AN IMPORTANT RULING (by Anahera Herbert-Graves – Chief Executive Officer, Te Runanga-a-Iwi o Ngāti Kahu)

Late last month the Supreme Court released a majority ruling (4 to 1) in favour of a man named Allan Haronga. Mr Haronga had fought his case all the way up from the Waitangi Tribunal, through the Māori Appellate Court, the High Court, and then the Court of Appeal, before finally winning a ruling from the highest Court in New Zealand. And what was that ruling? Simply that the Waitangi Tribunal must do its job and hold an urgent hearing into Mr Haronga's application for a binding recommendation that the Crown return 8626 acres of the Mangatu State Forest to Mangatu Incorporation.

In 1893 Mangatu Incorporation was established by Te Aitanga a Māhaki, an iwi based in Turanganui a Kiwa (the Bay of Plenty), to protect them and their lands from the pressure to sell to Europeans. It is a matter of great pride to them that they have managed to hold the bulk of their lands since 1893. However in 1961 the Crown acquired some of their land for 'erosion control purposes.' Although the Incorporation was reluctant to sell, as it planned to afforest the land, it was prevailed upon to believe that there was no option other than Crown ownership. But it turned out that the Crown had never intended to use their land for erosion control at all. Instead it planted a commercial forest on it from which it has profited ever since.

In 1992 Eric Ruru, a member of the Incorporation, lodged two claims with the Waitangi Tribunal seeking the return of the land from the Crown. Later, his claims were grouped by the Tribunal into a district-wide inquiry. In 2004 the Tribunal ruled his claims were well-founded, but recommended that all claimants within the district enter direct negotiations with the Crown together. In 2008 a draft Agreement in Principle emerged which showed that the key redress item for the entire district was to be the Mangatu lands. In short, Te Aitanga a Māhaki and their claims had been subsumed, and their lands were to be used by the Crown to settle everyone's claims.

As soon as he saw where negotiations were headed Allan Haronga returned to the Tribunal and asked it to complete its inquiry by ordering the Crown to return the Mangatu lands to the Mangatu Incorporation, but the Tribunal declined to even hold a hearing on the grounds that its power to hear an application for binding orders against the Crown was a discretionary one. Now it has been plainly told by the Supreme Court that it is not a discretionary power and it needs to do its job; i.e. hold a hearing and make a ruling based on law for or against Mr Haronga's application.

In 2008 Ngāti Kahu also applied to the Tribunal for binding orders against the Crown and also got rebuffed, but we didn't have the wherewithal to appeal. Combined with the fact that Supreme Court rulings set case law that can be used by others in the future, this makes Haronga v Waitangi Tribunal and Others a very important ruling for us. We are now considering our options very carefully.