IN THE MĀORI LAND COURT OF NEW ZEALAND
TAITOKERAU DISTRICT

A20130006264

UNDER	Sections 108, 113, 115, 118 and 242 Te Ture Whenua Māori Act 1993
IN THE MATTER OF	an application by Buster Retemeyer also known as Buster Waipouri for succession to Tahuaka Waipouri also known as Tahuaka Ngakete
BETWEEN	BUSTER RETEMEYER Applicant
AND	CHRISTINE LOLOA Respondent

Hearing: 29 September 2014, 93 Taitokerau MB 117-124
2 March 2015, 100 Taitokerau MB 18-24
13 July 2015, 111 Taitokerau MB 128-133
16 November 2015, 118 Taitokerau MB 208-244
(Heard at Auckland)

Appearances: Alana Thomas for the applicant
Dayle Takitimu for the respondent

Judgment: 09 May 2016

RESERVED JUDGMENT OF JUDGE M P ARMSTRONG

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Introduction

[1] Tahuaka Waipouri (nee Ngakete) passed away on 29 October 2011. Pursuant to the terms of her will, she left her Māori land interests to her whāngai son, Buster Retemeyer, and his children.

[2] The issue in this case is whether Mr Retemeyer, and his children, are entitled to succeed pursuant to the terms of the will, or if not, who is entitled to succeed on intestacy.

Background

[3] Tahuaka was married to Clarke Waipouri who predeceased her. She had no biological children.

[4] Tahuaka had three siblings: Waireti Ngakete, Henry Pa Ngakete, and Kiri Ngakete, all of whom are deceased. Waireti had one child, Christine Loloa, the respondent. Henry and Kiri did not have any children.

[5] Tahuaka held interests in the following Māori freehold land blocks:

(a) Taharoa A Section 3B;

(b) Taharoa A Section 3D;

(c) Taharoa A Section 6D No. 1;

(d) Taharoa A7J13B2G;

(e) Taharoa C Incorporation; and

(f) Waipipi Lot 358A.

[6] The interests in the Taharoa blocks, and the Taharoa C Incorporation (the Taharoa interests), are located near Kawhia. It is accepted that Ngāti Mahuta is the hapū that associates with the Taharoa interests.

[7] Waipipi Lot 358A (the Waipipi block) is located near Waiuku. It is also accepted that Ngāti Te Ata is the hapū that associates with the Waipipi block.

[8] Tahuaka left a will dated 1 September 1978. Probate has not been sought. Clauses 3 and 4 of the will state:

> 3. I GIVE DEVISE AND BEQUEATH all of my shares in the Proprietors of Taharoa C Block unto my Trustee UPON TRUST to divide the same into two equal lots and to distribute such lots as follows:
>
> (a) As to one equal lot of the shares, to transfer the same to my son the said BUSTER RETEMEYER for his own use and benefit absolutely, and
>
> (b) As to the other equal lot of the shares UPON TRUST for such of my grandchildren namely NGAREWA LOUISE RETEMEYER, MOANA ROA RETEMEYER, KIRI COLLEEN RETEMEYER and ROGER RANGATAHI RETEMEYER as may be living at the date of my death and have attained the age of Twenty (20) Years or thereafter attain the age of Twenty (20) Years as tenants in common in equal shares,
>
> AND I DECLARE that the bequests of the shares shall carry all dividends declared after the date of my death even although for a period wholly before or partly before and partly after my death but not dividends declared before but not paid until after my death.
>
> 4. I GIVE DEVISE AND BEQUEATH all that the rest residue and remainder of my estate both real and personal of whatsoever nature and kind and wheresoever situate of or to which I shall be possessed or entitled at the date of my death and all other property of which I shall have power to dispose by this my Will to my Trustee TO HOLD the same after payment of all of my just debts funeral and testamentary expenses and all duties payable in respect of the whole of my dutiable estate UPON TRUST for my son the said BUSTER RETEMEYER for his own use and benefit absolutely.

Procedural history

[9] This application was initially filed in the Waikato-Maniapoto district. On 13 September 2013, the application was adjourned to the Taitokerau district, for hearing at Auckland, as requested by Mr Retemeyer.[1]

[10] The application was first heard in Auckland on 29 September 2014.[2] Mr Retemeyer and Ms Loloa appeared. I raised with Mr Retemeyer whether he is related by

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1 63 Waikato Maniapoto MB 143 (63 WMN 143).
2 93 Taitokerau MB 117-124 (93 TTK 117-124).

blood to Tahuaka, and whether he is entitled to succeed per s 108 of Te Ture Whenua Māori Act 1993 (the Act). Mr Retemeyer advised that he may be related to Tahuaka but he was not sure. Ms Loloa also sought an opportunity to discuss the application with Mr Retemeyer given that she may be entitled to succeed on intestacy if the will is of no effect. The application was adjourned, and I directed the Registrar to prepare a report, per s 40 of the Act, on whether the court record disclosed a blood relationship between Mr Retemeyer and Tahuaka.

[11] The s 40 report was completed on 19 February 2015. The report found that the record did not disclose a common tupuna between Mr Retemeyer and Tahuaka. However, the record did show that both Mr Retemeyer and Tahuaka had derived interests from original owners in the parent Taharoa A block, and as such, it is likely that they are connected to the hapū that associates with that block. The report further noted that there is no information in the record which shows that Mr Retemeyer has a whakapapa connection to the Waipipi block.

[12] The application was then heard on 2 March 2015.[3] At that hearing, both Mr Retemeyer and Ms Loloa sought a further opportunity to discuss the application to see if an agreement could be reached. I granted a further adjournment accordingly.

[13] I heard the application again on 13 July 2015.[4] Mr Retemeyer and Ms Loloa advised that an agreement had not been reached. As such, I set the application down for a special sitting of the Court to hear evidence and submissions from the parties on who is entitled to succeed.

[14] The substantive hearing was held on 16 November 2015.[5] Ms Takitimu appeared as counsel for Ms Loloa. Mr Retemeyer appeared in person. Both parties presented evidence. At the conclusion of the hearing, I adjourned the application and directed the filing of closing submissions, following which I would issue a reserved decision.

[15] Following that hearing, Mr Retemeyer instructed Ms Thomas as counsel. Both Ms Thomas and Ms Takitimu filed closing submissions on behalf of their clients. Upon

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3 100 Taitokerau MB 18-24 (100 TTK 18-24).
4 111 Taitokerau MB 128-133 (111 TTK 128-133).
5 118 Taitokerau MB 208-244 (118 TTK 208-244).

reviewing those submissions, further questions arose which had to be put to the parties before I could properly make a determination in this case.

[16] I convened a telephone conference on 8 April 2016. After addressing counsel, I directed that any further submissions on the points raised were to be filed by 15 April 2016.[6] Both parties filed further submissions pursuant to those directions.

Issues

[17] Mr Retemeyer argues that he is Tahuaka's whāngai son, and as such he should be entitled to succeed pursuant to the terms of the will. Mr Retemeyer further argues that his children are related by blood to Tahuaka, and are members of the hapū that associates with the relevant land, and so they should also be entitled to succeed pursuant to the terms of the will.

[18] Ms Loloa argues that Mr Retemeyer and his children have been unable to show that they are related by blood to Tahuaka. For this reason, they should not be entitled to succeed to the Taharoa interests. Ms Loloa further contends that those interests should go to her on intestacy as the next of kin.

[19] Ms Loloa submits that, to the extent that Mr Retemeyer or his children are entitled to succeed, they should only receive a life interest, following which the interests should go to her on remainder.

[20] Ms Loloa does not oppose that Mr Retemeyer should be entitled to succeed to Tahuaka's interests in the Waipipi block. Her only concern is with the Taharoa interests. This decision therefore focuses on the Taharoa interests. However, I must still be satisfied that Mr Retemeyer is entitled to succeed to the interests in the Waipipi block, and I consider that issue accordingly.

[21] The following issues arise in this case:

(a) Is Mr Retemeyer a whāngai child of the deceased, and entitled to succeed pursuant to the terms of the will?

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6 128 Taitokerau MB 97-98 (128 TTK 97-98).

(b) Are Mr Retemeyer's children related by blood to Tahuaka and members of the hapū associated with the land?

(c) If the provisions in the will are of no effect, is Ms Loloa entitled to succeed on intestacy?

The Law

[22] Section 108 of the Act states:

> **108 Disposition by will**
>
> (1) Except as provided by subsections (2) and (3), no owner of any beneficial interest in any Maori freehold land has the capacity to dispose of that interest by will.
>
> (2) An owner of a beneficial interest in Maori freehold land may leave that interest by will to any person who belongs to any 1 or more of the following classes:
>
> (a) children and remoter issue of the testator:
>
> (b) any other persons who would be entitled under section 109(1) to succeed to the interest if the testator died intestate:
>
> (c) any other persons who are related by blood to the testator and are members of the hapu associated with the land:
>
> (d) other owners of the land who are members of the hapu associated with the land:
>
> (e) whangai of the testator:
>
> (f) trustees of persons referred to in any of paragraphs (a) to (e).
>
> (2A) A person in whom an occupation order has been vested may leave the occupation order by will to any 1 or more persons who come within subsection (2).
>
> (2B) A person is entitled to succeed to an occupation order by will—
>
> (a) if the person owns a beneficial interest in the land to which the occupation order applies; and
>
> (b) if the court is satisfied, in the circumstances, that the extent of the person's beneficial interest in the land justifies that person succeeding to the occupation order.
>
> (2C) An occupation order that passes by will is cancelled automatically on the date of expiry or termination of the occupation order.
>
> (3) Subsection (2)(e) shall have effect notwithstanding anything in section 19 of the Adoption Act 1955.
>
> (4) Any owner of a beneficial interest in Maori freehold land may by will leave that interest to the owner's spouse, civil union partner, or de facto partner for life or for any shorter period.

(5) Any provision in a will purporting to leave a beneficial interest in Maori freehold land to any person otherwise than in accordance with subsection (2) or subsection (4) shall be void and of no effect; and that interest shall, unless disposed of in accordance with either of those subsections by some other provision of the will, pass to the persons entitled on intestacy.

(6) Where any beneficial interest in Maori freehold land is left by will to any trustee, the trustee shall not have power under the will or under any Act to sell the interest; and any provision in the will purporting to confer such power shall be void and of no effect.

[23] Section 115 of the Act states:

115 Court may make provision for whangai

(1) In the exercise of its powers under this Part in respect of any estate, the court may determine whether a person is or is not to be recognised for the purposes of this Part as having been a whangai of the deceased owner.

(2) Where, in any such case, the court determines that a person is to be recognised for the purposes of this Part as having been a whangai of the deceased owner, it may make either or both of the following orders:

(a) an order that the whangai shall be entitled to succeed to any beneficial interest in any Maori freehold land belonging to the estate to the same extent, or to any specified lesser extent, as that person would have been so entitled if that person had been a child of the deceased owner:

(b) an order that the whangai shall not be entitled to succeed, or shall be entitled to succeed only to a specified lesser extent, to any beneficial interest in Maori freehold land to, or than that, which that person would otherwise be entitled to succeed on the death of that person's parents or either of them.

(3) Every order under subsection (2) shall have effect notwithstanding anything in section 19 of the Adoption Act 1955.

Is Mr Retemeyer a whāngai of the deceased and entitled to succeed pursuant to the terms of the will?

[24] The leading authority on whāngai is the decision of the Māori Appellate Court in *Hohua – Estate of Tangi Biddle*.[7] In *Hohua*, Professor Wharehuia Milroy gave evidence on the tikanga of Ngāi Tuhoe in relation to whāngai succession. According to Professor Milroy:[8]

> Tuhoe iwi determines "whangai" as any customary and optional procedure for taking as [one's] own, a child of other parents. The main principle in "whangai" is kinship. Tuhoe regarded as important in the "whangai" of a child that there has to be a whakapapa link which is readily established and that the taking the point of

[7] *Hohua – Estate of Tangi Biddle or Hohua* (2001) 10 Waiariki Appellate MB 43 (10 APRO 43).

[8] *Hohua – Estate of Tangi Biddle or Hohua* (2001) 10 Waiariki Appellate MB 43 (10 APRO 43) at MB 49-50.

> relationship in the "whangai" situation outside the fourth cousin status is too far removed to allow a "whangai" to have rights in the use of family land. Thus, a close blood relationship is a pre-requisite to the "whangai" eventually assuming rights in family land.
>
> I list the following characteristics of Tuhoe tikanga that would apply to tamariki "whangai".
>
> 1. The "whangai" would be invariably a blood relative of the adopting parent.
>
> 2. The hapu, and perhaps to a lesser exten[t], the iwi, would need to give consent in some situations and providing that "whangai" remains with the adopted hapu that "whangai" would be entitled to share the hapu lands. If there were other relatives, the "whangai" would share in the succession to whanau/hapu lands.
>
> 3. The process of "whangai" normally involved taking a child at birth or in early infancy and raising it with its "whangai" parents or parent until the "whangai" marries.
>
> 4. If there were no close relatives and the "whangai" had assumed the responsibilities of caring for the adoptive parents till old age then the "whangai" would receive the whole of the interest of the (matua whangai).
>
> 5. If there were circumstances falling outside these principles, then those will be taken into account to decide whether the "whangai" had any rights or not.
>
> It is unlikely that Tuhoe tikanga would be considerably different from other tribal areas prior to the Maori Land Court coming into existence. Outside of the above conditions there would be "whangai" situations intra-hapu; intra-iwi; extra-hapu; extra-iwi that would serve most of the cultural dictates that prevail except where land, food gathering rights and property are involved. In those instances other principles are then invoked.
>
> It must be pointed out that the term "whangai" differs from the term "atawhai" in that the delineation is that "atawhai" tends to equate more with "fostered child" and "whangai" with adopted child." Other synonyms which are used to describe an "atawhai" child as used by Joan Metge are tiaki (look after) and taurima (to treat with care) and whakatipu (to make grow). These terms are used by Tuhoe as well to establish the difference between a "whangai" and an "atawhai."

[25] In *Milner v Milner – Estate of Warihi Te Keu Faenza Milner*, Dr Hirini Mead explained the term whāngai in the following way: [9]

> … a tamaiti whangai is somebody who has been taken into another family and raised by that family as though that person was one of their own. This person lives with them for many years, grows up with that whanau – not only the whanau whaiti, that is the household but within the greater whanau so that the matter is open – everybody knows that so-and-so is a tamaiti whangai of so-and-so, because they see the evidence right before their eyes.

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[9] *Milner v Milner – Estate of Warihi Te Keu Faenza Milner* (2008) 83 Ruatoria MB 108 (83 RUA 108) at MB 114.

[26] Dr Mead went on to identify four main questions to determine whether a person was a whāngai:

(a) Did the person grow up within the whānau?

(b) Was this well known among the whānau?

(c) Was this an accepted thing among the whānau?

(d) Did the person become integrated into the whānau?

[27] There is no dispute in the current case that Mr Retemeyer was raised by Tahuaka as her whāngai son. Mr Retemeyer gave evidence as follows.

[28] Mr Retemeyer was born in 1938. Within weeks of his birth he was taken by Hariata Rehurehu and Haane Ngakete as their whāngai son. Hariata and Haane were Tahuaka's parents. Hariata passed away in around 1940. Mr Retemeyer was approximately 20 months old at that time. Following Hariata's death, Tahuaka then took Mr Retemeyer and raised him as her son.

[29] Mr Retemeyer grew up considering that Tahuaka was his mother. He did not know what a whangai was back then. He simply knew of Tahuaka as his 'mum'. Mr Retemeyer lived with Tahuaka, and her husband Clarke, throughout his childhood. In 1967, Mr Retemeyer got married and he and his wife lived with Tahuaka until 1972, when they bought their own house and moved out.

[30] Clarke passed away in 1978. Following his death, Tahuaka initially went to live with her sister Waireti. Later that same year, Mr Retemeyer and his wife bought a new house that had a 'granny flat' at the rear of the property. Tahuaka then moved into the 'granny flat' in 1978 and lived there with Mr Retemeyer until she passed away in 2011. Mr Retemeyer and his family took care of Tahuaka up until her death.

[31] According to Mr Retemeyer his status as Tahuaka's 'son' was recognised by the entire family and by the wider community. This relationship is confirmed in Tahuaka's

will where she refers to Mr Retemeyer as "my son" and to his children as "my grandchildren".

[32] Ms Loloa did not dispute this evidence. She accepts that Mr Retemeyer was raised by Tahuaka as her whāngai son, and that this was recognised and accepted by the family.

[33] Accordingly, I find that Mr Retemeyer was raised by Tahuaka as her whāngai son. The issue in this case is whether Mr Retemeyer is entitled to succeed pursuant to the terms of the will.

Does section 115 of the Act apply?

[34] Section 115 of the Act provides a two step approach. The first step is to determine whether or not a person is to be recognised as having been a whāngai of the deceased owner. If that person is recognised as a whāngai, the second step is to then determine whether he or she shall be entitled to succeed, and if so, whether to the same or any lesser extent as that person would have been entitled if he or she had been the child of the deceased owner.

[35] Different approaches have been taken in this Court as to whether this two step approach applies in relation to testate estates, or only on intestacy.

[36] In *Karauti – Estate of George or Hori Kiwa Tukua,*[10] Judge Carter held:

> Section 108 includes whangai in the various classes of people to whom a testator may leave land interests by way of will. There is no other restriction or limitation. On the face of the section it would seem that if a devisee comes within any of those classes the Court must give effect to the provisions of the will.
>
> Mr O'Shea suggests that where a Court determines that a person is a whangai it may use section 115 to limit the extent to which the whangai may be entitled. He asks that Te Kahuhui's entitlement be limited to a life interest.
>
> Such an interpretation is hardly compatible with the intent of Section 108 which empowers a testator to leave lands to a whangai. As the devisee would be absolutely entitled by virtue of the provisions of the will there would be no grounds for the Court to limit the extent of any entitlement. There is no doubt that the Court can apply a limitation under section 115 in the case of an intestacy. The distinction is that the entitlement of a whangai arises as of right under a will but in the case of an intestacy only on the making of an order under section 115 during the process of

[10] *Karauti – Estate of George or Hori Kiwa Tukua* (2000) 116 Otorohanga MB 81 (116 OT 81) at MB 89.

which the Court is entitled to take various circumstances into account including relationship to the deceased and ties to his lands.

[37] In *Kake – Estate of Kiriwai Ihaia (Ruka)*, Judge Ambler expressed a similar view:[11]

> Section 108(2)(e) of the Act allows an owner of a beneficial interest in Māori freehold land to leave that interest by Will to a whangai. That is an exception to the Act's general prohibition on alienating undivided interests in Māori freehold land to persons outside of the preferred classes of alienees (section 148) – whangai are not, by definition, members of the preferred classes of alienees. Where there is a Will, the Court must first determine the person is a whangai in terms of section 115 of the Act, and then the Will applies. In my view the Court does not have a discretion to override the terms of the Will provided that the person is found to be a whangai. However, Kiriwai Ihaia did not leave a Will and the law must be applied in terms of an intestacy.
>
> Where there is an intestacy section 115 enables the Court to provide for a whangai child as if he or she were the natural child or legally adopted child of the deceased. This too is an "exceptions provision": it is an exception to the normal rules of intestacy (as provided for in section 109) whereby only the natural children or legally adopted children of the deceased can succeed to his or her interests in Māori freehold land. The purpose of the exception is to enable the Court to provide for whangai in terms of tikanga Māori. Therefore, as section 115 is an exceptions provision designed to accommodate tikanga Māori as it relates to whangai, the Court can only make an order under section 115 if it accords with tikanga Māori or, at least, does not offend tikanga Māori. I refer to the helpful discussion by the Māori Appellate Court in *Re An Appeal by Waimania Hohua* 10 APRO 43.

[38] In *Johnson v Stone*,[12] Judge Coxhead adopted the approach in *Karauti*:

> [26] If the Court finds that a person is a whāngai, then the Court must give effect to the provision of the will absolutely, without restriction or limitation.[13] The Māori Land Court, in *Karauti – George or Hori Kiwa Tukua*, held that section 115 cannot be used to limit the extent to which a person determined to be whāngai is entitled to the interests left to them in a will.[14] However, this would be different in the case of intestacy.

[39] In *Smith-Williams – Estate of Joseph Tukaki*, Chief Judge Isaac adopted a report by Judge Clark which followed a different approach:[15]

> 40. I note that in *Kake – Kiriwai Ihaia (Ruka) or Kiriwai Tai Hukuwai* (2007) 118 Whangarei MB 256 (118 WH 256) Judge Ambler suggested that where there is a Will, the Court must first determine that a person is a whāngai in terms of section 115 of the Act and then the Will applies. In his view the

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11 *Kake – Estate of Kiriwai Ihaia (Ruka) or Kiriwai Tai Hikuwai* (2006) 118 Whangarei MB 256 at [15]-[16].

12 *Johnson v Stone – Estate of Tamait (Poppy) Johnson* (2011) 13 Tairawhiti MB 251 (13 TRW 251).

13 *Karauti – Estate of George or Hori Kiwa Tukua* (2000) 116 Otorohanga MB 81 (116 OT 81) at MB 89.

14 Ibid.

15 *Smith-Williams – Estate of Joseph Tukaki* [2011] Chief Judge's MB 90 (2011 CJ 90) at [3].

> Court does not have the discretion to override the terms of the Will provided that the person is found to be a whāngai.
>
> 41. He went on to add that when there is an intestacy, s 115 enables the Court to provide for a whāngai child as if he or she were the natural child or legally adopted child of the deceased.
>
> 42. I interpret what Judge Ambler is saying to mean that in a situation in which a deceased dies leaving a Will, the Court must automatically apply the provisions of the Will, if an applicant successfully argues that they are the whāngai of a testator. That is, the Court has no discretion to award less than a full beneficial interest as contemplated by s 115(2)(b).
>
> 43. Whilst I respect the obiter comments of Judge Ambler, I do not agree. There is nothing in s 115 which indicates that the provisions of subsection (2) do not apply when a testator dies leaving a Will. There is nothing in s 115 which indicates that it is limited solely to a situation in which a person dies intestate. Indeed the opening words of s 115(1) state that the Court may make provision for whāngai "in the exercise of its powers under this Part of this Act in respect of any estate, …"
>
> 44. I interpret "this Part of this Act" to apply from s 108 on, through to the conclusion of Part 4 of the Act. My interpretation is that s 115 applies to both a situation in which a person dies leaving a Will and to a situation in which a person dies intestate.
>
> 45. In my opinion the approach a Court should take when considering whether a person is a whāngai following the death of a person who leaves a Will is:
>
> (a) First there must be an inquiry pursuant to s 115(1) as to whether or not that person is a whāngai;
>
> (b) Secondly if the Court accepts that a person is a whāngai of the testator, then the Court retains a discretion to award either a full beneficial interest pursuant to s 115(2)(a) or a lesser interest pursuant to s 115(2)(b).

[40] Ultimately these different approaches need to be resolved by the Māori Appellate Court. Despite that, I must make a determination on which approach to follow in this case.

[41] On behalf of Mr Retemeyer, Ms Thomas argues in favour of the approach set out in *Karauti*. She submits that as it is accepted that Mr Retemeyer is Tahuaka's whāngai, I should automatically grant orders pursuant to the terms of the will.

[42] Ms Takitimu, on behalf of the respondent, accepts that Mr Retemeyer is a whāngai. However, she argues that the Court must take the second step of determining whether Mr Retemeyer is entitled to succeed. She contends that I should find that Mr Retemeyer is not entitled to succeed, or if he is, then it should be to a life interest only.

[43] For the reasons set out below I agree with the approach in *Smith-Williams – Estate of Joseph Tukaki*.[16]

[44] Firstly, the wording of s 115 is clear that the application of that provision is not limited to intestate estates. Section 115(1) applies to the exercise of the Court's powers "under this Part of this Act". Part 4 of the Act deals with the administration of estates generally, both testate and intestate. Section 115(1) also applies with respect to "any estate". There is no limitation that the provision only applies on intestacy.

[45] Section 115(2) of the Act provides the second step of determining the extent of a whāngai's entitlement to succeed. This provision refers back to a determination under s 115(1) where "in any such case" the Court determines that a person has been recognised as a whāngai "for the purposes of this Part". Once again there is no limitation to intestacy.

[46] As such, there is nothing in the wording of s 115 of the Act which supports that these provisions only apply to intestate estates. Rather, s 115 is clear that it applies to the exercise of the Court's powers under Part 4 of the Act generally, with respect to any estate. This must include s 108 of the Act, and therefore, a disposition by will.

[47] Section 108(2)(e) is the specific provision which allows an owner to leave interests in Māori freehold land, by will, to a whāngai. Whāngai is defined in s 4 of the Act as "… a person adopted in accordance with tikanga Māori".

[48] As a result, the Court often hears expert evidence on the tikanga of the relevant hapū or iwi with respect to whāngai succession. Such evidence assists the Court in determining whether the whāngai is entitled to succeed in accordance with the relevant tikanga.

[49] While tikanga between hapū and iwi may vary, a common theme is that in order for a whāngai to succeed they must be related by blood to the deceased owner.[17] This is consistent with well known principles of tikanga that rights to land are regulated by whakapapa. This is not always the case and some hapū have a more flexible approach,

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16 *Smith-Williams – Estate of Joseph Tukaki* [2011] Chief Judge's MB 90 (2011 CJ 90).

17 For example, see the evidence given by Professor Milroy in *Hohua – Estate of Tangi Biddle or Hohua*, (2001) 10 Waiariki Appellate MB 43 (10 APRO 43) at MB 49-50.

allowing whāngai to succeed even where they are not related by blood to the deceased owner, depending on the circumstances of the case.[18]

[50] Section 115 of the Act is often applied to recognise and give effect to these principles. Where tikanga allows a whāngai to succeed if related by blood, and such a whakapapa exists, orders may be granted that the whāngai should succeed as if a natural child. Where tikanga requires a whakapapa connection, but none may exist between the whāngai and the deceased owner, the Court may nevertheless grant an order allowing the whāngai to succeed to a lesser extent, such as a life interest, although that may still be conditional on the views of the wider whānau.

[51] This approach allows the Court to recognise and uphold tikanga, by only granting full succession rights to whāngai where it is consistent with tikanga. This approach also allows some flexibility to recognise whāngai relationships, and to give effect to the wishes of the owners, by granting a life interest where that whāngai might not otherwise be entitled to succeed as if a natural child. This is also consistent with the overall objectives of the Act, as confirmed in the Preamble, ss 2 and 17, and in particular the objectives of promoting the retention of land in the hands of its owners, their whānau and their hapū, giving effect to the wishes of the owners, and promoting practical solutions.

[52] In my view, the approach set out in *Karauti* is not consistent with those objectives. If the approach in *Karauti* was adopted, this would mean that where there is provision for a whāngai in a will, he or she would automatically be entitled to succeed as if they were a natural child (depending on the terms of the Will). This would be the case even if the whāngai were not related by blood to the deceased owner, and such an order may not be consistent with the tikanga of the relevant hapū or iwi. This approach is at odds with the very definition of a whāngai being a person adopted *in accordance* with tikanga Māori.

[53] Alternatively, it could be argued that under the *Karauti* approach, such factors should be taken into account in determining whether or not a person is a whāngai. That is, if the whāngai is not entitled to succeed according to the tikanga of the relevant hapū or iwi, then the Court should take that into account in determining whether or not the person

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[18] For example, refer to the discussion on the tikanga of Ngāti Mahuta in *Karauti – Estate of George or Hori Kiwa Tukua* (2000) 116 Otorohanga MB 81 (116 OT 81) at MB 89.

is a whāngai for the purposes of s 108 of the Act. However, such an approach may create a two class system where a whāngai is not entitled to succeed pursuant to the terms of a will, but he or she may be entitled to succeed on intestacy (albeit to a lesser extent) given the flexibility allowed by s 115. Such an approach is illogical and cannot be correct.

[54] For these reasons, I find that the two step approach as set out in s 115 of the Act must apply to all estates, both testate and intestate, including the application of s 108 where there is a disposition by will.

Is Mr Retemeyer entitled to succeed in this case and if so to what extent?

[55] In considering whether a whāngai is entitled to succeed per s 115 of the Act, the starting point is to consider the tikanga of the relevant hapū or iwi associated with the lands in question. In the present case, it is accepted that Ngāti Mahuta is the hapū that associates with the Taharoa interests.

[56] Mr Retemeyer did not call any witnesses, or present evidence, on the tikanga of Ngāti Mahuta in relation to whāngai succession. However, there is evidence in the Court record as to the tikanga that applies.

[57] In *Karauti*, Judge Carter considered whether a whāngai should succeed to interests in Maketu C2B. Ngāti Mahuta is also the hapū associated with that block. Maketu C2B is located on the northern side of the Kawhia Harbour. The Taharoa interests are located on the southern side of the same harbour.

[58] In *Karauti*, expert evidence was presented on the tikanga of Ngāti Mahuta by the late Fred Kana and Dr Ngapare Hopa. Judge Carter summarised Mr Kana's evidence as follows:[19]

> Mr Kana is a [descendant] of Ngati Mahuta and affiliated to the Maketu Marae in Kawhia. In his Affidavit he confirmed his understanding that whangai in a general sense is the adoption of a child in accordance with tikanga Maori, that is where a child who is not a child of a person is raised by that person as though their own although no legal adoption has taken place. He went on to say that in the ordinary course of events whangai relationships will occur between members of the same bloodline or from within the same family or extended family. He then went on to say and I quote:

[19] *Karauti – Estate of George or Hori Kiwa Tukua*, (2000) 116 Otorohanga MB 81 (116 OT 81) at MB 85.

> "8. Notwithstanding the matters outlined in paragraph 6 above, where the child involved is not from the same bloodline or from within the same family or extended family, my understanding is that they could also be considered whangai. This is particularly true where the whangai relationship is strong and recognised by other members of the family and the community.
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> 9. In addition, whangai relationships can occur for various reasons. For example where a whangai parent raises their partner's child as their own or where there is a past association between families and an agreement is reached that one family will raise a child of the other family although the families involved are not blood relatives.
>
> 10. Contrary to the evidence given by Mr Tukua, I do not believe that it is Ngati Mahuta custom to only recognise as whangai those children adopted in accordance with tikanga Maori who are from the same bloodline or from within the same family or extended family.
>
> 11. As outlined in paragraph 8 above, I believe Ngati Mahuta would also recognise as whangai those children who are adopted in accordance with tikanga Maori who are not of the same bloodline or from within the same family or extended family. Particularly where the whangai relationship is strong and widely recognised.
>
> …
>
> 19. Given my understanding of the concept of "whangai" both in a general context and more specifically in relation to how Ngati Mahuta regard "whangai", I believe that the relationship between George and Kahu was a "whangai" relationship for the following reasons:
>
> (a) George and Kahu's mother Paapi had lived together in a de facto relationship;
>
> (b) George thought of Horo, Abraham and Kahu as his sons;
>
> (c) George and Kahu had a strong relationship which was widely recognised by family and the community as a "whangai" relationship;
>
> (d) I believe Kahu is of the same bloodline as George and is a member of the same extended family."

[59] Dr Hopa gave similar evidence. She also referred to examples of whāngai where there was no blood relationship, such as the practice of whāngai exchange between the Waikato Kahui Ariki (Royal house) and whānau/hapū that pay allegiance to it.

[60] In considering this evidence, Judge Carter found:[20]

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[20] *Karauti – Estate of George or Hori Kiwa Tukua*, (2000) 116 Otorohanga MB 81 (116 OT 81) at MB 87.

> In assessing the aforegoing evidence the Court concludes that custom generally favours whangai as being from a kin group. However both Mr Kana and Dr Hopa indicate that there are variations to that practice which mean that persons from outside kin groups can at times be recognised as whangai. In this regard Dr Hopa places considerable importance upon their recognition by whanau groups. I therefore find that the fact that the Court is unable to conclude that Te Kahuhui is related by blood to the late George Tukua does not rule out his recognition as a whangai.

[61] Although I have disagreed with the approach in *Karauti* regarding the application of s 115 of the Act where the deceased has left a will, that does not undermine the expert evidence which was presented in that case. The expert evidence in *Karauti* was also raised with the parties in the present case so that they had an opportunity to comment on it.

[62] Mr Retemeyer advised that he knew Fred Kana who was his first cousin. Mr Retemeyer also stated that he knows of Dr Hopa, although he doesn't know her personally. Mr Retemeyer considered that Mr Kana was a kaumatua within Ngāti Mahuta. Ms Loloa had also heard of Mr Kana but not Dr Hopa. Ms Loloa did not know whether Mr Kana was recognised as a kaumatua for Ngāti Mahuta.

[63] Rangi Witika was called by Ms Loloa to give evidence on Ngāti Mahuta tikanga. Ms Witika advised that she made inquiries with the Taharoa C Incorporation as to who is entitled to succeed to shares in the Incorporation. Ms Witika said that she was told that it was necessary for a person to be of the bloodline in order to succeed. Ms Witika knew Mr Kana, as he was her cousin, and she accepted that he was a kaumatua at Taharoa. When Mr Kana's evidence in the *Karauti* case was put to her, Ms Witika advised that was the first time that she was made aware of that evidence. However, she did not dispute the evidence and referring to it, said that she is "guessing it can be open to what you just read out".

[64] I consider that the evidence presented by Mr Kana and Dr Hopa in *Karauti* applies in this case.[21] Both Mr Retemeyer and Ms Witika accepted that Mr Kana is a kaumatua of Ngāti Mahuta. Ms Witika gave evidence that she had received advice from someone associated with the Taharoa C Incorporation that successors were required to be within the bloodline. However, it is not known who she spoke to. It is unclear whether Ms Witika was talking about whāngai or about succession generally. Also, she did not dispute Mr

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[21] Te Ture Whenua Māori Act 1993, s 69.

Kana's evidence, but appeared to accept his statements regarding the tikanga of Ngāti Mahuta.

[65] The evidence in *Karauti* shows that Ngāti Mahuta tikanga generally favours whāngai to be from within the kin group. Therefore I begin by assessing whether there is evidence that Mr Retemeyer belongs to the same kin group as Tahuaka.

[66] In the present case, the evidence shows that both Mr Retemeyer, and Tahuaka were members of Ngāti Mahuta. Tahuaka's father, Haane, was Ngāti Mahuta. Mr Retemeyer's biological mother, Hera Retemeyer, was also Ngati Mahuta. The s 40 report prepared by the Registrar shows that both Mr Retemeyer and Tahuaka trace their whakapapa to original owners in the parent Taharoa A block. Mr Retemeyer argued that given these connections, he must be related by blood to Tahuaka. However, he does not know the whakapapa to show a direct connection.

[67] There is no direct whakapapa evidence in this case showing the descent of Mr Retemeyer and Tahuaka from a common tupuna. However, I consider that the connections demonstrated in the evidence are sufficient to show that Mr Retemeyer and Tahuaka come from the same kin group which is connected to these lands in accordance with tikanga. I also consider that this is sufficient to comply with the tikanga requirements of Ngāti Mahuta in relation to whāngai as set out in the expert evidence in *Karauti.*[22]

[68] Mr Retemeyer can whakapapa to an original owner in the land and is a member of the Ngāti Mahuta hapū. Tahuaka is also a member of Ngāti Mahuta and can whakapapa to an original owner in the land. While I do not have direct evidence of the whakapapa relationship between them, it is clear that they come from the same hapū, that this hapū associates with these particular lands, and that they both whakapapa to original owners in these lands.[23]

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22 *Karauti – Estate of George or Hori Kiwa Tukua*, (2000) 116 Otorohanga MB 81 (116 OT 81).

23 See *Sade v Mahanga – Taiharuru 2A1* (2008) 7 Taitokerau Appellate MB 47 (7 APWH 47) where the Māori Appellate Court held that the association is with the land and not with any particular title to the land.

[69] In *Re Nuhaka 2E3C8A2B*, Judge Isaac (as he then was) found that rights to land are validated by whakapapa. He went on to state:[24]

> According to Tikanga Maori, right to land is validated by Whakapapa. The earlier the ancestor the stronger the right to that land. Land was claimed by Whakapapa because in accordance with Tikanga Maori all things were derived from the ancestors and were passed on to future generations. If a person can Whakapapa to an original owner or occupier of the land that person has a right to the land.

[70] The approach in *Re Nuhaka 2E3C8A2B* has been adopted in a number of decisions, including by the Court of Appeal in *Nicholas v Kameta*.[25] These principles further support the proposition that in this case, Mr Retemeyer is sufficiently connected to these lands in accordance with tikanga to succeed to Tahuaka's interests under her will.

[71] As such, I consider that Mr Retemeyer is a whāngai within the general tikanga of Ngāti Mahuta, and is entitled to succeed in this case as if a natural child.

[72] Even if I am wrong on that point, Mr Kana's evidence in *Karauti* is that Ngāti Mahuta would also recognise as whāngai those children who were adopted in accordance with tikanga Māori who are not of the same bloodline, particularly where the whāngai relationship is strong and widely recognised. I consider that this principle applies in the present case.

[73] Mr Retemeyer was raised by Tahuaka from a young age and their relationship was that of mother and son. Ms Loloa accepted that this was widely recognised amongst the whānau. Therefore, even if Mr Retemeyer did not come within the same bloodline, or was not within the same kin group, as Tahuaka, I consider that Mr Retemeyer is still entitled to succeed pursuant to one of the exceptions recognised within Ngāti Mahuta tikanga.

[74] Finally, I note that Mr Retemeyer is an existing owner in Taharoa A1C4, Taharoa A7A2A, Taharoa A7A2B, Taharoa A Sec 3B, Taharoa A2B2, Taharoa A7J13B2E, and Taharoa A7J13B2G. These interests are derived from the original Taharoa A block. Mr Retemeyer is also a shareholder in the Taharoa C Incorporation. While Mr Retemeyer has framed his case on the basis that he is a whāngai, s 108(2)(d) of the Act provides that other

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24 *Re Nuhaka 2E3C8A2B* (1994) 92 Wairoa MB 214 (92 WR 214) at MB 218.
25 *Kameta v Nicholas* [2012] NZCA 350, [2012] 3 NZLR 573.

owners of the land, who are members of the hapū associated with the land, are entitled to succeed to further interests in those lands by will.

[75] In *Sade v Mahanga* the Māori Appellate Court had to consider whether a prospective donee, Colleen Allan, came within the preferred class of alienee for the purpose of gifting shares in the Taiharuru 2A1 block. [26] Ms Allan was a direct descendant of Hohepa Mahanga who was an owner in the original Taiharuru parent block prior to Taiharuru 2A1 being created by partition. The Māori Appellate Court found that:

> [9] In this case Ms Allan would be within the kin group if she were "whanaunga of the alienating owner who is associated in accordance with tikanga Māori with the land." Clearly there are two separate requirements here but equally clearly Ms Allan falls within both and Ms Sade conceded as much before us. **It is to be noted that the association is with the land and not with any particular title to the land**. Ms Allan can whakapapa back to the tupuna Hohepa in the 1870s and there was a direct and complete legal relationship to the particular block in which we are concerned until 1943. As an uri of Hohepa Mahanga she would also be a descendant of a former owner who was a member of the hapū associated with the land. (Emphasis added)

[76] This decision demonstrates that the association is with the land and not with any particular title to the land. As such, association with a parent block is sufficient even though that parent block may have subsequently been partitioned by the Court.

[77] Therefore, even if Mr Retemeyer was not entitled to succeed as a whāngai, he would nevertheless be entitled to succeed to the Taharoa interests as an existing owner in Taharoa lands who is a member of the hapū associated with the land.

Are Mr Retemeyer's children entitled to succeed under the will?

[78] Kiri Retemeyer advised that she and two of her siblings, Moana and Roger, were raised by Tahuaka until they attended school. However, Mr Retemeyer has not argued that they were raised as Tahuaka's whāngai children. This is consistent with the evidence that Tahuaka saw them as her grandchildren rather than whāngai children.

[79] Instead, Mr Retemeyer argues that his children are related by blood to Tahuaka, and are members of the hapū associated with the land, and that they are therefore entitled to succeed per s 108(2)(c) of the Act.

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[26] See *Sade v Mahanga – Taiharuru 2A1* (2008) 7 Taitokerau Appellate MB 47 (7 APWH 47).

[80] As noted, there is no direct evidence in this case of a blood relationship between Mr Retemeyer and Tahuaka, although they are both members of Ngāti Mahuta, the hapū associated with the Taharoa interests. So too are Mr Retemeyer's children. I raised the following questions with the parties as to whether there is a blood connection between Tahuaka and Mr Retemeyer's children sufficient for the requirements of s 108(2)(c):[27]

(a) Does membership within the hapū of Ngāti Mahuta require descent from a paramount tupuna?

(b) If this is a requirement, is Mahuta a paramount tupuna?

(c) If Mahuta is a paramount tupuna, is such a whakapapa connection sufficient?

[81] Ms Thomas argued that membership of Ngāti Mahuta does not require descent from a paramount tupuna. She argued that if a person can trace their whakapapa to an original owner in the land, and the land is acknowledged to be of a particular hapū, then that person is a member of the hapū.

[82] Ms Takitimu argued that Mahuta may well be the eponymous ancestor of Ngāti Mahuta, however, there is insufficient evidence to establish that in this case. Ms Takitimu contends that while it may be possible that membership within Ngāti Mahuta requires descent from a common tupuna, this cannot be assumed. She argued that there may be exceptions to such an approach, and that the applicant should have established such principles in evidence if he sought to rely on them.

[83] In *Nicholas v Kameta*,[28] the Māori Appellate Court considered the application of s 108(2)(c) of the Act. The Court found:[29]

> [45] The whakapapa in this case does not go back as far as the founding ancestor of Waitaha tūturu before there is a common link, but it is not far from it. What is important is that it records that the land was devolved as a taonga tuku iho through a whakapapa line from which both the Nicholas children and Mr Kameta descend.

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27 128 Taitokerau MB 97 (128 TTK 97).

28 *Nicholas v Kameta - Estate of Whakaahua Walker Kameta* [2011] Maori Appellate Court MB 500 (2011 APPEAL 500).

29 Ibid at [45]-[47].

> Whakapapa and blood descent are as much a taonga tuku iho as land is. This whakapapa also demonstrates a blood relationship exists between these people and it demonstrates membership of the hapū associated with the land.
>
> [46] Where we believe the lower Court erred was in discounting the importance of this whakapapa in establishing a blood relationship. Rather it engaged in counting generations and measuring degrees of [consanguinity], finishing with an assertion, that "in the rituals of encounter, it would be extreme indeed to go back nine to thirteen generations to find a link." While we acknowledge that the degrees of relationship through whakapapa will always be a relevant consideration, in this case we do not consider the link to be so tenuous as to discount a connection by blood which satisfies the statutory provisions.
>
> [47] What is needed is that a person or persons to whom a devise is made are related by blood relevant to the land in question. This can be established once uncontested whakapapa is produced. In other words, speaking hypothetically, if the parties were related by blood on their Te Ārawa side to the hapū connected with the land then a blood relationship would be self evident. For [argument's] sake, if the parties were both Ngāti Pikiao and the land concerned was a well known Ngāti Pikiao block, then the requirements of s 108 would be satisfied. Conversely if the parties were related on their Ngāti Pikiao side but the Will-maker alone was also Ngāti Whakaue and the land to be left by Will was unquestionably Ngāti Whakaue, then the fact that they are related by blood is insufficient to satisfy the two-limb test of being related by blood and also being members of the hapū associated with the land. Similarly, if the parties were related only on their Mataatua side and the land was Te Ārawa then being related by blood is insufficient to comply with s 108 of the Act.

[84] This approach was subsequently upheld by the Court of Appeal:[30]

> The Māori Appellate Court, correctly in our judgment, adopted a conjunctive approach to the construction of s 108(2)(c) in finding that a blood relationship will be established where the parties can show a whakapapa connection to the testator, even if distant, providing that that connection satisfies what is called "the associational relationship" of shared bloodlines and being part of the same hapu which once held collective ownership of the land. Notably, a hapu consists of a number of whanau bound by strong kinship ties and the whakapapa principle, where particular importance is attached to "being born into the group". It was not enough in this case that Mr Kameta and the Nicholas children shared a common ancestor; what was decisive was the devolution through a whakapapa link or relationship by blood within a hapu which was relevant to the land in question. That conclusion is reinforced by the Māori Appellate Court's finding, not challenged on appeal, that the Nicholas children were in fact members of the same functioning hapū as Mr Kameta.

[85] The approach by the Māori Appellate Court in *Nicholas v Kameta* suggests that membership within the hapū associated with the land may well be sufficient to establish entitlement for succession. However, it is clear in both the decisions of the Māori Appellate Court and the Court of Appeal that the person seeking to succeed pursuant to s

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30 *Kameta v Nicholas* [2012] NZCA 350, [2012] 3 NZLR 573 at [31] (footnotes omitted).

108(2)(c) must establish both limbs: that they are related by blood to the deceased, and are members of the hapū associated with the land.

[86] Membership within hapū or iwi customarily relies on whakapapa, usually from an eponymous ancestor. However, that cannot be assumed. The fact that Mr Retemeyer and Tahuaka are both members of Ngāti Mahuta may well mean that they are related by blood, but there is no direct evidence to confirm that in the present case.

[87] I do not discount the possibility that membership of the hapū associated with the land may well establish a blood connection to the deceased owner in a particular case. Descent from a common tupuna, who is the eponymous ancestor of the hapū associated with the land, may well be sufficient to show that a person is related by blood within s 108(2)(c) of the Act, where the evidence demonstrates that the land was devolved as a taonga tuku iho through a whakapapa line from which both the testator and successor descend. Such an approach is consistent with the findings in *Nicholas v Kameta.*[31] However, there is insufficient evidence to make such a finding in this case, particularly in light of Ms Thomas' argument that membership within Ngāti Mahuta does not require descent from a common tupuna. Whether intended or not, such a submission casts further doubt on whether Mr Retemeyer's children are entitled to succeed in this case.

[88] Finally, I do not accept Ms Thomas' submission that a person is a member of a hapū simply because they can whakapapa to an original owner in a block of land, and that land is acknowledged to be associated with a particular hapū. Such an approach cannot be correct. For example, a person may be a member of Ngāti Whakaue and Ngāti Mahuta. That person may also be an owner in Ngāti Mahuta lands. On Ms Thomas' approach, the owners' Ngāti Whakaue whanaunga would automatically be members of Ngāti Mahuta because they can whakapapa to an owner in Ngāti Mahuta lands. Such an argument cannot be correct. Whakapapa to an original owner may provide evidence of hapū membership but it is not automatic and must be tested by the circumstances of the case.

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[31] *Nicholas v Kameta - Estate of Whakaahua Walker Kameta* [2011] Maori Appellate Court MB 500 (2011 APPEAL 500).

[89] The onus is on those seeking to succeed to establish that they are entitled to do so. In this case Mr Retemeyer's children have not discharged that onus and the gift to them per cl 3(b) of the will must fail.

[90] As that gift has failed, those interests fall into the residuary estate.[32] Pursuant to cl 4 of the will, the residuary estate goes to Mr Retemeyer. I have already found that Mr Retemeyer is entitled to succeed to the Taharoa interests and accordingly he is entitled to succeed to the additional shares in the Taharoa C Incorporation that were intended for his children. As Mr Retemeyer is entitled to succeed as if a natural child, his children would be entitled to succeed to those interests in due course.

Waipipi Lot 358A

[91] As noted, there is no opposition that Mr Retemeyer is entitled to succeed to Tahuaka's shares in the Waipipi block. Despite that, I must still be satisfied that Mr Retemeyer is entitled to succeed per s 108 of the Act.

[92] It is accepted that Ngāti Te Ata is the hapū associated with the Waipipi block. Tahuaka is Ngāti Te Ata through her mother Hariata. Tahuaka received her interests in the Waipipi block from her maternal grandmother, Mere Wharetirara Paora.[33]

[93] Evidence was not presented as to the tikanga of Ngāti Te Ata in relation to whāngai. Mr Retemeyer filed an email from Nganeko Minhinnick dated 26 February 2016 which states:

> With regard to whangai, generally they did not inherit even though their parents may have loved them as their own. However a WILL probably makes a big difference. [sic]

[94] This statement is inconclusive. Mrs Minhinnick was not called to present evidence and it appears that her comments in the aforementioned email were preliminary in nature.

[95] Evidence has been presented that Mr Retemeyer is connected to Ngāti Te Ata, and the Waipipi block.

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32 See Te Ture Whenua Māori Act 1993, s 108(5).
33 27 Auckland MB 234 (27 AK 234).

[96] Mr Retemeyer's sister, Horakiuta Herangi, gave evidence that Hineku is her great grandmother on her mother's side. Hineku was Ngāti Te Ata. She married Turanga King from Ngāti Mahuta. As such, Mrs Herangi advised that she and Mr Retemeyer are also members of Ngāti Te Ata on their mother's side.

[97] Mrs Herangi advised that their whānau are also shareholders in the Waipipi lands. Mrs Herangi is an owner in the Parish of Waipipi Lot 369B block. She is also a trustee on the Ahu Whenua Trust which administers that block. The Parish of Waipipi Lot 369B block is located a short distance from Waipipi Lot 358A.

[98] Mrs Herangi said that Mr Retemeyer is not an owner in that block. However, he shares the same connections and whakapapa to those lands as she does through their maternal great-grandmother.

[99] Despite that, Mrs Herangi was unable to provide a whakapapa connection showing a direct link between Mr Retemeyer and Tahuaka on their Ngāti Te Ata side. It may be that they are related by blood as descendants of Te Ata-i-Rehia. However, there is insufficient evidence to establish that in the present case.

[100] As there is no evidence as to the tikanga of Ngāti Te Ata in relation to whāngai succession, and no evidence that Mr Retemeyer is related by blood to Tahuaka, I am unable to find that Mr Retemeyer is entitled to succeed to the interests in the Waipipi block. In the normal course of events, this part of the application would be dismissed. However, there are special circumstances in this case which mean that it is not appropriate to do so.

[101] If the will fails with respect to the interests in the Waipipi block, those interests would go to Ms Loloa on intestacy as the only child of Tahuaka's deceased siblings.[34] However, Ms Loloa is not seeking to succeed to those interests. Her only claim is to the Taharoa interests. Given these special circumstances, I consider that Mr Retemeyer should have a further opportunity to present evidence on whether he is entitled to succeed to the interests in the Waipipi block.

[102] Accordingly, this part of the application will be set down for further hearing.

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[34] Te Ture Whenua Māori 1993, s 109.

Decision

[103] I grant the following orders pursuant to Te Ture Whenua Māori Act 1993:

(a) Section 115 determining that Buster Retemeyer is recognised as a whāngai of Tahuaka Waipouri (nee Ngakete) and is entitled to succeed to the interests set out below as if he had been a natural child of the deceased;

(b) Section 113 determining that Buster Retemeyer is entitled to succeed to Tahuaka's interests in:

(i) Taharoa A Section 3B;

(ii) Taharoa A Section 3D;

(iii) Taharoa A Section 6D No. 1;

(iv) Taharoa A7J13B2G; and

(v) Taharoa C Incorporation;

(c) Section 118 vesting those interests in Buster Retemeyer; and

(d) Section 242 for payment of any funds held with respect to those interests in favour of the deceased to Mr Retemeyer.

[104] The application for succession to Tahuaka's interests in Waipipi Lot 358A is to be set down for further hearing on a date to be confirmed by the Registrar.

Pronounced at Whangarei at 11.30 am this 9th day of May 2016.

M P Armstrong
JUDGE