

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

**A20110007018
CJ 2011/29**

UNDER Section 45, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Hohepa Ripia
(Deceased)

DEPUTY REGISTRAR
Applicant

Judgment: 20 October 2016

DECISION OF CHIEF JUDGE W W ISAAC

Introduction

[1] This application filed by a Deputy Registrar, of the Māori Land Court in Whangarei, (“the applicant”) pursuant to s 45 of Te Ture Whenua Māori Act 1993 (“the Act”) seeks to amend a determination order dated 8 August 1997 at 84 Whangarei MB 158 relating to Hohepa Ripia (“the deceased”).

[2] The applicant claims that there was a mistake, error or omission on the part of the Court upon the following grounds:

- (a) An earlier succession took place over the wrong interests, as there were two people with the same name;¹
- (b) This was later cancelled on 30 October 1996 at 1996 Chief Judge's MB 568-571 (6 WHCJ 14-17) and set down for hearing again;
- (c) When the matter was subsequently heard by the Court, the lands were incorrectly vested back into the same people (this is the order complained of).²

[3] The applicant claims that the whānau of Hohepa Ripia have been adversely affected by the order complained of, upon the grounds that the determination order has granted land to the whānau of the wrong Hohepa Ripia.

[4] The applicant seeks to have the order amended by deleting reference to all land interests owned by Hohepa Ripia (son of Paki Ripia and Ameria Rewi or Davis).

Background

[5] The Case Manager's Report and Recommendation dated 1 August 2016 sets out the background to the application. The report is produced in full as follows:

¹ 14 KH 59 dated 17 July 1984

² 84 WH 158 dated 8 August 1997

REPORT AND RECOMMENDATION

Details of the mistake or omission alleged by the applicant

1. The application, filed by the Deputy Registrar of the Māori Land Court in Taitokerau (the applicant), seeks to amend a determination order made on 8 August 1997 at 84 Whangarei MB 158 relating to Hohepa Ripia.
2. The applicant claims that the said order is incorrect because of a mistake, error or omission on the part of the Court in that:
 - a) An earlier succession took place over the wrong interests, as there were two people with the same name;³
 - b) This was later cancelled on 30 October 1996 at 1996 Chief Judge's MB 568-571 (6 WHCJ 14-17) and set down for hearing again;
 - c) When the matter was subsequently heard by the Court, the lands were incorrectly vested back into the same people (this is the order complained of).⁴
3. The applicant claims that the whānau of Hohepa Ripia have been adversely affected by the order complained of, upon the grounds that the determination order has granted land to the whānau of the wrong Hohepa Ripia.
4. The applicant seeks to have the order amended by deleting reference to all land interests owned by Hohepa Ripia (son of Paki Ripia and Ameria Rewi or Davis).

Concise history of Order sought to be amended

5. On 17 July 1984 at 14 Kaikohe MB 59 the Court heard an application for succession to Hohepa Ripia or Hohepa Ripia Tango or Joseph Ripia. Willie Woods (the applicant) stated that the deceased was his grandfather who had died at Omanaia on 16 August 1940 and was legally married once only to Riripeti or Te Mamae Ripia (nee Hetaraka), who predeceased him.
6. The lands and issue of the deceased were as follows:

Taitokerau District

| <u>Blocks</u> | <u>Shares</u> |
|-----------------|---------------|
| Maungaturoto E | 0.779 |
| Ngatihine | 0.544 |
| Pakonga C | 1.889 |
| Waiwhariki 2C2B | 0.445 |
| Wainui Island | 0.666 |
| Te Ti B3 | Undefined |

³ 14 KH 59 dated 17 July 1984

⁴ 84 WH 158 dated 8 August 1997

Successors/Beneficiaries Entitled

| | <u>Name</u> | <u>Sex</u> |
|---|--------------------------|-------------|
| 1 | Ngawai Chris Beazley | fd Issue |
| 2 | Te Paea (Sophie) Pearson | fd Issue |
| 3 | James McLaughlin | md No Issue |
| 4 | Haki Ripia | md Issue |
| 5 | Kare Healey | fd Issue |

7. Evidence was presented that the children from 1, 2, 4 and 5 above would be more than 200, so a family arrangement was made to vest the interests in a representative of each, as follows:

Successors/Beneficiaries Appointed

| | <u>Name</u> | <u>Sex</u> |
|---|--------------------------------------|------------|
| 1 | James Seddon Beazley (son of No. 1) | ma |
| 2 | Willie Woods (son of No. 2) | ma |
| 3 | Richard Healey (eldest son of No. 5) | ma |
| 4 | Joseph Ripia (eldest son of No. 4) | ma |

8. An application was lodged by Polly Eileen Ryfle, to amend the order at 14 Kaikohe MB 59 on the basis that the wrong family succeeded to the interests of her father, Hohepa Ripia. In support of her application she filed:
- a) A death certificate for her father which showed that he died on 29 November 1989, and that his father was Paki Ripia; and
 - b) A minute of 3 July 1974 at 75 Wairoa MB 197-198 which showed that Hohepa Ripia received his shares in Maungaturoto E, Motatau 1A8 (now Ngatihine H2B), Pakonga C, Wainui Island and Waiwhariki 2C2 (now Waiwhariki 2C2B) blocks, from his father Paki Ripia.
9. On 30 October 1996 at 1996 Chief Judge's MB 568-571 (6 WHCJ 14-17), Deputy Chief Judge Smith ordered that the succession made at 14 Kaikohe MB 59, be cancelled and the lands re-vested back in the original deceased. The original application for succession should then be revived.
10. On 8 August 1997 at 84 Whangarei MB 158 the succession application was heard again by the Court. The order made re-vested the interests back into the same beneficiaries as those originally ordered at 14 Kaikohe MB 59.

The evidence transpired as follows:

SECTION 45/93 – HOHEPA RIPIA (DECEASED)

Deputy Registrar in support: The Court on 17 July 1984 made succession orders to the Maori land interests of the deceased and these orders were overturned by the Deputy Chief Judge on 30 October 1996. In his minute dated 21 July 1997 the Deputy Chief Judge directed that this matter be referred back to this Court.

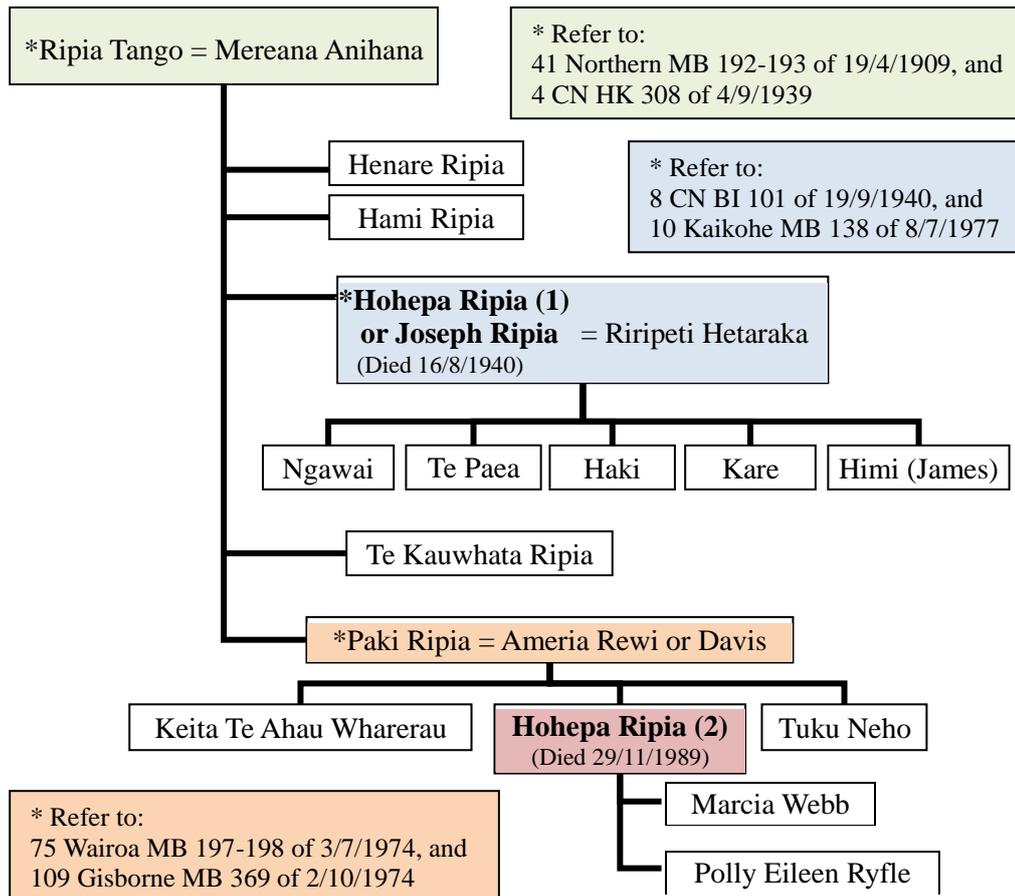
The interests now owned by Hohepa Ripia are:

| | |
|----------------------|--------------|
| Maungaturoto E | 0.779 shares |
| Ngatihine H2B | 8.000 shares |
| Pakonga C | 1.889 shares |
| Waiwhariki 2C2B | 0.445 shares |
| Wainui Island | 0.666 shares |
| Te Tii B3 (Waitangi) | Undefined |

COURT There is an order 18(1)(a) of Te Ture Whenua Maori Act 1993 determining that the above shares are owned equally by the successors in the succession order of 17 February 1984, ie James Seddon Beazley, Willie Woods, Richard Healey and Joseph Ripia. Order accordingly.

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

11. The applicant has provided the following documents in support of the application:
 - a) A memorandum from the Land Registry team in Whangārei dated 6 April 2011, which provides research on the matter from the Court record (with supporting documents);
 - b) Whakapapa, a copy of which is provided below (For convenience, the two different persons have been identified as numbers (1) and (2), as shown):



12. Research completed for the Registrar's report to the Chief Judge, as ordered at 1996 Chief Judge's MB 568-571 (6 WHCJ 14-17), clearly shows that interests of Hohepa Ripia (2) were incorrectly succeeded to at the hearing on 17 July 1984 at 14 Kaikohe MB 59, in that:

- a) Evidence given by Willie Woods, at the hearing on 17 July 1984 at 14 Kaikohe MB 59, was that Hohepa Ripia (1) died on 16 August 1940;
- b) Hohepa Ripia (2) gave evidence at a Court hearing on 3 July 1974 at 75 Wairoa MB 197-198; and
- c) The death certificate filed by Polly Eileen Ryfle states that her father, Hohepa Ripia (2) died on 29 November 1989.

13. Current Court research shows that the source of the interests affected are as follows:

- a) Maungaturoto E (0.779 shares)
Part successor to Paki Ripia on 2 October 1974 at 109 Gisborne MB 369
Owned by Hohepa Ripia (2)
- b) Pakonga C (1.889 shares)
Part successor to Paki Ripia on 2 October 1974 at 109 Gisborne MB 369
Owned by Hohepa Ripia (2)
- c) Ngatihine H2B (8.000 shares)
Part successor to Paki Ripia on 2 October 1974 at 109 Gisborne MB 369 in the former title "Motatau No 1A No 8" block for 0.400 shares, which equated to 0.544 shares in the new title "Ngatihine", and equates to 8.000 shares in the current title "Ngatihine H2B"
Owned by Hohepa Ripia (2)
- d) Waiwhariki 2C2B (0.445 shares)
Part successor to Paki Ripia on 2 October 1974 at 109 Gisborne MB 369
Owned by Hohepa Ripia (2)
- e) Wainiu Island (0.666 shares)
Part successor to Tukaru Tango on 4 September 1939 at 4 HK Cons MB 308
Owned by Hohepa Ripia (1)

Note:

The following shares are still currently held by Hohepa Ripia (2)
0.222 shares received as part successor to Paki Ripia on 2 October 1974 at 109 Gisborne MB 369

- f) Te Tii B3 (Waitangi) (undefined shares)
Part successor to Ripia Tango on 19 April 1909 at 41 Northern MB 192-193
Owned by Hohepa Ripia (1)

14. Research also shows that:
- a) The interests in "Wainiu Island" block have been succeeded to correctly, by way of an earlier succession order made for the deceased, Hohepa Ripia (1), on 8 July 1977 at 10 Kaikohe MB 138.
 - b) That order has been entered into the Court's ownership records.
 - c) Accordingly, as the deceased no longer owned that interest in the block and to ensure accuracy of the Court record, this interest should be deleted from the subject order made on 8 August 1997 at 84 Whangarei MB 158.
 - d) The determination order made on 8 August 1997 at 84 Whangarei MB 158, pursuant to section 18(1)(a) of the Act, has not been entered in the Court's ownership records for "Maungaturoto D1A and Others (Aggregated)" block (being for interests in "Maungaturoto E" and "Pakonga C" blocks).
 - e) Accordingly, Hohepa Ripia (2) is shown as a current owner in this block with 131.044 shares (formerly 0.779 shares in "Maungaturoto E" block), and 108.981 shares (formerly 1.889 shares in "Pakonga C" block)
 - f) Land Information New Zealand (LINZ) titles, for all interests affected by this application, are registered in the names of trustees and therefore no amendment of such records would be required.

Details of subsequent Orders affecting lands to which this application relates

15. On 26 August 2004 at 5 Kaikohe Succession MB 47-48
(Sections 214, 219, 220 and 222/93)

These orders vest the interests of James Seddon Beazley, in Ngatihine H2B, Waiwhariki 2C2B and other blocks, into the trustees of the James Seddon Beazley and Ngakura Beazley Whānau Trust.

Details of payments made as a result of the Order

16. The Māori Trustee does not administer any of the blocks affected by this application.
17. There is also no evidence of any payments made, in respect of the lands affected, as a result of the orders made.

Reference to areas of difficulty

18. No contact details for the affected parties have been provided by the applicant.
19. Court research has failed to find contact details for "all" affected parties, including two of the original successors Willie Woods (deceased) and Richard Healey (see Appendix 1).

20. Finding other descendants of Te Paea (Sophie) Pearson and Kare Healey, to notify of this application, could prove to be quite difficult as they never received any interests in their own right. Therefore the Court has no record of their beneficiaries, as Willie Woods and Richard Healey were appointed as their family representatives on succession.
21. To ensure that proper notice of this application is given to any affected parties, the applicant will therefore need to find a means of notifying descendants of Te Paea (Sophie) Pearson and Kare Healey (i.e. advertising on the Māori Land Court pānui and website).

Consideration of whether matter needs to go to full hearing

22. Based on the information available, there is sufficient evidence to show that an error was made on the part of the Courts administration and in the presentation of the facts of the case to the Court.
23. It is clear the same mistake, as corrected by an earlier order of the Chief Judge, has been made again and therefore needs to be corrected.
24. Interests have been clearly identified as not being owned by the deceased, and should therefore be re-vested back into the name of Hohepa Ripia (son of Paki Ripia and Ameria Rewi or Davis).
25. A Court hearing is not necessary as the matter can be dealt with on the papers before the Court.

Recommendation of course of action to be taken

26. 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) The Registrar (Māori Land Court, Taitokerau) give notice to the descendants of Te Paea (Sophie) Pearson and Kare Healey and make a copy of this Report available to them. The Registrar is to confirm that this has been done and advise of the means of notification, in writing, within 28 days of receipt of this Report.
 - c) If no objections are received, then an order be made pursuant to section 44(1) of the Act amending the order made on 8 August 1997 at 84 Whangarei MB 158, in respect of Hohepa Ripia, by:

- i. Deleting reference to the following land interests:

| <u>Block</u> | <u>Share</u> |
|-----------------|--------------|
| Maungaturoto E | 0.779 |
| Ngatihine H2B | 8.000 |
| Pakonga C | 1.889 |
| Waiwhariki 2C2B | 0.445 |
| Wainui Island | 0.666 |

- ii. Re-vesting the following interests back into the name of Hohepa Ripia (son of Paki Ripia and Ameria Rewi or Davis).

| <u>Block</u> | <u>Share</u> |
|-----------------|--------------|
| Ngatihine H2B | 8.000 |
| Waiwhariki 2C2B | 0.445 |

- d) A further order be made, pursuant to section 47(4) of the Act, making all consequential amendments necessary to give full effect to the above order, including amending the orders made on 26 August 2004 at 5 Kaikohe Succession MB 47-48 by deleting reference to the following land interests:

| <u>Block</u> | <u>Share</u> |
|-----------------|--------------|
| Ngatihine H2B | 2.000 |
| Waiwhariki 2C2B | 0.111 |

- e) If objections are received then the matter should be referred to the Chief Judge for directions.

[6] On 2 August 2016 the Case Manager's Report and Recommendation was sent to all parties, for whom addresses were known. The applicant was also asked to give notice to the descendants of Te Paea (Sophie) Pearson and Kare Healey, and make a copy of the Report available to them.

[7] The specified deadlines have passed and no objections have been received to the Case Manager's Report and Recommendation.

Discussion

[8] Pursuant to s 44 of Te Ture Whenua Māori Act 1993 the Chief Judge may cancel or amend an order made by the Court or a Registrar, if satisfied that the order 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. The Chief Judge may also make such other orders as, in the opinion of the Chief Judge, is necessary in the interests of justice to remedy the mistake or omission.

[9] The applicant has requested that the Chief Judge amend the order that is the subject of this application. In terms of *Tau v Nga Whānau O Morven & Glenavy – Waihao 903 Section IX block*⁵ and *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)*⁶ the burden of proof rests with the applicant to prove that there was a mistake or error in the order complained of.

[10] In the current case, having considered the Case Manager's Report, I am satisfied that an error in fact or law has been made due to a mistake or omission in the presentation of facts of the case to the Court, because it is clear that the orders made included land interests owned by Hohepa Ripia (son of Paki Ripia and Ameria Rewi or Davis).

[11] Such land interests have been clearly identified as:

- | | | |
|-----|-----------------|--------------|
| (a) | Ngatihine H2B | 8.000 shares |
| (b) | Waiwhariki 2C2B | 0.445 shares |

[12] As a result the affected order made on 8 August 1997 at 84 Whangarei MB 158 should be amended as sought.

Orders

[13] Accordingly I make the following orders pursuant to Te Ture Whenua Māori Act 1993:

- (a) Section 44(1) amending the order made on on 8 August 1997 at 84 Whangarei MB 158, in respect of Hohepa Ripia, by:
- (i) Deleting reference to the following land interests:

| | <u>Block</u> | <u>Share</u> |
|----|----------------|--------------|
| 1. | Maungaturoto E | 0.779 |
| 2. | Ngatihine H2B | 8.000 |
| 3. | Pakonga C | 1.889 |

⁵ [2010] Māori Appellate Court MB 167 (2010 APPEAL 167)

⁶ [2009] Chief Judge's MB 209-225 (2009 CJ 209)

| | | |
|----|-----------------|-------|
| 4. | Waiwhariki 2C2B | 0.445 |
| 5. | Wainui Island | 0.666 |

- (ii) Re-vesting the following interests back into the name of Hohepa Ripia (son of Paki Ripia and Ameria Rewi or Davis):

| | <u>Block</u> | <u>Share</u> |
|----|-----------------|--------------|
| 1. | Ngatihine H2B | 8.000 |
| 2. | Waiwhariki 2C2B | 0.445 |

- (b) Section 47(4) making all consequential amendments necessary, including amending the orders made on 26 August 2004 at 5 Kaikohe Succession MB 47-48 by deleting reference to the following land interests:

| | <u>Block</u> | <u>Share</u> |
|------|-----------------|--------------|
| (i) | Ngatihine H2B | 2.000 |
| (ii) | Waiwhariki 2C2B | 0.111 |

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

[15] The Case Manager is to distribute a copy of this decision to all parties.

Dated at Wellington this 20th day of October 2016.

W W Isaac
CHIEF JUDGE