

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

**A20120015167
CJ 2013/4**

UNDER Section 45 of Te Ture Whenua Māori Act 1993

IN THE MATTER OF Paratene Mita Hotene

MOHI WIREMU HOTENE
Applicant

Judgment: 5 September 2018

DECISION OF CHIEF JUDGE W W ISAAC

Introduction

[1] This application filed by Mohi Wiremu Hotene ('the applicant') pursuant to s 45 of Te Ture Whenua Māori Act 1993 seeks to amend succession orders dated 1 September 1998 at 90 Whakatāne MB 405-407 and 28 January 2000 at 92 Whakatāne MB 250-251 relating to Paratene Mita Hotene ("the deceased") who is the great uncle of the applicant.

[2] Both orders are claimed by the applicant to be incorrect because of a mistake, error or omission in the presentation of the facts of the case to the Court, namely, the misidentification of two of the four children of Kereopa Hotene who was the brother of the deceased and the applicant's grandfather.

[3] The applicant claims that persons identified as Tewera Hotene (m.d) and Mita Hotene (m.d) at 90 Whakatāne MB 405-407 and at 92 Whakatāne MB 250-251 should have respectively been described as Tame or Tom Hotene (m.d) and Wiremu Hotene (m.d).

[4] The applicant also claims that he has been adversely affected by the order to which the application relates, because he has been excluded from succession due to presentation of information which has resulted in the interests of the deceased (who died without issue) not having been brought down to persons entitled to succeed to them.

[5] The applicant seeks the Court to amend the orders at 90 Whakatāne MB 405-407 and at 92 Whakatāne MB 250-251 by including himself as a successor to the deceased's Māori land interests.

Background

[6] The Case Manager's Report and Recommendation dated 22 February 2018 sets out the background to the application. The report is produced 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. Mohi Wiremu Hotene ('the applicant') seeks to have two succession orders made at 90 Whakatane 405-407 (1 September 1998) and 92 Whakatane MB 250-251 (28 January 2000) amended.
2. The applicant is the grand nephew of Paratene Mita Hotene ('the deceased') who died on 30 January 1980. He is requesting correction of the names of two people identified as issue of his grandfather Kereopa Hotene (a brother to the deceased). The deceased did not leave a will and had no children.
3. The applicant claims both orders are incorrect through errors made in evidence put before the Court. He maintains that two out of four children of Kereopa Hotene were incorrectly identified (Tom/Tewera Hotene and Wiremu/Mita Hotene).
4. The error claimed occurred within an Application for a Vesting Order form submitted to the Court in June 1998 by Lillian Riria Smith (maternal niece to the deceased) who identified the children of Kereopa Hotene as:
 - (a) Mohi Hotene
 - (b) Huatahi Allison (f.d)
 - (c) Tewera Hotene (m.d)
 - (d) Mita Hotene (m.d)

The applicant claims that persons (c) and (d) should have been recorded as:

 - (c) Tame or Tom Hotene (m.d)
 - (d) Wiremu Hotene (m.d)
5. The orders passed at 90 Whakatane 405-407 (1 September 1998) and 92 Whakatane MB 250-251 (28 January 2000) have adversely impacted upon the applicant because they have meant that the interests of the deceased have not been brought down to the persons entitled to succeed to them.
6. The purpose of the current application is to resolve inconsistencies with earlier Court records to enable the further distribution of the interests of the deceased.

Concise history of Order sought to be applied correctly

7. At 90 Whakatane MB 405-407 (1 September 1998) and 92 Whakatane MB 250-251 (28 January 2000) succession was made by vesting the interests of the deceased in the following blocks.

<u>Blocks</u>	<u>Shares</u>
90 Whakatane MB 405-407:	
Block (Waiariki District)	
Lot 31P No 3F Parish of Rangitaiki	4.983400
Parish of Rangitaiki Lot 41B 10C	58.75000
Rotoito 15	5.67000

Okataina No 10	5.67000
Okataina 6B1	5.67000
Kokohinau	.450000
Matahina A1D1	1.50000
Lot 59B No 3A Sec 3B Parish of Matata	.30312
Maungaroa No 2	.43750
Maungaroa No 1 Sec 4A (River Reserve)	1.45834 4.20000
Maungaroa No 1 Sec 23L (Okauteawha) & Maungaroa No 1 Sec 25 (Aggregated)	8083.23
Rangitaiki Parish Lot 29A1	.56249
Rangitaiki Lot 28B No 22	3.33334
Parish of Matata 72B 3Q 2B2	52.08762
Maungaroa No 1 Sec 2B	2.78500
Maungaroa No 1 Sec 22B	4.200000
Maungaroa No 1 Sec 23A (Otamahikawa No 1)	.04000
Omataroa Rangitaiki No 2	576.530000
Parish of Rangitaiki Lot 21B No 3	.37500
Waimana 246B 2C 2B 2	.77789
Wairaka A No 40	1.00000
Rangitaiki 60C1	.040000
Kawerau A Sec 6	4.817500
Waikawa 2B & Waikawa 3 Aggregated	147.17
Kawerau A Sec 13	1.339200
Okataina 6B2	5.67000
92 Whakatane MB 250-251:	
Block (Waikato Maniapoto District)	
Motiti B 19A (Northern Portion)	1.000000
Motiti North C6	0.46312

Block (Waiariki District)	
Rangitaiki 28B1C & 28B1D (agg)	0.66667
	0.85186
	0.66667
	0.12500
Rangitaiki Parish 21B3	0.66700
Rangitaiki Parish 28B1A3	0.66700
	0.62500
Pohueroro 2	0.56000
Rangitaiki 29X1	0.06000
Iwiroa 9	

8. Those orders vested the above Māori land interests in the persons below in the proportions set out.

Successors/Beneficiaries

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
1.	Mohi Hotene	M	1/12
2.	Huatahi Allison	Fd	1/12
3.	Tewera Hotene	Md	1/12
4.	Mita Hotene	Md	1/12
5.	Tunoa Hotene	d	1/18
6.	Riria Smith	F	1/18
7.	Marewa Lassey	d	1/18
8.	Rangi Murray	d	1/18
9.	Ema Pirini Ward	F	1/18
10.	Tipene (Hemi) Hotene	M	1/18
11.	Tawai Ratahi II	Fd	1/3

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

9. The applicant has provided the following documents in support of his application:
- (a) A copy of the minutes and orders complained of 90 Whakatane 405-407 (1 September 1998) and 92 Whakatane MB 250-251 (28 January 2000);
 - (b) Whakapapa;
 - (c) New Zealand Armed Forces Application for War Service Gratuity (15 January 1946);

- (d) Statutory Declaration (17 January 2013) concerning alternative naming of Tewera (Tom or Tame) Hotene and Mita (Wiremu) Hotene;
- (e) Letter from the applicant to the Māori Land Court (21 November 2012).

Court Research

- 10. Turuhira Hotene was married to Kereopa Hotene. Court minutes at 31 WHK MB 339 (26 February 1957) recorded that she died 8 October 1954 and had four children. Three children were living at the time of her death (Mohi Hotene, Te Huatahi Hotene (Mrs Allison) and Tame Hotene); with Wiremu Hotene having predeceased his mother in 1945.
- 11. At 221 Rotorua MB 63 (12 May 1989), the Māori land interests of Kereopa Mita Hotene were devised in accordance with his will dated 30 August 1972 to his three surviving children: Mohi Hotene, Tom Hotene and Huatahi Alison, with clause 5 of the will providing:
 - 5. I GIVE DEVISE AND BEQUEATH all the rest residue and remainder of my estate both real and personal of whatsoever kind and wheresoever situate of which I shall be possessed to which I shall be entitled or over which I shall have any disposing power at my death unto my trustees UPON TRUST to divide the same equally between my three children MOHI HOTENE TOM HOTENE and HUATAHI HOTENE provided however that in the event of any of them my children predeceasing me and leaving a child or children who shall survive me such grandchild or grandchildren shall take and if more than one in equal shares the share or interest in my estate which is his her or their parent would have taken had such parent survived me.
- 12. Tewera/Tame/Tom Hotene
 - (a) The applicant's statutory declaration of 13 January 2013 submitted that Tewera Hotene might possibly have been the same person as Tom or Tame Hotene:

Tame or Tom Hotene was what we knew him as. Tewera Hotene was on some old court records. Ref pages 4 and 5¹. His wife Julie Hotene doesn't recall him calling himself Te Wera – but said some family relations may have used it as a nickname.
 - (b) Court minutes show over a long period of time, that Mr Hotene was referred to either as Tame or Tom.
 - (i) Records at 31 WHK MB 338-339 (26 February 1957) identify Tame Hotene as the son of Turuhira Hotene.
 - (ii) Tame Hotene swore evidence at 57 WHK 168 MB 168-169 (24 October 1973) that Turuhira Hotene or Turukereopa was his mother who died at Whakatane on 8 October 1954.
 - (iii) At 221 ROT MB 63 (15 May 1989) executors vested the Māori land interests of Kereopa Mita Hotene in his children Mohi Hotene, Tom Hotene and Huatahi Allison in accordance with his will.
 - (iv) 89 Whakatane MB 25 – 27 (4 April 1998) concerned succession to the estate of 'Tom or Tame Hotene (Deceased)'.

¹ 90 Whakatane MB 405-407 (1 September 1998) and 92 Whakatane MB 250-251 (28 January 2000)

(v) At 90 Whakatane MB 405-407 (1 September 1998) and 92 Whakatane MB 250-251 (28 January 2000) the interests of Paratene Mita Hotene were vested in his brothers and sisters with substitution of issue. The interests that would have gone to Kereopa Hotene were vested in Mohi Hotene, Huatahi Allison, Tewera Hotene and Mita Hotene.

(c) The historic Court records above indicate that an error was made in the identification of Tom or Tame Hotene as Tewera Hotene at 90 Whakatane MB 405-407 (1 September 1998) which was then relied upon at 92 Whakatane MB 250-251 (28 January 2000). The identification made at that time was inconsistent with all other prior recorded evidence concerning the names of the four children of Turuhira Hotene and Kereopa Hotene (being Mohi Hotene, Te Huatahi (Mrs Allison), Tame and/or Tom Hotene and Wiremu Hotene).

13. Wiremu Hotene

(a) Wiremu Hotene was a child of Kereopa and Turuhira Hotene who died at Whakatane on 21 July 1945. No existing Court record identifies that Wiremu Hotene was alternatively also referred to as Mita Hotene. That alternative naming was put forward in the applicant's statutory declaration dated 13 January 2013 in the following commentary:

Wiremu Hotene was known as Mita – real name was Wiremu. He passed away before his parents Kereopara Mita Hotene and Turuhira Hotene aged 26 years with war injuries. Wiremu Hotene is on his headstone. Ray at Auckland Court has sighted his war records.

(b) The applicant also made the following statement in a letter to the Court received 21 November 2012:

'I know that Tewera is the same as Tame and Mita is the same as Wiremu.'

(c) At the time of Wiremu Hotene's death in 1945, the applicant was three years old. Research of Court records shows that when the name Mita Hotene does appear in relation to this whānau (for example at 149 ROT MB 26 (14 November 1969)) it is as the father of Paratene and Kereopa Hotene.

Details of subsequent Orders affecting lands to which this application relates

14. Mohi Hotene or Mohi Kereopa Hotene - succession at 62 Waiariki MB 262-265 (1 October 2012).
15. Te Huatahi Allison – application for succession at 82 Opotiki MB 274-276 (9 October 2003) and Huatahi Allison – succession to further interests at 102 WHK MB 261 (17 June 2004).
16. Tom Hotene or Tame Hotene (Deceased) at 89 Whakatane MB 25-27 (4 April 1996) and 305 Rotorua MB 295 – 297 (8 February 2007) (interests vested into the Tame Hotene Whānau Trust).

Details of payments made as a result of the Order

17. We are awaiting a response from the Māori Trustee Office as to any further payments.

Reference to areas of difficulty

18. There are no areas of difficulty to deal with in this matter. While the Court has contact details for some affected parties, the applicant has not provided contact details for other parties who may be affected by this application, such as Lillian Riria Smith/Riria Smith.

19. Huatahi Alison may have also held Māori land interests under the name Huatahi Allyson. A further succession application would need to be lodged should it be determined that they are in fact the same person.

Consideration of whether matter needs to go to hearing

20. It appears that significant identity errors were made in the presentation of facts recorded on the succession application form submitted in June 1998. It is recommended that the succession orders made at 90 Whakatane MB 405-407 (1 September 1998) and 92 Whakatane MB 250-251 (28 January 2000) be altered through removal of the names Tewera Hotene and Mita Hotene and replacing those names with Tame or Tom Hotene (m.d) and Wiremu Hotene (m.d).
21. The application could be resolved through a hearing or alternatively, be dealt with on the papers before the Court.

Recommendation of course of action to be taken

22. 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 **all affected parties to give 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 Court records pursuant to the order complained of at 90 Whakatane MB 405-407 (1 September 1998) and 92 Whakatane MB 250-251 (28 January 2000) by amending the succession order in accordance with point 20 of this report.
23. A further order being made pursuant to section 47(4) of Te Ture Whenua Māori Act 1993 making all other consequential amendments.
24. If objections are received, then the matter should be referred to the Chief Judge for directions.

[7] On 26 February 2018, the Case Manager's Report and Recommendation was sent to all parties known to the Court and no objections have been received to it.

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, are 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 on the basis that errors were made in the presentation of the facts of the case to the Court. In terms of *Tau v Nga Whānau O Morven & Glenay – Waihao 903 Section IX block* and *Ashwell² – Rawinia or Lavinia Ashwell (nee Russell)*³ the burden of proof rests with the applicant to prove there was a mistake or error in the orders complained of.

[10] In support of this s 45 application, Court minutes over a forty year timeframe previously identified the four issue of Kereopa Mita Hotene and Turuhia Nuku or Hotene as including either Tame or Tom Hotene but not Tewera Hotene. A fourth child Wiremu, who died without issue in July 1945, is similarly mentioned at 31 Whakatāne MB 338-339 dated 26 February 1957 and at 57 Whakatāne MB 168 dated 24 October 1973. Prior Court evidence was not referred to in the Court minutes challenged by the applicant at 90 Whakatāne MB 405-407 dated 1 September 1998.

[11] Having considered the Report and the evidence provided in support I am satisfied that errors have been made in the presentation of the facts of the case to the Court. As a result, Tame or Tom Hotene was omitted as a successor to the deceased at 90 Whakatāne MB 405-407 and 92 Whakatāne MB 250-251.

[12] The errors are confirmed by previous evidence presented to the Court, which records the mother and father of Tame or Tom Hotene and Wiremu Hotene as being Turuhia Nuku or Hotene and Kereopa Mita Hotene. No further evidence has been filed to dispute this.

[13] It is therefore appropriate for me to exercise my jurisdiction, in the interests of justice, to correct those errors.

² [2010] Māori Appellate Court MB 167 (2010 APPEAL 167)

³ [2009] Chief Judge's MB 209-225 (2009 CJ 209)

Orders

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

- (a) Section 44(1) amending the succession order at 90 Whakatāne MB 405-407 dated 1 September 1998 to include (in substitution of Tewera Hotene and Mita Hotene)

6 Tom or Tame Hotene (md)

7 Wiremu Hotene (md) (no issue)

- (b) Section 44(1) amending the succession order at 92 Whakatāne MB 250-251 dated 28 January 2000 through removal of the name of Mita Hotene as a successor and including (in substitution of Tewera Hotene)

3 Tom or Tame Hotene

- (c) Section 47(4) that all consequential amendments are made where necessary.

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

[16] A copy of this decision is to be distributed to all parties.

Dated at Wellington this 5th day of September 2018.

W W Isaac
CHIEF JUDGE