

1977/140

THE MAORI LAND COURT RULES 1958, AMENDMENT NO. 4

DENIS BLUNDELL, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 7th day of June 1977

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Maori Affairs Act 1953, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following rules.

ANALYSIS

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RULES

1. Title and commencement—(1) These rules may be cited as the Maori Land Court Rules 1958, Amendment No. 4, and shall be read together with and deemed part of the Maori Land Court Rules 1958* (hereinafter referred to as the principal rules).

(2) These rules shall come into force on the 15th day of June 1977.

*S.R. 1958/162

Amendment No. 1: S.R. 1969/144

Amendment No. 2: S.R. 1971/78

Amendment No. 3: S.R. 1976/273

2. Forms—The principal rules are hereby amended by revoking rule 7, and substituting the following rule:

“**7. Forms**—(1) Subject to subclause (2) of this rule, the forms prescribed by these rules for use in the proceedings of the Court are those set forth in the First Schedule hereto, and indicated by the corresponding numbers therein.

“(2) Notwithstanding anything in these rules, the use of form 1 or, as the case may require, form 10 in place of any other form shall be sufficient compliance with any requirement of these rules that that other form be used.

“(3) The prescribed forms may be used with such modifications as the case may require, and if no form is prescribed by these rules, and if the matter to which the form relates is not an application to the Court or an order of the Court, then such form may be used as a Judge may direct or approve. In any case an equivalent form in the Maori language may be used and shall be sufficient.

“(4) All applications shall give the full postal address for service of the applicant.

“(5) Where these rules require that the signature to any application or other document shall be attested, then, in the absence of any other requirement, the application or other document shall be attested by a Commissioner, Registrar, or Deputy Registrar of the Court, any person acting as Clerk of the Court at any sitting, a Solicitor of the Supreme Court, Justice of the Peace, Postmaster, Licensed Interpreter, Registered Medical Practitioner, or Minister of Religion.

“(6) Notwithstanding anything in these rules, every application for the exercise of jurisdiction by a Registrar, and every order made by him in the exercise of that jurisdiction, shall be in a form approved by the Registrar.”

3. Court sittings—Rule 10 (2) of the principal rules is hereby amended by omitting the word “April”, and substituting the word “January”.

4. Adjournments—Rule 11 (1) of the principal rules is hereby amended by inserting, after the words “The Chief Judge”, the words “or (in the case of the Maori Land Court) the Judge”.

5. Commencement of proceedings—Rule 13 of the principal rules is hereby amended by revoking subclause (3), and substituting the following subclause:

“(3) Every application shall be signed by the applicant personally or by his statutory delegate in his name, and, where so required by these rules, shall be attested.”

6. Place where applications to be made—(1) Rule 14 of the principal rules is hereby amended by revoking subclause (2).

(2) The said rule 14 is hereby further amended by revoking subclause (4), and substituting the following subclause:

“(4) Every application constituting a pecuniary claim shall be made in the district in which the cause of action arose.”

7. Form of application where no form provided—Rule 18 of the principal regulations is hereby revoked.

8. Recording of proceedings and evidence—Rule 24 of the principal rules is hereby amended by revoking subclause (2), and substituting the following subclause:

“(2) The Judge, or one of the Judges if more than one is present, shall either—

“(a) Personally record the proceedings of the Court and the evidence in a minute book; or

“(b) Cause the proceedings and evidence to be recorded in shorthand or by mechanical device, and a type-written transcript thereof, checked by him, to be inserted in a minute book.

The minute book shall be a record of the Court, and shall be retained in the custody of the Registrar.”

9. Reinstatement of dismissed application—Rule 27 (2) of the principal regulations is hereby amended by adding the words “, within 1 year after the dismissal of the application”.

10. Directions relating to further evidence—Rule 73 of the principal rules is hereby amended by adding, as subclauses (2) and (3), the following subclauses:

“(2) Without limiting the generality of subclause (1) of this rule, in any proceedings where the Court is of the opinion that the production of further evidence is reasonably necessary for the proper exercise of the Court’s jurisdiction, the Court may, on the application of any of the parties or of its own motion, give directions to any of the parties relating to all or any of the following:

“(a) The filing of additional evidence by way of affidavit:

“(b) The filing of further particulars:

“(c) The production of any document for inspection:

“(d) The production of copies of entries in any ledgers or other books of accounts relating to any business.

“(3) Failure by the applicant to comply with any direction given under subclause (2) of this rule within the time specified in the direction shall be a ground for the dismissal of the action.”

11. Partition—(1) The principal rules are hereby amended by revoking rule 82, and substituting the following rule:

“82. (1) An application for partition shall be in form 114 or, as the case may require, form 115.

“(2) The applicant shall, on form 116, file with the application, or within such time thereafter as the Registrar may allow, particulars of the following matters:

“(a) Name of block and area:

“(b) Name of applicant:

“(c) Name of the county, borough, or town district within which the land is situate:

- “(d) The locality of the land, if situated in a county:
- “(e) Particulars of the order or other instrument constituting title:
- “(f) Whether the order is completed by survey:
- “(g) Particulars of survey liens:
- “(h) Whether the order is registered under the Land Transfer Act 1952 and, if so, reference to the title:
- “(i) The legal width of any public road to which the land has frontage:
- “(j) Particulars of the existing Government valuation:
- “(k) Particulars of any improvements claimed by the applicant:
- “(l) Whether the land is vested in the Maori Trustee or any other trustee or trustees or a body corporate, or is subject to Part XXIV of the Act:
- “(m) Particulars of any registered alienation, encumbrance, right of way or other easement, or *profit á prendre*:
- “(n) Particulars of any unregistered alienation, encumbrance, right of way or other easement, or *profit á prendre* disclosed by the Court files, or known to the applicant:
- “(o) Particulars of any alienation the subject of an application for confirmation not then disposed of, and particulars of any alienation that does not require confirmation and has not been endorsed by the Registrar:
- “(p) The names, postal addresses (where these are known to the applicant), and relative shares of all the owners of the land as at the date of the application, together with the ages of any of the owners who are minors.

“(3) The applicant shall file with the application, or within such time thereafter as the Registrar may allow, a plan showing the proposed partition with measurements of boundaries and areas, together with a statement detailing all unusual features of the land and the Maori names of those features.

“(4) When the Registrar is satisfied that all the requirements of subclauses (2) and (3) of this rule have been complied with, he shall bring the application to the notice of a Judge who shall give such directions as to service as he thinks fit, together with notification of the date and place of hearing of the application.

“(5) The Court may, at any time during the proceedings upon an application, whether before or after the commencement of the hearing,—

- “(a) Require the applicant or the Registrar to give such notice as it thinks fit to any person affected by the application:
- “(b) Require any party to furnish any search of title or any other particulars that the Court deems necessary:
- “(c) Require any party to lodge with the Registrar any plan instead of or in addition to that filed under subclause (3) of this rule:
- “(d) Require any party to adduce evidence as to the nature or value of the land to be partitioned or of any improvements thereon:
- “(e) Require any person to make any report upon the nature or value of the land or of any improvements thereon, or to prepare any plan for the purpose of the partition and may receive and consider any such report or plan. Any such report or plan shall be open to inspection by any party:

“(f) Require any party to lodge with the Registrar such sum as the Court thinks fit to defray the cost of any report or valuation, the carrying out of any preliminary survey, or the preparation of any plan:

“(g) Require the parties or any party to deposit with the Registrar such sums as the Court thinks fit to defray the cost of survey of the partition:

“(h) Require any party to cause to be made by the Valuer-General and submitted to the Court a special valuation of the land or of the proposed partitioned areas of the land:

“(i) Require the plan of partition to be referred for consideration and comment to the relevant local authority, or to the Ministry of Works and Development, or to any other department of State, local authority, or statutory body.

“(6) The Court may refuse to proceed with any partition until the survey of any former partition has been completed and a plan thereof furnished to the Court.”

(2) Rule 3 (1) of the Maori Land Court Rules 1958, Amendment No. 1 is hereby consequentially repealed.

12. Registrar to give notice of order to Ministry of Works and Development—Rule 90 of the principal rules is hereby amended by inserting, after the words “for the district”, the words “the nearest district office of the Ministry of Works and Development,”.

13. Leases of Maori land—The principal rules are hereby amended by revoking rule 99, and substituting the following rule:

“99. (1) An application under section 236 (1) of the Act for leave to surrender a lease shall be in form 175, and the order shall be in form 176.

“(2) An application under section 236 (9) of the Act for an order authorising the Maori Trustee to accept the surrender of a lease shall be in form 177, and the order shall be in form 178.

“(3) The applicant in any application under subclause (1) or subclause (2) of this rule shall serve a copy of the application upon the lessor under the lease affected, and, if there are several lessors, upon such of them as the Registrar shall determine. The Court may at any time require the applicant to serve copies of the application upon the lessors not served as aforesaid.

“(4) The applicant in either of the aforesaid applications under this rule shall also serve a copy of the application upon every person holding any mortgage or charge over the interest of the lessor or of the lessee in the land comprised in the lease.

“(5) The applicant shall, before the hearing, file a declaration in proof of service of the copies of the application as aforesaid.

“(6) The applicant in either of the aforesaid applications under this rule shall, at the hearing, lodge in the Court the lessee’s copy of the lease affected.

“(7) An order under section 247 (2) of the Act varying the proportions for the distribution of rent shall be in form 182.

“(8) An order under section 251 of the Act appointing a receiver shall be in form 184.”

14. Assembled owners—Rule 103 (2) of the principal rules (as substituted by rule 3 of the *Maori Land Court Rules 1958, Amendment No. 2*) is hereby amended by adding the following paragraph:

“(c) Where the land is comprised in a certificate of title under the *Land Transfer Act 1952*, an up-to-date photocopy or search of the certificate of title.”

15. Surveys—Rule 107 of the principal rules is hereby amended by revoking subclause (1), and substituting the following subclause:

“(1) An application under section 406 of the Act for transmission of a survey requisition shall be in form 235, and the requisition shall be in form 235A.”

16. Aggregation of ownership—The principal rules are hereby amended by inserting, after rule 109, the following rule:

“109A. (1) An application under section 434A of the Act for an order vesting pieces of land in the aggregate of the owners thereof shall be in form 1, and the order shall be in form 10.

“(2) The applicant shall file with the application the information, documents, and plan specified in rule 109 (3) of these rules in respect of applications under section 435 of the Act for an order amalgamating several titles.”

17. Vesting of dwelling sites—Rule 112 of the principal rules is hereby amended by adding the following subclause:

“(4) Notwithstanding the foregoing provisions of this rule or anything in form 253, the application shall be endorsed at the foot thereof with the consent of the proposed alienee.”

18. Withdrawal of appeal—Rule 139 (2) of the principal rules is hereby amended by omitting the words “as to costs”, and substituting the words “as to the payment of any costs relating to the notice of appeal, any proceedings, or any incidental matters (including the preparation of the record of the earlier proceedings),”.

19. Application of certain rules to proceedings in respect of Maori incorporations—Notwithstanding anything in the principal rules to the contrary, rules 101 and 102 of those rules, with any necessary modifications, shall apply to and in respect of proceedings of the Court under Part IV of the *Maori Affairs Act 1967*.

20. Certain forms revoked and others substituted—(1) The First Schedule to the principal regulations is hereby amended by revoking forms 1 and 10, and substituting the forms numbered 1 and 10, respectively, set out in the Schedule to these rules.

(2) The said First Schedule is hereby further amended by revoking form 235, and substituting the forms numbered 235 and 235A set out in the Schedule to these rules.

21. Redundant rules and forms revoked—(1) The principal rules are hereby amended by revoking rules 57 to 63, 65 to 72, 74, 92, 100 (1), 106, and 117 (2).

(2) The First Schedule to the principal rules is hereby further amended by revoking forms 45, 51 to 79, 83 to 85, 94, 95, 97, 144 to 146, 149 to 156, 179 to 183, 185, and 229 to 234.

SCHEDULE

R. 20

FORMS

R. 7

Form 1

GENERAL FORM OF APPLICATION

Application for

The Maori Affairs Act 1953, Section
[or other Act conferring jurisdiction]

The Maori Land Court Rules 1958, Rule
[State relevant rule or rules]

In the Maori Land Court
of New Zealand,
..... District.

In the matter of [*State name of land, Maori incorporation, person, deceased person, or matter in respect of which the application is made*].

APPLICATION is hereby made for an order under section of the Act that [*State the precise nature of the order sought*].

Upon the grounds that [*State the grounds and the relevant facts of the application, following the wording of the relevant Act*].

This application is made by [*Full name of applicant*] of [*Full residential address*] [*Occupation*] whose address for service is:

..... [*Full postal address to which notices, copy pleadings, and correspondence in respect of the application may be delivered or posted.*]

Signed by the applicant }
on day the } [*Signature of applicant*]
day of 19



SCHEDULE—*continued*

R. 34

..... [*Minute Book Reference*]

Form 10

GENERAL FORM OF ORDER

The Maori Affairs Act 1953, Section
 [*or other Act under which the order is made*]

In the Maori Land Court
 of New Zealand,
 District.

In the matter of [*State name of
 land, Maori incorporation, per-
 son, deceased person, or matter
 in respect of which the order is
 made*].

AT a sitting of the Court held at on the day of
 before, Esquire, Judge.

Upon reading the application of and the other material
 filed in support thereof:

And upon hearing the applicant [*or Mr, Counsel for the
 applicant in support and Mr, in opposition; or otherwise,
 following the actual course of the proceedings*]:

Now therefore the Court, being satisfied upon all matters and things
 upon which it is required to be satisfied, doth hereby order [*Insert the
 words "by consent" if appropriate*] that

[*Set out the terms of the order, following the wording of the Act or
 rule under which the order is made.*]

[*If, in the course of the proceedings on the application, the Court,
 pursuant to section 27 (2) of the Act, has proceeded to exercise
 any other part of its jurisdiction, state the fact and circumstance
 with reference to that enactment.*]

[*If the Court has exercised jurisdiction under section 34 (10) of the
 Act state accordingly, giving precisely the words employed, e.g.,
 immediately, forthwith, or the precise period of time.*]

As witness the hand of the Judge and the Seal of the Court.

.....
 Judge.

SCHEDULE—continued

R. 107

Form 235

APPLICATION FOR TRANSMISSION OF SURVEY REQUISITION

The Maori Affairs Act 1953, Section 406

To: The Maori Land Court
at.....

(1) APPLICATION is hereby made under section 406 of the Maori Affairs Act 1953 for the transmission to the Chief Surveyor at of a requisition for the survey of:

[State full description of the land(s), and the nature and date of title or other order]

but no other land.

(2) The survey is necessary or expedient for the completion of [State the nature of the order(s)] Order(s) of the Court dated

or

[Where the survey is necessary or expedient for the exercise of some power or jurisdiction of the Court in relation to the land(s), state precisely the order (if any), and the facts and circumstances relied upon.]

(3) It is requested of the Chief Surveyor that he appoint [State the full name and address of the surveyor of the applicant's choice] as surveyor to make the required survey.

(4) It has been agreed between [Name of surveyor] and me that payment of the appropriate cost of the proposed survey is a matter for that surveyor and me whose appointment I so request.

Dated at..... this..... day of..... 19.....

Applicant:.....

Address:

CONSENT OF SURVEYOR REQUESTED TO BE APPOINTED BY
CHIEF SURVEYOR

I,, of Registered Surveyor, hereby consent to my appointment in terms of section 406 (4) of the Maori Affairs Act 1953 on the terms set out in the above application for the transmission of a survey requisition.

Dated at this day of 19

.....
Registered Surveyor.

SCHEDULE—*continued*

R. 107

Form 235A

REQUISITION FOR SURVEY

The Maori Affairs Act 1953, section 406, section 34 (9)

In the Maori Land Court
of New Zealand,
..... District.

In the matter of [*State full description land(s), and nature and date of title or other order*].

THE COURT being of the opinion that the survey of the above-described Maori land(s) is necessary or expedient for the completion of an [*State nature of order*] order of the Court dated the day of 19.....

[*Where the survey is necessary or expedient for the exercise of some power or jurisdiction of the Court in relation to the land(s), state precisely the order (if any) and the facts and circumstances relied upon.*]

The Court [*or Registrar*] now transmits to the Chief Surveyor at this requisition for the survey in terms of the Maori Affairs Act 1953 and the Survey Regulations 1972 of the land(s) but no other.

[*State the full name and address of the person who has sought the survey.*]

has made application to the Court for the transmission of this requisition and requests that [*State the full name and address of the surveyor of the applicant's choice*] be appointed by the Chief Surveyor to make the required survey.

The question of payment of the appropriate cost of the proposed survey is a matter for the applicant and the surveyor appointed, and not for this Court.

Attached hereto is the application for the transmission of a survey requisition (form 235) signed by the applicant and the surveyor of his choice.

Dated at this day of 19.....

.....
Judge/Registrar.

P. G. MILLEN,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the rules, but is intended to indicate their general effect.

These rules amend the Maori Land Court Rules 1958.

Rule 1 relates to the Title and commencement. The rules come into force on 1 May 1977.

Rule 2 revokes rule 7 of the principal rules, relating to the use of prescribed forms, and substitutes a new rule. The changes are:

- (a) The new form 1 or, as the case may require, the new form 10 may be used in place of any other form:
- (b) In all applications the applicant must give his address for service:
- (c) Every application for the exercise of jurisdiction by a Registrar must be in a form approved by him.

Rule 3 is consequential upon section 4 of the Maori Purposes Act 1976 which changed the commencement of the Court year from 1 April to 1 January in each year.

Rule 4 empowers the Judge of the district, as well as the Chief Judge, to adjourn or cancel a sitting of the Court before the commencement of the sitting. At present, this power is exercisable only by the Chief Judge.

Rule 5 requires every application to be signed by the applicant personally or by his statutory delegate in his name. At present, an application must be signed by the applicant or his authorised agent.

Rule 6 amends rule 14 of the principal rules relating to the place where an application must be made. First, it revokes subclause (2) which is redundant as the Court no longer has jurisdiction in probate matters. Secondly, it requires an application in respect of a pecuniary claim to be made in the district in which the cause of action arose. At present, such a claim must be made in the district in which the defendant resides.

Rule 7 is consequential upon rule 2.

Rule 8 allows proceedings of the Court to be taken down in shorthand or mechanically recorded, instead of being recorded by the Judge. Where this alternative procedure is adopted a transcript of the proceedings and evidence, checked by the Judge, is to be included in the minute book of the Court.

Rule 9 amends rule 17 (2) of the principal rules which provides that where an application has been dismissed for want of prosecution it may be reinstated or the applicant may file a fresh application. The amendment prescribes a time limit of 12 months for the reinstatement or further application.

Rule 10 makes more explicit the powers of the Court under rule 73 of the principal rules, and provides that where any applicant fails to comply with any direction of the Court to produce further evidence that shall be a ground for dismissal of the application.

Rule 11 revokes rule 82 of the principal rules, relating to partitions, and substitutes a new rule. The changes are:

- (a) The present requirement to state whether the land is vested in the Maori Trustee is extended to include cases where it is vested in any other trustee:
- (b) The present requirement to give particulars of any alienation that is the subject of an application then pending is extended to include particulars of any alienation that does not require confirmation and has not yet been endorsed by the Registrar:
- (c) The requirement to give certain information relating to the owners of the land is extended to include their postal addresses:
- (d) The requirement to file a plan giving certain information is extended to include a statement of all unusual features of the land and the Maori names of those features:
- (e) The duty of the Registrar to bring an application before the Judge when all procedural requirements have been complied with is clarified, and the Judge is now required to give directions for service and notification of the date and place of hearing:
- (f) The powers of the Court to require any party to produce further information or to take certain action are widened to include the presentation of a special valuation by the Valuer-General of any land affected by the proposed partition, and the reference of the plan of the proposed partition to the Ministry of Works and Development and interested local authorities for consideration and comment.

Rule 12 adds the district office of the Ministry of Works and Development to the list of bodies to whom notice of a partition order or other order subdividing land is to be sent by the Registrar.

Rule 13 revokes rule 99 of the principal rules, relating to leases of Maori land, and substitutes a new rule. The principal change is the revocation of subclause (3) which was rendered redundant by amendments to section 237 of the Act. The other amendments are consequential upon that revocation.

Rule 14 adds to the list of particulars to be filed with an application to summon a meeting of assembled owners, in appropriate cases, a copy or search of the relevant certificate of title.

Rule 15 prescribes new forms for an application for the transmission of a survey requisition, and for the requisition itself.

Rule 16 prescribes forms for an application for an order vesting title to separate pieces of land in the aggregate of the owners thereof, and for the vesting order itself.

Rule 17 requires an application for an order vesting land in a Maori for the purposes of a dwelling to be endorsed with the consent of the proposed alienee.

Rule 18 clarifies the powers of the Court to order payment of costs where notice of appeal is withdrawn.

Rule 19 applies certain of the principal rules to proceedings under Part IV of the Maori Affairs Amendment Act 1967 relating to Maori incorporations.

Rule 20 revokes certain forms and substitutes others.

Rule 21 revokes a number of redundant rules and forms.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 9 June 1977.

These rules are administered in the Maori Affairs Department.