High Court.

[9] As noted, the High Court rejected the various claims advanced on behalf of Ngāti Te Ata by Richard Minhinnick, who now appeals.

### **The issues for the Court to decide**

[10] This Court was required to decide whether any “affirmative defences” raised by the Crown and NZ Steel, being standing, limitation, and laches and acquiescence, fall to be determined in this appeal.

[11] In relation to events in the 19th century, the Court was required to answer the following questions:

- (a) Was the sale under the Waiuku Deed an unconscionable bargain, or voidable for duress or undue influence?
- (b) Was the confiscation under the New Zealand Settlements Act 1863 lawful?
- (c) Did the New Zealand Settlements Acts Amendment Act 1866 validate any illegality in the confiscation?
- (d) Did either or both of the Waiuku Deed and Confiscation breach a fiduciary duty to consider and protect the interests of Ngāti Te Ata, or any other equitable duty?

[12] In relation to the 20th century takings of the wāhi tapu, the Court was required to determine the following issues:

- (a) Were the takings of the wāhi tapu under the Public Works Act 1928 and the inclusion of the wāhi tapu in the mining licence:
  - (i) unlawful on the basis that the Crown failed to consider the special status of the land; and/or
  - (ii) a breach of a fiduciary duty owed by the crown to Ngāti Te Ata to consider and protect their interests in the special circumstances prevailing?

[13] The Court was also required to determine issues arising from the 1990 commitments and Ngāti Te Ata's legitimate expectations:

- (a) Did the Crown's agreement under the MOU to return the wāhi tapu to Ngāti Te Ata and remove them from the mining licence give rise to binding and enforceable obligations on the Crown?
- (b) Did the Crown breach Ngāti Te Ata's legitimate expectation that its claims of breach of the Crown's Treaty of Waitangi obligations would have been fairly addressed by now and not rendered nugatory by Crown action or omission?

### **The decision**

[14] For the reasons set out in its unanimous judgment, the Court has concluded:

- (a) In relation to standing, it would be wrong in principle for this Court to determine standing when the High Court did not do so. As the appeal is dismissed, it was not necessary for this Court to consider the other affirmative defences.
- (b) In relation to the 19th century:
  - (i) The sale under the Waiuku Deed was not voidable as an unconscionable bargain, or for duress or undue influence.

- (ii) The Confiscation of Ngāti Te Ata’s land under the New Zealand Settlements Act 1863 (subject to the Crown grants of land to the signatories of the Waiuku Deed) was lawful in accordance with the statutory requirements and reflected the arrangements agreed between Ngāti Te Ata and the Crown under the Waiuku Deed.
  - (iii) To the extent that the Order in Council of 29 December 1864 providing for the Confiscation did not state that the Governor in Council was satisfied that “a considerable number” of Ngāti Te Ata were in rebellion (referring simply to Ngāti Te Ata being in rebellion), that was an omission within the validating terms of the New Zealand Settlements Acts Amendment Act 1866.
  - (iv) The Waiuku Deed and the Confiscation did not breach a fiduciary duty to consider and protect the interests on Ngāti Te Ata or any other equitable duty.
- (c) In relation to the 19th century, the takings of the wāhi tapu under the Public Works Act 1928 and the inclusion of the wāhi tapu in the mining licence issued under the Iron and Steel Industry Act 1959:
  - (i) were not unlawful on the basis that the Crown failed to consider the special status of the land; and
  - (ii) did not breach a fiduciary duty owed by the Crown to Ngāti Te Ata to consider and protect their interests.
- (d) In relation to the issues arising from the 1990 commitments:
  - (i) The memorandum of understanding entered into in 1990 did not bind the Crown to return the wāhi tapu to Ngāti Te Ata and remove them from the mining licence.

- (ii) The Crown did not breach a legitimate expectation of Ngāti Te Ata that its claims of breach of the Crown's Treaty of Waitangi obligations would have been fairly addressed by now and not rendered nugatory by Crown action or omission.