

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

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

A20200011162

WĀHANGA Section 165, Te Ture Whenua Māori Act 1993
Under

MŌ TE TAKE Succession to Momona Tamihana
In the matter of

I WAENGA I A THE MĀORI TRUSTEE
Between Te Kaitono
Applicant

ME LARA ERUETI
And Te Kaiurupare
Respondent

Nohoanga: 20 July 2021, 435 Aotea MB 215-221
Hearing 15 November 2021, 446 Aotea MB 30-42
(Heard at Whanganui)

Kanohi kitea: G Reilly for Applicant
Appearances

Whakataunga: 5 May 2022
Judgment date

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

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Hei tīmatanga kōrero*Introduction*

[1] Momona Tamihana died in 1947 leaving a will dated 14 August 1945. By codicil in 1946 the Māori Trustee was appointed executor of his estate. The Māori Trustee was appointed executor and received the estate assets by Court orders made in 1948 and 1950.¹

[2] The Māori Trustee has now applied to distribute the estate of Momona.

[3] The estate consists of three blocks of Māori land and one block of general land, all within the Aotea district. There is no issue concerning entitlement to the Māori land interests but there is one issue that needs to be determined in relation to the general land block. The issue is whether Te Uira Dee-Dee Anne Davidice (Dee-Dee) is entitled to succeed to the general land interest. Her entitlement is challenged by Lara Erueti.

[4] I heard the matter on 15 November 2021 and adjourned to allow service of the minutes and Lara’s affidavit on Dee-Dee, with leave for further submissions and evidence in writing.²

[5] No further submissions or evidence have been filed and I now determine who is entitled to succeed to the estate of Momona and make the appropriate orders.

Kōrero whānui*Background*

[6] The Māori Trustee holds the following interests as executor:

SCHEDULE A

Aotea District – Māori Freehold land:

<u>Blocks</u>	<u>LINZ Ref</u>	<u>Current Owner</u>	<u>Shares</u>
Ngatitu No. 14 A	TN100/267	Maori Trustee as	1.6667
Parihaka Papakainga	439693	executor of the estate	1.0
Parihaka X	508166	of Momona Tamihana Manuao	19.7826

¹ 105 Whanganui MB 344 (105 WG 344) and 57 Taranaki MB 347 (57 TAR 347).

² 441 Aotea MB 30-42 (411 AOT 30-42).

SCHEDULE B

Aotea District – General Land:

<u>Block</u>	<u>LINZ Ref</u>	<u>Current Owner</u>	<u>Shares</u>
Part Section 14 Tarurutangi District	TN121/19	Maori Trustee as executor of the estate of Momona Tamihana Manuao	Solely

[7] Momona's will did not specifically gift the land interests, instead providing for a life interest for his wife and upon her death, life interests for his adopted children, Doreen Tamihana (also known as Doreen Momona or Doreen Ngawai Erueti or Doreen Ngawai MacLeod) and Johnny Tamihana (also known as John MacLeod), so that on the death of one, the survivor would be entitled to the whole of the income from his estate for the remainder of his or her life.

[8] Clause 3(c) of the will provided:

Upon the death of the survivor of them the said Doreen Tamihana and Johnny Tamihana for such of their respective children absolutely as shall be living on the death of each survivor and if more than one then as tenants in common in equal shares per capita and not stirpes

[9] Johnny died on 20 May 2021. He legally adopted Dee-Dee.

[10] Doreen died on the 14 September 2015. She had nine children. Doreen's son William Angus Te Warihi Erueti died in December 2018. Lara Erueti is the eldest of William's four children. Another of Doreen's children, Anthony Wayne Kaponga Erueti, died in March 2014, before Doreen's death in December 2015. Anthony had two children, Rema Parekorari Erueti and Laine Ngawai Erueti.

[11] In terms of the will, Anthony is not a beneficiary as he predeceased his mother Doreen, the last surviving life tenant.

[12] On 20 April 2021, the descendants of Doreen entered into a Deed of Family Arrangement under which all agreed to include Anthony in the succession with his share to go to his two children.

[13] That arrangement was not supported by Johnny's adopted child Dee-Dee. Her interest therefore remains a one ninth share in accordance with the terms of the will, with the remaining shares to be divided equally amongst all of Doreen's children, with substitution with respect to both William and Anthony.

Ngā take

The issues

[14] With respect to the Māori land interests, I will make orders in accordance with the terms of the will of Momona as modified by the April 2021 Deed of Family Arrangement.

[15] The remaining issue concerns a challenge to the entitlement of Dee-Dee to a one ninth interest in the general land block. This is 20.1533 hectares in size and has for some time been leased for grazing purposes.

Ngā kiritake me ō rātou ake whakapono

The parties and their positions

[16] Lara's objection to Dee-Dee succeeding to an interest in the general land is set out in her affidavit of 22 October 2021, and accompanying memorandum of the same date.

[17] Under his will, Johnny left his entire estate, including land interests, to Lara. In her affidavit Lara explains that this was in accordance with a tikanga in the whānau for land interests to be left to the eldest grandniece or grandnephew. She was the eldest grandniece of Johnny which is why she was appointed beneficiary under his will.

[18] Dee-Dee challenged her adoptive fathers will by way of a Family Protection claim. That claim was settled, and the terms of settlement are attached to Lara's affidavit. The settlement provided that Dee-Dee would receive a 55/100 share of the net balance of the estate of John MacLeod (also known as Johnny Tamihana) by way of cash payment, with Lara receiving the balance 45/100 share of the net balance of the estate by way of a cash payment. Clause 3 provided:

That as part of the settlement, it is agreed by the Plaintiff and LARA ERUETI that any interest in Maori land owned by the ESTATE OF JOHN MACINTOSH MACLEOD will pass to the deceased's sister DOREEN ERUETI and on Doreen's death such land interests will pass or be distributed equally between the children of JOHN MACINTOSH MACLEOD (including the Plaintiff) and DOREEN ERUETI.

[19] In her affidavit Lara makes clear that her objection is just with respect to Dee-Dee's proposed entitlement to an interest in the general land block held in the estate of Momona. At paragraph 4 of her affidavit Lara says:

The reason Dee-Dee is not entitled is because I am the beneficiary under my Grand-Uncle Johnny's will. Dee-Dee and I reached an agreement after she brought a claim under the Family Protection Act 1955 against Grand -Uncle Johnny's estate.

[20] Mr Reilly for the Māori Trustee does not agree with the objection raised in Lara's affidavit and the accompanying memorandum. He argues that there is no basis to exclude Dee-Dee from entitlement to succeed to an interest in the general land block. This was because under his will, Momona passed life interests only to Johnny and Doreen. The absolute interests of Momona in both the Māori and general land blocks were not part of the estate of Johnny.

Kōrerorero

Discussion

[21] I have considered the matters raised by Lara in both oral submissions she made at the hearing in November 2021 and by way of her affidavit and memorandum. I have concluded that the challenge to Dee-Dee's entitlement with respect to the general land block cannot succeed for the reasons advanced by counsel for the Māori Trustee. Momona, by his will, left only a life interest to Johnny. All his real and personal property were to vest absolutely in the respective children of Doreen and Johnny who were living on the death of their respective parents. Dee-Dee is therefore entitled to a one ninth share in the land interests of Momona. This derives pursuant to the will of Momona and not from the will of her late adopted father Johnny.

[22] The terms of the settlement agreement reached between Lara and Dee-Dee address their respective entitlements to the estate of Johnny. By its terms any interest in Māori land owned by Johnny would, under the settlement agreement, pass to Johnny's sister, Doreen, and then upon her death in equal shares between the children of Johnny and Doreen. The settlement agreement is silent with respect to general land.

[23] The settlement agreement does not have any effect upon disposition of the general land block forming part of the estate of Momona as Johnny's interest in this land was a life interest only.

[24] I agree with counsel for the Māori Trustee that in accordance with the terms of Momona's will, his Māori and general land interests are to vest in the children of Johnny and Doreen as are living at the date of their respective deaths.

[25] Whilst I can recognise and give effect to the terms of the family arrangement entered into between Doreen's children, no such agreement has been reached between those entitled with respect to the general land block, and accordingly Dee-Dee is entitled under the will of Momona to a one ninth share of this land.

[26] Finally, I note for completeness that the will pre-dates Te Ture Whenua Māori Act 1993 ("the Act"). Section 100(2) of the Act provides that if administration of the estate of a deceased was granted before commencement of the Act on 1 July 1993, or a person dies before 1 July 1994 leaving a will executed before 1 July 1993, then Part 4 of the Act does not apply. The law immediately before commencement of the Act shall govern. The orders that follow reflect this.

[27] The Māori Trustee holds the following interests as executor of the estate of Momona Tamihana:

SCHEDULE A

Aotea District – Māori Freehold land:

<u>Blocks</u>	<u>LINZ Ref</u>	<u>Current Owner</u>	<u>Shares</u>
Ngatitu No. 14 A	TN100/267	Maori Trustee as executor of	1.6667
Parihaka Papakainga	439693	the estate of Momona	1.0
Parihaka X	508166	Tamihana Manuao	19.7826

SCHEDULE B

Aotea District – General Land:

<u>Block</u>	<u>LINZ Ref</u>	<u>Current Owner</u>	<u>Shares</u>
Part Section 14 Tarurutangi District	TN121/19	Maori Trustee as executor of the estate of Momona Tamihana Manuao	Solely

[28] Those entitled to succeed, and their respective proportions are set out in the following table (“Table C”):

<u>Table C Successors</u>				
<u>No</u>	<u>Name</u>	<u>Sex</u>	<u>Address</u>	<u>Proportion</u>
<u>Child of Johnny Tamihana (1/9th of estate of Momona Tamihana)</u>				
1	Te Uira Dee-Dee Anne Davidice also known as Te Uira Leone Aroha Nihoniho	F	16B Northcote Road, Redwood, Christchurch 8052	1/9
<u>Children of Doreen Erueti (a shared 8/9th of estate of Momona Tamihana)</u>				
	<i>William Angus Te Warihi Erueti - substituted by:</i>	<i>MDI</i>	<i>Deceased - 25 December 2018</i>	
2	Lara Selena Erueti	F	3 Onslow Place, Merrilands, New Plymouth 4312	2/81
3	Karmin Melody Erueti	F	461 Wellington Road, Marton 4710	2/81
4	Amber Marie Erueti	F	257 St Aubyn Street, New Plymouth 4310	2/81
5	Tansi Marlaine Williams	F	2 Turehu Street, Merrilands, New Plymouth 4312	2/81
6	Margaret Vicki Peitini Erueti	F	Unit 2/52 Standish Street, Inglewood 4330	8/81
7	Michael Cleveland Hoani Erueti	M	3452 Kaipara Coast Highway, RD 4, Warkworth, Auckland 0984	8/81
8	Cecil James Rangī Erueti	M	51/136 Palm Meadows Drive, Carrara, Gold Coast 4211, Australia	8/81
9	Doreen Karen Te Ata Eynon (nee Erueti)	F	15 Banrock Drive, Ellenbrook 6069, Perth, Western Australia	8/81
10	Sonja Mary Ngawai Ngaia (nee Erueti)	F	1/29 Bulsteel Street, New Plymouth 4310	8/81
11	Helen Joy Erueti	F	31 Brumby Avenue, Henley Brook 6055, Perth, Western Australia	8/81
12	Bevan Blair Erueti	M	158 Park Road, West End, Palmerston North, 4410	8/81
	<i>Anthony Wayne Kaponga Erueti - substituted by:</i>	<i>MDI</i>	<i>Predeceased the surviving life tenant - 31 March 2014</i>	
13	Rema Parekorari Erueti	F	7 Glenmore Road, Sunnyhills, Auckland 2010	4/81
14	Laine Ngawai Erueti	F	7 Glenmore Road, Sunnyhills, Auckland 2010	4/81

Ngā ōta
Orders

[29] Pursuant to s 100(2) of Te Ture Whenua Māori Act 1993, Part 4 of the Act does not apply. The Court makes the following orders:

- a) Section 135 of the Māori Affairs Act 1953 determining that those persons entitled to succeed to the deceased's interests are those listed in Table C, in their respective proportions;
- b) Section 136 of the Māori Affairs Act 1953, vesting the Māori land interests of the deceased shown in Schedule A and held by the Māori Trustee in those entitled in their respective proportions as shown in Table C; and
- c) Section 145 of the Māori Affairs Act 1953, vesting the general land interests of the deceased as shown in Schedule B and held by the Māori Trustee in those entitled as shown in Table C, in their respective proportions.

I whakapuaki i te 2.00 pm i Te Whanganui-a-Tara te 5 o ngā rā o Haratua i te tau 2022.

M J Doogan
JUDGE