

**I TE KOOTI WHENUA MĀORI O AOTEAROA  
I TE ROHE O AOTEA**

*In the Māori Land Court of New Zealand  
Aotea District*

**A20140012470  
CJ 2014/30**

**WĀHANGA**  
*Under*

Section 45 of Te Ture Whenua Māori Act 1993

**MŌ TE TAKE**  
*In the matter of*

Te Ringahuia Rangitakatu

**CLAUDE KETU and NINA PILKINGTON**  
Ngā kaitono  
*Applicants*

**Nohoanga:** 12 July 2019, 2019 Chief Judge's MB 939-947  
*Hearing* (Heard at Tokaanu)

**Kanohi kitea:** Mr Watson for the applicants  
*Appearances*

**Whakataunga:** 24 January 2020  
*Judgment date*

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**TE WHAKATAUNGA Ā TE KAIWHAKAWĀ MATUA W W ISAAC**  
*Judgment of Chief Judge W W Isaac*

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### **Hei timatanga kōrero - Introduction**

[1] On 7 August 2018, at 2018 Chief Judge's MB 237 the Court made orders pursuant to Te Ture Whenua Māori Act 1993:<sup>1</sup>

- (a) Under s 44(1) amending succession orders at 33 Tokaanu MB 251-252 to properly reflect the intention of the testator, Te Ringahuaia Rangitakatu;
- (b) Under s 44(1) requiring that matters relating to ownership of the house on Tokaanu B2C4B No 2A (the land) be completed by filing an application pursuant to s 18(1)(a) in the Aotea Māori Land Court;
- (c) Under s 47(4) making the required consequent amendments to Court orders; and
- (d) Under s 332(1)(a) and (b) requiring a full survey of the land.

[2] The background to this matter is set out in that decision and I do not intend to repeat it here.

### **Ngā kōrero o ngā pāti – Submissions of the parties**

[3] On 10 November 2018, the Court received a letter from Sarita Hug on behalf of Te Iria Ida Kaipara. In this letter, Ms Hug responded to a proposal received from Mr Te Waa via his lawyer, Mr Leo Watson. The proposal set out an agreement that the house on the land was built by Te Iria and belongs to her; Mr Te Waa requested that the house be removed from the land and the land be repaired to good working order. Ms Hug in her letter stated that the partition of Tokaanu B2C4B No 2A and the adjacent Tokaanu B2C4B No 2B has not been completed as no survey occurred to “legally define” the land. For that reason, Ms Hug submitted that these blocks remain one large block and both houses belong to the owners of Tokaanu B2C4B No 2B. However, as the case related to Te Ringahuaia's will, Ms Hug maintained that the house to be surveyed and the house at issue is the one on the parent block which was built by Te Ringahuaia. She asks that only this house be surveyed and the house which was built by Te Iria be left alone.

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<sup>1</sup> *Ketu – Te Ringahuaia Rangitakatu* [2018] Chief Judge's MB 237 (2018 CJ 237) at [16].

[4] Counsel for the applicant responded to by way of memorandum of counsel on 13 November 2018. Mr Watson submitted that despite no survey having been conducted, the boundaries of the land blocks are well known. Mr Watson concluded that my orders under s 45 clearly related to Tokaanu B2C4B No 2A and this encompasses the house built by Te Iria. Despite a reasonable offer to remedy the situation relating to the house, Ms Hug and her whānau now appear to counsel to be avoiding completing the orders. Mr Watson sought Court direction allowing him to engage a surveyor at the expense of the Court, for access to the land in order to conduct the survey and for the survey to be filed with the necessary offices in order finalise the titles.

[5] On 14 November 2018, I convened a telephone conference with the parties including Mr Watson as counsel for Claude Te Waa (the applicant) and Mrs Virginia Church, Ms Daniella Cesca and Ms Hug.<sup>2</sup> The attendees discussed whether an application under s 18(1)(a) was required as ownership of the house had been determined in favour of Te Iria Ida Kaipara on 13 May 1994.<sup>3</sup> Parties also questioned who would carry the cost of the survey ordered. I determined that further directions would issue when Mr Watson had sought instructions and filed submissions.

[6] After seeking instruction, counsel filed a further memorandum dated 21 January 2019 responding to a number of issues raised in the 14 November telephone conference. Various, Mr Watson questioned the standing of Ms Cesca, Ms Hug and Ms Church and requested they file notice of intention to appear in the usual way. He also noted his agreement to filing for under s 67 of the Act for a judicial conference and a site visit to the land. As regards the 1994 order determining ownership of the house in favour of Ms Kaipara, counsel submitted that there is no need for any further application under s 18(1)(a). The original application under s 45 requested that amendments be made to the 1994 order to reflect the true ownership of the land and the fact that Mr Te Waa was never consulted. Mr Watson submitted that the orders at 2018 Chief Judge's MB 237 be amended to require matters of ownership be determined by application under s 67. On that basis, counsel requested that a judicial conference be held in Tokaanu, a site visit be undertaken, and submissions be made on the remaining steps for conclusion of the application under s 45, including the possibility of mediation. Mr Watson also made submissions regarding the confusion raised by the

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<sup>2</sup> [2018] Chief Judge's MB 818 (2018 CJ 818).

<sup>3</sup> 39 Aotea MB 110 (39 AOT 110).

respondent parties as to which house is the subject of the will and my orders. He maintains that the house erected by Te Iria on Tokaanu B2C4B No 2A and which was subject to the 1994 order is the only house in question. The house on Tokaanu B2C4B No 2B was built by Te Ringahuia but was not the house referred to in the relevant sections of her will. Mr Watson submitted that substantive material filed by the respondents after the decision of the Court should not be accepted and requested a site visit be held prior to the survey.

[7] On 25 February 2019, the Court received submissions from the respondents in response to the 21 January 2019 memorandum of Mr Watson. In these submissions, Ms Hug maintains that the house to be surveyed and the house at the centre of these proceedings is that built by Te Ringahuia which is located on Tokaanu B2C4B No 2B. Following this survey, the respondent submits that Mr Te Waa will be able to have sole title for “the partitioned Whenua, where our kuia Te Ringahuia’s proper Whare is.” The respondents rely on a 2015 email from Nina Pilkington, daughter of Claude Te Waa, as proof of their assertions. The respondents refuse to file notices of intention to appear on the basis that they are haukainga of the land in question and acting on behalf of their relative, Te Iria. Mrs Church suggested that Te Iria be granted 12 months to discuss a share swap with whanau that would enable her to own some land for her house.

[8] On 5 March 2019, Mr Watson on behalf of Mr Te Waa filed an application pursuant to s 67 for a judicial conference and site visit of Tokaanu B2C4B No 2A to address the confusion surrounding the house and land referred to in Te Ringahuia’s will and to deal with remaining matters arising from the application under s 45.

[9] On 12 July 2019, the requested site visit was made.<sup>4</sup> This was attended by Deputy Registrar Majurey and Deputy Registrar Dittmer of the Māori Land Court, Mr Watson, Nina Pilkington, Ms Church, Ms May Gay, Ms Hug, Ms Ataahua Pilkington, Ms Diana Manihera, Ms Ellen van Nistelrooy, and Ms Lani Ketu. The attendees walked the boundary of Tokaanu B2C4B No 2B and observed Te Ringahuia’s house, they were also able to see across to Tokaanu B2C4B No 2A where Te Iria’s house is located. Ms Church asserted that that Te Ringahuia’s house ought to have been built on Tokaanu B2C4B No 2A, in the place where Te Iria’s house is currently located. Counsel for the applicant disputed that assertion, stating

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<sup>4</sup> [2019] Chief Judge’s MB 939-948(2019 CJ 939-948).

that Te Ringahua's house was built before Tokaanu B2C4B No 2A was partitioned out of the larger block. He stated that the confusion between the parties arises from the will, which refers to another house that was to be built on Tokaanu B2C4B No 2A; that house was not built before Te Ringahua's death. All parties agreed that the house on Tokaanu B2C4B No 2A was built by and is owned by Te Iria.

### **Whakataunga - Decision**

[10] Having reviewed the submissions of counsel, I agree that there is no need for a further application under s 18(1)(a) to determine ownership of the house on the land. The order made at 39 Aotea MB 110 finding the house is the sole property in law and equity of Te Iria Ida Kaipara is unaffected by my decision under s 45. Additionally, all parties who attended the site visit agreed that the house on Tokaanu B2C4B No 2A belongs to Te Iria. If any parties do not agree that the house on the land belongs to Te Iria, my order at 2018 Chief Judge's MB 237 still stands and that matter can be determined by application to the Māori Land Court.

[11] For the sake of the respondent parties, I reiterate my conclusion under s 45: the interest in the land was to be vested in Claude Te Waa solely on marriage of his whāngai siblings. I have ordered the succession and Court records be updated to reflect that. Mr Te Waa is therefore within his rights to request that the house on his land be removed. If amicable terms cannot be reached between the parties, Mr Te Waa and his counsel may file for injunction with the Aotea Māori Land Court office. All parties may wish to consider the decision of the Māori Appellate Court in *Hohepa v Banks* in relation to any potential injunction.<sup>5</sup>

[12] In a further memorandum of counsel dated 29 November 2019, Mr Watson noted that the title of the land has not been updated to reflect my orders under s 45. I direct that Court staff immediately complete those orders.

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<sup>5</sup> *Hohepa v Banks – Waima C30A and Waima Tōpū B Blocks* [2019] Māori Appellate Court MB 629 (2019 APPEAL 629).

[13] On completion of the above orders, there will be no need for further order of the Court for access to the land in order to complete the survey. For that reason I expect that this matter is now concluded.

[14] The case manager is directed to distribute this decision to counsel and all parties.

I whakapuaki i te 3.00pm i Te Whanganui-a-Tara te 24 o ngā rā o Hānuere te tau 2020

W W Isaac  
**CHIEF JUDGE**