
**IN THE HIGH COURT OF NEW ZEALAND
PALMERSTON NORTH REGISTRY**

CRI-2016-454-000023

BETWEEN

NEW ZEALAND POLICE

Appellant

AND

PHILIP DEAN TAUEKI

Respondent

**MEMORANDUM OF COUNSEL FOR THE APPELLANT IN RESPONSE
TO RESPONDENT'S SUBMISSIONS ON SUPPLEMENTARY QUESTION
OF LAW**

30 August 2016

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MAY IT PLEASE THE COURT:

1. This matter is a Crown appeal on questions of law. On 2 August 2016 the Court granted leave for the respondent, Mr Taueki, to add a “supplementary question” in the following terms:

As Mr Philip Dean Taueki is a direct descendent of Taueki who signed the Treaty of Waitangi on behalf of Taueki (Tauheke), and as these questions apply to ancestral lands that have belonged in fee simple estate to Mua-Upoko since a certificate of title was issued in 1899, will an affirmative response effectively nullify the Treaty of Waitangi upon which the jurisdiction of this Court is founded?¹

2. The appellant submits that the question should be answered “no”.
3. The Treaty itself envisages that Maori property rights are subject to change – in particular, by providing for the sale of land. Here the land has not been sold but the bundle of rights of the original owners has been modified to a lesser extent by statute, based upon antecedent negotiations and agreement between the Crown and those owners. The propriety of that legislation and the arrangements on which it is based is apparently challenged by Mr Taueki in the Waitangi Tribunal, but this Court is required to interpret and apply the relevant statutes enacted by the legislature.²
4. The jurisdiction of this Court is not derived from the Treaty. Heath J stated in *R v Mason* that:

Objections to the jurisdiction of the District and High Courts to try alleged offenders for criminal offences have been roundly rejected in cases leading up to *Wallace v R*. Courts derive their authority to hear and determine criminal cases from the exercise of Parliament’s legislative powers.³

30 August 2016



F G Biggs
Counsel for the appellant.

TO: The Registrar of the High Court of New Zealand.
AND TO: The respondent.

¹ Minute of Brown J, 2 August 2016 para [3].

² See *Hoani Te Henben Tukino v Aotea District Maori Land Board* [1941] AC 308 (PC); *New Zealand Maori Council v Attorney General* [1987] 1 NZLR 641 (CA); *Berkett v Tauranga District Council* [1992] 3 NZLR 206 (HC); *R v Toia* [2007] NZCA 331 para [10] (c).

³ *R v Mason* [2012] 2 NZLR 695 (HC) para [32]. Referring to the Supreme Court’s decision in *Wallace v R* [2011] NZSC 10. See also *Berkett v Tauranga District Council* [1992] 3 NZLR 206 (HC).