IN THE MĀORI LAND COURT OF NEW ZEALAND
TE WAIPOUNAMU DISTRICT

A20100006933

UNDER	Section 45, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Succession to Ngarangi Kapapa Wiari Selwyn Turoa
BETWEEN	DEPUTY REGISTRAR Applicant

Hearing: On the papers

Judgment: 30 March 2017

RESERVED JUDGMENT OF CHIEF JUDGE W W ISAAC

Introduction

[1] This is an application under s 45 of Te Ture Whenua Māori Act 1993 seeking the exercise of the Chief Judge's special powers to amend two orders made on 29 May 2007: a succession order and an order constituting a whānau trust.[1] The succession order, made under s 78A of the Māori Affairs Amendment Act 1967, vested the interests of the deceased, Ngarangi Kapapa Wiari Selwyn Turoa, in five of his grandchildren, in terms of his will. The second order vested these interests into a newly constituted whānau trust, the Ngarangi Kapapa Wiari Selwyn Turoa Mokopuna Whanau Trust (the trust), for the benefit of all the deceased's mokopuna.[2] The decision to constitute the trust for the purpose of holding the deceased's interests had been made at a whānau hui held on 15 April 2006, subsequent to which, the successors and other members of the whānau provided their written consent to their interests being vested in the trust.

Background

[2] The deceased died on 3 June 1988 and left a will dated 14 May 1987. Clause 4 of the will states:

> I give:
>
> (1) The interests (other as mortgagee or creditor) which I own at my death in any Maori freehold land, and
>
> (2) All shares which I own at my death in any Maori incorporation
>
> to be divided equally among my grandchildren living at my death who reach the age of 21.

[3] The deceased had six children. Up to the present day, 14 grandchildren have been born. The five grandchildren named in the succession order were those grandchildren who were already 21 on 29 May 2007 (that is, the date of the Court hearing and succession order, which occurred on the same day). However, four other grandchildren were already alive at this point. Three of these grandchildren were born before the deceased's death, but were not yet 21 when the succession order was made. One was already 21 at the time of the order. There were also two grandchildren who, although born after the deceased's death, were *en ventre sa mere* (in their mother's womb) when he died. Finally, there are

---

[1] 15 Auckland Succession MB 283-286 (15 AT(S) 283).
[2] 15 Auckland Succession MB 283-286 (15 AT(S) 283).

three grandchildren who were born after the deceased's death, but are too young to have been *en ventre sa mere* while the deceased was still alive.

[4] On 19 May 2010, after initially seeking a rehearing, which was rejected, the Deputy Registrar of the Māori Land Court filed a s 45 application challenging the succession on the grounds that certain individuals who were entitled to take under the will were excluded. The application also challenged the vesting of interests in the trust because some of the successors had signed consents for their interests to be so vested, despite not being of an age to give such consent.

[5] The following report was completed by the case manager and was distributed to the parties on 28 May 2015.

APPLICATION UNDER SECTION 45 OF TE TURE WHENUA MĀORI ACT1993
REPORT AND RECOMMENDATION

Introduction

1. This application filed by the Deputy Registrar (the Applicant) pursuant to section 45 of Te Ture Whenua Māori Act 1993 (the Act) seeks to amend a succession order dated 29 May 2007 at 15 Auckland Succession MB 283-286 relating to Ngarangi Kapapa Wiari Selwyn Turoa also known as Rangi Selwyn Turoa (the Deceased), and the creation of the Ngarangi Kapapa Wiari Selwyn Turoa Mokopuna Whānau Trust (the Trust).

2. The Applicant claims the order is incorrect by reason of a mistake, error or omission on the part of the Court because:

   (a) The Will of the Deceased relating to the distribution of the Deceased's Māori land interests were to be divided equally among the Deceased's grandchildren living at his "date of death who reach the age of 21" was misinterpreted by the Court.

3. The Deceased's grandchildren who were alive at the date of his death (3 June 1988) but had not reached the age of 21 at that time have been adversely affected by the order complained of upon the grounds that:

   (a) Only five of the grandchildren, those who had already attained the age of 21 when the application to succeed to the Deceased was heard in Court, were named as successors;

   (b) There are at least three and maybe up to five grandchildren who were living at the time of the Deceased's death, who would now have reached the age of 21, and who are therefore entitled namely;

	Name
1	Rangi Bishop
2	Hetekia Ru Turoa
3	Adam Clinton Turoa
4	Ru Rene John Turoa/Monga
5	Mary Tekiriwera Bishop

(c) Those grandchildren were not named as successors to the Deceased and, although they signed consents to vest interests in the whānau trust, they were not of an age to give consent, for the interests they would later become eligible to succeed, to being vested in the whānau trust. The interests were vested in the whānau trust regardless.

Concise history of Order sought to be amended/cancelled

4. On 29 May 2007 at 15 Auckland Succession MB 283-286, the Court determined, pursuant to s78A of the Māori Affairs Act 1953, the following grandchildren as the persons entitled in terms of the Deceased's Will and vested his Māori land interests in them as set out:

	Name	Date of Birth
1	Mike Rangi Syd Korewha	09.12.1979
2	Basil Roy Turoa	10.08.1980
3	Elizabeth Moeroa Philomena Taitua	17.06.1981
4	Numia Tracey Korewha	27.06.1981
5	Beatrice Korewha	01.02.1985

Aotea District

Blocks	Shares
Rangipo North 3C	0.7143
Owhaoko C2	0.0179
Ruamata	0.547621
Hohotaka 1B1	5.0
Te Poutahi	0.0536
Matata 72B 3Y 8	0.00943
Lake Rotoaira	0.3087
Whangamata No 3	0.08854
Hautu 4B2B2B2E	0.5
Tokaanu Township 1st Res Sec 5 Blk IV, Sec 9 Blk IV, Sec 13 Blk IV, Sec 7 Blk V	2.2858
Rangipo North 5C	0.0179
Rangipo North 2D1	0.149
Rangipo North 2C1D	0.7086
Tauranga Taupo 1A2	16.3086

Whangaipeke X	0.015
Pukawa 6B2	0.1906
North Island Tenths	13.53
Tokaanu Township 15 Sec 6B Blk I	2.2858
Omataroa 7AC 6A	9.81112
Tokaanu Township 40 & 41 Blk I	1.1429
Tokaanu B2M6B	0.4286
Pukawa 2G2	0.0833
Rangipo North 2C1B	0.7086
Tihoi 6	860.50967
Himatangi 2A5B	476.943
Owhaoko C4	0.1429
Matata Parish 72B 3Y 9A (Tu Te Ao Marae)	1.0
Hautu 4B2B1	0.5001
Hautu C	0.5
Opawa Rangitoto 4 & 5 & Hautu D (Aggregated)	16.3086
Pukawa B	0.33296
Whangaipeke 10	0.1429
Tauranga Taupo 2B 1C	1.0277
Opawa Rangitoto No 3	0.5
Rangipo North 7C	0.0179
Kaimanawa 3B2B	0.1429
Owhaoko B1B	0.1429
Tokaanu Township 2nd Res	2.2858
Ohotu 7B1	0.0834

Waiariki District

Blocks	Shares
Tihoi 6	15.36625
Whangamata No 3	0.00983
Whangamata No 7	0.00695
Waikawa 2B & Waikawa 3	219.62
Motuaruhe 3B 1	6.84941
Motuaruhe 3B 3B	0.33333
Waikawa Pahaoa 1H 2	0.48472

5. The Court constituted the Ngarangi Kapapa Wiari Selwyn Turoa Mokopuna Whānau Trust over the land interests listed above and appointed the following Trustees:

	Name
1	Elizabeth Philomena Turoa

2	Abraham Rangi Turoa
3	Urikore Mary Korewha
4	Michael Kenneth Turoa
5	Numia Tracey Korewha
6	Anne Francine Turoa

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

6. Paragraph 4.1 of the Deceased's Will states:

> I give:
>
> (1) the interest (other as mortgagee or creditor) which I own at my death in any Māori freehold land, and
>
> (2) all shares which I own at my death in any Māori Incorporation
>
> **To be divided equally among my grandchildren living at my date of death who reach the age of 21. [emphasis added]**

7. Uncertified Birth Certificates have been provided for the following grandchildren who were born before the death of the Deceased as follows:

	Name	Date of Birth	Age at 3 June 1988
1	Hetekia Ru Turoa	6 March 1987	14 Months
2	Rangi Apohia Abraham Bishop	10 September 1987	8 Months
3	Adam Clinton Turoa	26 May 1988	8 days

8. Uncertified copies of Birth Certificates have also been provided for the following grandchildren born after the death of the Deceased as follows:

	Name	Date of Birth
1	Anne Francine Turoa	20 September 1988
2	Eruera Ngarangi Korewha	6 June 1989
3	Pete Turoa	26 August 1989
4	Ngarangi Nopine Turoa	17 October 1990

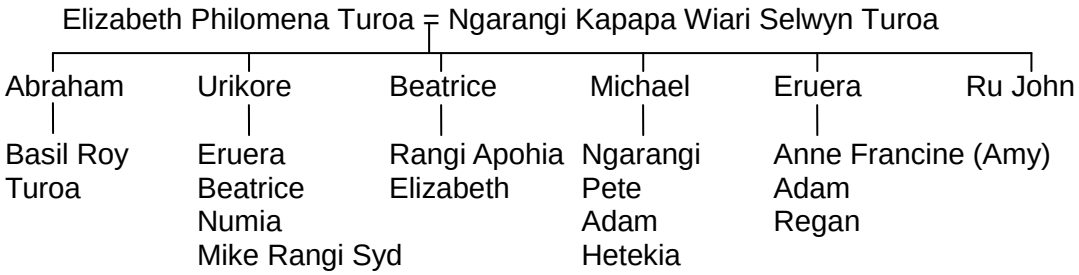
9. A family meeting was held on 15 April 2006 where it was decided to form a whānau trust over the Deceased's Māori land interests. The following persons consented to vesting the interests in the Trust:

	Name	Birth Date	Relationship to Deceased
1	Eruera Francis Turoa		Son
2	Ru John Turoa		Son
3	Michael Kenneth Turoa		Son
4	Beatrice Turoa		Daughter

5	Urikore Mary Korewha		Daughter
6	Rangi Abraham Turoa	10 September 1987	Son
7	Elizabeth Philomena Turoa		Wife
8	Pete Turoa	26 August 1989	Grandchild
9	Eruera Ngarangi Korewha	6 June 1989	Grandchild
10	Anne Francine Turoa	20 September 1988	Grandchild
11	**Ru Rene John Turoa/Monga**	**Unknown**	**Grandchild**
12	Adam Clinton Turoa	26 May 1988	Grandchild
13	Hetekia Ru Turoa	6 March 1987	Grandchild
14	**Mary Tekiriwera Bishop**	**Unknown**	**Grandchild**
15	Beatrice Korewha*	1 February 1985	Grandchild
16	Numia Tracey Korewha*	27 June 1981	Grandchild
17	Mike Rangi Syd Korewha*	9 December 1979	Grandchild
18	Basil Roy Turoa*	10 August 1980	Grandchild
19	Elizabeth Moeroa Philomena Taitua*	17 July 1981	Grandchild

(* Persons determined entitled)

10. A whakapapa has been compiled from the Court research and is set out as follows:



Details of subsequent Orders affecting lands to which application relates

11. On 25 August 2010 at 14 Waiariki MB 228-235 the Court heard an application to succeed to the further interests of Ripeka Neteira also known as Ripeka Meteira. Rangi Turoa was listed as a person beneficially entitled as per evidence from the original succession to Ripeka Neteira also known as Ripeka Meteira dated 12 October 1923 at 21 Whakatane MB 157. The Deceased's entitlement was vested in the successors determined at the order complained of.

12. On 6 December 2002 at 100 South Island MB 168-171 – Succession to Edward Francis Turoa in favour of Adam, Regan and Amy Turoa.

Details of payments made as a result of the Order

13. Beneficiary Rent Card numbers 1719948 and 1751656 held by the Māori Trustee Office totalled $101.73 was paid out to the Trust.

14. The Court has received correspondence from the Wakatu Incorporation dated 9 November 2010, addressed to Judith Turoa. The letter acknowledges 'Rangi Turoa' currently holds 8,729.01 (WI 56920) with unclaimed money of $17,850.67. The Wakatu Incorporation will hold any payments pending the outcome of this application.

15. The family will need to make an application to succeed to the Wakatu Incorporation interest held in the name of 'Rangi Turoa' to be able to access the monies held.

Reference to areas of difficulty

Rehearing Application

16. On 29 April 2010 the Deputy Registrar, Te Waipounamu, filed an application for rehearing which was rejected by the Court upon the grounds that:

    (a) The Will left the interests to the mokopuna who were aged 21 at the date of death;

    (b) A rehearing is inappropriate; and

    (c) A s45 application will be required if the applicant alleges there is a mistake.

Persons Entitled

17. The issue arising is one of determining the beneficiaries in terms of the Deceased's Will. The Applicant has advised at least three and maybe up to five grandchildren who were living at the time of the Deceased's death were not included in the succession.

18. There is sufficient evidence to prove that at least three grandchildren were omitted in error namely; Rangi Bishop, Hetekia Ru Turoa and Adam Clinton Turoa.

19. Consents were given by Rangi Bishop (4/7/2006), Hetekia Ru Turoa (7/7/2006), and Adam Clinton Turoa (7/7/2006), to vest their interests in the Ngarangi Kapapa Wiari Selwyn Turoa Mokopuna Whānau Trust. However when they gave their consent they were not recorded as successors and so were not making an informed choice

20. There is no evidence to confirm that Ru Rene John Turoa/Monga and Mary Tekiriwera Bishop were born prior to the Deceased's death. Birth certificates would need to be provided to confirm that they are entitled to succeed.

Consideration of whether matter needs to go to full hearing

21. The Courts response to the rehearing application set out its interpretation of the Deceased's Will as the "mokopuna who were aged 21 at the date of death" of the Deceased.

22. At the date of the Deceased's death, none of the Deceased's grandchildren were aged 21. Those determined entitled to succeed had reached the age of 21 at the date of the hearing. Their dates of birth and relative ages at the Deceased's death, and ages at the date of the hearing are set out as follows:

	Name	Date of Birth	Age at 3 June 1988	Age at 27 May 2007
1	Mike Rangi Syd Korewha	09.12.1979	8	27
2	Basil Roy Turoa	10.08.1980	7	26
3	Elizabeth Moeroa Philomena Taitua	17.06.1981	6	25
4	Numia Tracey Korewha	27.06.1981	6	25
5	Beatrice Korewha	01.02.1985	3	22

23. The order complained of was made in error. The evidence supports the following grandchildren being included as successors to the Deceased:

	Name	Date of Birth	Age at 3 June 1988	Age at 27 May 2007
1	Hetekia Ru Turoa	06.03.1987	15 Months	20
2	Rangi Apohia Abraham Bishop	10.09.1987	8 Months	19
3	Adam Clinton Turoa	26.05.1988	8 days	19

24. Should Rangi Bishop, Hetekia Ru Turoa, and Adam Clinton Turoa, confirm that they wish to exclude their interests from the Ngarangi Kapapa Wiari Selwyn Turoa Mokopuna Whānau Trust, there is no need to upset the whanau trust order other than to:

(a) Amend the various shareholdings of persons whose interests were vested in the trust; and

(b) Exclude Rangi Bishop, Hetekia Ru Turoa and Adam Clinton Turoa's interests.

Recommendation of course of action to be taken

25. 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 the parties for whom the Court has addresses to give them an opportunity to comment or respond, in writing, within 28 days of the date the Report was released to them;

(b) The Applicant/parties provide, within 28 days of the date of release of this Report, birth certificates for those grandchildren who:

i. Are not noted in the Report or there is insufficient evidence to identify them;

ii. Were living at the time of the Deceased's death; and

iii. Were not included in the succession.

(c) Rangi Bishop, Hetekia Ru Turoa and Adam Clinton Turoa's provide written confirmation should they wish to have their interests excluded from the Ngarangi Kapapa Wiari Selwyn Turoa Mokopuna Whānau Trust, within 28 days of the date of release of this Report.

(d) 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 complained of dated 29 May 2007 at 15 Auckland Succession MB 283-286 by:

i. including Rangi Bishop, Hetekia Ru Turoa and Adam Clinton Turoa in the estate of Ngarangi Kapapa Wiari Selwyn Turoa also known as Rangi Selwyn Turoa as to a 1/8th proportion each;

ii. amending the other beneficially entitled persons accordingly;

(e) And a further order be made pursuant to section 47(4) of Te Ture Whenua Māori Act 1993 making all other consequential amendments including to the shareholding in the schedule of the Ngarangi Kapapa Wiari Selwyn Turoa Mokopuna Whānau Trust.

(f) If objections are received then the matter should be referred to the Chief Judge for directions

[6] On 15 June 2015, Mary Urikore, the deceased's daughter and a trustee of the trust, provided a written response to the report. She sought to correct some points of information in the report regarding the whakapapa and names of certain grandchildren, and to clarify the following:

(a) At least three other grandchildren were living at the time of her father's death who were wrongly excluded from the succession. Further, there were additional grandchildren, born shortly after his death, who should also be included as successors.

(b) The whānau wanted the deceased's interests to be available for all the grandchildren, not just those named as successors, and so wished for the shares to remain in the trust. Accordingly, the consents given by the named successors to the vesting of their interests in the trust should stand despite any defects.

[7] In the discussion that follows, I will first deal with whether the court erred in excluding certain grandchildren from succeeding under the will. I will canvas this issue by considering each of the three groups of excluded grandchildren:

(a) those alive at the date of the deceased's death, three of whom were not yet 21 at the date of the succession order, and one of whom was already 21;

(b) those born after the deceased's death but *en ventre sa mere* while the deceased was still alive; and

(c) those born after the deceased's death who were too young to have been *en ventre sa mere* at the time of the deceased's death.

[8] Regarding this first issue, I note that in the case managers' report it was recommended that three additional children were entitled to succeed. They could not make recommendations regarding any other grandchildren because certified copies of their birth certificates had not been provided to the Court. The report also did not consider the grandchildren who were *en ventre sa mere*, in part because this submission was not fully crystallised until Ms Urikore's response to the report.

[9] Secondly, I will address whether the Court erred in constituting the trust given that some of the successors who consented to the vesting of their interests in the trust were too young to do so.

Were some grandchildren who were entitled to succeed, excluded from doing so?

[10] The gift in clause 4 of the will is a class gift, that is, a gift given, either jointly or in shares, to persons falling within a general description rather than described individually.[3] Under a class gift, any person who falls within the definition of the class is entitled to take under the will, provided that the class has not closed. In this case, the will defines the class as "grandchildren living at my death". This definition makes clear that members of the class must be grandchildren of the deceased, but also that the class closes at the date of the deceased's death, given that any grandchild not alive at this point falls outside the definition ("living at my death").

[11] Furthermore, each member's receipt of their interests is both contingent on, and postponed until, the member turns 21. However, the latter is an instruction about the time of vesting, and is immaterial to ascertaining members of the class.[4]

Excluded grandchildren, already born when the deceased died

[12] As noted, to be included within the scope of the class gift, it is sufficient that the person was a grandchild of the deceased and that they were living at the time of the deceased's death. It is not necessary that the individual was 21 at the time of death. Rather, the age contingency contained in the class signals the date that the gift will be transferred to each member of the class. When the deceased died, none of his grandchildren then alive

[3] *Pearks v Moseley* (1880) 5 App Cas 714 (HL); *Kingsbury v Walter* [1901] AC 108 (HL).
[4] See *Williams v Haythorne* (1871) 6 Ch App 782.

were 21. However, in accordance with the will, they were all entitled to succeed and received a vested interest in their share, to be paid to them if and when they turned 21.

[13] Accordingly, the Court order erred by only naming the five grandchildren who were 21 at the time of the succession order as successors. It is not immediately apparent why this mistake was made. Either a deficiency in how the facts were presented to the Court left the Judge unaware that further grandchildren—who were alive when the deceased died but were not yet 21—existed, or the Judge incorrectly imported the reference to age in cl 4 of the will into the definition of the class, such that only those who were alive at the date of death and 21 could succeed (though I reiterate that at the date of death, none of the grandchildren were 21), or perhaps some other reason.

[14] I add that one of these four excluded grandchildren, Mary Tekiriwera Bishop, was actually 21 at the date of the Court order. Again, it is not apparent why she was excluded; perhaps because the facts presented to the Court were incomplete.

[15] In any case, there is no doubt that, as a matter of law and fact, the following individuals who were alive when the deceased died, should also have been listed as successors:

(a) Mary Tekiriwera Bishop, DOB 25 January 1986;

(b) Hetekia Ru Turoa, DOB 6 March 1987;

(c) Rangi Apohia Abraham Bishop, DOB 10 September 1987; and

(d) Adam Clinton Turoa, DOB 26 May 1988.

Grandchildren en ventre sa mere *at the time of the deceased's death*

[16] Two grandchildren were *en ventre sa mere* when the deceased died. The issue is whether, for the purposes of the will, they can be considered to have been "living" at that time, given they were not yet born. At common law it is recognised that while ordinary constructions of the word "living" exclude unborn children, for the purposes of interpreting a will, the courts will adopt the legal fiction that a child *en ventre sa mere* is "living", if it

would secure to that unborn child a benefit it would have been entitled to had it been born on the relevant date.[5] The child must be clearly within the "reason and motive" of the gift, in that they must fit within the class of children or issue being described.[6]

[17] The *en ventre sa mere* principle is an old rule, developed by English courts. However, it has been considered in New Zealand cases. In the 1999 Family Court case of *Edwards v Brown*, the Judge stated, in relation to *en ventre sa mere*, that "there is no persuasive authority to the contrary".[7] More recently, the Supreme Court declined to apply the principle in *Wood-Luxford v Wood*.[8] However, this was because the facts before the Court were distinguishable from those of the English cases in which the principle had developed. The issue in *Wood-Luxford* related to the meaning of "step-child" in s 2 of the Family Protection Act 1955. The Supreme Court distinguished the *en ventre sa mere* authorities because they addressed the interpretation of testamentary dispositions and marriage settlements, and were:[9]

> … not therefore promising authority upon which to base a wider presumption or rule of statutory interpretation to include, for purposes other than fulfilment of testamentary or settlor intention in testamentary dispositions or settlements, children in utero as "living" or "surviving".

[18] I note that neither the Supreme Court nor the Court of Appeal decision in the same case, appeared to contest that the *en ventre sa mere* principle would apply in New Zealand in the case of testamentary dispositions (although such comments were obiter). The Courts merely opposed the extension of the principle beyond this limited context. In other words, had the facts been the right facts, the Courts would have applied the principle.

[19] In the present case, I am dealing with a testamentary disposition. The facts fall squarely within the intended scope of the *en ventre sa mere* principle and so I am content to apply it. The two grandchildren who were *en ventre sa mere* when the testator died were "living" at this time, for the purposes of cl 4 of the will. The grandchildren are otherwise within the reason and motive of the gift, as they fit within the category of person defined in the will ("grandchildren"). Had they already been born at the date of the testator's death,

---

5 *Elliot v Joicey* [1935] AC 209 (HL), which affirms the position as set out in *Villar v Gilbey* (1907) AC 139 (HL), *Trower v Butts* (1823) 1 S & St 181 and *Blasson v Blasson* (1864) 2 DE G J & S 665.

6 *Elliot v Joicey*, above n 5, at 233-234.

7 *Edwards v Brown* [1999] NZFLR 279 (FC) at 285.

8 *Wood-Luxford v Wood* [2013] NZSC 153, [2014] 1 NZLR 451.

9 At [21].

the two grandchildren would have been entitled to, and directly benefitted from, their share of the interests divided amongst the grandchildren.

[20] Accordingly, I find that the Court erred in law by overlooking the *en ventre sa mere* principle when it made the succession order, resulting in the erroneous exclusion of the following two grandchildren:

(a) Ru Rene John Turoa-Monga, born 12 July 1988; and

(b) Anne Francine Turoa, born 20 September 1988.

Grandchildren born after the deceased's death, but not en ventre sa mere *when the deceased was alive*

[21] The three grandchildren who were born after the deceased died, but not *en ventre sa mere* at the time of the deceased's death, fall outside the definition of the class because the deceased used the phrasing "living at my death". In the absence of ambiguity, words in a will should be given their plain and ordinary meaning.[10] Whilst the courts have established that a child *en ventre sa mere* at the time of death will be deemed to be "living", to interpret the phrase "living at my death" to also encompass a grandchild neither born nor *en ventre sa mere* at that time would stretch the words beyond their natural or ordinary meaning, in reliance on a non-existent ambiguity. Accordingly, the class had already closed by the time these three grandchildren were born and the Court did not err by not listing them as successors. I note that this reasoning would also apply to any other grandchildren born after these three grandchildren.

Was the trust constituted without the necessary consents?

[22] The 2007 order also constituted the trust and vested the interests referred to in cl 4 of the will in this trust, pursuant to s 214 of the Act. Section 214 states that:

> **214 Whanau trusts**
>
> (1) The Court may, in accordance with this section, constitute a whanau trust in respect of any beneficial interests in Maori land or General land owned by Maori

[10] *Re Beckbessinger* [1993] 2 NZLR 362 (HC).

> or, subject to any minimum share unit fixed by its constitution, any shares in a Maori incorporation.
>
> (2) An application for the constitution of a whanau trust under this section—
>
> (a) Shall be made—
>
> (i) By or with the consent of the owner or all of the owners of the interests or shares to which the application relates;
>
> […]

[23] The case managers' report and Ms Urikore's response appear to indicate that it was at the 15 April 2006 whānau hui that several of the grandchildren consented to their interests, acquired under cl 4 of the will, being vested in the trust. Apart from the fact that some of the successors were not present at this meeting, even had they been, on my reading of the minutes, the hui attendees merely resolved that whānau members (not limited to the successors) would arrange written consents to their interests being vested in the trust. Subsequent to the meeting, all the 14 grandchildren, as well as the deceased's children, signed owner's consent forms to this effect. These are all included in the file, though I note that none of the forms are witnessed or certified. Interestingly, these forms were signed by all grandchildren, that is, including those erroneously excluded from the succession order, but also those grandchildren who were not entitled to succeed.

[24] The first point to note is that the six individuals who were wrongly excluded from the succession order were nevertheless given the opportunity to consent. It is unclear what they were consenting to at that stage, given that they were not listed as successors in the order. The case managers' report argued that, essentially, their consent was not informed because they did not realise they were entitled to interests that were to be vested in the trust. Ms Urikore stated in her response that it was the Court's mistake that these individuals were not included in the succession order, which I take as an argument that at the time these individuals made the written consents, they thought they would be succeeding. However, this does not explain why the whānau arranged for the youngest grandchildren, who clearly were not successors, to sign owner consent forms.

[25] Second, four of the individuals who were wrongly excluded from the succession were not of the age of majority to give such consent at the time of the order. Furthermore, I

note that at the time the consent forms were actually signed (almost a year earlier, though some forms are undated), five of the grandchildren entitled to succeed were minors.

[26] Accordingly, without having before it evidence of the necessary informed consent, properly acquired by law, the court acted outside of its jurisdiction by vesting the interests in the newly constituted trust because the application did not comply with the requirements of s 214 of the Act.

Is it in the interests of justice to disturb the order?

[27] Having found errors in the order in relation to the naming of successors and the constitution of the whānau trust, I turn now to consider whether it is in the interests of justice to exercise my power to amend or cancel the order.

[28] As a result of the erroneous order, the deceased's interests are now vested in a whānau trust for the benefit of all the deceased's grandchildren. Ms Urikore attests that, despite defects in the 2007 order, all the successors wish to retain their interests in the trust. This being so, it may be prejudicial to cancel the order that constituted and vested the interests in the trust. Furthermore, cancelling the order would have the effect of depriving some grandchildren who were not entitled to succeed under the will, from equally sharing in these land interests.

[29] I consider the best way forward is to recognise those grandchildren who were entitled to succeed in terms of cl 4 of the will, and then in the interests of this family, to leave the whānau trust orders unaltered.

Decision

[30] As a result of the above discussion, I grant the application in relation to the order granting succession and make an order in terms of s 113 of Te Ture Whenua Māori Act 1993 determining the persons entitled to succeed as follows:

(a) Mike Rangi Syd Korewha;

(b) Basil Roy Turoa;

(c) Elizabeth Moeroa Philomena Taitua;

(d) Numia Tracey Korewha;

(e) Beatrice Korewha;

(f) Mary Tekiriwera Bishop;

(g) Hetekia Ru Turoa;

(h) Rangi Apohia Abraham Bishop;

(i) Adam Clinton Turoa;

(j) Ru Rene John Turoa-Monga; and

(k) Anne Francine Turoa.

[31] Finally, the whānau trust order made on 29 May 2007 at 15 Auckland Succession MB 283-286 is confirmed.

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

[33] I direct the case manager to send a copy of this decision to all parties.

Dated at Wellington this the 30th day of March 2017

_____

W W Isaac
CHIEF JUDGE