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B. Folake Ogunyemi, LL.M.

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Stanley Welsh, Part Awarua Block
A20080003461, Appeal 2008/67, 7 Taitekerau MB 22, 9 June 2009, Judge Savage, Judge Clark, and Judge Harvey.

This was an appeal against a decision of the Maori Land Court. A 10 acre portion of the Awarua 2D block acquired by the Crown in 1920 for the purposes of a school later became surplus to Ministry of Education requirements. The Ministry filed an application under s134(1)(c) TTWMA to revest the school site in the former Maori owners. In January 2008, it was ordered that the site be vested in 13 former owners and also declared that the land would become Maori freehold land. That decision of Judge Ambler was appealed by Mr Welsh on the basis of the earlier history of the land.

In August 1916, the Awarua block was partitioned into two blocks and the partition order recorded Maraina Wi Mura as owning 880 out of the total 1,617 shares of Awarua No 2 block. In December 1916, Awarua No 2 block was partitioned into ten blocks and in the partition order for Awarua No 2D, Maraina Wi Mura was recorded as one of 13 owners and as owning 880 out of a total 1,038 shares.

In July 1920, a notice of intention to take a 10 acre portion of Awarua 2D was published in the New Zealand Gazette, after Maori residents of Awarua requested that the Education Department establish a school there. In December 1924, a partition application in relation to Awarua 2D was heard and Maraina Wi Mura sought to partition out all of her interests. Her interests were partitioned and she subsequently became the sole owner of Awarua 2D.

After the s134 application was brought by the Ministry in 2006, a hui was held at the school site in August 2007 and members of the Welsh whanau expressed their belief that Maraina Wi Mura was the sole owner of the school site at the time the land was taken for that purpose.

During the course of the appeal, it became apparent that neither the appellate court nor the lower court had been informed as to what proportion of shares Maraina Wi Mura owned in the Awarua 2D block at the date of the first change of ownership after December 1916. Mr Welsh submitted that at the time of acquisition of the school site, Maraina Wi Mura was the sole owner of the school site so it should have been revested solely in her.

The court noted the respondent's submissions of the Maori Land Court:

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