

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

**A20100012163
CJ 2010/62**

UNDER Section 45 of Te Ture Whenua Māori Act 1993

IN THE MATTER OF Rihi Hoone Pekama also known as Elizabeth
Pekama or Rihi Hone Hamiora

ROBYN ALANA FAITH DEER
Applicant

Judgment: 02 March 2017

RESERVED JUDGMENT OF CHIEF JUDGE W W ISAAC

Introduction

[1] This application filed by Robyn Alana Faith Deer (the applicant) pursuant to section 45 of Te Ture Whenua Māori Act 1993 (the Act) seeks to amend a succession order made on 26 February 1997 at 9 Registrar Taitokerau MB 70 relating to the Māori land interests of Rihi Hoone Pekama also known as Elizabeth Pekama or Rihi Hone Hamiora (the deceased), the applicant's maternal grandmother.

[2] The applicant claims that the order is incorrect due to a mistake, error or omission in the presentation of the facts of the case to the Registrar on the grounds set out as follows:

- (a) Her mother, Naomi Emme Jacqueline Cox, was omitted from the succession; and
- (b) When succession was filed by Maretta June August (sibling to Naomi), as the administratrix for the estate of the deceased, Naomi was not listed as a child of the deceased.

[3] The applicant claims that she has been adversely affected by the order complained of upon the grounds that her family have been denied the right to succeed to their mother's shares.

[4] The applicant seeks to have the order made on 26 February 1997 at 9 Registrar Taitokerau MB 70 amended by:

- (a) Recognising Naomi Emme Jacqueline Cox as being a person entitled to succeed to the Māori land interests of the deceased;
- (b) Including Naomi Emme Jacqueline Cox as a successor to the deceased; and
- (c) Adjusting the proportional shares from a 1/4th to a 1/5th shareholding.

Background

[5] The Registrar's Report and Recommendation dated 27 July 2016 sets out the background to the application. The Report is reproduced in full as follows:

APPLICATION UNDER SECTION 45 OF TE TURE WHENUA MĀORI ACT 1993
REPORT AND RECOMMENDATION

Details of the mistake or omission alleged by the applicant

1. This application filed by Robyn Alana Faith Deer (the applicant) seeks to amend a succession order made on 26 February 1997 at 9 Registrar Taitokerau MB 70 relating to Rihi Hoone Pekama or Elizabeth Pekama or Rihi Hone Hamiora (the deceased), the applicant's maternal grandmother.
2. The applicant claims the said order is incorrect due to a mistake, error or omission in the presentation of the facts of the case to the Registrar because:
 - a) Her mother, Naomi Emme Jacqueline Cox was omitted from the succession; and
 - b) When succession was filed with the Registrar by Maretta June August (sibling to Naomi), as administratrix for the estate of the deceased, Naomi was not listed as a child.
3. The applicant claims that she has been adversely affected by the order complained of upon the grounds that her family have been denied the right to succeed to their mother's shares.
4. The applicant seeks to have the order made on 26 February 1997 at 9 Registrar Taitokerau MB 70 amended by:
 - a) Recognising her mother, Naomi Emme Jacqueline Cox as being a person entitled to succeed to the Māori land interests held by the deceased; and
 - b) For the proportional shares of the successors to be adjusted from 1/4th to 1/5th.

Concise history of Order sought to be amended

5. On 29 May 1996 at 9 Registrar Taitokerau MB 11 an application for succession to Rihi Hoone Pekama or Elizabeth Pekama or Rihi Hone Hamiora, filed by Maretta June August as administratrix to the estate of the deceased, was ordered by the Registrar. The evidence given is reproduced as set out below:

Minute Book reference: 9 RGTO 11

Place: Whangarei
Present: R R Wilson, Deputy Registrar
C I Tohu, Section Officer (Estates)

Date: 29 May 1996

Estate No. 1827 – Section 81/67
Rihi Hoone Pekama or Elizabeth Pekama or Rihi Hone Hamiora,
Deceased

The deceased died on 11 October 1987. Intestate.

Letters of Administration P number 451/88 was granted by the High Court at Auckland on 22 February 1988.

There is an order under Section 81 of the Māori Affairs Amendment Act 1967 vesting the following interests:

Land	Shares
Matauri 3C	Solely
Whakataha Z1C	11.539

In Maretta June August as the administratrix of the estate of the deceased.

6. On 26 February 1997 at 9 Registrar Taitokerau MB 70, the Registrar made an order vesting in the persons entitled to succeed to the interests of the deceased. A copy of the evidence presented is reproduced as set out below:

Minute Book Reference: 9 RGTO 70

Place: Whangārei
 Present: R R Wilson, Deputy Registrar
 L Lafaele, Section Officer (Estates)
 Date: 26.2.97

Estate No. 1827 – Section 81A/67
Rihi Hoone Pekama or Elizabeth Pekama or Rihi Hone Hamiora
(Deceased)

The deceased died on 11 October 1987.

L Lafaele: At 9 RGTO 11 of 29 May 1996 the interests of the deceased were vested in Maretta June August as administratrix of the estate of the deceased, who now seeks to vest the interests in the persons beneficially entitled.

Deputy Registrar: There is an order under Section 81A of the Māori Affairs Amendment Act 1967 in terms of the application filed vesting the interests accordingly as set out in the schedule below.

SCHEDULE

Matauri 3C	Whakataha Z1C
1.000	11.539

Maretta June August
 David Anthony Cox
 Hinemoa Isobel Cox
 Helen Bernice Sulfa

Equally

7. The Registrar's Order made pursuant to section 81A of the Māori Affairs Amendment Act 1967, relating to the Māori land interests of Rihi Hoone Pekama or Elizabeth Pekama or Rihi Hone Hamiora, was as follows:

Taitokerau District

<u>Blocks</u>	<u>Shares</u>
Matauri 3C	1.000
Whakataha Z1C	11.539

Successors/Beneficiaries

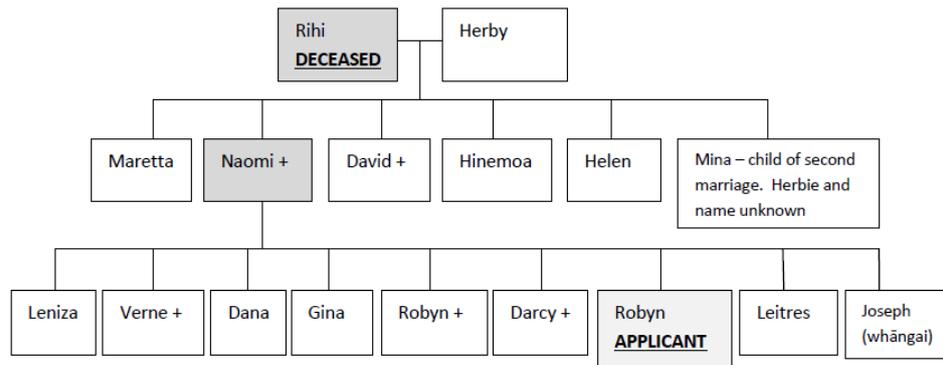
<u>Name</u>	<u>Matauri 3C</u> <u>(CT 49A/133)</u>	<u>Whakataha Z1C</u>
	1.000	11.539
1. Maretta June August 17 Farnborough Crescent Mangere	0.250	2.885

2.	David Anthony Cox	0.250	2.885
3.	Hinemoa Isobel Cox	0.250	2.885
4.	Helen Bernice Sulfa	0.250	2.885

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

8. The applicant has provided the following documents in support of her application:
- a) Whakapapa as set out below:

Whakapapa for Rihī Hoone Pekema



Key: + Deceased

- b) A certified copy of the Death Certificate for Naomi Emme Jacqueline Wilson showing her to be a child of Liz Pekama (nee Cox), mother, and Herbie Pekama, father, and having died on 6 December 1991;
- c) A certified copy of a Birth Certificate showing Naomie Emme Jacqueline Cox to be a child of Herbert Edward Cox (father) and Lizzie Cox (mother);
- d) A certified copy of the Marriage Certificate between Naomi Emme Jacqueline Pekama and William Patric Wilson;
- e) List of contact details for all of Naomi's children and her descendants;
- f) Letter dated 8 November 2010 seeking waiver of the filing fee;
- g) Letter dated 8 November 2010 listing the names of David's issue, Naomi's brother;
- h) Signed letter from Maretta June August and Hinemoa Isobel Kathleen Pekama (Naomi's siblings) in support of the applicants application before the Chief Judge;
- i) A copy of the minute and order complained of made on 26 February 1997 at 9 Registrar Taitokerau MB 70; and
- j) A copy of the minute dated 29 May 1996 at 9 Registrar Taitokerau MB 11.

Court Research

9. When the succession application was filed with the Registrar, Maretta August listed the deceased as having (4) four issue consisting of three daughters and one son. It's noted that Naomi Emme Jacqueline Cox was deceased at the time, having died on 6 December 1991.

10. Court research has located a Death Certificate on the subject application file that shows the deceased as having five (5) issue consisting of four daughters and one son.
11. The applicant has obtained a signed letter from two of Naomi's siblings namely; Maretta August and Hinemoa Pekama acknowledging Naomi as their sibling. A copy of their letter is reproduced as follows:

To whom it may concern.

My Name is Maretta June August
 6847 S.H. 35 Tekaha Opatiki 3199 ✓
 Phone (09) 325-2199 ✓

My Mother's name - Rihiri Hone Hamiora
 AKA Rihiri Pekama / Cox

My Father's name - Herbie Hirini Pekama / Cox
 AKA Herbert Edward Cox

My Sister - NAOMI Emme Jacqueline Cox
 AKA NAOMI / JACKIE WILSON.
 M.J. August.

To whom it may concern

My name is Hinemoa Isabel Kaitheken Pekama.
 One Tamlinson St, Hill Park - Manurewa; Manukau City - Auckland ✓ 2102
 Ph: 027-3454384 ✓

My mother was Rihiri Hone Pekama - Nee Hamiora.

My father was Herbert Edward Pekama - A.K.A. Cox.

My sister was - Naomi Emme Jacqueline (Cox) Wilson.
 H. Pekama.

Details of subsequent Orders affecting lands to which this application relates

12. On 19 January 2009 at 18 Auckland Succession MB 83-84 the Court made succession orders relating to David Anthony Cox also known as David (Rawiri) Pekama or David De Kama.

Details of payments made as a result of the Order

13. On 10 September 2013 notice was sent to the Māori Trustee requesting that a hold be placed over the client accounts affected by this application and to provide details of what payments (if any) have been made to date.
14. On 11 September 2014 reply correspondence was received from the Māori Trustee, Wellington. It confirmed that a hold had been placed on the following shareholder accounts, pending the outcome of this application, with a list of payments made and those awaiting distribution.

	<u>Name</u>	<u>Client Number</u>	<u>Held Funds</u>	<u>Payments made after 26/02/1997</u>	<u>Current Balance</u>
1	Maretta June August	CLI-00112192	Nil	Direct credit payment (Succession monies ex Rihi Hoone Pekama) \$10.33	\$0.00
2	David Anthony Cox	CLI-00118748	Nil	Funds transferred to successors (Succession monies ex Rihi Hoone Pekama & Distributable Income) \$10.47	\$0.00
3	Hinemoa Pekama or Hinemoa Isobel Cox	CLI-00191631	Nil	Direct credit payment (Succession monies ex Rihi Hoone Pekama) \$10.32	\$0.00
4	Helen Bernice Sulfa	CLI-00146436	\$12.35	Succession monies ex Rihi Hoone Pekama \$10.32 Distributable Income \$2.03	\$12.35
5	Vanessa Kim Pekama	CLI-00147475	\$11.98	Succession monies ex David Cox \$10.47 Distributable Income \$1.51	\$11.98
6	Dover Spencer Pekama	CLI-00114389	Nil	Nil	\$0.00
7	Davinia Cribb	CLI-00147476	Nil	Nil	\$0.00
8	Cheryl Marie Ihaka	CLI-00192567	Nil	Nil	\$0.00
9	Casey Anne Ihaka	CLI-00114390	Nil	Nil	\$0.00

Reference to areas of difficulty

15. There are no areas of difficulty in respect of this application.

Consideration of whether matter needs to go to hearing

16. There is sufficient evidence to show that an error was made in the presentation of the facts of the case to the Court, when succession was made to the Māori land interests of the deceased.

17. Naomi Emme Jacqueline Cox has been shown to be a child of the deceased and therefore entitled to succeed.

18. Taking the above matters into consideration, the application does not need to go to hearing as the matter can be dealt with on the papers before the Court.

Recommendation of course of action to be taken

19. 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 of this Report.**
- b) If no objections are received, then an order be made pursuant to section 44(1) of Te Ture Whenua Māori Act 1993 amending the order made on 26 February 1997 at 9 Registrar Taitokerau MB 70, in respect of the Māori land interests of Rihi Hoone Pekama or Elizabeth Pekama or Rihi Hone Hamiora, by:
 - i. Recognising Naomi Emme Jacqueline Cox as being a person entitled to succeed to the estate of Rihi Hoone Pekama or Elizabeth Pekama or Rihi Hone Hamiora; and
 - ii. Including Naomi Emme Jacqueline Cox as an equal successor; and
 - iii. Adjusting the proportional shares for the successors from a 1/4th to a 1/5th share.

- c) And a further order be made pursuant to section 47(4) of Te Ture Whenua Māori Act 1993 making all other consequential amendments necessary to give effect to this order.
- d) If objections are received then the matter should be referred to the Chief Judge for directions.

Procedure

[6] The Registrar's Report was distributed to parties on 27 July 2016 advising that any written responses or objections were to be filed at the Office of the Chief Registrar Wellington, no later than 24 August 2016.

[7] On 22 September 2016, the Registrar's Report was distributed to other whānau members whose addresses were provided to the Court, advising that they had until 10 October 2016 to submit at the Office of the Chief Registrar Wellington, any written responses or objections to the Report.

[8] On 9 August 2016 Maretta August contacted the Registrar for a copy of the Report to be emailed to her as she planned to discuss this matter with the children of Naomi.

[9] No responses or objections were received by this office in regards to the Registrar's Report.

[10] On 20 October 2016 I directed that the matter proceed on the papers filed before the Court and to adopt the recommendation of the Registrar by issuing a Reserved Judgment.

The Law

[11] The Chief Judge's jurisdiction to amend or cancel an order of the Māori Land Court is set out in section 44(1) of the Act:

44 Chief Judge may correct mistakes and omissions

- (1) On any application made under section 45, 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, 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.

[12] For the benefit of the parties it is necessary to set out the principles that are applied to s 45 decisions. These are to be found in the judgment *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)* where the Chief Judge summarised certain principles relating to s 45 applications as follows:¹

- When considering s 45 applications, the Chief Judge needs to review the evidence given at the original hearing and weigh it against the evidence provided by the Applicants (and any evidence in opposition);
- Section 45 applications are not to be treated as a rehearing of the original applications;
- 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. Therefore in the absence of a patent defect in the order, there is a presumption that the order made was correct;
- Evidence given at the time the order was made, by persons more closely related to the subject matter in both time and knowledge, is deemed to have been correct;
- The burden of proof is on the applicant to rebut the two presumptions above; and
- As a matter of public interest, it is necessary for the Chief Judge to uphold the principles of certainty and finality of decisions. These principles are reflected in section 77 of the Act, which states that Court orders cannot be declared invalid, quashed or annulled more than 10 years after the date of the order. Parties affected by orders made under the Act must be able to rely on them. For this reason, the Chief Judge's special powers are used only in exceptional circumstances.

[13] Section 45 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 this. For this reason, s 45 applications must be accompanied by proof of the flaw identified, through the production of evidence not available or not known of at the time the order was made.

¹ *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)* [2009] Chief Judge's MB 209 (2009 CJ 209) at [15].

[14] As stated in *Tau v Nga Whanau o Morven & Glenavy – Waihao 903 Section IX Block*,² the Chief Judge must exercise his jurisdiction by applying the civil standard of proof on the balance of probabilities having regard to that standard's inherent flexibility that takes into account the nature and gravity of the matters at issue. This means that the applicant must establish on the balance of probabilities that there was a mistake or omission.

Discussion

[15] In the context of this case, and in exercising my jurisdiction under s 44, I must consider whether the succession order relating to the estate of Rihi Hoone Pekama also known as Elizabeth Pekama or Rihi Hone Hamiora was made as a result of a mistake, error or omission in the presentation of the facts of the case to the Registrar and whether it is necessary in the interests of justice to remedy the mistake, error or omission by cancelling or amending the order.

[16] Having considered the Registrar's Report, I am satisfied that a mistake, error or omission had been made in the presentation of the facts of the case to the Registrar on the grounds that:

- (a) The applicant has provided evidence to show that her mother, Naomi Emme Jacqueline Cox to be a natural child of the deceased; and
- (b) Signed letters from Naomi's siblings, Maretta June August and Hinemoa Isobel Kathleen Pekama acknowledging Naomi as their sister.

[17] It is noted that Maretta June August had made the succession to the deceased in 1997. Naomi predeceased her mother in 1991 as evidenced by the Death Certificate submitted by the applicant.

[18] The letters submitted by both Maretta and Hinemoa confirms Naomi as their sibling and support of the applicant's claim to have her mother Naomi included as a successor.

² *Tau v Nga Whanau o Morven & Glenavy – Waihao 903 Section IX Block* [2010] Maori Appellate Court MB 167 (2010 APPEAL 167) at [61].

[19] Having regard to the above, it is clear that Naomi Emme Jacqueline Cox should be recognised as being a natural child of the deceased and be entitled to succeed to the deceased's Māori land interests.

Orders

[20] I hereby exercise my jurisdiction pursuant to section 44(1) of the Act to amend the succession order made on 26 February 1997 at 9 Registrar Taitokerau MB 70 by:

- (a) Including Naomi Emme Jacqueline Cox as a successor to the deceased; and
- (b) Adjusting the proportional shares from 1/4th share to 1/5th share.

[21] And a further order is made pursuant to section 47(4) of Te Ture Whenua Māori Act 1993 amending all other consequential orders including the order made on 19 January 2009 at 18 Auckland Succession MB 83-84 to David Anthony Cox also known as David (Rawiri) Pekama or David De Kama.

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

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

Dated at Wellington this the 2nd day of March 2017

W W Isaac

CHIEF JUDGE