

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

A201400012908

UNDER Section 118(6) of Te Ture Whenua Māori Act
1993

IN THE MATTER OF Tangahoe also known as Tangahoe Rawahirua
or Wiini Tangahoe

BETWEEN MICHAEL TANGAHOE BURGESS
Applicant

Hearing: 337 Aotea MB 149-154 dated 9 June 2015

Judgment: 11 April 2016

RESERVED JUDGMENT OF JUDGE L R HARVEY

Introduction

[1] Michael Burgess seeks an order to vest the interests of Tangahoe also known as Tangahoe Rawahirua or Wiini Tangahoe in Rangitoto Tuhua 60 A 3B 3B, Te Rongoroa A8 and Te Rongoroa Papakainga in himself in accordance with previous succession orders issued on 29 April 2002 and 10 July 2002.¹ The applicant submits that the Māori land interests currently held under the name of Wiini Tangahoe are additional interests of his father, Wiini Burgess. On 29 April 2002 the applicant was determined to be the sole successor to the estate of Wiini Burgess.

[2] Prior to this application being heard the case manager drafted a memorandum to the Court outlining the possibility of there being more than one person known by the name Wiini Tangahoe. The report also pointed out the possibility that previous succession orders made in respect of Wiini Tangahoe may have been made in error. A copy of the case manager's report was sent to the applicant. There has been no response to that report. The application was set down to be heard on 9 June 2015. The applicant made no appearance.

¹ 119 Otorohanga MB 228-230 (119 OT 228-230) and 120 Otorohanga MB 52 (120 OT 52)

[3] The issues for determination are first, are the interests in the name of Wiini Tangahoe additional interests of Wini Burgess or of another individual? Second, is the applicant entitled to succeed to the lands the subject of this application?

Background

[4] As foreshadowed, on 29 April 2002 and 10 July 2002 the Court issued orders determining the applicant to be the sole successor to the estate of Wini Paora Tangahoe Burgess also known as Wiini Burgess or Wini Burgess (“Wiini Burgess”).² The evidence before the Court was that Wini Burgess was born on 19 January 1932 and died on 20 July 2000 aged 68. His parents were Rosie Wi nee Rehu and Weka “Skid” Wi. Wiini Burgess had one child, Michael Burgess.

[5] The succession records confirm that the Māori land interests held by Wiini Burgess were determined to be derived from Kahutopuni Mahurangi,³ and Kahutopuni Ngatai.⁴ The evidence on the application file is that these two persons are one and the same being the mother of Wiini Burgess. Both Kahutopuni Mahurangi and Kahutopuni Ngatai received a number of their interests pursuant to the will of Kahutopuni Waata.⁵

[6] There is also correspondence on the file which outlines that there was not enough information to confirm that interests held in the name of Wiini Tangahoe in Rangitoto Tuhua 60 A 3B 3B, Te Rongoroa A8 and Te Rongoroa Papakainga blocks belonged to Wiini Burgess.

The Law

[7] Section 118(6) of Te Ture Whenua Māori Act 1993 provides:

- (6) Where the known estate of a deceased person has previously been administered and additional interests of the deceased in Maori freehold land are discovered, the court, notwithstanding any other provisions of this section, may deal with those interests under this section if it is satisfied that any other course would be unduly expensive or difficult having regard to the value of the interests.

² 119 Otorohanga MB 228-230 (119 OT 228-230) and 120 Otorohanga MB 52 (120 OT 52)

³ 31 Tokaanu MB 119 (31 TOK 119), 76 Otorohanga MB 232 (76 OT 232), 75 Otorohanga MB 349 (75 OT 349) and 107 Rotorua MB 263 (107 Rot 263)

⁴ 7 Whanganui Registrars MB 122 (7 RGWG 122) and 14 Whanganui Registrars MB 41 (14 RGWG 41)

⁵ 69 Otorohanga MB 330 (69 OT 330) and 195 Rotorua MB 186 (195 Rot 186)

[8] Section 118(6) gives the Court the ability to make succession orders to additional interests of a deceased. That section pre-supposes that the interests concerned belong to the deceased and not to another person.⁶

Are the interests in the name of Wiini Tangahoe additional interests of Wini Burgess?

Wiini Tangahoe

[9] As foreshadowed, Wiini Tangahoe holds interests in Rangitoto Tuhua 60 A 3B 3B; Te Rongoroa A8 and Te Rongoroa Papakainga.

[10] An examination of the title records for these three blocks shows that Wiini Tangahoe is listed as an original owner in all the blocks alongside Kahutopuni Ngatai and Kahutopuni Mahurangi. It appears that Wiini Tangahoe derived these interests by succession from Kahutopuni Waata, in accordance with her will, on 18 June 1923.⁷ Kahutopuni Waata made the following devises:

1. Wiini Tangahoe all interests in Rangitoto Tuhua No 67 with Te Rakaupai as trustee and all interests in Rangitoto Tuhua No 60 with Kahutopuni Ngatai as trustee;
2. Kahutopuni Te Rehu all interests in Rangitoto Tuhua No 73B1 and Rangitoto Tuhua No 74
3. Kahutopuni Ngatai, Wiini Tangahoe, Atria Te Parana, Titihuia Ngatokowha and Te Atarani Ngatokowha interests in Rangitoto Tuhua 76 and Te Rongoroa Reserve with Kahutopuni Ngatai as trustee for Wiini Tangahoe and Te Atarani Ngatokowha
4. Kahutopuni Ngatai and Te Kopere te Rangawhenua all interests in Rangitoto Tuhua 78B2B1
5. Kahutopuni Ngatai solely Rangitoto Tuhua 74, 55B2, 80, 68, 2, 77E3C1, 64, 76B8B2A, 78B, 77E2C4 and others.

[11] An application for succession to Wiini Tangahoe was heard on 20 January 1931.⁸ The minutes record evidence given by Kahutopuni Ngatai that the deceased died in May 1929 leaving no will and no children. The Court noted the interests came through the will of Kahutopuni Waata. The proceedings were then held over to enable the Court to consider how to deal with the interests. A further hearing was held on 26 May 1936 where the Court confirmed that the interests did not fall into the residuary estate under the will of Kahutopuni Waata and instead reverted to source. It was determined that the correct successors were the

⁶ *Tane – Rowallan Blk IV Section 5* (2012) 292 Aotea MB 135 (292 AOT 135)

⁷ 64 Otorohanga MB 164-166 (64 OT 164-166) 64 Otorohanga MB 91 (64 OT 91)

⁸ 1 Conference MB 117-118 (1 CNWM 117-118)

next of kin of Kahutopuni Waata.⁹ The case was then adjourned as issues were raised about interests received by Kahutopuni Waata from her husband Ngararu Te Whakaki.

[12] Succession orders issued on 5 May 1937, which reflected an agreement between the parties that a portion of shares go to the next of kin of Kahutopuni Waata and the remaining portion to the next of kin of Ngararu Te Whakaki.¹⁰

[13] On 22 March 1967 the Court dealt with further succession to Wiini Tangahoe.¹¹ Initially evidence was given that Wiini Tangahoe was the son of Kahutopuni Waata's brother Te Rawahirua Tangahoe and that Wiini Tangahoe had one daughter Herena Tangahoe.¹² However as it turned out that evidence was incorrect and this Wiini Tangahoe was determined not to be the same person as that referred to in the initial evidence. Orders were issued in favour of the next of kin of Ngararu Te Whakaki (being the source of the interests).

[14] The evidence demonstrates that Wiini Tangahoe was 14 years of age in 1921 putting his birth around 1909. He received several interests from Kahutopuni Waata although there is no information on the Courts record as to the relationship between the two. This Wiini Tangahoe died in 1929 leaving no will and no children. His interests, being derived by will, were determined to belong to the next of kin of Kahutopuni Waata and/or the next of kin of Ngararu Te Whakaki depending on the source of the interest.

Wini Rawahirua also known as Tangahoe or Tangahoe Te Rawahirua

[15] According to the records of the Court Wini Rawahirua also known as Tangahoe Te Rawahirua or Tangahoe ("Wini Rawahirua") is the son of Te Rawahirua Waata, who is the brother of Kahutopuni Waata.¹³ On succession to his father, Wini Rawahirua confirmed this relationship and directed the interests go directly to his daughter Herena Tangahoe.¹⁴

[16] Evidence of this relationship is confirmed in numerous court minutes. For example, on 20 September 1906 concerning an application by Kahutopuni Waata to succeed to her sister Kahukoka Waata, evidence was given that they had a half brother named Te

⁹ 70 Otorohanga MB 311 (70 OT 311)

¹⁰ 71 Otorohanga MB 47 (71 OT 47)

¹¹ 41 Tokaanu MB 246 (41 ATK 246)

¹² 41 Tokaanu MB 317 (41 ATK 317) and 42 Tokaanu MB 26 (42 ATK 26)

¹³ 44 Otorohanga MB 21, 29 and 41(44 OT 29, 21 and 41)

¹⁴ Ibid

Rawahirua who had a son Tangahoe who in turn had a daughter name Herena Tangahoe aged 6 years old.¹⁵

[17] A further example is dated 9 April 1910 concerning an application to succeed to Tangahoe Te Rawahirua. Evidence was given that he died on 12 December 1909 and had one child, Herena Tangahoe aged 11 years old. Kahutopuni Waata was appointed as her trustee.¹⁶

[18] A third example concerned further succession orders dated 13 April 1910 to Tangahoe Te Rawahirua. It is noted that he is also known as Wini Te Rawahirua. Hinerangi Te Huaki gave evidence that Wini Te Rawahirua was her son; he died 12 December 1909 and had one child Herena Tangahoe aged 11 years old.¹⁷ Kahutopuni Waata was appointed one of her trustees. Similar orders were also made on 25 April 1910.¹⁸

[19] Succession orders to Herena Tangahoe were made on 10 April 1913.¹⁹ The minutes confirm the relationship outlined and that Kahutopuni Waata as determined to be her successor.

[20] The evidence before the Court is that Wini Rawahirua died in 1909 leaving one child Herena Tangahoe. According to the evidence he was the nephew of Kahutopuni Waata. I find, on the balance of probabilities, that Wini Rawahirua is not one and the same person referred to as Wini Tangahoe in Kahutopuni Waata's will. This is further supported by the succession minutes to Kahutopuni Waata where it is noted that Wiini Tangahoe is 14 years old. It cannot have been intended that Kahutopuni Waata would leave interests to her nephew who died some 10 years prior to when she executed her will.

[21] Accordingly, Wini Rawahirua is not one and the same person as Wiini Tangahoe. In any event his interests were vested in Herena Tangahoe who was succeeded to by Kahutopuni Waata.

[22] Given these findings, I confirm that, on the balance of probabilities and in the absence of more compelling contrary evidence, it would appear that there are three separate individuals bearing the same or similar names:

¹⁵ 45 Otorohanga 209 (45 OT 209)

¹⁶ 51 Otorohanga MB 25 (51 OT 25)

¹⁷ 51 Otorohanga MB 62-63 (51 OT 62-63)

¹⁸ 51 Otorohanga MB 142 (51 OT 142)

¹⁹ 55 Otorohanga MB 229 (55 OT 229)

- (a) Wini Rawahirua also known as Tangahoe Te Rawahirua or Tangahoe, who died in 1909 leaving one child, Herena Tangahoe;
- (b) Wiini Tangahoe who died in 1929 with no issue; and
- (c) Wiini Burgess who died on 20 July 2000 leaving one child, Michael Burgess.

Is the applicant entitled to succeed to the lands the subject of this application?

[23] I now consider whether the applicant can succeed to the interests held under the name Wiini Tangahoe. It is clear that Wiini Tangahoe is a different person to Wiini Burgess and accordingly the application to vest further interests in the applicant cannot succeed.

[24] Succession to the interests held by Wiini Tangahoe will need to be in accordance with previous succession minutes, which determined the next of kin of Kahutopuni Waata and/or Ngaparu Te Whakaki as entitled (depending on the source of the interests). A further application will need to be sought concerning the entitlement of those persons to succeed.

Decision

[25] The application is dismissed.

[26] If further evidence can be provided to show that Wiini Burgess is one and the same person as Wiini Tangahoe the applicant can file another application.

[27] No issue of costs arises.

Pronounced at 5.00 pm in Rotorua on Monday this 11th day of April 2016

L R Harvey
JUDGE