IN THE MĀORI LAND COURT OF NEW ZEALAND
TAITOKERAU DISTRICT

A20130001995
A20130003412
A20130003634
A20130003635
A20130003636

UNDER	Sections 113, 117 and 118, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	William Goulton Benjamin Goulton Edward Goulton Daphne Goulton Charlie Goulton
BETWEEN	JAMES SAVAGE RAEWYN FUSITUA ELIZABETH GATES Applicants

Hearing: 26 June 2013
27 August 2013
(Heard at Kaikohe and Auckland)

Judgment: 06 September 2013

RESERVED JUDGMENT OF JUDGE D J AMBLER

Introduction

[1] At the conclusion of the hearing of these five succession applications on 27 August 2013 I adjourned all applications to January 2014 for the whānau to hold a hui to discuss the whānau trust proposal and how, if at all, a trust may accommodate whāngai. I advised that I would not make any orders pending the next hearing.

[2] However, on reflection I realise that it is important that I set out my findings in relation to the issues raised in Court as they will likely influence the discussion and decisions at the forthcoming hui. These findings are final, and I will not hear further evidence on the issues except in relation to the whānau trust. Nevertheless, I will not make any final orders until the applications resume in front of me.

Background

[3] The succession applications relate to five of the 12 children of the late William Goulton II and Rangi Goulton (nee Stewart).

[4] William Goulton predeceased his wife. Rangi Goulton died on 23 May 1945. She left 12 children. At least half of them were minors. Under her will dated 25 July 1939 she left her farmland at Pungaere to her five sons and the residue and remainder of her property to her daughters. On 17 July 1946 the Court made succession orders[1] vesting the said farmland in the five sons and the other lands (being two five acre sections at Kaeo) in the seven daughters. The minute also notes:

> Orders in favour of daughters for other blocks will be made if and when any are ascertained.

[5] No further succession orders appear to have been made.

[6] In subsequent years the sons sold the farmland. The seven daughters remain the registered proprietors of the two sections at Kaeo even though six of them are now deceased. An issue may in fact arise as to whether those two sections are Māori freehold land.

---

1 75 Northern MB 263-266 (75 N 263-266).

[7] The relevance of Rangi Goulton's will is that some within the whānau say that Rangi Goulton's sons should not have received interests in Te Wainui No 2D No 1 and Wainui 2D2C3 ("the Wainui land"), as that land should have passed to the daughters as per the will.

[8] The Court is asked to deal with succession to five of Rangi Goulton's children. These are:

(a) Edward Goulton who died on 21 August 1996, intestate, having never married and never had children.

(b) Daphne Goulton who died on 1 October 2002, intestate, having never married and never had children.

(c) Benjamin Goulton who died on 1 September 2006, intestate. His widow disclaims any entitlement. He had four children.

(d) William Goulton III who died on 16 April 2010, intestate. He married but did not have children of his own. His wife is also deceased. He did however whāngai his wife's grandson, James Savage.

(e) Charlie Goulton who died on 12 March 2012, intestate, having never married and never had children.

[9] Each of the five siblings have two sets of Māori land interests. First, interests in Orotere A and Tauaki which they received by succession to their paternal grandmother, Mere Tukariri. Second, the interests in the Wainui land which they received by succession to their maternal grandmother, Ema Tuari (or Stewart). It is only the second interests that are in dispute.

Issues

[10] Three issues have arisen in relation to the five applications.

[11] First, as mentioned, some within the whānau challenge the right of any of Rangi Goulton's sons to the Wainui land interests.

[12] Second, although there is no dispute that James Savage was whāngai'd by William Goulton from a baby and treated as his own son, there are different views as to whether he should be entitled to succeed to the land interests.

[13] Third, Benjamin Goulton's daughter, Raewyn Fusitua, has also sought to establish a whānau trust to be known as the William Goulton and Rangi Stewart Whānau Trust and to be for all of the descendants of William Goulton II and Rangi Stewart (that is, Rangi Goulton).

Rangi Goulton's will and the Wainui lands

[14] Elizabeth Gates, who is the last survivor of Rangi Goulton's children, challenges her brothers' entitlement to the Wainui lands and says that those lands should have come to her and her sisters when the Court dealt with succession to their mother in 1946. Thus, I am asked to not deal with succession to the Wainui lands in the names of her brothers.

[15] As I explained to the parties in Court, I am not able to look into the correctness or otherwise of the interests that are today in the names of Rangi Goulton's five sons. That is because s 77 of Te Ture Whenua Māori Act 1993 ("the Act") provides that no challenge may be made to an order after 10 years. However, an application can be made to the Chief Judge under s 44(1) where an order is said to be in error. But I have no power to correct any alleged error.

[16] In circumstances where an order is said to be in error and an application is made to the Chief Judge, I have a discretion to delay the making of any further orders in relation to the affected interests pending the outcome of the application. As I explained in Court, I do not consider that I should delay these succession applications pending a possible application to the Chief Judge. There are four reasons for this.

[17] First, even though the members of the whānau who challenge the five sons' ownership of the Wainui interests have known about this issue for some time, no

application has been made to the Chief Judge. It would be wrong for me to jump at shadows.

[18] Second, the succession orders have been in place for almost 70 years without challenge. That time period may count against the success of any application.

[19] Third, if Elizabeth Gates' primary motivation is to ensure that her brothers do not have any interests in the Wainui land, then ultimately she will not be successful. That is because even if the brothers' interests in the Wainui land were to be returned to the sisters, the brothers (with issue) are entitled to a share of Daphne Goulton's interests under the intestacy provisions of the Act. Thus, it is inevitable that they will hold interests in the Wainui lands.

[20] Fourth, my tentative view is that the complaint regarding the Wainui interests is misconceived. That is because the Wainui interests belonged to Rangi Goulton's mother, Ema Tuari, and never fell into Rangi Goulton's estate.

[21] Ema Tuari died on 21 April 1943 (according to the information on the original documents – the Court minute records her date of death as 20 March 1943 but this must be wrong as her will is dated 29 March 1943). The Court dealt with succession to her interests on 11 July 1945.[2] The minute and the original file disclose a will whereby Ema Tuari left all of her lands and other property to her husband Frank (or Pairaka) Stewart.

[22] The will was challenged in Court by Ema Tuari's son, Hone Tuari. He and his living siblings apparently opposed all of the land going to their father and suggested he receive two acres. In the end, the Court granted Frank Stewart a life interest in respect of two acres. The minute discloses that some form of family arrangement was arrived at. Importantly, the interests that would have gone to Rangi Goulton, who died two months earlier, were by agreement to go to her 12 children.

[23] Elizabeth Gates and her supporters point out that on 11 July 1945 the Court was not aware of Rangi Goulton's will. But in my view the more significant factor is that these interests were part of the estate of Ema Tuari, that under her will they would have gone to

---

[2] 75 Northern MB 101-102 (75 N 101-102).

Pairaka Stewart, but that as per the family arrangement, it was decided that all of the interests that would have gone to Rangi Goulton would got to her 12 children without exclusion.

[24] In those circumstances, I doubt that the Court's orders of 11 July 1945 can be challenged today. But it is not my role to express a definitive view. Elizabeth Gates can bring an application to challenge the orders if she wishes.

[25] My point is simply that I do not believe that there is a proper basis to postpone dealing with the interests that are derived from those 1945 orders. If Elizabeth Gates and others wish to pursue an application to the Chief Judge and the Chief Judge concludes that the orders were in error, any succession orders made in relation to the five sons will need to be revisited. But the whānau should not have to put on hold dealing with those interests because of that mere possibility.

James Savage's rights as whāngai to William Goulton

[26] There is no dispute that William Goulton III died without issue but raised as his son James Savage, the grandson of William's wife, Sophie Savage. Apparently William also whāngai'd other children but not in the same respect as James and those other children do not claim interests.

[27] The primary issue is whether James Savage should be entitled to succeed to William's interests absolutely or as to a life interest only or not at all. The first issue to address is whether James has any whakapapa connection to William and the land in question.

[28] James Savage did not claim any direct whakapapa connection to William. However he emphasised his Ngaiterangi and Ngāti Porou connections but was unable to explain how those iwi have any association with these lands, which are in the region of Whangaroa Harbour in the Taitokerau. He also gave disputed evidence regarding whakapapa, claiming that Mereana Tukariri was the same person as Mere Kuia (who has Ngaiterangi whakapapa).

[29] I am satisfied that Mereana Tukariri and Mere Kuia are two different people. Mereana Tukariri (who I am told did not have Ngaiterangi ancestry) married William Goulton I. Their son was William Goulton II, who married Rangi Stewart (that is, the parents of William Goulton III with whom I am concerned). Rangi Goulton's parents were Ema Tuari and Pairaka (or Frank) Stewart. Pairaka Stewart's mother was Mere Kuia. Thus, these two tupuna kuia are different and come from different lines.

[30] But of most significance, the land interests that we are concerned with in relation to William Goulton come from either Ema Tuari or Mereana Tukariri. None of these interests come from Mere Kuia. There is therefore no evidence that James Savage has a whakapapa connection to the land with which we are concerned.

[31] During the hearing I explained that the Court can grant a whāngai child an interest in land if it accords with tikanga Māori, and that there are authorities to the effect that if a child does not share the whakapapa to the land the most that child can expect is a life interest only. I rely in particular on the Māori Appellate Court's discussion of these matters in *Hohua – Estate of Tangi Biddle or Hohua.*[3]

[32] Also, in *Monica Kake – re Kiriwai Ihaia (Ruka)*[4] I heard considerable evidence regarding the tikanga that applies to whāngai in this part of the Taitokerau, specifically in and around Wainui and the Whangaroa Harbour. That evidence was that interests should stay within the bloodline, and in that case the kaumātua, Hare Hikuwai, objected to even a life interest going to the whāngai child. As it turned out, I concluded that the whāngai child was entitled to a life interest only in relation to some of the lands.

[33] There is a split within the whānau as to what interest James Savage should receive. Elizabeth Gates and those of the whānau who support James say that he should receive a full interest and that this would reflect William's wishes. On the other hand, Raewyn Fusitua and Frances Goulton say that they would welcome James Savage having a life interest but that because he does not carry the bloodline, it would not accord with tikanga for him to receive more than a life interest.

---

3 *Hohua – Estate of Tangi Biddle or Hohua* (2001) 10 Waiariki Appellate Court MB 43 (10 APRO 43).
4 *Monica Kake – re Kiriwai Ihaia (Ruka)* (2007) 118 Whangarei MB 256 (118 WH 256).

[34] I conclude that James Savage should be entitled to a life interest only in William Goulton's lands. The remainder interests will lie with William's surviving siblings or those who died with issue.

[35] I arrive at this view because, fundamentally, the Act only allows whāngai to receive interests under s 115 as a tikanga exception to the general law. The law does not recognise children adopted by Māori custom. This is an important exception but it is necessarily based on the principle that a whāngai should only be able to succeed to the extent that any succession fits within the appropriate tikanga. I am satisfied that the appropriate tikanga means that James should not receive more than a life interest as he does not whakapapa to the land.

[36] Nevertheless, if the whānau were to bring together all their interests into a whānau trust it may be possible for the trust order to better accommodate whāngai. As a whānau trust stops any ongoing succession to lands, it can sometimes resolve any dissension over how to reflect a whāngai's association with a tupuna. In some whānau trusts the whānau are happy to recognise the place of whāngai. That is a matter for this whānau to discuss.

The whānau trust

[37] Raewyn Fusitua has proposed a whānau trust for all of William and Rangi Goulton's descendants. Four of the 12 branches of the whānau have agreed to bring their interests into the whānau trust. Others have yet to agree and it is suggested that if they do not agree, it would not be appropriate to establish a whānau trust under William and Rangi Goulton's name.

[38] These matters have not been thoroughly discussed and, given the size of the whānau, it is necessary for these issues to be discussed at a hui. I have taken time to set out my findings in this decision with the aim of informing the hui. There are real advantages in establishing a whānau trust but, at the end of the day, that is a matter for each whānau and the holders of the interests to decide.

Outcome

[39] When this application comes back to Court I will make succession orders whereby Edward, Daphne and Charlie Goulton's interests will be succeeded to on the basis of their

having died intestate without issue; I will make succession orders in respect of William Goulton in favour of James Savage as to a life interest only with the remainder to Elizabeth Gates and William's other siblings who died with issue; and I will make succession orders in respect of Benjamin Goulton in favour of his four children. It is up to the whānau members to decide whether these interests will be placed into a whānau trust.

[40] I direct the Case Manager to provide a copy of Ema Tuari's will and Rangi Goulton's will to each of the parties.

[41] The applications stand adjourned to January 2014 to await the outcome of the whānau hui.

D J Ambler
JUDGE