IN THE MĀORI LAND COURT OF NEW ZEALAND
AOTEA DISTRICT

A20150004101
CJ 2015/19

UNDER	Section 45 of Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Pipi Rakena or Pipi Te Awe Awe and a succession order made at 81 Otaki MB 265-266 on 6 November 1978
BETWEEN	WIREMU KINGI TE AWE AWE and RANGI KAPIKI TE AWE AWE Applicants
AND	WIREMU TIPI TE AWE AWE Respondent

Hearing: 6 November 2019, 2019 Chief Judge's MB 1224-1244 (Heard at Whanganui)

Judgment: 11 December 2019

JUDGMENT OF DEPUTY CHIEF JUDGE C L FOX

Introduction

[1] Wiremu Kingi Te Awe Awe and Rangi Kapiki Te Awe Awe (the applicants) make application under s 45 of Te Ture Whenua Māori Act 1993 (the Act), to amend the succession order made on 6 November 1978 at 81 Otaki MB 265-266 relating to Pipi Rakena or Pipi Te Awe Awe (the deceased).

[2] The applicants claim that the said order is incorrect because of a mistake, error or omission in the presentation of the facts of the case to the Court, in that the sole successor, Wiremu Te Tipi Larkins (a son of the deceased), was to hold the shares in trust on behalf of all the children of the deceased.

[3] The applicants claim that they have been adversely affected by the order complained of, as nephews of the deceased, as the land interests should have been succeeded to by all of the children entitled equally.

Background

[4] The Registrar's Preliminary Report and Recommendation (the Report) dated 24 April 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 Wiremu Kingi Te Awe Awe and Rangi Kapiki Te Awe Awe (the applicants) and seeks to amend a succession order made on 6 November 1978 at 81 Otaki MB 265-266, relating to Pipi Rakena or Pipi Te Awe Awe (the deceased).

2. The applicants claim that the said order is incorrect because of a mistake, error or omission in the presentation of the facts of the case to the Court, in that the sole successor, Wiremu Te Tipi Larkins (a son of the deceased), was to hold the shares in trust on behalf of all the children of the deceased.

3. The applicants further state that:

    a) The sole successor being Wiremu Te Tipi Larkin or Larkins or Te Awe Awe, was to hold Pipi's land shares in Trust on behalf of his 7 siblings

and for any income derived from those lands to be payed to Te Rangimarie Marae as consented to by family arrangement on 20 August 1978; and

b) Wiremu has failed to honor the arrangement and on behalf of our mother Waitohi King we would like this order cancelled and reverted back into Pipi's name so that all her land shares are succeeded to equally by her children. Because Wiremu was made a Trustee of Pipi's shares he is now in breach of that Trust. Our mum Waitohi and her sister Riria gave consent in good faith to Wiremu. Waitohi and Riria now want this to be overturned. No monies have been paid to the marae since Pipi's succession.

Concise history of Order sought to be amended

4. The application for succession to the deceased was heard by the Court on 6 November 1978 at 81 Otaki MB 265-266 and the evidence transpired as follows:

> Pipi Rakena or Pipi Te Awe Awe deceased
>
> Appln by W.T.T Larkins for S.78A/1967 Order
>
> Wiremu Te Tipi Larkins (o.f.o): Deceased my mother. She died at Palmerston North on 17.6.78. No will. No property other than Maori lands. Husband predeceased her. She had following children:
>
> | | | |
> |---|---|---|
> | 1. | Joseph Tanenuiarangi Larkins | m.a. |
> | 2. | David Te Kauru Larkins | m.a. |
> | 3. | Pare Matenga | f.a. |
> | 4. | Harry Larkins | m.a. |
> | 5. | Waitohi King | f.a. |
> | 6. | Riria Larkins | f.a. |
> | 7. | Hoani Meihana Larkins | m.a. |
> | 8. | Wiremu Te Tipi Larkins | m.a. |
>
> & another child, Pipsy, died without issue. I refer to minutes of family meeting on file at which my brothers & sisters agreed I should be sole successor. No debts or funeral expenses
> (Nos 1, 3, 6, 5 all present in Ct confirm).
>
> COURT: ORDER S.78A/1967 – vesting in Wiremu Te Tipi Larkins m.a. solely the following interests of deceased:
>
> | | |
> |---|---|
> | Waiorongomai 7F | (Value $200) |
> | Tahoramaurea | (Value $175) |
> | Tokomapuna | (Value $25) |
> | Whakapawaewae East No 1 | (Value $10) |
> | Taupo No 2 Pts Lot 45 & 51 D.P. 2555 | (Value $127) |
> | Horohoro Reserve No 1 | (Value $80) |
> | Horohoro Reserve No 2 | (Value $70) |
> | Horohoro Reserve No 3B | (Value $1) |
> | Horohoro Reserve No 3A | (Value $5) |
> | Horohoro Reserve No 4 | (Value $5) |
> | Horohoro Reserve No 5 | (Value $1) |
> | Horohoro Sec 39 | (Value $1) |
> | Horohoro Urupa No 3 | (Value $1) |

Horohoro Urupa No 4	(Value $1)
Horohoro Urupa No 5	(Value $1)
Horohoro Urupa No 1	(Value $1)
Horohoro Urupa No 2	(Value $1)

5. The effect of the order, made under section 78A of the Māori Affairs Amendment Act 1967, was to vest the land interests under the names Pipi Rakena or Pipi Te Awe Awe or Pipi Larkins or Pipi te Rei as follows:

Aotea District

Blocks	Name	Shares
Waiorongomai 7F	Pipi Rakena	2410.000
Tahoramaurea	Pipi Rakena (Mrs Te Awe Awe)	31.050
Tokomapuna	Pipi Rakena (Mrs Te Awe Awe) or Mrs Larkins	32.625
Whakapawaewae East No. 1	Pipi Rakena or Pipi Larkin	20.875
Taupo No. 2 Pts Lot 45 & 51 DP 2555	Pipi Rakena (Larkin)	58.75

Waiāriki District

Blocks	Name	Shares
Horohoro Reserve No. 1	Pipi te Rei	10.000
Horohoro Reserve No. 2	Pipi te Rei	10.000
Horohoro Reserve No. 3B	Pipi te Rei	10.000
Horohoro Reserve No. 3A	Pipi te Rei	10.000
Horohoro Reserve No. 5	Pipi te Rei	10.000
Horohoro Sec 39	Pipi te Rei	403.000
Horohoro Urupa No. 3	Pipi te Rei	10.000
Horohoro Urupa No. 4	Pipi te Rei	10.000
Horohoro Urupa No. 5	Pipi te Rei	10.000
Horohoro Urupa No. 1	Pipi te Rei	10.000
Horohoro Urupa No. 2	Pipi te Rei	10.000

Beneficiary/Successor

	Name	Sex	Proportion
1	Wiremu Te Tipi Larkins	M	Solely

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

6. The applicants have provided copies of the following documents in support of their application:

    a) The minute and order complained of made on 6 November 1978 at 81 Otaki MB 265-266; and

    b) The minutes of a family meeting held on 20 August 1978.

7. The minutes of that family meeting are reproduced as follows:

> FAMILY MEETING HELD AT RANGIMARIE MARAE,
>
> RANGIOTU, ON SUNDAY, 20 AUGUST 1978 AT 2.00 PM
>
> This meeting was called in order that every member of the Te Awe Awe family were made aware of what the outcome of Te Rangimarie Marae, the burial ground, the homestead, trustees and succession to the late Pipi Te Awe Awe's land interests were.
>
> PRESENT
>
> Jack Larkins, Kim Larkins, Barry Larkins, Dave Larkins, Joe Larkins, Polly Matenga, Charlie Matenga, Karen Rata, David and Mary Matenga, Polly and Alan Horsfall, John Matenga, Waitohe King, Karpiki Larkins, Wiremu – Trieste – Wiremu Jnr – Norwine Larkins, Christine, Vivienne and Peter King; Riria Larkins, Ann & Gregory Keene, Rebecca and Graeme Hunt; Bill and Jackie – Brigitte and Kim Larkins, Jackie and Cedric Bowlin, Sandy and Dana Horsfall – all of the descendants of Wiremu Kingi and Pipi Te Awe Awe.
>
> BUSINESS FOR DISCUSSION
>
> SUCCESSION TO PIPI TE AWE AWE'S MAORI LAND INTEREST AND RENT
>
> On the proposal of Polly Matenga it was agreed by all those present that an application be made to the Maori Land Court for application for Vesting Orders in the matter of Pipi Te Awe Awe's Maori land interests in the name of Wiremu Te Tipi Te Aweawe.
>
> Wiremu Te Tipi Te Awe Awe is to be the sole beneficiary and the Maori Rent Monies received will be paid into the Rangimarie Marae funds.
>
> Moved R. Larkins / seconded Joe Larkins CARRIED
>
> There being no further business this part of the meeting closed at 4.45 p.m.

8. Court research shows that:

a) Whilst "Horohoro Reserve No 4" block was listed in the Court's succession minute, it was not included on the Court order when drawn (This appears to have been an oversight).

b) "Whakapawaewae East No. 1" block subsequently became part of "Katihiku X1, Katihiku X2 and Katihiku X3" block, with Wiremu Te Tipi Larkins interest equating to 8.330 shares.

c) It is further noted that no entry of the succession order, in respect of the Horohoro land interests held in the Waiāriki district, was ever made in Court records and therefore such interests are still listed under the name "Pipi te Rei".

d) Subsequent research also shows that the land interests in the Horohoro blocks, held under the name "Pipi te Rei", do not in fact belong to this deceased. It has been established that they are actually owned by the deceased's mother, and therefore those interests were included in the succession order by error.

Details of subsequent Orders affecting lands to which this application relates

9. There are no subsequent orders affected by this application.

Details of payments made as a result of the Order

10. The Māori Trustee provided the following details by letter dated 12 November 2015:

Client Record	**Name(s)**	**Funds Held as at 12.11.15**
CLI-00137188	Wiremu Tipi Te Awe Awe Larkins, Billy Larkins, William Larkins, William Te Tipi Awe Awe Larkins, Wiremu Te Tipi Larkins	**$0.00**
Payments made after 6 November 1978		
Cheque Payments (1979–2005) & Direct Credit Payments (2011–2015)		$1,698.13
Paid Funds Derived From:		
Rangitikei Manawatu B4C - ex Emma Taite Te Tomo		$99.69
Rangitikei Manawatu C7B - ex Rangingangana Te Awe Awe		$372.41
Waiorongomai 7F - ex Pipi Rakena		$1,219.36
Distributable Income		$6.67

a) The "Te Rei Trust" administers "Waiorongomai No. 7F" block, the Māori Trustee is the responsible trustee for such, and these payments relate to the affected shares of the deceased;

b) The "Rangitikei Manawatu B4C" monies were derived on succession to Wiremu Te Tipi Larkins paternal aunt, Emma Tait or Ema Manawaroa, on 26 June 1980 at 114 Napier MB 111-112 - These monies are not affected by this application; and

c) The "Rangitikei Manawatu C7B" monies were derived on succession to Wiremu Te Tipi Larkins paternal grandmother, Rangingangana Te Awe Awe, on 6 May 1993 at 31 Aotea MB 237-238 - These monies are also not affected by this application.

11. The Katihiku X Trust confirmed, by email dated 10 September 2015, that there have been no funds paid to shareholders and that there are no plans to pay any funds/dividends to shareholders at this time.

Reference to areas of difficulty

1978 Family Agreement

12. The family agreement made on 20 August 1978 was that Wiremu Te Tipi Te Awe Awe be appointed sole beneficiary, but that any rent monies received were to be paid into the "Rangimarie Marae" funds.

13. Whilst the typed minutes of that hui list the persons present, which appear to include all eight children of the deceased, no written consents or signatures of the eight children entitled were provided to the Court, in support of the family agreement.

14. At the succession hearing on 6 November 1978 at 81 Otaki MB 265-266 the minutes from the family meeting were presented in evidence, and several family members were also present to confirm that Wiremu Te Tipi Larkins was to be sole successor.

15. The Court made a succession order accordingly, vesting in Wiremu Te Tipi Larkins solely, but made no conditions as to the income from such interests.

Te Rangimarie Marae

16. The "Te Rangimarie Marae" is located on "Part Rangitikei Manawatu B No. 4 DP 5009" block - This block is not subject to the current application.

17. The whānau interests in this block are derived through the deceased's husband, Wiremu Kingi Te Awe Awe. Succession to Wiremu Kingi Te Awe Awe occurred on 30 May 1985 at 148 Whanganui MB 182, whereat the interests were vested into all eight of his children equally.

Legislation

18. The order made on 6 November 1978 at 81 Otaki MB 265-266, was pursuant to section 78A of the Māori Affairs Amendment Act 1967, which is reproduced in full as follows:

> 78A. COURT MAY VEST MAORI LAND IN SUCCESSORS WITHOUT GRANT OF ADMINISTRATION
>
> (1) Subject to the provisions of this section, where any person has died on or after the 1st day of April 1968 and administration (within the meaning of the Administration Act 1969) of the estate of that person has not been granted, the Maori Land Court may make an order vesting in the persons entitled thereto the

undivided beneficial freehold interests in common in Maori freehold land of that person.

(2) Application for an order under this section shall be made by the person or one of the persons claiming to be entitled to the interests in land under the will or on the intestacy of the deceased person.

(3) No order shall be made under this section unless the Court is satisfied:

(a) That the applicant or applicants together with any other persons named in the application are entitled to succeed to the interest; and

(b) That the person or persons entitled to obtain a grant of administration of the estate of the deceased person do not intend to seek any such grant; and

(c) That there is no reason apparent why the estate of the deceased person should be formally administered; and

(d) That the value at the date of death, of the interests in land affected by the application did not exceed $4,000; and

(e) Where the deceased person is known to have owned beneficial freehold interests in Maori freehold land in more than one Maori Land Court district, the aggregate value, at the date of death, of his known interests in all such districts did not exceed $10,000.

(4) In making orders under this section the Court shall proceed as if all the persons living at the death of the deceased person who, if they had then attained the age of 20 years, would take any absolutely vested interest in any part of the estate, had then attained that age.

(5) *Repealed by s 19 of the Maori Purposes Act 1976.*

(6) Where more than one person is entitled to share in the interests in the land covered by any application under this section, the Court may in making orders give effect to any arrangement or agreement whereby the share of any one person entitled is to be vested in any other person entitled:

Provided that if the Court is satisfied that the projected arrangement or agreement is fair and equitable in the circumstances and is not contrary to the interests of the persons concerned, it may give effect to the projected arrangement or agreement notwithstanding that any of the persons concerned has not agreed thereto or objects thereto.

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

(8) Any money held by the Maori Trustee for a deceased owner of Maori land, being the proceeds of the alienation of Maori freehold land, shall for the purposes of subsection (6) of this section be deemed to be interests in Maori freehold land and the Court may dispose of them accordingly by making an order for payment thereof under section 32 of the principal Act.

19. The Maori Affairs Amendment Act 1967 came into force on 1 April 1968, the deceased in this case died intestate on 17 June 1978 and the succession was completed on 6 November 1978.

20. The succession order appears to have been made in terms of subsection (6), which enabled the Court to make orders in terms of a family arrangement, with the discretion to do so "notwithstanding that any of the persons concerned has not agreed thereto or objects thereto".

Consideration of whether matter needs to go to full hearing

21. It is clear that the succession order made on 6 November 1978 at 81 Otaki MB 265-266 contains the following errors:

    a) The exclusion of the interests in "Horohoro Reserve No 4" block, from the order drawn, when such interests were included in the minute; and

    b) The inclusion of all interests in the Horohoro blocks, under the name "Pipi te Rei" when in fact those interests are owned by the deceased's mother.

22. It is also clear that the Court, in terms of section 78A(6) of the Māori Affairs Amendment Act 1967, had jurisdiction to give effect to the family arrangement, and that no objections or concerns to the arrangement were raised at the time.

23. Therefore the applicants have not proven that the order was erroneous, by vesting the interests in Wiremu Te Tipi Larkins solely.

24. There is however still a question as to whether or not the family arrangement created a form of 'trust', by stipulating where the income from the interests was to go. This is a matter that will require a judicial determination.

25. The whānau affected by this claim held a meeting, to discuss the application, in Palmerston North on 7 May 2016. The meeting outcome was Wiremu Te Tipi Te Awe Awe indicating that he was prepared to have the shares, that he received solely from the deceased, divided equally amongst all the siblings or those persons now entitled.

26. The minutes from that meeting have been signed by Wiremu Tipi Te Awe Awe and five others.

27. To give effect to such an agreement would require an order made pursuant to section 164 of Te Ture Whenua Māori Act 1993 (the Act), if the Court is satisfied that all the requirements of that application have been met.

28. Accordingly, to afford all affected parties an opportunity to present their case to the Court, and to confirm their intention of giving effect to the outcome of their whānau hui held on 7 May 2016, a Court hearing is deemed necessary.

29. As all the land interests affected are in the Aotea district, and numerous affected parties live in the Palmerston North region, any Court hearing should be held in Whanganui.

Recommendation of course of action to be taken

30. 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) Upon expiration of the 28 days, the matter be referred to the Chief Judge for consideration as to setting it down for hearing in Whanganui.

    c) Notice of the Court hearing to be issued to all parties affected, for whom the Court holds contact details.

    d) If no objections are received, then an order be made, pursuant to section 44(1) of the Act, amending the succession order made on 6 November 1978 at 81 Otaki MB 265-266, relating to Pipi Rakena or Pipi Te Awe Awe, by:

        i. Adding the interests in "Horohoro Reserve No 4" block, under the name "Pipi te Rei", to accord with the Court minute; and

        ii. Cancelling the succession order in respect of all the Horohoro land interests in the Waiāriki district, as they do not belong to the deceased.

    e) 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.

    f) The Registrar send a form to the applicants, for succession to further interests, to be filed in respect of the Horohoro land interests held under the name "Pipi te Rei" (the deceased's mother).

    g) The applicants also be advised to file an application for the gifting of shares (section 164 of the Act), in order to give effect to the outcome of the whānau hui held on 7 May 2016. It should seek to vest the affected interests in all the siblings equally, or those persons now entitled - The filing fee is to be waived, if the application is filed within 6 months.

Procedural History

[5] On 24 April 2019, the Registrar's Preliminary Report and Recommendation was distributed to all affected parties, for whom addresses were known. Responses to the Report were received from Rangi Kapiki Te Awe Awe, John Mason Larkins and Wiremu Te Tipi Te Awe Awe Larkins.

[6] The application was heard before me in Whanganui on 6 November 2019[1] where evidence was given by Rangi Kapiki Te Awe Awe that a family meeting did take place in 1978, whereat it was agreed that William Te Tipi Te Awe Awe (Larkin - the respondent) would take the interests of Pipi Rakena or Pipi Te Awe Awe (the deceased) on condition that "he gave the money across and everyone was happy."[2] No money has ever been paid to the Te Rangimarie Marae. When challenged, the respondent's position was that as his siblings had given him the shares he did not intend to pay anything. He later stated in 2013 that the money was in a trust. The applicants believe the sum owed to be in the vicinity of $40-60,000. Rangi's evidence was supported by Wiremu Kingi Te Awe Awe.

[7] Both these men were at the meeting held in 1978. Rangi pointed out that he contested the matter on that date but the minutes do not reflect that nor are the minutes signed. He acknowledges that his uncle (the respondent) had agreed to transfer equal shares to family members who descended from his siblings. However, the issue remains what happened to the money.

[8] In reply, Mr Wiremu Tipi Te Awe Awe noted that he was the youngest and sole surviving child of his mother Pipi Rakena or Pipi Te Awe Awe. He recited his mother's whakapapa and that indicates that the family are descendants of Waitohe, the sister of Te Rauparaha and the family are Ngāti Toa and Ngāti Raukawa. They are also, through their father, are Rangitane. His view was that at the meeting in 1978, it was a unanimous decision that he be made the sole beneficiary of his mother's land. That was the decision of his brothers and sisters.

[9] He denied that he was trustee for the income generated from those lands. He claimed that the money could not go to the marae because it is a Rangitane Marae. He also stated that two thirds of the beneficiaries of the marae do not whakapapa to his mother, as they descend from someone else. Te Rangimarie Marae is recognised as a Rangitane Marae and in his view, have no entitlement to the money.

[10] However, in an effort to achieve reconciliation, he called a meeting on 7th May 2016 where he offered to share the land with his siblings or their descendants. He claims

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1 [2019] Chief Judge's MB 1224-1244 (2019 CJ 1224)
2 [2019] Chief Judge's MB 1234-1234 (2019 CJ 1234)

that everyone present, agreed that would be a good outcome. But in November 2016, immediately after his sister, Waitohe Keane, passed away and was buried, his nephews (the applicants - plus John Larkins) asked to meet with him at the marae, where they questioned him about his mother's 'business' dating back to August 1978. He rescinded his offer to return the lands.

[11] Upon questioning by the Court, he was adamant he did not give any undertaking that the money generated by his mother's shares would go to Te Rangimarie Marae. He claimed his sister made the proposal in 1978. When asked whether he agreed, he stated that "I never had anything to say, because it was done, it was just done, that particular time."[3]

[12] In response, John Larkin for the applicants, submitted that this was another example of his uncle making it difficult to deal with land matters. He contended that "This is clearly fraudulent behaviour" and that his uncle was "unjustifiably claiming what is not his."

[13] I reserved my judgment.

[14] At the hearing and following it, the Registrar completed further research and he advises that Te Rangimarie Marae was gazetted on 9 March 2017 as a Māori Reservation for the common use and benefit of the descendants of Wiremu King Te Awe Awe and Manawaroa Te Awe Awe.[4] This was identified at the Court hearing. However, since then the Registrar reviewed the history of the reservation and found that it was originally known as Rangiotu Marae. The Māori Land Court hearing that resulted in the recommendation of the Court in 2017 was to cancel a Māori reservation and include the underlying land in the new reservation, redefine the purposes of the reservation and change its name.[5]

[15] The land upon which Rangiotu stands was originally gazetted as a Māori Reservation on 13 June 1985 for the descendants of Wiremu King Te Awe Awe and Manawaroa Te Awe Awe.[6] This followed the determination of the Chief Judge pursuant to s 452 of the Māori Affairs Act 1953 made on 26 November 1984.[7] In that decision, the then Chief Judge noted that Wiremu Kingi Te Awe Awe (husband of the deceased in this

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3 [2019] Chief Judge's MB 1238-1239 (2019 CJ 1238-1239)
4 New Zealand Gazette No 25, 9 March 2017 (2017-In112) TN16768)
5 345 Aotea Minute Book 18-21 (345 ATMB 18-21)
6 New Zealand Gazette No 110, 13 June 1985 (1985-2530) TN17356

application) was the son of Manawaroa. He also noted that Manawaroa had two other children, Tareha Manawaroa and Wharawhara Leonards. This confirms the evidence of Wiremu Tipi Te Awe Awe that not all the beneficiaries of Te Rangimarie Marae are descendants of Pipi Rakena or Pipi Te Awe Awe.

The Law

[16] 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.

[17] The principles that are applied to s 45 decisions have been previously set out in numerous decisions made by the Chief Judge and myself. These are to be found in the judgment *Ashwell - Rawinia or Lavinia Ashwell (nee Russell)*[8] and in *Tau v Nga Whanau O Morven & Glenavy - Waihao 903 Section IX Block.*[9] I do not propose to repeat those principles again in this judgment.

[18] 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,

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7 [1984] Chief Judge's MB 123-130 (1984 CJ 123-130)
8 [2009] Chief Judge's MB 209-225 (2009 CJ 209)
9 [2010] Maori Appellate Court MB 167 (2010 APPEAL 167)

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

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

(a) Was the order made on 6 November 1978[10], vesting in Wiremu Te Tipi Larkins 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 & Decision

[20] On 6 November 1978 at 81 Otaki MB 265-266 the Court made a succession order vesting in Wiremu Te Tipi Larkins as sole successor. This was in accordance with evidence before the Court including the minutes of a family meeting held in August 1978. No appeal was made against this order.

[21] The principle of *Omnia Praesumuntur Rite Esse Acta* (everything is presumed to have been done lawfully unless there is evidence to the contrary) applies to s 45 applications.

[22] On the face of the Court record, there was no mistake or omission on the part of the Court or in the presentation of the facts of the case to the Court, and the applicants have been unable to prove otherwise. At least one of the applicants also acknowledged that this is not in dispute. That then means that I cannot exercise jurisdiction.

[23] I also consider that if a remedial constructive trust exists it should have been litigated in the proper manner with a full Māori Land Court hearing years ago. There is still the opportunity to pursue this option and the applicants should seek legal advice.

[24] Having made these findings, there is no need to address Issue (b) – namely whether it is in the interests of justice to remedy the mistake or error complained of.

[25] It is clear, however, that the order, as drawn, contains administrative errors as set out in paragraph 21 of the Registrar's report.

Orders

[26] The application is dismissed as to its substance.

[27] However, in terms of s 44(1) of Te Ture Whenua Māori Act 1993, I exercise my jurisdiction to correct the administrative errors in the succession order by:

(a) Adding the interests in "Horohoro Reserve No 4" block, under the name "Pipi te Rei", to accord with the Court minute; and

(b) Amending the succession order by deleting all the Horohoro land interests in the Waiāriki district, as they do not belong to the deceased.

[28] 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.

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

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

Pronounced at 1.30 pm in Gisborne on Wednesday this 11th day of December 2019.

C L Fox
DEPUTY CHIEF JUDGE

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[10] 81 Otaki MB 265-266 (81 OTI 265)