

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

A20180004310

UNDER Sections 113 and 118, Te Ture Whenua Māori Act
1993

IN THE MATTER OF Succession to El-Alamein Harawira

ROBERT CARMONT
Applicant

Hearing: 18 April 2019, 191 Taitokerau MB 86-92
(Heard at Auckland)

Judgment: 6 August 2019

JUDGMENT OF JUDGE T M WARA

Introduction

[1] The applicant, Mr Robert Carmont, says that he is the partner of the late El-Alamein Harawira, also known as El Alamein Harawira or El Alamein Carmont. He seeks a life interest in the deceased's Māori land interests. Mr Carmont says that the deceased left a will, and that he is entitled to receive a life interest under the will.

[2] The majority of the deceased's children oppose the application. They say that there is no will, and they want to succeed to their mother's Māori land interests and vest them into a whānau trust for the benefit of her descendants.

[3] The issue for determination is whether Mr Carmont is entitled to a life interest.

Background

[4] El-Alamein Harawira died on 1 December 2016. She was the mother of six children: Patrick Rewa; Raymond Rewa; Claudia (Kororia) Hadfield; Rangimarie Te Aute; Maraea Trevithick and Rosalia Skelton. Her parents were Frances Pomare Harawira and Joseph Osiki.

[5] The deceased holds interests in two blocks located in Te Taitokerau district: Pakonga No.2B and Te Kao 86.

Submissions for the applicant

[6] Mr Carmont appeared at the Court hearing and produced a photocopied document that he claimed to be a will. He informed the Court that he had been in a relationship with the deceased for approximately 30 years. He was supported by one of the deceased's sons, Partick Rewa, who informed the Court that the applicant and his mother had been in a relationship for a long time, he made her happy, he loved and supported her, and treated her "like a queen".

Submissions in opposition

[7] The Court received emails from two of the deceased's children, Kororia Hadfield and Raymond Rewa, both opposing the application for a life interest. In addition, two of

the deceased's other children, Maraea Trevithick and Rosalia Skelton, appeared at the hearing opposing the application. The deceased's granddaughter, El-Alamein Hadfield, was also present.

[8] The common position from those in opposition was the understanding that the land was for the deceased's children.

Is Mr Carmont entitled to a life interest under the Act?

[9] Pursuant to s 108(4) of Te Ture Whenua Māori Act 1993, any owner of a beneficial interest in Māori freehold land may leave that interest by will to the owner's spouse, civil union partner or de facto partner for life or any shorter period.

[10] If an owner of a beneficial interest in Māori freehold land dies intestate, leaving a spouse or civil union partner, then pursuant to s 109(2) of the Act that person is entitled to a life interest until he or she remarries or enters into a new civil union partner or de facto relationship.

[11] The critical point is that a de facto partner is only entitled to receive a life interest if this is provided for in a will.

[12] The alleged will is a hand-written document, headed "last will of El-Alamein Hadfield" – however it is not clear whether these words were included at the time the document was prepared, as they are excluded from another photocopied version of the document that was included with the application.

[13] The document contains a number of corrections, as words have been crossed out or inserted. The corrections, coupled with some illegible handwriting makes the document difficult to understand, however it appears to state:

To Robbert Grant Carnot 3 Oran Road Panmure Auckland My Son Paddy and Raymond My Granddaughter El-Alamein Hadfield If anything happen's to me your in charge Robbie.

El-Alamein Hadfield

15-6-19[??]

[14] There are two issues. Firstly, there is no clear gift of a life interest of the deceased's Māori land interests to Mr Carmont. Secondly, a will must be in writing and must be signed and witnessed by at least two witnesses.¹ The document produced by Mr Carmont was not witnessed, therefore it is not legally valid.

[15] As the deceased and the applicant were neither married nor in a civil union, the intestacy provisions under s 109(2) applies. In accordance with the provision, as a de facto partner, Mr Carmont is not entitled to a life interest in the deceased's Māori land interests.

Is Mr Carmont entitled to an order pursuant to section 116 of the Act?

[16] While Mr Carmont has not applied for an order pursuant to s 116, it is relevant under the current circumstances. Section 116 of the Act allows the Court to make special provisions relating to income where a person falls outside the defined classes able to receive Māori land interests on succession.

[17] However, s 116(2) provides that this Court cannot make an order under s 116 in favour of any person whose claim falls within the jurisdiction of the High Court under the Family Protection Act 1955. This was addressed by Judge Armstrong in *Bennett – Estate of Ronald Clifford Bennett*, who determined that where a claimant is eligible to bring proceedings in the High Court or the Family Court under the Family Protection Act 1955, then an order for income cannot be made by this Court.²

[18] I accept that Mr Carmont was in a de facto relationship with Mrs Harawira, and therefore would be entitled claim a provision out of the estate under s 3(1)(aa) of the Family Protection Act 1955, however an order under s 116 cannot be made by this Court.

[19] I note that the income generated by the deceased's Māori land interests appears to be nominal, and therefore the cost of making a claim under the Family Protection Act 1955 may outweigh the benefit.

¹ Section 11 of the Wills Act 2007.

² *Bennett – Estate of Ronald Clifford Bennett* (2017) 156 Waiariki MB 250 (156 WAR 250).

Decision

[20] I grant the following orders pursuant to Te Ture Whenua Māori Act 1993:

- (a) section 113 determining that the persons entitled to succeed to the deceased's interests in Pakonga No.2B and Te Kao 86 are Patrick Rewa; Raymond Rewa; Claudia (Kororia) Hadfield; Rangimarie Te Aute; Maraea Trevithick and Rosalia Skelton.
- (b) section 118 vesting the Māori land interests of the deceased in the persons I have determined entitled; and
- (c) section 242 for the payments of funds held by the Māori Trustee to Robert Carmont as a contribution towards the application fee.

Pronounced in open Court in Whangārei at 9:00 am on Tuesday this 6th day of August 2019.

T M Wara
JUDGE