

**IN THE MĀORI LAND COURT OF NEW ZEALAND  
TAITOKERAU DISTRICT**

**A20140010545**

UNDER Section 164, Te Ture Whenua Māori Act 1993  
IN THE MATTER OF Motatau 2 Section 52B  
BETWEEN ELLEN BRANIFF  
Applicant

**A20140010546**

UNDER Section 214, Te Ture Whenua Māori Act 1993  
IN THE MATTER OF Sharon Moana Hei Whānau Trust  
AND BETWEEN SHARON HEI  
Applicant

Hearing: 18 February 2015  
29 May 2015  
(Heard at Whangarei)

Judgment: 7 September 2015

---

**RESERVED JUDGMENT OF JUDGE M P ARMSTRONG**

---

## Introduction

[1] On 6 October 2014 applications were filed seeking orders:

- (a) Vesting shares in Motatau 2 Section 52B owned by Mate Koraha Hei in her daughter Sharon Hei per s 164 of Te Ture Whenua Maori Act 1993 (“the Act”); and
- (b) Constituting a whānau trust over those shares per s 214 of the Act.

[2] The issue in this case is whether I should grant the orders as sought.

## Background

[3] Mate Koraha Hei (also known as Ellen Braniff) owns 443.417 shares in the Motatau 2 Section 52B block. She received those shares from her mother on 2 March 1955.<sup>1</sup> Mate has seven children:

- (a) Harmonia Hei;
- (b) Moerangi Kennedy;
- (c) Sharon Hei;
- (d) Robert Kennedy;
- (e) Fiona Kennedy;
- (f) Moana Lumley; and
- (g) Moyra Braniff.

[4] The applications seek to transfer Mate’s shares to her daughter Sharon. Sharon then wishes to constitute a whānau trust over those shares. The trust is to be called the Sharon Moana Hei Whānau Trust. Sharon is to be appointed as the sole trustee of the trust. Sharon and all of her siblings are to be the tupuna of the trust. As such, the trust will be for the benefit of all of Mate’s descendants.

[5] In support of the application consent forms were filed which have been signed by all of Mate’s children. Each of those consent forms state:

---

<sup>1</sup> 29 Bay of Islands 221 (29 BI 221).

... I agreed to the full transfer of our mothers shares that amount to 443.417 shares with the understanding Sharon will concurrently lodge an application to form our whānau trust (which she will manage and administer) with the application of transfer.

[6] I heard the application on 18 February 2015.<sup>2</sup> Sharon Hei appeared in support of the application. Mate did not appear, nor did any of her other children. During the hearing I asked Sharon why it was proposed that the shares be gifted to her before being vested into the trust. It would be more straightforward to simply constitute the trust over Mate's shares. This would prevent the need for the vesting order per s 164 of the Act. I also asked why the trust was to be in Sharon's name. I raised, with Sharon, whether the trust should be in Mate's name to recognise that she is the current owner of the shares and she is the matriarch of the family.

[7] Sharon advised that the applications were advanced in this manner as this was the preference of her step-father, James Braniff. In particular, Mr Braniff was concerned that if Mate constituted the whānau trust, or if the trust was in her name, she may be liable for rates or other financial obligations with respect to these interests. This assumption is clearly incorrect. I also raised concern that the applications were framed according to Mr Braniff's views when he is not the owner of the shares.

[8] Given the unusual manner in which the applications were being advanced, and that Mate and her other children had not appeared at the hearing, I adjourned the applications and directed that a copy of the minutes be sent to Mate and all of the children so that they could consider these issues.

[9] Sadly, Mate passed away on 18 March 2015.

[10] The applications were then heard on 29 May 2015.<sup>3</sup> Further consents were received from Moyra Braniff, Moana Lumley and Robert Kennedy confirming their support for the applications. Objections were filed by Fiona Kennedy and Moerangi Kennedy. No further response was received from Harmonia Hei.

---

<sup>2</sup> 98 Taitokerau MB 92 (98 TTK 92).

<sup>3</sup> 110 Taitokerau MB 85 (110 TTK 85).

[11] Sharon appeared at the second hearing. Her siblings did not appear. Sharon sought orders as per the applications filed. At the conclusion of the hearing I reserved my decision.

### **Discussion**

[12] It is unfortunate that Mate passed away before these applications could be determined. However, her death does not prevent the vesting order from being made. Section 164(7) of the Act states:

#### **164 Transfer of land or undivided interest by Court vesting orders**

...

- (7) Where a vesting order is sought to give effect to a proposed transfer and one of the parties to the transfer has died, the Court may make the order if it is satisfied that proper agreement has been reached before the death of that party.

[13] Mate signed the application seeking to vest these shares in Sharon by way of gift. Her signature was witnessed by David Thick who is recorded as a Justice of the Peace. All of her children were made aware of the application to vest the interests in Sharon. This vesting is part of an arrangement to ultimately vest the shares into a whānau trust for the benefit of all of Mate's descendants. As such, I am satisfied that proper agreement was reached prior to Mate's death. Her passing does not prohibit the orders from being made. Rather, the issue is whether the orders should be granted in light of the objections received.

[14] Turning to those objections, in an email dated 20 May 2015, Moerangi Kennedy states:

...I am happy for Sharon to manage the trust, not sure about Sharon being the administrator.

Ideally I would like a trust to be set up in all of Mate Koraha Nore Hei's children:

- Harmonia Mami Hei
- Moerangi Kennedy
- Sharon Kennedy (Hei)
- Robert Kennedy
- Fiona Kennedy

- Moana Hei
- Moyra Braniff

[15] In an email dated 20 May 2015 Fiona Kennedy states:

...I do not have a problem with Sharon managing our mothers land, I do object to Sharon being the sole trustee and the administrator, this is not my mothers wishes. I agree with the courts to establish the whānau trust remains in my mothers name and not being excluded after all it is my mothers land and spirit. I would like to point out I was not fully aware of the implications if this action will be in place. Once again I would like to stress that my mothers shares belongs with the trustee therefore all of my mothers offspring will benefit... [sic]

[16] It is significant that Moerangi and Fiona do not actually oppose the applications. Neither take issue with the proposed two-step process of gifting the shares to Sharon and then constituting the whānau trust. Rather, they have expressed concerns around the make-up of the whānau trust. I address this further below.

[17] All of the original consent forms filed expressly consent to the transfer of the shares to Sharon on the basis that she concurrently lodges an application to form the whānau trust.

[18] At the first hearing I questioned whether this was necessary as the same result could be achieved by constituting the whānau trust directly over Mate's shares. I still consider that the transfer was unnecessary at that time. However, given Mate's death, and the ability to proceed with the application per s 164(7) of the Act, the initial step of the transfer now has merit.

[19] I do harbour some concern that if the whānau trust was terminated, the shares would vest back in Sharon per s 241(2) of the Act. That would have the effect of alienating the other whānau members from these interests. However, any such detriment or unreasonable disadvantage to the other whānau members would also go against any future application for termination pursuant to the principles set out in *Larkins v Kaitaia – Waihou Hutoia D2A*.<sup>4</sup>

[20] More importantly, and as set out above, there are no objections to this two-step approach.

---

<sup>4</sup> *Larkins v Kaitaia – Waihou Hutoia D2A* [2013] Māori Appellate Court MB 189 (2013 APPEAL 159).

[21] Turning then to the whānau trust, it is clear that all of Mate's children agree that the shares should be vested into a whānau trust. Moerangi and Fiona have raised concerns over the terms of that trust. In particular, they state that the trust should be for the benefit of all of Mate's children.

[22] It is proposed that the tupuna of the trust are to be Sharon and all of her siblings. As such, they and all of their descendants will be beneficiaries of the trust. It may be that Moerangi's and Fiona's concerns stem from the proposal to call the trust the "Sharon Moana Hei Whanau Trust". This gives the impression that the trust is only for Sharon's benefit. That is not the case. However, there is clear room for confusion in adopting Sharon's name as the trust name and this is already apparent given the objections filed.

[23] In an email dated 27 May 2015 Moyra Braniff states that she has spoken to her father, James Braniff, and he has given approval for Mate's name to be used as the name of the trust. While I do not consider that approval from Mr Braniff is necessary, Sharon proposed that the trust was to be named after her as, she said, this was her step-father's wishes. That is no longer the case.

[24] In a written submission Sharon confirmed that it was her first preference for the trust to be named after her mother. She does not object to the name of the trust being changed, provided that by doing so, her step-father will not be liable for any outstanding rates or other financial obligations.

[25] As I said during the hearing, the change to the name of the whānau trust will not have any impact on liability for rates. If the orders are granted, and the shares are vested into the trust, it is the trustees on behalf of the trust who are responsible for meeting any financial obligations with respect to those interests.

[26] For these reasons, I consider that the name of the trust should be changed to the Mate Koraha Nore Hei Whānau Trust. This will prevent any confusion as to the beneficiaries of this trust. This also recognises Mate as the original owner of the shares and as the matriarch of the family.

[27] The final issue is whether Sharon should be appointed as the sole trustee of the trust.

[28] The original consent forms signed by all of Mate's children state that Sharon will "manage and administer" the trust.

[29] In her email of 20 May 2015 Fiona states:

..I do not have a problem with sharon managing our mothers land, I do object to sharon being the sole trustee and the administrator... [sic]

[30] Moerangi states that:

..I am happy for Sharon to manage the trust, not sure about Sharon being the administrator...

[31] Fiona's and Moerangi's positions are not clear. It is the trustee of a trust who manages and administers those interests on behalf of the beneficiaries. It is not clear if Fiona and Moerangi are saying that additional trustees should be appointed along with Sharon, or whether Sharon should undertake some other role on the trust but not as a trustee. In either case, Fiona and Moerangi do not say who should be appointed as trustee or additional trustee.

[32] Sharon's other four siblings all support her appointment as a trustee. As such, pursuant to s 222(2)(b) of the Act I am satisfied that Sharon's appointment is broadly acceptable to the beneficiaries.

[33] Sharon is currently employed at the Northern Region Corrections Facility. She is also a Māori Warden. Sharon has filed references from a co-worker Marlene Kaio, and from two friends Shelley Foster and Susanna Katene-Cotton. A further reference has been filed from Priscilla Brown who is a trustee of Matawaia Marae. They all support Sharon and have spoken of Sharon's passion for this land and for establishing a trust to benefit the whole whānau. Ms Brown also states that Sharon makes herself available to support Matawaia Marae.

[34] It is not clear from the material filed whether Sharon has experience as a trustee. I consider that she would benefit from undertaking the trustee training that the Māori Land

Court provides. Given her current employment and voluntary roles, and the positive references that have been filed, provided that she undertakes that training I am satisfied that Sharon will have the necessary ability, experience and knowledge as per s 222(2)(a) of the Act to fulfil the role of trustee.

[35] Whether Sharon should remain as the sole trustee or whether additional family members should be appointed as additional trustees are ultimately matters for the whānau, as beneficiaries of the trust, to discuss. There is nothing preventing the whānau from meeting to discuss whether additional trustees should be appointed. If a resolution is passed to appoint additional trustees a further application can be filed with the Court to give effect to that.

[36] For these reasons I am satisfied that the orders sought should be granted.

[37] While it is unusual to vest the shares in Sharon prior to constituting the whānau trust, there are no objections to this approach. With Mate's passing, the ability of the Court to proceed with the application per s 164(7) of the Act means that this approach now has some merit.

[38] Objections were raised over the structure of the whānau trust but it appears that this largely relates to confusion over the original proposal to call the trust the Sharon Moana Hei Whānau Trust. I am satisfied that the name should be amended to the Mate Koraha Nore Hei Whānau Trust.

[39] While there was also some objection to the appointment of Sharon as the sole trustee, the nature of those objections were not clearly spelt out. Sharon's appointment is supported by the majority of her siblings, I am satisfied that with training she has suitable ability, experience and knowledge, and there is opportunity for the appointment of additional trustees in the future.

## **Decision**

[40] I make the following orders pursuant to Te Ture Whenua Māori Act 1993:

- (a) Section 158 dispensing with the need to file a special valuation;

- (b) Section 164 vesting 443.417 shares of Mate Koraha Hei in Motatau 2 Section 52B in Sharon Moana Hei by way of gift;
- (c) Section 214 and 219 constituting the Mate Koraha Nore Hei Whānau Trust and declaring terms of trust in accordance with the standard Taitokerau Whānau Trust order now approved by the Court. The tupuna are Harmonia Mami Hei, Moerangi Kune Kennedy, Sharon Moana Hei, Robert Henare Kennedy, Fiona Megan Kennedy, Moana Maree Lumley and Moyra Braniff; and
- (d) Section 220 and 222 appointing Sharon Moana Hei as the responsible trustee and vesting her interests in Motatau 2 Section 52B in her in her capacity as trustee.

[41] The orders are conditional on Sharon Moana Hei undertaking the Māori Land Court trustee training within three months of the date of this judgment.

Pronounced in open Court at Whangarei at 4.25 pm on Monday this 7<sup>th</sup> day of September 2015.

M P Armstrong  
**JUDGE**