

Hei tīmatanga kōrero*Introduction*

[1] This decision concerns an application filed by Georgina Wanikau-Chapman who seeks an order of succession regarding the Māori land interests of Lily Waiarani Ratahi.

[2] The distribution of Ms Ratahi's estate has been an issue of contention for some time. Ms Ratahi left two wills, one that was properly attested and signed, and the other which was in draft. Under the will dated 3 March 2010, Ms Wanikau-Chapman is the sole devisee of the residuary estate which includes interests in Māori land. Under the draft will, the residue estate is to be divided equally between Elizabeth Palmer, Bella Howard, and Ms Wanikau-Chapman. Challenges were made as to the validity of the draft will in the High Court, and ultimately that parties resolved estate issue by way of a Deed of Family Arrangement. It is the interpretation and effect of this Deed that is at the centre of the current conflict.

[3] Ms Palmer and Ms Howard are opposed to Ms Wanikau-Chapman receiving the interests in Māori land solely.

[4] The issue for determination is who is entitled to succeed to the interest of Ms Ratahi?

Kōrero whānui*Background*

[5] Ms Ratahi passed away on 21 November 2015. She left a validly signed will dated 3 March 2010 ("the will"). This will:

- (a) Appointed Ms Wanikau-Chapman as the executor and trustee of the will;
- (b) Gifted \$10,000.00 to Fiona;
- (c) Gifted \$10,000 to Tautahiariki; and
- (d) Gifted the residue of her estate including her Māori land interests to Ms Wanikau-Chapman.

[6] Ms Ratahi also left an unsigned draft will (“the draft will”) dated 2015 that:

- (a) Appointed Ms Palmer as the executor and trustee of the will; and
- (b) Gifted the residue of her estate including her Māori land interests to Ms Palmer, Ms Wanikau-Chapman and Ms Howard.

[7] On 6 March 2017 Ms Palmer applied to the High Court seeking an order declaring an unsigned draft will to be a valid will. On 21 June 2017, Ms Palmer then lodged a caveat in the High Court at Wellington pursuant to s 60 of the Administration Act 1969 to prevent Ms Wanikau-Chapman from applying for probate and distributing the estate in accordance with the will.

[8] The parties agreed to resolve matters relating to the disposition of Ms Ratahi’s estate by entering into a Deed of Family Arrangement dated 5 December 2019 (“the Deed”). Within the Deed are two agreements that are relevant to this proceeding:

- (a) That Ms Wanikau-Chapman will apply for probate, and 10 days after probate has been granted, will retire as the parties intend for the Public Trust to be an independent executor and trustee to administer the estate in accordance with the Deed.
- (b) That the Māori land interests shall be dealt with through the Māori Land Court.

[9] In accordance with the Deed, Ms Wanikau-Chapman applied for probate of the will, and it was granted by the High Court at Wellington on 21 July 2020 under probate number CIV-2016-485-607344, in her favour as sole executrix. However, despite the agreement for Ms Wanikau-Chapman to retire, it was subsequently discovered that she could not simply retire as intended. In order to appoint the Public Trust, an application to obtain discharge of administrator and appointment of Public Trust needed to be sought.

[10] The process concerning the replacement of executor and trustee was set out in a Variation of Deed of Family Arrangement dated 12 November 2020, however this deed was not signed by Ms Wanikau-Chapman.

Ko te hātepe ture o te tono nei

Procedural history

[11] On 3 September 2020 Ms Wanikau-Chapman applied for an order of succession pursuant to s 113 of Te Ture Whenua Māori Act 1993 (“the Act”). The application was opposed by Ms Palmer and Josephine Palmer who filed a notice of intention to appear on 2 December 2020.

[12] The application was heard in the first instance on 9 December 2020, where both Ms Wanikau-Chapman and Ms Palmer were present. Ms Wanikau-Chapman sought that the Māori land interests be divided between herself and Bella Howard, a sister to the deceased. Ms Palmer sought the Māori Land Court deal with the interests in accordance with the Deed.

[13] The hearing was adjourned for three months, where the parties were encouraged to either settle the issues by agreement, or engage legal representation to address the impact of the Deed on the distribution of the estate:¹

Court: I am going to adjourn the application for a defended hearing. That hearing will not take place until March and that will provide you with three months to either settle this matter or engage lawyers to deal with it, okay?

B Howard: And if this matter is not settled in three months, what happens then?

Court: So if you don’t reach an agreement amongst yourselves within three months, then you will be back in front of me and I’ll be determining it.

E Palmer: Yes, so you’ll determine it. Ka pai.

[14] The hearing was fixtured for 8 April 2021. The parties had not reached an agreement as to the distribution of the Māori land interests, and Ms Wanikau-Chapman instructed Cameron Hockley, as her counsel, to make legal submission on her behalf. Despite warnings as to legal interpretation, Ms Palmer continued to represent herself.

¹ 233 Taitokerau MB 269-275 (233 TTK 269-275) at 275.

[15] At the hearing, after setting out her position, Ms Palmer sought a further adjournment to engage a lawyer:²

Court: Okay. Do you have anything else that you would like to add this afternoon Elizabeth?

E Palmer: Other than it sounds like, yes, I wonder if we can get an adjournment. I can get my lawyer to go over this again because I thought I had everything in front of me and it was clear to me and you and all the parties because all I hear is, from Mr Hockley's words, is he is going back to the 2010 Will and I thought the Wills were laid to rest and everything would take precedence.

Court: Well in seeking an adjournment at this stage Elizabeth, the reality is I had adjourned this matter in December to enable just that step to take place, to enable you to obtain legal advice on this issue that is before me and you chose not to.

E Palmer: No. So, Your Honour, I did get legal advice. That's representation for me today.

Court: Well, no you did not get legal representation. Let us be clear, you did not get legal representation for this matter that is before this Court.

E Palmer: Yes.

Court: And you had three months to do that.

E Palmer: Yes Your Honour.

Court: And I made it clear in December that there would be a defended hearing to work through how the estate should be administered. So in my view, Elizabeth, you have had ample opportunity to take any steps that you could take to be represented in this matter and on that basis I am not going to adjourn today.

[16] As Ms Palmer had already been given an opportunity to obtain legal advice, and failed to do so, her request for a further adjournment was declined. After hearing from both parties the decision was reserved.

Ko te kōrero a Ms Wanikau-Chapman

Case for Ms Wanikau-Chapman

[17] Ms Wanikau-Chapman seeks that succession to the deceased's interests in Māori land be determined by the Court in accordance with the Deed and the will. Mr Hockley submitted on Ms Wanikau-Chapman's behalf that the Deed does not dictate to the Court how the interests should be distributed, or the effect of the will. He says that there was an opportunity for the parties to agree to distribution that differed from the will, but they did

² 231 Taitokerau MB 164-181 (231 TTK 164-181) at 177-178.

not take the opportunity to do this. He says that in the absence of an expressed agreement between the parties, the Court must be guided by the probated will.

[18] With regard to making the application, Mr Hockley says that Ms Wanikau-Chapman has standing to make the application as she is a person of interest, in accordance with s 113(1) of the Act. He says that while his client sought to retire as per the agreement, an application had to be pursued for the discharge and replacement of administrator and this had not been pursued at the time of the hearing.

Ko te kōrero a Ms Palmer

Case for Ms Palmer

[19] Ms Palmer seeks that the estate is distributed in accordance with the Deed, which provides that the “deceased’s interests in Māori land shall be dealt with through the Maori Land Court.” Ms Palmer says that the effect of the Deed is that the executed will dated 3 March 2010 is invalid. It is her desire that the interests are vested in a whānau trust that is established for the betterment of all the whānau.

[20] Ms Palmer challenges Ms Wanikau-Chapman’s standing to bring the application to Court. She says that under the Deed, Ms Wanikau-Chapman agreed to retire as trustee and executor and on that basis she does not have standing.

Te Ture

The Law

[21] Section 113 of the Act provides that the Court can determine the persons legally entitled to succeed to any beneficial interest in Māori freehold land belonging to an estate. An application can be made by the administrator of the estate, any person interested, or by the Registrar.³ A determination must be made before the interests can be vested.⁴

[22] The Act provides different pathways for succession depending on whether the interest is to be disposed of by way of a will,⁵ or whether succession is to be determined on

³ Te Ture Whenua Māori Act 1993, s 113(1).

⁴ Te Ture Whenua Māori Act 1993, s 113(5).

⁵ Te Ture Whenua Māori Act 1993, s 108.

intestacy.⁶ Under s 117, where a grant of administration has been made, the Court may make an order vesting any beneficial interest in Māori freehold land belonging to the estate in the person or persons legally entitled to succeed to the interest.⁷ Where there is no grant of administration, the Court may make an order vesting the interest in the person or persons entitled to the interest pursuant to s 118 of the Act.

Kōrerorero

Discussion

[23] While Ms Palmer raises issues with Ms Wanikau-Chapman applying to this Court for an order of succession as she had agreed to retire, she is still entitled to make the application as a person with an interest per s 113 of the Act. In addition, she remains as administrator until formal steps are taken for her replacement. Ultimately there is no issue as to standing.

[24] The fundamental issue is determining who is entitled to succeed to Ms Ratahi's interests in Māori land. In order to make a determination, the crucial question is whether clause 2(d) of the will is affected by the Deed.

[25] Starting with the will, while Ms Palmer initially challenged validity by seeking an order declaring the draft will valid, she discontinued that proceeding. Probate of the will dated 3 March 2010 was granted by order of the High Court on 21 July 2020, and the effect of probate is that the validity of the will was confirmed.⁸

[26] As to the provisions of the will, as Ms Ratahi did not make any specific gifts regarding her Māori land interests, these fell into her residuary estate. Clause 2(d) of the will devises the residue estate as follows:

I GIVE DEVISE BEQUEATH AND APPOINT the whole of my real and the residue of my personal estate of whatsoever nature and kind the same may be and wheresoever situate of which shall be possessed to which I shall be entitled or over which I shall have any disposing power at the date of my death unto the said GEORGINA WANIKAU-CHAPMAN...

⁶ Te Ture Whenua Māori Act 1993, s 109.

⁷ Te Ture Whenua Māori Act 1993, s 117.

⁸ Probate is defined as the official proving the will, or establishing the validity of the will (*Concise Oxford Dictionary* (12th ed, 2011) at 1143).

[27] Turning now to the Deed, it contains recitals which set out the background of Ms Ratahi's death and the challenges made with respect to the will and probate. It states that "[t]he parties have agreed to resolve matters relating to the estate and wish to record their agreement on the disposition of the deceased's estate into the Deed."

[28] The terms of the Deed address matters such as probate and the appointment of an independent trustee and executor, and the distribution of specific property that fell into the residuary estate. The terms of the Deed also include a clause as to independent legal advice, an acknowledgement that parties are of sound mind, and that the agreements reached are in full and final settlement. It is clear from the expressed terms of the Deed that the parties sought finality in the distribution of the estate and the avoidance of further litigation in the High Court. Both parties had the opportunity to obtain legal advice, and during the course of the hearing, Ms Palmer confirmed that she had legal representation.

[29] The property addressed in the Deed is extensive, including real estate and rent; chattels and personal belongings; a car; cash; and Māori land. With regard to Ms Ratahi's interests in Māori land, clause 34 simply states that "[t]he deceased's interests in Māori land shall be dealt with through the Māori Land Court."

[30] There is no direction from this clause as to how the Māori Land Court should determine succession to the interests in a way that departs from the ordinary process. As the will has been declared as valid, any departure from the expressed terms of the will must be irrefutable. This is not the case, and I agree with Mr Hockley that there was an opportunity for a specific distribution to be negotiated that departed from the will, however this was not undertaken. Importantly, the Deed does not go so far as to invalidate clause 2(d) of the will, rather it determines how the extensive property within the residuary estate is to be distributed.

[31] As the Deed does not invalidate clause 2(d) of the will, and clause 34 does not direct a distribution in a way that departs from the ordinary process, then the Deed has no effect on the way in which the interests in Māori land are to be disposed. As the will has been confirmed as valid, then the ordinary process is for disposition of the interests in accordance with s 108 of the Act. Under clause 2(d) of the will, Ms Ratahi leaves her

interests in Māori land to Ms Wanikau-Chapman, and as she is a person related by blood under s 108(2), then she is entitled to succeed.

[32] For these reasons, I determine that Georgina Wanikau-Chapman is entitled to succeed to the interests in Māori land in accordance with s 113 of the Act.

Kupu whakataua

Decision

[33] The Court makes orders pursuant to Te Ture Whenua Māori Act 1993:

- (a) Section 113 determining that the person entitled to succeed to the deceased's interests is Georgina Wanikau-Chapman; and
- (b) Section 117 vesting the Māori land interests of the deceased in Georgina Wanikau-Chapman.

I whakapuaki i te 1:00 pm i Waiariki, te tekau mā ono o ngā rā o Poutū-te-rangi i te tau 2022.

Pronounced at 1:00pm in Waiariki on this 16th day of March 2022.

T M Wara
JUDGE