

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

**A20190007457
CJ 2019/25**

UNDER Section 45 of Te Ture Whenua Māori Act 1993

IN THE MATTER OF Maketu A Section 39 Block and Lot 2 Deposited
Plan South Auckland 25586 (formerly known as
Maketu A Section 42C Block) and orders made at
236 Rotorua MB 46 on 6 September 1994

BETWEEN RUBY TE PAE CLARKE
Applicant

AND JEANNIE LOUISA OVERINGTON
Respondent

Judgment: 3 February 2020

JUDGMENT OF CHIEF JUDGE ISAAC

Introduction

[1] Ruby Te Pae Clarke (the applicant) makes application under s 45 of Te Ture Whenua Māori Act 1993 (the Act), to:

- a) amend the Registrar's entry of status orders made on 6 September 1994 at 236 Rotorua MB 46 relating to Maketu A Section 39 Block and Lot 2 Deposited Plan South Auckland 25586 (formerly known as Maketu A Section 42C Block) (the lands); and
- b) cancel subsequent succession orders made on 1 November 2007 at 318 Rotorua MB 3-11 relating to Robert Raupatu Clarke and on 1 June 2017 at 163 Waiariki MB 231-236 relating to Rawinia Jeannie Clark-Brayshaw.

[2] The applicant claims that the said orders are incorrect because of an error made by the Registrar of the Māori Land Court in wrongfully recording the decision of the Court made on 6 September 1994, by awarding one equal share each to herself and her husband, Robert Raupatu Clarke, as tenants in common in the subject lands.

[3] The applicant claims that she has been adversely affected by the orders complained of as the lands were settled as a joint family home and upon the death of her husband, Robert Raupatu Clarke, she should have become the sole owner as the surviving joint tenant.

Background

[4] The Registrar's Preliminary Report and Recommendation (the Report) dated 6 December 2019 sets out the background to the application. The Report is reproduced in full as follows:

PRELIMINARY REPORT AND RECOMMENDATION

Introduction

1. This application has been filed by Ruby Te Pae Clarke (the applicant) and seeks to:

- a) amend the Registrar's entry of status orders made on 6 September 1994 at 236 Rotorua MB 46 relating to Maketu A Section 39 Block and Lot 2 Deposited Plan South Auckland 25586 (formerly known as Maketu A Section 42C Block); and
 - b) cancel subsequent succession orders made on 1 November 2007 at 318 Rotorua MB 3-11 relating to Robert Raupatu Clarke and on 1 June 2017 at 163 Waiariki MB 231-236 relating to Rawinia Jeannie Clark-Brayshaw.
2. The applicant claims that the said orders are incorrect due to an error made by the Registrar of the Māori Land Court in wrongfully recording the decision of the Court made on 6 September 1994, by awarding a half-share in the subject lands to Robert Raupatu Clarke.
3. The applicant claims that she has been adversely affected, by the orders complained of, upon the grounds that:
- a) The applicant as sole owner settled on herself and her husband Robert Raupatu Clarke the lands Maketu A 39 and Lot 2 DPS25586 formerly part Maketu A 42C as a joint family home registered under BO82822.2, 22 May 1992.
 - b) Judge Hingston granted the application of the applicant and her husband to change the status of Maketu A 39 and Lot 2 DPS25586, formerly part Maketu A 42C, from General Land to Maori Freehold Land. Judge Hingston was not asked to and clearly did not cancel the joint family home and did not award a half share in the land to the applicant's husband.
 - c) Robert Raupatu Clarke did not purport to vest or bequeath these half shares during his lifetime and died intestate.
 - d) The applicant had no knowledge of the breach of the Registrar's duty, by the Registrar wrongly recording that Judge Hingston in his decision awarded a half share in the said lands and she continued to reside on the land, paying rates, insurance premiums and maintaining the lands and improvements, as she had done since 1982, secure in the knowledge that she was the sole owner of the lands.
 - e) The Maori land Court wrongly accepted as correct the Registrar's breach of duty in incorrectly recording the decision of Judge Hingston and made the succession orders in respect of the share of Robert Raupatu Clarke in each of the lands recorded in the abovenamed minute books.
 - f) The applicant has been left with the burden of applying to the Chief Judge to remedy the breach of the Registrar's duty in wrongly recording the decision of Judge Hingston in September 1994 and causing the subsequent succession orders of the share of Robert Raupatu Clarke so recorded to be made.

4. The applicant claims that she has been adversely affected by the breach of duty by the Registrar in wrongly recording the decision of Judge Hingston and causing the subsequent succession orders to be made. The applicant is further affected by being at present only a half owner in her own home.

Concise history of Orders sought to be amended/cancelled

5. The applications for change of status were heard by the Court on 6 September 1994 at 236 Rotorua MB 46. A copy of the minute is reproduced below:

31 & 32 MAKETU A SEC 42C AND 39 - s 133/93

Court: The applications before the Court concern Maketu A Sec 42C block and Maketu A Sec 39 they are both applications by Mr Clarke and his wife to change the status from its he present status of General land to Maori land. In respect of each application there will be an order 133/93 changing the status as sought in the application. Copy of minutes to the applicants.

6. The Court made the following orders:
- a) section 133 of Te Ture Whenua Māori Act 1993 (the Act), declaring that the status of Maketu A Section 39 shall cease to be that of General Land and shall become Māori Freehold Land; and
 - b) section 131 of the Act, determining that the land known as Maketu A Section 42C Lot 2 on Deposited Plan S 25586 is Māori Freehold Land.
7. Ownership data subsequently entered into the Māori Land Court record is reproduced as follows:

| MAKETU A SECTION 39 | | | |
|--|-------------------------|---|-----------------|
| 531 Square Metres | | | |
| Robert Raupatu Clarke | 236 ROT 46 | m | 1.000000 |
| Ruby Te Pae Clarke | 236 ROT 46 | f | 1.000000 |
| TOTAL NUMBER OF OWNERS 2 | TOTAL NUMBER OF SHARES: | | <u>2.000000</u> |
| List compiled to 06.09.94 | | | |
| <i>Data captured block 6.8.98. block 10.8.98</i> | | | |

MAKETU A SECTION 42C

911 Square Metres

| | | | |
|-----------------------|------------|---|----------|
| Robert Raupatu Clarke | 236 ROT 46 | m | 1.000000 |
| Ruby Te Pae Clarke | 236 ROT 46 | f | 1.000000 |

| | | |
|--------------------------|-------------------------|----------|
| TOTAL NUMBER OF OWNERS 2 | TOTAL NUMBER OF SHARES: | 2.000000 |
|--------------------------|-------------------------|----------|

List compiled to 06.09.94

*Kaka captured to Lake 4-8-98.
2ND ENTRY DONE 5/8/98 Kaka.*

8. On 1 November 2007 at 318 Rotorua MB 3-11 the Court made an order under sections 113 and 118 of the Act, vesting the 1.0 share held by Robert Raupatu Clarke in both Maketu A Section 39 and Lot 2 Deposited Plan South Auckland 25586 in his daughter, Rawinia Jeannie Clark-Brayshaw, solely.
9. The Court minute records that Robert Raupatu Clarke:
 - a) died on 28 August 2006;
 - b) did not leave a Will or any assets which required a grant of administration;
 - c) married Ruby Te Pae Clarke; and
 - d) had two children, namely Rawinia Jeannie Clarke-Brayshaw and Annetta Joy Tapsell (legally adopted).

An extract from the Court Minute states:

“By letter dated 20 August 2007 Annetta Joy Clarke has stated that she was legally adopted by Robert (Raupatu Pikau Karaka) Clarke and Ruby Te Pae Clarke. And acknowledges that she is not blood related to the Clarke Whanau and does not wish to make any claims from any of her adopted fathers shares.

By letter dated 24 August 2007 Ruby Te Pae Clarke wishes to surrender her life interest to this succession application for Raupata Robert Clarke or Karaka.”

10. On 1 June 2017 at 163 Waiariki MB 231-236 the Court made an order under sections 113 and 118 of the Act, vesting the 1.0 share held by Rawinia Jeannie Clark-Brayshaw in both Maketu A Section 39 and Lot 2 Deposited Plan South Auckland 25586 in her daughter, Jeannie Louisa Overington, solely.
11. The Court minute records that Rawinia Jeannie Clark-Brayshaw:
 - a) died on 3 December 2016;
 - b) left a Will dated 18 October 2006 devising the residue of her estate to her daughter, Jeannie Louisa Brayshaw; and
 - c) had one child, namely Jeannie Louisa Overington.

Identification of evidence that may be of assistance in remedying the mistake or omission

- 12. The applicant has provided a copy of the Court minute dated 6 September 1994 at 236 Rotorua MB 46.

Court Research

Maketu A Section 39 Block

- 13. Original Application No.38814 was received by the Māori Land Court on 6 July 1994. The application records the grounds for seeking a change of status as being *"to retain ownership within the family"*. Certificate of Title SA43B/447 was the only document filed in support and is reproduced as follows:

References
 Prior C/T 14B/822
 Declaration of Lease H.854189
 Transfer No.
 Order No.

Land and Deeds 69



CERTIFICATE OF TITLE UNDER LAND TRANSFER ACT

This Certificate dated the 23rd day of March one thousand nine hundred and eighty nine under the seal of the District Land Registrar of the Land Registration District of SOUTH AUCKLAND

WITNESSETH that RUBY TE PAE CLARKE of Te Puke married woman

Is seized of an estate in fee-simple (subject to such reservations, restrictions, encumbrances, liens, and interests as are notified by memorial underwritten or endorsed hereon) in the land hereinafter described, delineated with bold black lines on the plan hereon, be the several admeasurements a little more or less, that is to say: All that parcel of land containing 531 SQUARE METRES more or less situated in Block VI Te Tumu Survey District being Maketu A Section 39 Block

No. 43 B / 447


 ASSISTANT LAND REGISTRAR

THIS CERTIFICATE OF TITLE IS AFFECTED BY THE FOLLOWING INTERESTS AS AT DATE OF ISSUE

The within land has no frontage to a public road

S.560262 Status Declaration the within land has ceased to be Māori Land - 9.6.1972 at 11.00 o'clock

n.082622.2 Settled under the Joint Family Homes Act 1964 on Robert Raupatu Clarke of Te Puke retired and Ruby Te Pae Clarke abovenamed his wife - 22.5.1992 at 2.25 o'clock
depono
 for R.H.R.

A.L.R.

2
DPS 25586

Maketu
A Sec.39
531 m²

Pt A37
ML21074

A38
ML15308^s

Measurements are Metric

No. 43 B / 447

Lot 2 on Deposited Plan S.25586 and being Maketu A Section 42C Block

14. Original Application No.38813 was received by the Māori Land Court on 6 July 1994. The application records the grounds for seeking a change of status as being “to retain ownership within the family”. Certificate of Title SA27A/1126 was the only document filed in support and is reproduced as follows:

Land and Deeds 69

References
Prior C/T 14B/821

Transfer No.
N^o 148/821


S

CERTIFICATE OF TITLE UNDER LAND TRANSFER ACT

This Certificate dated the 7th day of August one thousand nine hundred and eighty one under the seal of the District Land Registrar of the Land Registration District of SOUTH AUCKLAND

WITNESSETH that WICKLIFFE TAPSELL of Maketu freezing worker and TE PAU TAPSELL his wife are seized of an estate in fee simple as tenants in common in common in equal shares

(subject to such reservations, restrictions, encumbrances, liens, and interests as are notified by memorial underwritten or endorsed hereon) in the land hereinafter described, delineated with bold black lines on the plan hereon, be the several admeasurement a little more or less, that is to say: All that parcel of land containing 911 SQUARE METRES more or less being Lot 2 on Deposited Plan S.25586 and being Maketu A Section 42C Block


B. Lloyd
ASSISTANT LAND REGISTRAR

B.373672 Transfer to Te Pau TapSELL abovenamed produced 30.10.1981 at 9.07 o'clock
Redgrave
for A.L.R.

B.082822.1 Evidence that the correct name of the registered proprietor is Ruby Te Pae Clarke - 22.5.1992 at 2.25 o'clock
Alphons
for M.L.R.

B.082822.2 Settled under the Joint Family Homes Act 1964 on Robert Raupatu Clarke of Te Puke retired and Ruby Te Pae Clarke abovenamed his wife - 22.5.1992 at 2.25 o'clock
Alphons
for M.L.R.

Bik VI Te Tumu S.D.



Measurements are Metric

No. 27A/1126

15. The following interest is recorded on both Certificate of Title SA43B/447 and Certificate of Title SA27A/1126:

B.082822.2 Settled under the Joint Family Homes Act 1964 on Robert Raupatu Clarke of Te Puke retired and Ruby Te Pae Clarke abovenamed his wife - 22.5.1992 at 2.25 o'clock

Land Information New Zealand Research

Maketu A Section 39 Block

16. LINZ Record of Title SA43B/447 is currently recorded as Māori Freehold Land, registered in the names of Robert Raupatu Clarke and Ruby Te Pae Clarke. Interests noted on the title include:

B082822.2 Settled under the Joint Family Homes Act 1964 - 22.5.1992

B461027.1 STATUS ORDER DECLARING THAT THE STATUS OF THE WITHIN LAND SHALL CEASE TO BE GENERAL LAND AND SHALL BECOME MAORI FREEHOLD LAND - 21.1.1998

Lot 2 Deposited Plan South Auckland 25586

17. LINZ Record of Title SA27A/1126 is currently recorded as General Land, registered in the names of Jeannie Louisa Overington and Ruby Te Pae Clarke as responsible trustees jointly, no survivorship. Interests noted on the title include:

7273546.1 Status order declaring that the status of the within land shall cease to be Maori Freehold Land and shall become General Land - 14.3.2007

7507485.1 Mortgage to Westpac New Zealand Limited - 20.8.2007

11156667.1 CAVEAT AGAINST THE SHARE / INTEREST OF RUBY TE PAE CLARKE BY PAUL TAPSELL - 6.7.2018

Land Information New Zealand (LINZ) vs Māori Land Information System (MLIS)

18. There are discrepancies between current ownerships recorded on the titles of Land Information New Zealand (LINZ) and the Māori Land Information System (MLIS):

a) **Maketu A Section 39 Block** is Māori Freehold Land:

- i) LINZ records the registered owners as Robert Raupatu Clarke and Ruby Te Pae Clarke as joint tenants; and
- ii) MLIS records the beneficial owners as Jeannie Louisa Overington (1.0 share) and Bertram Tapsell, Debbie Tapsell, Raven Walker, Rawinia Clarke-Brayshaw and Wicklife Tapsell as trustees of the Tamepo Petera Tapsell and Hinetatara Tapsell Whānau Trust (1.0 share).

- b) **Lot 2 Deposited Plan South Auckland 25586** is General Land:
- i) LINZ records the registered owners as Jeannie Louisa Overington and Ruby Te Pae Clarke as responsible trustees jointly, no survivorship; and
 - ii) MLIS records the beneficial owners as Jeannie Louisa Overington (1.0 share) and Ruby Te Pae Clarke (1.0 share).

Jeannie Louise Overington and Ruby Te Pae Clarke are the current responsible trustees of Maketu A 42C Trust, constituted on 5 May 2006 at 299 Rotorua MB 77-81. Clause 4(a) of the terms of trust provides that the status of land shall revert to Māori Freehold Land upon review of trust and/or discharge of mortgage.

Details of subsequent Orders affecting lands to which this application relates

19. All subsequent orders affecting the interests of both Ruby Te Pae Clarke and Robert Raupatu Clarke have been made on the basis of 'tenants in common' ownership and are identified as follows:

Maketu A Section 39 Block

- a) Vesting interest of Ruby Te Pae Clarke (1.0 share) in the trustees of the Tamepo Petera Tapsell and Hinetatara Tapsell Whānau Trust made on 8 October 2018 at 198 Waiariki MB 205-207 (Section 164 of the Act).

Maketu A 42C Block

- b) Vesting interest of Ruby Te Pae Clarke (0.5 share) in her sister, Lucy Tapsell made on 5 May 2006 at 299 Rotorua MB 77-81 (Sections 158 and 164 of the Act);
- c) Vesting interest of Robert Raupatu Clarke (0.5 share) in his daughter, Rawinia Jeanie Clarke-Brayshaw made on 5 May 2006 at 299 Rotorua MB 77-81 (Sections 158 and 164 of the Act); and
- d) Annuling the vesting orders made on 5 May 2006 (299 Rotorua MB 77-81) upon the grounds that the land was General Land and the Māori Land Court had no jurisdiction to deal with the transfer of shares made on 21 February 2007 at 306 Rotorua MB 52-55 (Section 43(5) of the Act).

Details of payments made as a result of the Orders

20. Not applicable.

Reference to areas of difficulty

21. It is evident from Certificate of Title SA43B/447 and Certificate of Title SA27A/1126 (filed in support of the original applications for change of status) that a Joint Family Home instrument was registered against the titles in 1992, in favour of Ruby Te Pae Clarke and her husband, Robert Raupatu Clarke.

22. Section 3 of the Joint Family Homes Act 1964 provides that a husband and wife or either of them may settle any land on them as a joint family home. Section 25 of the Joint Family Homes Act 1964 provides for settlements of Māori land.
23. Sections 9(1)(b) and 9(2)(b) of the Joint Family Homes Act 1964 state:

9 Effect of registration

(1) [...]

- (b) subject to the provisions of this Act, the husband and wife on whom the property is settled shall become the legal and beneficial owners of the settled property, subject to all mortgages, charges, encumbrances, estates, and interests then affecting the same; and, if the husband and wife are not already registered as proprietors of the settled property or any part of it as joint tenants, that property or part shall vest in them as joint tenants without transfer or conveyance, but subject to all mortgages, charges, encumbrances, estates, and interests then affecting it, and subject to the provisions of this Act:

[...]

- (2) While the settlement under this Act of any property remains uncanceled the following provisions shall apply:

[...]

- (b) on the death of the husband or wife, whichever first occurs, the settled property shall become the property of the survivor of them, subject to all mortgages, charges, encumbrances, estates, and interests then affecting it:

24. Robert Raupatu Clarke also known as Raupatu Paki Clarke died on 28 August 2006.
25. While the LINZ Title for Maketu A Section 39 Block continues to show settlement of the land as a joint family home, settlement of Lot 2 Deposited Plan South Auckland 25586 was cancelled in 2007, following the registration of orders vesting the land in responsible trustees.
26. In accordance with section 9(2)(b) of the Joint Family Homes Act 1964, Ruby Te Pae Clarke should have become the sole owner of the properties.
27. It is further noted that succession orders made on 1 November 2007 at 318 Rotorua MB 3-11 and on 1 June 2017 at 163 Waiariki MB 231-236 included the General Land known as Lot 2 Deposited Plan South Auckland 25586.

As formal administration had not been granted in the estates of Robert Raupatu Clarke and Rawinia Jeannie Clark-Brayshaw, the Court had no jurisdiction to make succession orders in respect of this block, under sections 113 and 118 of the Act.

Consideration of whether matter needs to go to full hearing

28. Based on research undertaken, there is clear evidence to confirm that the change of status orders made on 6 September 1994 at 236 Rotorua MB 46 are **not erroneous**.
29. Rather, the **entry** of the status orders into the record of the Māori Land Court **wrongly** altered the ownership of Maketu A Section 39 Block and Lot 2 Deposited Plan South Auckland 25586, by recording Ruby Te Pae Clarke and Robert Raupatu Clarke as 'tenants in common' as opposed to 'joint tenants'.
30. To afford any affected parties opportunity to present evidence on the matters raised above, the matter should be set down for hearing at the Māori Land Court in Rotorua.

Recommendation of course of action to be taken

31. If the Chief Judge is of a mind to exercise his jurisdiction, then it would be my recommendation that:
 - a) A copy of this report be sent to **those affected parties, for whom we have contact details for, giving them an opportunity to comment or respond in writing, within 28 days of the date this Report is sent to them.**
 - b) If no objections are received, then an order be made pursuant to section 44(1) of Te Ture Whenua Māori Act 1993, amending the succession orders made on 1 November 2007 at 318 Rotorua MB 3-11 and on 1 June 2017 at 163 Waiariki MB 231-236 by:
 - i) deleting "*Lot 2 Deposited Plan South Auckland 25586*" and "*Maketu A Section 39*" blocks from the schedule of lands contained in the orders; and
 - ii) re-vesting the interests in Lot 2 Deposited Plan South Auckland 25586 and Maketu A Section 39 Block, settled on Robert Raupatu Clarke and Ruby Te Pae Clarke under the Joint Family Homes Act 1964, in favour of Ruby Te Pae Clarke as the surviving joint tenant.
 - c) And a further order be made, pursuant to section 47(4) of the Act, making any consequential amendments necessary to give full effect to the above order, including:
 - i) vesting interests of Ruby Te Pae Clarke in the trustees of the Tamepo Petera Tapsell and Hinetatara Tapsell Whānau Trust on 8 October 2018 at 198 Waiariki MB 205-207 - by amending the donor's share from "1.0" to "2.0".

Procedural History

[5] On 29 November 2019¹ the Māori Appellate Court made an order (on associated Application A20190007086) pursuant to section 56(1)(f) of the Act, that the ownership of Maketu A39 and Lot 2 DP 25586 as recorded by the Deputy Registrar upon the change of status to these blocks on 6 September 1994, be amended to give effect to the true intention of the Court, that they were owned by Robert Raupatu Clarke and Ruby Te Pae Clarke jointly.

[6] On 6 December 2019, the Registrar's Preliminary Report and Recommendation was distributed to all affected parties, for whom addresses were known.

[7] On 9 December 2019 counsel Mr Graeme Dennett, for Mrs Ruby Te Pae Clarke, filed submissions supporting the Registrar's Preliminary Report and Recommendation and seeks orders without a hearing.

[8] On 13 December 2019 counsel Ms Kylee Katipo, for Ms Jeannie Louisa Overington, filed a memorandum advising her client does not wish to pursue the matter further and does not challenge the recommendation of the Registrar.

[9] On 24 December 2019² a minute issued in relation to the associated appeal proceedings referred to at [5] above. The minute noted:

- (a) the Registrar's recommendation is consistent with the errors identified in the appeal proceedings, and the course of action, as set out in the earlier decision of the Māori Appellate Court dated 29 November 2019; and
- (b) the Chief Registrar has advised that the Chief Judge indicated he will consider this s 45 application on the papers without a formal hearing.

¹ [2019] Māori Appellate Court MB 696-699 (2019 APPEAL 696-699)

² [2019] Māori Appellate Court MB 723-724 (2019 APPEAL 723-724)

The Law

[10] The Chief Judge's jurisdiction to amend or cancel an order of the Māori Land Court is set out in s 44(1) of the Act:

44 Chief Judge may correct mistakes and omissions

(1) On any application made under section 45 of this Act, the Chief Judge may, if satisfied that an order made by the Court or a Registrar (including an order made by a Registrar before the commencement of this Act), or a certificate of confirmation issued by a Registrar under section 160 of this Act, was erroneous in fact or in law because of any mistake or omission on the part of the Court or the Registrar or in the presentation of the facts of the case to the Court or the Registrar, cancel or amend the order or certificate of confirmation or make such other order or issue such certificate of confirmation as, in the opinion of the Chief Judge, is necessary in the interests of justice to remedy the mistake or omission.

[11] The principles that are applied to s 45 decisions have been previously set out in numerous decisions made by the Deputy Chief Judge and the Chief Judge. These are to be found in the judgment *Ashwell - Rawinia or Lavinia Ashwell (nee Russell)*³ and in *Tau v Nga Whanau O Morven & Glenavy - Waihao 903 Section IX Block*.⁴ I do not propose to repeat those principles again in this judgment.

[12] However, for the benefit of the parties, I note that s 44 explicitly refers to situations where the Court has made an incorrect decision due to a flaw in the evidence presented, or in the interpretation of the law, and it is necessary in the interests of justice to correct its record. For this reason, s 45 applications must be accompanied by proof of the flaw identified, either through the production of evidence not available or not known of at the time the order was made or through submissions on the law.

Issues

[13] The issues to determine in this case are:

³ [2009] Chief Judge's MB 209-225 (2009 CJ 209)

⁴ [2010] Maori Appellate Court MB 167 (2010 APPEAL 167)

- (a) Were the succession orders made on 1 November 2007⁵ vesting in Rawinia Jeannie Clark-Brayshaw as sole successor and on 1 June 2017⁶ vesting in Jeannie Louisa Overington as sole successor, erroneous in fact or law because of any mistake or omission on the part of the Court or in the presentation of the facts of the case to the Court; and
- (b) If so, is it necessary in the interests of justice to remedy the mistake or omission.

Discussion

[14] Having considered the Registrar's Report, I agree that an error in fact or law has been made due to a mistake or omission on the part of the Court because the Deputy Registrar made an error entering the ownership of Robert Raupatu Clarke and Ruby Te Pae Clarke as tenants in common in the subject lands, rather than as joint tenants.

[15] The subsequent succession orders were granted based on the mistake made by the Deputy Registrar, which recorded that Mr Robert Raupatu Clarke held a separate interest as a tenant in common.

[16] Having regard to the above, it is clear that the subject lands should be vested in Ruby Te Pae Clarke as the surviving joint tenant.

Decision/Orders

[17] Accordingly, in terms of s 44(1) of Te Ture Whenua Māori Act 1993, I consider that it is necessary in the interests of justice that I exercise my jurisdiction and amend the succession orders made on 1 November 2007 at 318 Rotorua MB 3-11 relating to Robert Raupatu Clarke and on 1 June 2017 at 163 Waiariki MB 231-236 relating to Rawinia Jeannie Clark-Brayshaw, by:

- (a) Deleting "Lot 2 Deposited Plan South Auckland 25586" and "Maketu A Section 39" blocks from the schedule of lands contained in the orders; and

⁵ 318 Rotorua MB 3-11 (318 ROT 3-11)

⁶ 163 Waiariki MB 231-236 (163 WAR 231-236)

- (b) Re-vesting the interests in Lot 2 Deposited Plan South Auckland 25586 and Maketu A Section 39 Block, settled on Robert Raupatu Clarke and Ruby Te Pae Clarke under the Joint Family Homes Act 1964, in favour of Ruby Te Pae Clarke as the surviving joint tenant.

[18] A further order is made, pursuant to s 47(4) of Te Ture Whenua Māori Act 1993, making all consequential amendments necessary to give full effect to the order made above, including:

- (a) Vesting interests of Ruby Te Pae Clarke in the trustees of the Tamepo Petera Tapsell and Hinetatara Tapsell Whānau Trust on 8 October 2018 at 198 Waiariki MB 205-207 – by amending the donor's share from 1.0 to 2.0.

[19] The foregoing orders are to issue immediately pursuant to rule 7.5(2)(b) of the Māori Land Court Rules 2011.

[20] The Case Manager is directed to distribute a copy of this judgment to all parties.

Pronounced at 11.23am in Wellington on Monday, this 3rd day of February 2020.

W W Isaac
CHIEF JUDGE