

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

A20180004540

UNDER Section 118, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Derek Heemi Hurunui (deceased)

ELIZA JANINE COOPER
Applicant

NGAHINA HURUNUI
Respondent

Hearing: 11 September 2018, 390 Aotea MB 56-64
19 December 2018, 394 Aotea MB 4-9
(Heard at New Plymouth)

Appearances: Eliza Cooper in person
Ngahina Hurunui in person

Judgment: 19 December 2018

ORAL JUDGMENT OF JUDGE L R HARVEY

Introduction

[1] Eliza Cooper, the de facto partner of the late Derek Hurunui, applies for succession to his Māori land interests. Ms Cooper seeks a life interest, or failing that, an order entitling her to the income from the deceased's Māori lands.

[2] Derek Hurunui and Ms Cooper had six children, two of whom are minors. Ms Cooper also seeks appointment as kaitiaki trustee.

[3] One of the deceased's children, Ngahina Hurunui, with support from one of the minors, Eliza-Moerewa Hurunui, opposes the order sought by her mother. She says that all four adult children do not wish for their mother to have any involvement with their late father's lands. In addition, Ngahina Hurunui contends that she should be the kaitiaki trustee for her siblings who are minors. Further, Ms Hurunui asserts that her mother is not entitled to a life interest or income because firstly, her parents were not married, and secondly, her mother has entered into relationships in the nature of marriage including falling pregnant.

Issues

[4] The issues for determination is are:

- (a) whether Eliza Cooper is entitled to a life interest or income; and
- (b) who should be appointed kaitiaki trustee for the minors?

[5] The application was first heard on 11 September 2018 where the parties gave evidence. The proceedings were then adjourned to the December sitting of the Court at New Plymouth to give the parties the opportunity to address their respective positions further. Despite that opportunity a resolution could not be found, prior to the hearing earlier today.

Submissions of Eliza Cooper

[6] Ms Cooper claims that it was the intention of the deceased that she should retain a life interest or, at the very least, derive a benefit from the income off the lands. Ms Cooper also claims that her intentions are altruistic, not motivated by greed, and are intended to benefit her children, especially the minors.

[7] As to an earlier proposal that one of the deceased's siblings should become kaitiaki trustee for the minors, Ms Cooper objected to that proposal asserting that the proposed nominees were unsuitable due to, what she alleged, was their antisocial conduct. Ms Cooper also confirmed that she was estranged from her daughter Ngahina Hurunui, and further that her son Denham Hurunui did not agree to the proposal that the lands should be vested in the adult children and in a kaitiaki trustee for the minors.

[8] Ms Cooper asserted that her adult children had agreed that the deceased's lands should fall under her control as to a trustee.

Submissions for Ngahina Hurunui

[9] Ms Hurunui denied the suggestion that her father wanted Ms Cooper to benefit from his Māori land interests. She asserted that her father wanted the lands to go to his children. Ms Hurunui also claimed that Ms Cooper had fallen pregnant on at least one occasion and had been in situations comparable to being in a relationship in the nature of marriage, soon after her father had died.

[10] In addition, Ms Hurunui acknowledged that, originally, it was proposed that either her uncle or aunty, the siblings of her father, would be appropriate as kaitiaki trustee. However, on reflection, she agreed to accept that responsibility herself.

[11] Further, Ms Hurunui was supported in her submissions by her sister, Eliza-Moerewa Hurunui, who also confirmed that, from her perspective, the assertions made by their mother were wrong. Eliza-Moerewa Hurunui disputed any right of her mother to claim the role of kaitiaki trustee for her or her sister Constance Cooper.

The Law

[12] Section 109 of Te Ture Whenua Māori Act 1993 provides:

109 Succession to Maori freehold land on intestacy

- (1) Subject to subsection (2) of this section, on the death intestate of the owner of any beneficial interest in Maori freehold land, the persons primarily entitled to succeed to that interest, and the proportions in which they are so entitled, shall be determined in accordance with the following provisions:
 - (a) Where the deceased leaves issue, the persons entitled shall be the child or children of the deceased living at his or her death, in equal portions if more than one, together with the issue living at the death of the deceased of any child of the deceased who died before the deceased, that issue to take through all degrees, according to their stocks, in equal portions if more than one, the portion to which their parent would have been entitled if living at the death of the deceased:
 - (b) Where the deceased leaves no issue, but leaves brothers and sisters, the persons entitled shall be the deceased's brothers and sisters living at the death of the deceased (including brothers and sisters of the half blood descended from the parent or other ascendant through whom the deceased received his or her entitlement to that interest), in equal portions if more than one, together with the issue living at the death of the deceased of any such brother or sister of the deceased who died before the deceased, that issue to take through all degrees, according to their stocks, in equal portions if more than one, the portion to which their parent would have been entitled if living at the death of the deceased:
 - (c) Where the deceased leaves no issue and no brothers and sisters, the persons entitled to succeed shall be ascertained always by reference to the derivation of entitlement by the deceased and shall be the issue, living at the deceased's death, of the person nearest in the chain of title to the deceased who has issue living at the deceased's death, that issue to take through all degrees, according to their stocks, in equal shares if more than one.
- (2) Where the owner of a beneficial interest in any Maori freehold land dies intestate leaving a person who is the owner's surviving spouse or civil union partner, that person is, subject to subsection (4), entitled as of right to an interest in that interest for life, or until he or she remarries or enters into a civil union or a de facto relationship.
- (3) Such a surviving spouse or civil union partner may, on the death of the deceased or at any time thereafter, surrender in writing his or her entitlement under subsection (2) of this section, whereupon the Court shall vest the interest absolutely in the persons entitled to succeed to the interest.
- (4) A surviving spouse or civil union partner shall not be entitled under subsection (2) of this section if, at the date of the death of the owner, a separation order, or a separation agreement made by deed or other writing, is in force in respect of the marriage or civil union between the surviving spouse or civil union partner and the owner.

[13] Section 116 of the Act states:

116 Court may make special provision relating to income

- (1) Subject to subsection (2) of this section, in the exercise of its powers under this Part of this Act in respect of any estate, the Court may make an order conferring on any person the right to the whole or any part of the income derived from any beneficial interest in Maori freehold land, or to the whole or any part of the proceeds of sale of any such interest, belonging to the estate, for life or for any shorter period.
- (2) The Court shall not make an order under this section in favour of any person whose claim, in the opinion of the Court, fell or falls within the jurisdiction of the High Court under the Law Reform (Testamentary Promises) Act 1949 or the Family Protection Act 1955.
- (3) In enacting this provision, Parliament has in mind particularly the possibility of injustice arising in individual cases from the prohibitions enacted by this Act against the alienation of beneficial interests in Maori freehold land to persons outside defined classes, and is therefore desirous of conferring on the Court some flexible, if limited, powers to ameliorate any such injustice.

Discussion

[14] Based on the available evidence, I accept that Ms Cooper has, from time to time, taken cumulatively, been involved in what might be described as relations in the nature of marriage. By her own acknowledgement, that has included falling pregnant on at least one occasion and this would tend to confirm the situation. On this basis, I cannot see how any argument as to a life interest could be sustained. As to the provision of income per section 116 of the Act, I am not persuaded by the arguments laid out this morning by Ms Cooper that such an entitlement is appropriate in all the circumstances. I therefore decline to exercise jurisdiction to provide Ms Cooper with the relief she is seeking either as to a life interest, which was unlikely to have been available to her, or as to income from the lands.

[15] The remaining issue is therefore the necessity for a kaitiaki trust for the minors. Eliza-Moerewa Hurunui confirmed that she had her personal effects and related items stored at the residence of her mother. However, she disputed that she “lived,” in the general sense of that word, with her mother. The impression I gained was that she would strongly prefer that her kaitiaki trustee should be her sister Ngahina Hurunui.

[16] Ms Hurunui also confirmed that the youngest of her siblings, Constance Cooper, was cared for by her grandparents. In such circumstances, if they are correct, I see no reason why Ms Cooper should be a kaitiaki trustee for Constance. Either, with their consent, one of the grandparents should fulfil this role or Ngahina Hurunui should be appointed. To avoid doubt, Ngahina Hurunui should confirm within two months from the date of this judgment

whether either herself or one of her grandparents will consent to appointment as kaitiaki trustee for Constance Hurunui.

[17] Ms Cooper asserted that at least one of her children, Denham Hurunui, did not agree with the proposals of Ngahina Hurunui and in fact wanted the land to be managed by Ms Cooper. Ms Hurunui on the other hand denied those claims. In any event, as foreshadowed, there are only two minors and their interests have now been dealt with in this decision. For the adult children, their situation is clear. They are entitled to succession to the interests of their father. There is no capacity for them to alienate those interests in any way to their mother unless she is a member of the preferred class of alienees or where the adult children agree to the constitution of a whānau trust with Ms Cooper as trustee. To avoid doubt, I give the adult children of the deceased two months from the date of this decision to confirm in writing to the case manager whether they wish to vest their interests in a whānau trust with Ms Cooper as trustee. Ngahina Hurunui has already made her position clear.

Decision

[18] There are orders for succession on intestacy in favour of the children of Derek Hurunui. The interests are vested accordingly.

[19] A kaitiaki trust is established for the interests of Eliza-Moerewa Hurunui using standard terms. Ngahina Hurunui is appointed kaitiaki trustee and the interests are now vested in her in that capacity.

[20] Ngahina Hurunui has two months from the date of this decision to confirm whether she or her grandparents consent to appointment as kaitiaki trustee over the interests of Constance Cooper.

[21] The three other adult children of the deceased, Keanee Hurunui, Denham Hurunui and Darrius Hurunui, are to confirm within two months whether they wish to vest their interests in a whānau trust with Eliza Cooper as trustee.

Pronounced at 4.15 pm in Whanganui on Wednesday this 19th day of December 2018

L R Harvey
JUDGE