

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

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

**A20210004482**

WĀHANGA                      Sections 108, 113 and 117, Te Ture Whenua Māori  
*Under*                              Act 1993

MŌ TE TAKE                      Succession to Bernard Albert Falp  
*In the matter of*

I WAENGA I A                      STEPHANIE HELEN ROSE FALP  
*Between*                              Te Kaitono  
*Applicant*

Nohoanga:                      20 May 2021, 432 Aotea MB 273-278  
*Hearing*                              26 May 2022, 449 Aotea MB 197 - 204

Whakataunga:                      26 May 2022  
*Judgment date*

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**TE WHAKATAUNGA Ā KAIWHAKAWĀ M J DOOGAN**  
*Judgment of Judge M J Doogan*

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**Hei tīmatanga korero***Introduction*

[1] I am going to issue an oral decision and, because it's an oral decision, I may tidy up some of the language when I have the typed back version. But, the substance of the decision won't change.

[2] Bernard Falp was born in Essex, England. As a young man, he came to New Zealand and married Paea Karaitiana. They had four children. Paea owned extensive interests in Māori land. She died in October 1987. By her will, she left all her Māori land interests to Bernard. The law at the time allowed for this.

[3] About 5 years later, Bernard re-married. His second wife was of Chinese descent. They had a child named Leshia Falp.

[4] Bernard died on 16 June 2018, leaving a will dated 8 April 2009. Clause 3 of Bernard's will states, "I give all my interests in Māori land to my children, and if more than one, in equal shares."

[5] The issue to decide is whether Leshia, a child of Bernard with no Māori whakapapa, is entitled to succeed to the Māori land interests Bernard received from Paea.

**Te horopaki***Background*

[6] This matter first came before the court in May 2021.<sup>1</sup> At that time, his honour Judge Savage adjourned the application noting a concern that someone who is not Māori may succeed to Māori land.

[7] The matter was adjourned so that the minutes could be sent to Leshia. Judge Savage noted that "it may be that Leshia will recognise that perhaps she should not take any shares in these lands."<sup>2</sup>

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<sup>1</sup> 432 Aotea MB 273-278 (432 AOT 237-278).

<sup>2</sup> Above n 1, at 278.

[8] Leshia did not grow up with her half siblings. Stephanie, Bernard's eldest child from his marriage to Paea, said that Leshia was 2 years old the last time she had seen her. At the time of Bernard's death in 2018, Leshia was 23 years old.

*Contact with Leshia*

[9] Before the May 2021 hearing, the case manager had been able to obtain an email address for Leshia from solicitors who had acted for Bernard's estate.

[10] On 31 March 2021, an email was sent to Leshia attaching the pānui for the upcoming hearing and inviting her to contact the case manager if she had any queries.

[11] On 2 April 2021, Leshia responded as follows: "Kia ora, thank you for contacting me, unfortunately I am currently in the United States and will not be able to attend the hearing. Sincerely, Leshia Falp."

[12] On 13 of April 2021, the case manager responded to Leshia thanking her for her response:

That is totally fine that you are not able to attend. However, as you are legally entitled to succeed to your fathers Māori land, he holds in his name absolutely, can I please have a contact address for you that I can add to the court minutes?

[13] Leshia did not respond to that email.

[14] On 14 June 2021, the case manager sent Leshia a copy of the minutes from the 20 May 2021 hearing. The case manager said:

You will note, that during the course of the hearing, questions were raised regarding your entitlement to your fathers Māori land interests. Our records show that he derived these interests from his first wife Paea Falp also known as Paea Karaitiana. Paea inherited all her Māori land interests by whakapapa (i.e. blood link). His honour Judge Savage is unsure whether you were aware of that.

The Te Ture Whenua Māori act 1993, which we are governed by, ensures that Māori land interests remain and are held by blood link, handed down from their tupuna (i.e. ancestors). This application has been adjourned to allow for your comment.

[15] Leshia did not respond to that email. Follow up emails were sent to Leshia on 7 September 2021 and 28 January 2022. At that time, Leshia was also advised that the matter would be referred back to the Court.

[16] On 3 May 2022, Leshia was sent notice of this hearing.

[17] No response has been received from Leshia and she did not appear at the 26 May 2022 hearing.

### **Kōrerorero**

#### *Discussion*

#### *Is Leshia entitled to succeed to Bernard's Māori land interests?*

[18] The passing of Te Ture Whenua Māori Act 1993 represented a significant shift in the law concerning entitlement to interests in Māori land. The 1993 Act placed a particular emphasis upon the importance of retaining Māori land in the hands of Māori owners and limiting the extent to which it could be alienated outside of the bloodline.

[19] Had Paea died after the commencement of the 1993 Act, she would not have been able to give her Māori land interests to Bernard under her will. At most, Bernard may have been entitled to a life interest. However, as the law stood at the time of her death, Bernard was able to receive an absolute interest in Paea's Māori land. I note that in her will Paea did not specifically refer to her Māori land holdings. They formed part of the real and personal property in the residue of her estate that was to go to Bernard in the event he survived Paea in 14 days.

[20] The present situation concerning Leshia's entitlement gives rise to a tension between two important principles in the 1993 Act. The first is the importance placed upon the retention of Māori land in the hands of its Māori owners, and the second is the right of an owner to decide how to dispose of their interests.

[21] I turn now to summarise in more detail the law concerning these principles before deciding how they apply the circumstances of this case.

#### *Retention of Māori land in Māori ownership*

[22] The importance of this principle is clearly stated in the Preamble to Te Ture Whenua Māori Act 1993 ("the Act") and reinforced in s 2. They provide as follows:

#### **Preamble**

Nā te mea i riro nā te Tiriti o Waitangi i motuhake ai te noho a te iwi me te Karauna: ā, nā te mea e tika ana kia whakaūtia anō te wairua o te wā i riro atu ai te kāwanatanga kia riro mai ai te mau tonu o te rangatiratanga e takoto nei i roto i te Tiriti o Waitangi: ā, nā

te mea e tika ana kia mārama ko te whenua he taonga tuku iho e tino whakaaro nuitia ana e te iwi Māori, ā, nā tērā he whakahau kia mau tonu taua whenua ki te iwi nōna, ki ō rātou whānau, hapū hoki, a, a ki te whakangungu i ngā wāhi tapu hei whakamāmā i te nohotanga, i te whakahaeretanga, i te whakamahitanga o taua whenua hei painga mō te hunga nōna, mō ō rātou whānau, hapū hoki: ā, nā te mea e tika ana kia tū tonu he Te Kooti, ā, kia whakatakotia he tikanga hei āwhina i te iwi Māori kia taea ai ēnei kaupapa te whakatinana.

Whereas the Treaty of Waitangi established the special relationship between the Maori people and the Crown: And whereas it is desirable that the spirit of the exchange of kawanatanga for the protection of rangatiratanga embodied in the Treaty of Waitangi be reaffirmed: And whereas it is desirable to recognise that land is a taonga tuku iho of special significance to Maori people and, for that reason, to promote the retention of that land in the hands of its owners, their whanau, and their hapu, and to protect wahi tapu: and to facilitate the occupation, development, and utilisation of that land for the benefit of its owners, their whanau, and their hapu: And whereas it is desirable to maintain a court and to establish mechanisms to assist the Maori people to achieve the implementation of these principles.

[23] Section 2 provides:

## **2 Interpretation of Act generally**

- (1) It is the intention of Parliament that the provisions of this Act shall be interpreted in a manner that best furthers the principles set out in the Preamble.
- (2) Without limiting the generality of subsection (1), it is the intention of Parliament that powers, duties, and discretions conferred by this Act shall be exercised, as far as possible, in a manner that facilitates and promotes the retention, use, development, and control of Maori land as taonga tuku iho by Maori owners, their whanau, their hapu, and their descendants, and that protects wahi tapu.
- (3) In the event of any conflict in meaning between the Maori and the English versions of the Preamble, the Maori version shall prevail.

[24] In s 4 of the Act, a Māori person is defined as “a person of the Māori race of New Zealand; and includes a descendant of any such person.”

[25] The preamble notes that it is desirable to recognise that land is a taonga tuku iho (a treasure handed down) of special significance to Māori people. For that reason, the Act promotes retention of that land in the hands of its owners, their whānau and their hapū.

[26] I am required by s 2 when exercising the powers and discretions conferred by the Act to do so as far as possible in a manner that facilitates and promotes the retention, use, development and control of Māori land as taonga tuku iho by Māori owners, their whānau, their hapū and their descendants.

[27] Application of these provisions and the principles they embody point clearly to succession by those who whakapapa to Paea Karaitiana, Bernard's first wife, and thereby promoting the retention and control of this Māori land as a taonga tuku iho for Paea's descendants, whānau and hapū. This would exclude Leshia as she has no whakapapa link to the land through Paea.

[28] However, Bernard was the legal owner of these Māori land interests and he also had a legal right to dispose of those interests by will.

*Can Bernard leave his Māori land interests to Leshia by will?*

[29] Section 108(1) provides that an owner of any beneficial interest in Māori freehold land can dispose of that interest by will only to one or more of the classes set out in s 108(2). Leshia comes within the first class as a child of Bernard. At law, there is nothing to prevent Bernard making such a provision in favour of Leshia along with his other children from his first marriage.

[30] By clause 3 of his will, Bernard left his interests in Māori land to his "children" drawing no distinction between the children of his first and second marriages.

[31] When interpreting the terms of a will, the Court's primary obligation is to give effect to the intentions of the testator. As Fisher J held in *Re Jensen*:<sup>3</sup>

If the testamentary language is unambiguous and discloses no obvious error, the Court must give effect to it as it stands. The Court must guard itself against conjecture as to the testator's possible true intentions notwithstanding the actual testamentary provisions or as to what he might have intended had he been better advised...

[32] There is no ambiguity in clause 3 of Bernard's will. The issue for decision is whether I should give effect to clause 3 as it stands or whether I should decline to include Leshia in succession to the Māori land interests having regard to the purposes and objectives of the Act as reflected in the preamble and in s 2 (and in related provisions concerning restrictions on alienation of Māori land outside the preferred class).

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<sup>3</sup> *Re Jensen* [1992] 2 NZLR 506, at 510.

**Decision***Kupu whakataua*

[33] In the circumstances of this case, I conclude that the Preamble and s 2 of the Act must prevail over the terms of Bernard's will and that I should make orders restoring Bernard's Māori land interests to the bloodline from which they have derived. This means that Leshia would not be entitled to succeed to Bernard's Māori land interests.

[34] I draw no adverse inference from the fact that Leshia has not responded to communications from the case manager seeking her views on the succession issue. It is possible that Leshia is unsure how to respond to requests for her view or it may be that she does not have a strong view one way or another.

[35] I have set out my reasons so that Leshia may consider them and exercise her right to apply for a rehearing or an appeal if she disagrees with the basis for my decision.

**Ngā ōta***Orders*

[36] Pursuant to s 113 of the Act, the Court determines that the persons entitled to succeed to Bernard's Māori land interests are:

- (a) Stephanie Helen Rose Falp;
- (b) Albert William Falp;
- (c) Rosetta Timms; and
- (d) Roselyn Falp.

[37] The Court makes an order under s 117 of the Act vesting those Māori land interests in those entitled in equal shares.

I whakapuaki i te 10:05am i Te Whanganui-a-Tara te 26 o ngā rā o Haratua i te tau 2022.

M J Doogan  
**JUDGE**