



Supreme Court of New Zealand

27 June 2012

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**JOHN HANITA PAKI, TORIWAI ROTARANGI, TAUHOPA TE WANO HEPI,
MATIU MAMAE PITIROI AND GEORGE MONGAMONGA RAWHITI v THE
ATTORNEY-GENERAL OF NEW ZEALAND FOR AND ON BEHALF OF THE
CROWN (SC 7/2010)
[2012] NZSC 50**

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 appellants claim as representatives of the descendants of owners of five blocks of land along the left bank of the Waikato River at Pouakani, transferred to Crown ownership from Maori ownership between 1887 and 1899.

In proceedings issued in the High Court, the appellants sued the Attorney-General on behalf of the Crown, seeking a declaration that Crown ownership of the river bed to the middle of the river adjacent to the Pouakani lands is subject to a constructive trust in favour of the Pouakani Maori owners. The Attorney-General contends that the river is navigable and that therefore the river became property of the Crown by s 14 of the Coal-mines Act Amendment Act 1903, the effect of which is preserved by s 261 of the Coal Mines Act 1979 and s 354 of the Resource Management Act 1991. The plaintiffs say that the river adjoining the Pouakani lands is not navigable and that s 14 had no application. They accept, however, that if the river bed vested in the Crown under s 14, their claim cannot succeed.

The Attorney-General says that the Crown's acquisition of the river bed was not in breach of any duty which could justify the imposition of a constructive trust. In addition he pleads that the plaintiffs lack standing.

The Crown succeeded on all claims in the High Court. In the Court of Appeal some doubt was expressed about the conclusion in the High Court that the plaintiffs lacked standing. However it was unnecessary to resolve the question of standing because the Court of Appeal took the view that the High Court had been right to treat the Waikato River as a whole as being a navigable river for the purposes of s 14 of the Coal-mines Act Amendment Act 1903.

On further appeal to this Court, leave was given in respect of all conclusions in the High Court on which relief would have been denied. Since, however, it was accepted that the questions of standing and the application of the vesting effected by s 14 of the Coal-mines Act Amendment Act 1903, if decided against the plaintiffs, would be dispositive of the appeal, the Court heard those two questions first. The judgment is issued in respect of the questions of standing and vesting under s 14 of the Coal-mines Act Amendment Act 1903 and its successors. Other questions raised by the appeal remain to be argued and determined. In the course of the hearing of the appeal on the first two questions, the Solicitor-General withdrew the Crown objection to the standing of the appellants to bring the claims. With the abandonment of the standing point, the only issue requiring determination by the Court at this stage was the application of the vesting of s 14 first achieved by the Coal-mines Act Amendment Act 1903.

A majority of the Supreme Court (the Chief Justice, Blanchard, Tipping and McGrath JJ, with William Young J dissenting) has found that the Waikato River adjacent to the Pouakani lands was not a navigable river for the purposes of s 14 of the Coal-mines Act Amendment Act 1903 and its successors, and so its bed did not vest in the Crown. The Court considered the Court of Appeal erred by not approaching the question of navigability on the basis of the sections of the river in question. Navigation as used in s 14 is concerned with connections for transport and trade. Use that is slight, intermittent and restricted does not cause a river to be navigable within the meaning of s 14 of the Coal-mines Act Amendment Act 1903 and its successors. Applying this approach, the Court has found that the Waikato river adjacent to the Pouakani lands was not a navigable river.

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