

**IN THE MĀORI LAND COURT OF NEW ZEALAND
TE WAIPOUNAMU DISTRICT**

A20190003007

UNDER Section 43 Te Ture Whenua Māori Act 1993

IN THE MATTER OF Succession to Te Whe Ariki Hutana – Rehearing of
application (A20180001255)

WAKA NATHAN HUTANA
Applicant

Hearing: 13 August 2019
(Heard at Christchurch)

Appearances: Waka Nathan Hutana in person
J Pou for Mrs Huia Williamson
J Ormsby for Mr Reginald Hutana

Judgment: 23 August 2019

JUDGMENT OF JUDGE S F REEVES

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Introduction

[1] On 14 February 2019 I delivered a preliminary determination in relation to an application for succession to Te Whe Ariki Hutana concerning interpretation of her will and made orders for succession in terms of the findings.¹

[2] On 12 March 2019, Waka Hutana filed an application for rehearing of the preliminary determination.

Background

[3] The background to these proceedings has been set out in several decisions of the Court, and I do not intend to repeat those matters for the purposes of this decision.²

[4] There are also applications concerning the administration of the estate pursuant to ss 237 and 238 Te Ture Whenua Māori Act 1993.³ These are adjourned for the provision of accounts and report by Mrs Williamson, the administrator. There is also an appeal against the preliminary determination filed by the administrator.⁴ I recently declined leave to appeal, until the rehearing application has been determined.⁵

[5] The issue in this case is whether the application for rehearing should be granted.

Submissions

[6] Mr Hutana set out the following grounds in his application of 12 March 2019:

- a) On 14 August 2018, the court ordered Huia Williamson to produce an up to date set of accounts and written reports in relation to the administration of the estate within 2 months of the hearing date, but she was given to 11 December 2018, she has failed to adhere on multiple occasions to the courts requests. Now she has been given till the 14 May 2019 to produce a summary of the accounts, with a right of extension. I believe she has not acted in good faith as an (acting administrator) and she has failed to meet her obligations.

¹ 53 Te Waipounamu MB 97-110

² See 57 Te Waipounamu MB 27-38 (57 TWP 27-38), and 57 Te Waipounamu MB 90-95 (57 TWP 90-95)

³ A20180001255

⁴ A20190005016

⁵ See note 2

- b) As a beneficiary to the Will and estate of Te Whe Ariki Hutana, I am requesting that all accounts (shares, lands and dividends) of the estate are to be audited due to the fact that 16 years have passed, and not 1 page of any documentation to the wellbeing of the estate or any financial records have been disclosed.
- c) I am requesting a full disclosure of shares, lands and dividends so that all parties can be assured of a fair and just outcome due to the fact that in 16 years, there has been no advancement or intention on behalf of the administrator to comply with clear instructions from the Māori Land Court to resolve this matter or to act on good faith pertaining to the expressed wishes of Te Whe Ariki Hutana.

Residue submission

- d) I believe that any separation or settlement of residue shares including monetary gifts made to any beneficiary (excluding Koha for Tangi) from the proceeds including estate and or share dividends made after Te Whe Ariki Hutana's death would constitute grounds for a succession if that does not apply neither should the forgiveness of debt apply in relation to Phillip Patrick Hutana.
- e) Huia Williamson as acting Administrator of Te Whe Ariki Hutana estate, has acted on good faith with the (intentions) of Te Whe Ariki Hutana's expressed wishes pertaining to her (WILL) and has accepted the forgiveness of debt from Phillip Patrick Hutana, so by accepting the debt owed by Phillip Patrick Hutana to the estate of Te Whe Ariki Hutana I believe that Huia Williamson as acting administrator has accepted Phillip Patrick Hutana's right to succession as it is stated in the (WILL).

[7] Mr Ormsby and Mr Conway appeared for Mr Reginald Hutana. He supports the preliminary determination and will also take that position in the appeal. In relation to the other applications before the Court, he is concerned with the delays around preparation of accounts and reporting by the administrator.

[8] This view was also expressed by whānau members Michelle Radford, and Nuku Malcolm who appeared by AVL.

[9] Mrs Williamson also appeared via AVL with Mr Pou but made no submissions in relation to the rehearing.

Legal principles

[10] Section 43 of the Act is as follows:

43 Rehearings

- (1) Subject to subsection (2), on an application made in accordance with the rules of court by any person interested in any matter in respect of which the court has made an order, the Judge by whom the order was made or any other Judge may order a rehearing upon such terms as the Judge thinks reasonable, and in the meantime may stay the proceedings.
- (2) A rehearing under this section shall not be granted on an application made more than 28 days after the order, unless the Judge is satisfied that the application could not reasonably have been made sooner.
- (3) An application under this section shall not operate as a stay of proceedings unless the Judge so orders.
- (4) The rehearing need not take place before the Judge by whom the proceedings were originally heard.
- (5) On any rehearing, the court may affirm its former determination, or may vary or annul that determination, and may exercise any jurisdiction that it could have exercised on the original hearing.
- (6) When a rehearing has been granted, the period allowed for an appeal to the Maori Appellate Court shall not commence to run until the rehearing has been disposed of by a final order of the court.

[11] The principles for an application under s 43 have been set out previously by the Māori Appellate Court,⁶ and were recently summarised by this Court in *Phillips v Paul – Mangorewa Kaharoa 6E3 No 2 Papakainga 15A2A*.⁷ I adopt those principles.

[12] A rehearing will normally be granted where there are procedural defects denying natural justice and where further material evidence becomes available. The ultimate issue for the Court is: where do the interests of justice lie?

Discussion

[13] The application for rehearing was filed within the 28-day filing period.

⁶ *Henare v Māori Trustee – Parengarenga 3G* [2012] Māori Appellate Court MB 1 (2012 APPEAL 1) at [14]-[21]; *White v Potroz – Mohakatino Parininihi No 1C West 3A2* [2016] Māori Appellate Court MB 143 (2016 APPEAL 143).

⁷ *Phillips v Paul – Mangorewa Kaharoa 6E3 No 2 Papakainga 15A2A* (2019) 216 Waiariki MB 54 (216 WAR 54) at [24]-[25].

[14] In my discussion with Mr Hutana at the hearing he conceded that the first three grounds set out in his application related to the issues concerning information about the estate and the filing of accounts. He also accepted that those issues were being dealt with in the other applications before the Court.

[15] The issues raised by the applicant that are part of the on-going applications for enforcement of obligations have not been determined and cannot be dealt with as part of this rehearing application.

[16] In relation to the other two grounds Mr Hutana accepted that these raise issues about the merits of the decision rather than a procedural or natural justice issue. Issues concerning the merits should be dealt with in the appeal and Mr Hutana can choose to participate as a party in the appeal if it proceeds.

[17] Mr Hutana also accepted that his concerns are primarily about the administration of the estate and provision of accounts and other information. He also stated during the hearing that he supported the preliminary decision that had been made concerning the will of his grandmother.

[18] As I commented during the hearing, these issues have been outstanding for 13 years since the death of Te Whe Ariki Hutana. In the last year, the Court has determined how the will should be interpreted and put a process in place to deal with the issues raised by the administration of the estate. The whānau should now let those applications take their course.

Decision

[19] The application for rehearing is declined

Pronounced at 3pm in Wellington on Friday this 23rd day of August 2019.

S F Reeves

JUDGE