

IN THE WAITANGI TRIBUNAL**WAI 2200****Wai 1073**

Under

The Treaty of Waitangi Act 1975

In the Matter of

of the Porirua ki Manawatu Inquiry

And

In the Matter of

**a Claim by Petuere Kiwara on behalf of
the descendants of Te Kere Ngataierua**

AMENDED STATEMENT OF CLAIM
31 JANUARY 2014

Mark McGhie Barrister and Solicitor
2/ 63 The Strand
PO Box 91
Whakatane
Phone 07 308 2454
Fax 07 308 6394.

RECEIVED Waitangi Tribunal
3 Feb 2014
Ministry of Justice WELLINGTON

MAY IT PLEASE THE TRIBUNAL

NGĀ KAITONO: THE CLAIMANTS

1. The claimant is Petuere Awatere Kiwara of Ngati Tu and Ngati Kowhaikura.
2. The claimant brings this amended claim on his own behalf and on behalf of the descendants of Te Kere Ngataierua who have been dispossessed of their ancestral connections to their land.
3. Within the Porirua ki Manawatu district Te Kere had extensive iwi affiliations with Ngati Apa, Ngati Kahungunu, Ngati Tuwharetoa and Ngati Haua-Te Rangi of the Upper Whanganui.¹ He was also associated with Ngati Rangatahi.

BACKGROUND:

- 4 Te Kere Ngataierua, who was also known as Te Kere Te Huaki, was a tohunga, peace maker, healer and carver of great repute. He was the son of Te Huaki and Te Putere.
5. At the time of the NZ Company purchase of Wanganui he was living at Wellington and in the 1840s he had joined raids in that area by Topine Te Mamaku of Wanganui.² He was later to be called as a witness in the land court as an expert on the customary ownership and whakapapa in land blocks in the Whanganui –a-Tara/ Porirua region.³
- 6 Like many others of the region, he had visions of how his tino rangatiratanga could be maintained in that time. These visions manifested themselves and found form within the spiritual, cultural and political movement which he named Paetiuihou. Like the Parihaka movement of Tohu and Te Whiti, Paetiuihou was a peaceful movement that attracted many followers with diverse genealogical connections.

¹ *Nga Tupuna o Te Whanganui-a Tara*. Wellington City Council –p40.

² Ditto- p40

³ Wellington MB no 1, p345-353 & Wellington MB no. 2 p 77-87

Te Kere Ngataierua was a nineteenth century spiritual leader of the Pae te Uihau movement who had strong connections with the Rangitikei River, and for whom the river was a central part of his existence²⁹. He was the grandfather of Titi Tihu of Tokorangi (Rangitikei River) and Tawata (Whanganui River), and a mentor ("his mana was passed on") to Mere Rikiriki of Parewanui.⁴

TE TONO: THE CLAIM

7. The claimants state that their claim falls within one or more of the matters referred to in section 6(1) of the Treaty of Waitangi Act 1975 (as amended) namely:
- a That they are Maori;
 - b That they have been, are, or are likely to be prejudicially affected by the ordinances, Acts, regulations, proclamations, notices and other statutory instruments, and the policies, practices, actions or omissions of the Crown as further set out in this statement of claim.
 - c The claimants further claim that all of the Acts, regulations, orders, policies, practices and action 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.

TE ROHE: CLAIM AREA

⁴ WAI 2200 #A10 –P47

8 The claimant's ancestors, were of the Porirua Ki Manawatu district and surrounding areas. Te Kere Ngataierua had land interests at various locations on the Rangitikei River including at;

- a. Tokorangi;
- b. Kakariki;
- c. Parewanui;

Te Kere had interests at other places within the Porirua ki Manawatu district, notably at Awahuri and at locations in the southern part of the Porirua ki Manawatu district

FIRST CAUSE OF ACTION: THE NATIVE LAND COURT DUTY

9. At all times the Crown had a duty to recognise and respect Māori custom and law including Māori systems of land tenure, to regulate the alienation of Māori land reasonably and with the utmost good faith towards Māori and to actively protect Māori in the use of their lands and resources to the fullest extent practicable.

BREACH

10. In breach of the principles of the Treaty of Waitangi, between 1865 and 1909 the Crown introduced tenure reform by way of the Native Land Court and associated legislation against the wishes of Māori. Furthermore, the Crown introduced a tenure system which in turn assisted in the fragmentation, individualisation and alienation of Māori land.

PARTICULARS

11. The Crown failed to ensure that customary rights of Maori were recognised and protected under Native Land Court legislation. The Court itself often failed to acknowledge traditional expert evidence –such as given by Te Kere Ngataierua- as to whakapapa and land ownership.

16.1

SECOND CAUSE OF ACTION: CROWN PURCHASING POLICY.

DUTY

12. At all times, the Crown had duties to actively protect Porirua Ki Manawatu Maori and their lands to the fullest extent practicable and to act reasonably and in the utmost good faith.

BREACH

13. The Crown, in breach of its duties, undervalued Porirua Ki Manawatu lands, limiting the price it would have to pay and increasing the land it could acquire.

PARTICULARS

14. The Rangitikei/Turakina block was purchased by the Crown at less than proper value, taking advantage of the divisions between Iwi with claims of ownership of the land.
15. Insufficient reserves were created as apart of the Rangitikei/Turakina purchase for the owners to subsist on.
16. The rights of all those with interests – including Te Kere Ngataierua - in the Rangitikei/ Turakina block were not acknowledged and compensated during the purchase of the block.

THIRD CAUSE OF ACTION: PUBLIC WORKS ACT

DUTY

- 17 At all times the Crown had duties to actively protect Māori and their lands to the fullest extent practicable; act reasonably and adopt a fair process in any dealings with Māori and their lands.

BREACH

- 18 In breach of its duties the Crown failed to consult with Māori prior to the enactment of Public Works legislation.

PARTICULARS

- 19 The Crown failed to:
- a Protect the land base of Māori by allowing alienations under Public Works Acts throughout the 19th and 20th centuries;
 - b Consult or negotiate with Māori landowners regarding the taking of land for public works purposes;
 - c Ensure that non-Māori land was available as an alternative prior to taking Māori Owned land
 - d Adequately consult with Māori prior to land being acquired under Public Works legislation;

e Ensure that all practical alternatives to purchasing land such as a leasehold interest had been exhausted prior to taking Māori land;

f Ensure that land taken compulsorily was offered back to the former Māori land owners once it had served the purpose for which it was taken;

g Protect sites of significance for Māori.

FOURTH CAUSE OF ACTION: 5% RULE.

DUTY

20 At all times the Crown had duties to actively protect Māori and their lands to the fullest extent practicable; act reasonably and adopt a fair process in any dealings with Māori and their lands.

BREACH

21 In breach of its duties the Crown failed to ensure the 5% rule (allowing the taking of land for roads/ railways without compensation) was applied fairly over Maori lands.

PARTICULARS

22 The Crown imposed different regimes under the 5% rule for Maori and European owned land.

23 The sections in the Native Land Court and Public Works Acts setting down the criteria for taking Maori owned land under the 5% rule were poorly drafted,

allowing the Crown more latitude in the taking of Maori land without compensation than had been intended by Parliament.

FIFTH CAUSE OF ACTION: SUFFICIENCY / FAILURE TO PROTECT THE LAND BASE

DUTY

- 24 At all times the Crown had duties to actively protect Māori and their lands to the fullest extent practicable, act reasonably and with the utmost good faith towards Māori, and to adopt a fair process in any dealings with Māori and their lands.

BREACH

- 25 In breach of the Crown duty of active protection to Maori of the Porirua ki Manawatu district and in breach of its duty to ensure they were left with a sufficient land base within the Inquiry District for their present and future needs, and its duty to act in good faith, the Crown facilitated a process of progressive alienation of the land, so that the descendants of Te Kere Ngataierua were left with insufficient land for their present and future needs.

PARTICULARS

- 26 The Crown has undertaken various actions, enacted legislations and implemented various policies that have impacted prejudicially on the claimants. These mechanisms and processes have resulted in the claimants' being rendered virtually landless today.

PREJUDICE

27 The claimants say that they have been prejudicially affected by the policies, practices, acts/or omissions of the Crown, in the following ways:

- a The loss of individual and collective mana and rangatiratanga;
- b Destruction of social structures and organisation of iwi, hapū and whānau of the claimants;
- c Dispossession of their land to which they had strong spiritual ties;
- d Destruction of their economic base.

RELIEF

28 The Claimant seeks all or any of the following relief;

- a. Findings that the Crown was and continues to be in breach of the principles of the Treaty of Waitangi as outlined above.
- b. An apology from the Crown for the breaches of the Treaty of Waitangi as outlined above.
- c. A recommendation that the Crown compensate the claimants for the prejudice suffered as a result of the Acts, regulations, policies, practices and omissions of the Crown as outlined above.
- d. A recommendation for the return of such lands, forests, fisheries, and other such properties owned by the Crown.
- e. Such other relief as the Tribunal sees fit to recommend in the circumstances.

- 29 The claimants reserve the right to amend or to add further to this claim as necessary.
- 30 The claimants seek leave to amend this statement of claim as a result of further research commissioned.
- 31 The Tribunal is advised the claimant's legal representative is Mark McGhie, Barrister and Solicitor, PO Box 91 Whakatane.
- 32 The following persons should be notified of this claim- Other claimants in the Porirua ki Manawatu District and the Crown.

Dated this 31st day of January 2014.



Mark McGhie

(Counsel for Claimant)

THIS DOCUMENT is filed by Mark McGhie, counsel for the above named Claimant.

The address for service of the above named claimant is at the offices of Mark McGhie Barrister and Solicitor 2/ 63 The Strand, Whakatane

Documents for service on the above named Claimants may be left at that address for service or may be –

- (a) Posted to PO Box 91, Whakatane.
- (b) E-mailed to mmc2i@ihug.co.nz