

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

**A20140012470
CJ 2014/30**

UNDER Section 45 of Te Ture Whenua Māori Act 1993

IN THE MATTER OF Te Ringahua Rangitakatu

CLAUDE KETU
NINA PILKINGTON
Applicants

Judgment: 7 August 2018

DECISION OF CHIEF JUDGE W W ISAAC

Introduction

[1] This application filed by Claude Ketu, also known as Claude Turetangata Te Waa and Nina Pilkington (“the applicants”) pursuant to s 45 of Te Ture Whenua Māori Act 1993 seeks to amend a succession order dated 14 October 1955 at 33 Tokaanu MB 251-252 relating to Te Ringahuia Rangitakatu (“the deceased”) who is the adopted mother of Mr Ketu.

[2] The applicants claim to be adversely affected by the above order because it does not reflect the intention of the deceased as set out in the original te reo Māori version of her will which has resulted in the following outcomes:

- (a) Land related interests continue to be held by Mr Ketu’s whāngai siblings; interests that were to terminate at the time of their respective marriages;
- (b) A life interest instead of a remainderman interest in Tokaanu B2C4B No 2A (‘the land’) being devised to Mr Ketu; and
- (c) The inability of Mr Ketu to:
 - (i) uphold mana whenua over land intended solely for him; or
 - (ii) make decisions independently concerning the land.

[3] The applicants seek the Court to amend the order at 33 Tokaanu MB 251-252 in accordance with the te reo Māori will of the deceased.

[4] Ida Te Iria Kaipara Hiri, the only living whāngai sibling of Mr Ketu has confirmed in writing that she does not object to amendment of the Minute Book entry at 33 Tokaanu MB 251-252 to accord with deceased’s final intentions for the land.

Background

[5] The Case Manager's Report and Recommendation dated 2 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 applicants

1. Claude Ketu, also known as Claude Turetangata Te Waa and Nina Pilkington ('the applicants') seeks to amend a succession order made at 33 Tokaanu MB 251-252 (14 October 1955) to Te Rangihua Rangitakatu, his adopted mother.
2. The applicants claim the said order is incorrect because it does not reflect the intention of Te Rangihua Rangitakatu as set out in the original signed Māori version of her Will. The errors identified by the applicants are:
 - a. The fact that the life interest for the whāngai children was to terminate on their marriage. This error is due to a discrepancy between the Maori and the translated English version of the will; and
 - b. The fact that Claude Te Waa was not intended to have a life interest, but rather a remainderman interest in the land and house. This error is due to a mis-reading of the Will by the Court when the orders were made.
3. The applicants claim that they been adversely affected by the order complained of because Mr Te Waa could not uphold mana whenua over the land he should have enjoyed solely or make decisions in relation to and/or occupy the land without interference from others.
4. The applicants seek the matter be resolved through the Court correcting its record in relation to Tokaanu B2C4B No. 2A, in accordance with the Will of Te Rangihua Rangitakatu.

Concise history of Order sought to be amended

5. Te Ringahua Rangitakatu ('the deceased') was the original owner of Tokaanu B2C4B No. 2A.¹ She died on 19 April 1954 leaving a Will dated 3 October 1951. Succession to her interests took place at 33 Tokaanu MB 251-252 (14 October 1955) and orders were made vesting Tokaanu B2C4B No. 2A ('the Tokaanu block') in the following successors:

Claude Turetangata te Waa	m.a	Tokaanu
Tame Ketu	m.a	Tokaanu
Albert te Rangihwakaarahia Ketu	m.18	
Hori Rihia te Wairata alias Hori Rihia No. 2	m.18	
Te Iria Ida Kaipara	f.6	

FOR LIFE WITH REMAINDER TO:

Claude Turetangata te Waa or his issue	m.a	
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¹ 30 ATK 106 (12 September 1951)

6. The Will of the deceased was written in Māori. (**Attachment A**) The English interpretation of the Will (**Attachment B**) was transcribed by Alfred Grace, Licensed Interpreter (1st Grade) after her death. Mr Grace drafted the Māori version of the Will and was a witness to the execution of that Will.

7. An extract of the Māori version of the Will is reproduced as follows:

...

Ko oku paanga i te poraka o TOKAANU B Nama Rua kua weheake nei e te Kooti Whenua Maori i tu ki Tokaanu i te marama i mahue ake nei, hei tuunga whare moku, me riro tenei ia Claude Turetangata Te Waa, he tamaiti taane he whangai naku, engari me whai mana taku taane a Tame Ketu ki te noho i roto i te whare a i runga i tenei whenua a mate noa ia. Me whai mana ano hoki enei o aku tamariki whangai, ara a Albert Te Rangiwahakaarahia Ketu (he taane) me Hori Rihia Te Wairata (he taane) me Te Iria Ida Kaipara (he wahine) ki te noho i runga i tenei whenua a i roto i te whare ina oti te mahi, **engari kia moemoe wahine taane ka mutu te mana ki te noho i reira.**

8. An extract of the English translation of the Will is reproduced as follows:

...

My interest in the TOKAANU B Number two block that has been partitioned off by the Māori Land Court at Tokaanu last month for a site for a house for me, this is to go to Claude Turetangata Te Waa, a male adopted by me, but my husband Tame Ketu is to have the right to live in this house and on this land during his lifetime. Also the following additional adopted children of mine, namely: Albert Te Rangiwahakaarahia Ketu (a male) and Hori Rihia Te Wairata (a male) and Te Iria Ida Kaipara (a female) are to have the same right to live on the same section and in the house when completed.

9. The difference between the Māori and English version of the Will is a key issue as the marriage clause, “engari kia moemoe wahine taane ka mutu te mana ki te noho i reira” was not reflected in the English version of the Will or the order of the Court.

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

10. On 5 October 2017 Counsel for the applicants filed a Memorandum of Counsel (**Attachment C**) with the following supporting documents.

- A. Whakapapa Chart
- B. Uncertified Te Reo Māori and Certified English version wills of Te Ringahua Rangitakatu and Application for Letters of Administration (31 August 1954)
- C. 33 Tokaanu MB 131-133 (9 June 1955) (Minute and Grant of Letters of Administration)
- D. 30 Tokaanu MB 106 (12 September 1951) (Minute and Order)
- E. 33 Tokaanu MB 251-252 (14 October 1955) (Order)
- F. Aerial Map (showing partitioned Tokaanu blocks)
- G. Certified Marriage Certificate (Te Rangiwahakaarahia Ketu and Sophia Urukaihina Ham)
- H. Certified Marriage Certificate (Hori Kariha Ketu and Frances Barbara Te Hae (sic) Taipari)
- I. Certified Marriage Certificate (Luciano Cesca and Te Iria Ida Hiri)
- J. 235 Aotea MB 186-187 (Minute and Order)
- K. 2 Tokaanu MB 78-80 (Minute and Order)
- L. Guaranteed search copy of Computer Interest Register 488491 (4 August 2009)
- M. 39 Aotea MB 110 (13 May 1994) (Minute and Order)
- N. Statement of Ida Teiria Kaipara Hiri (11 September 2014)
- O. A Letter from Te Iria Ida Kaipara Hiri to Hori Rihia (16 February 1984)
- P. Affidavit of Frances Barbara Te Haa Ketu (21 August 2017)

11. The Memorandum of Counsel ('MoC') states that as per the terms of the Maori Will the Mr Te Waa was to take sole and absolute ownership in the Tokaanu block "upon the death of Tame Ketu and the marriage of their whāngai children Albert, Hori and Te Iria".² Supporting documents show that;

Tame Ketu died on 9 October 1960;
Hori or George Rihia or Te Wairata (now deceased) married Frances Barbara Te Haa Taipari on 19 October 1956;
Albert Te Rangiwakaarahia Ketu (now deceased) married Sophia Urukaihina Ham on 21 November 1959;
Te Iria Kaipara married Luciano Cesca on 28 July 1975.

Court Research

12. At 33 Tokaanu MB 131-133 (9 June 1955) the Court heard an application for Letters of Administration to the deceased. An extract from the Court minute is reproduced as follows:

Te Ringahua Rangitakatu decd

Appln for Letters of Administration with will annexed.

Will dated 3rd October 1951 (in Maori) filed

Witnesses: P Alfred Grace, Lcd Interpreter, Tokaanu

E A Gurney, J.P Tokaanu

...

The Court: Do you know whether there are any objections whatever to this will.

Mr, Grace: No, the matter has been discussed and everybody is satisfied. Nobody has made any objection.

The will was read in Maori in Court.

Puataata Alfred Grace m.a (sworn): I recognise the will now before the Court as the last will and testament of abovementioned deceased executed by her at Tokaanu on 3rd October 1951 in the presence of E. A. Gurney, a Justice of the Peace, and of myself. I am a Licensed Interpreter of the First Grade. The testatrix called at my house about one week before date of execution. She told me that she wanted me to make her will. She then gave me her instructions in Maori which I took down in writing. She had called purposely upon me to make the will as she knew that she was suffering from cancer. I checked and read over her instructions with her before she left and she was quite satisfied. No one was with her. She returned to my house at Tokaanu on 3rd October 1951 after I had informed her the will was ready for execution. She was alone. W.E.A. Gurney J.P. Tokaanu was also present. I read over and explained the will to her in Maori, and am perfectly satisfied that she completely understood same. I asked her if this was so and she said she was fully satisfied – the will as drawn carried out her wishes.

Her mind was normal at the time, and she possessed full testamentary capacity. She was a woman of about 61 years of age, but despite the fact that she was suffering from cancer, she was well able to walk about and do business and her mind was in no way affected. There was no appearance whatsoever of undue influence. She executed the will by signing her name in the presence of W.E.A.

² Memorandum of Counsel (5 October 2017) pg 8

Gurney and myself: and each of us signed in the presence of this testatrix and each other – all the requirements of the Wills Act regarding execution being complied with.

Tame Ketu m.a (sworn) I am the husband of the decd. Te Ringahuia Rangitakatu. She died on 19th April 1954. She left no issue whatever. She had no legally adopted children. I am satisfied with the provision made for me in the will of the deceased – **giving me the right (with three adopted children) to share in an estate for life in the house owned by the decd.** I ask for Letters of Administration of the will as read. There is no personalty whatever, and the only assets are Maori freehold lands.

Objections called for – none.

13. The following persons are identified on Court records and the Computer Interest Register ('CIR') 488941 as the current owners/registered proprietors of the Tokaanu block:

Claude Turetangata Te Waa

For life or until remarriage with remainder to:

Claude Turetangata Te Waa

Te Iria Ida Kaipara

Hori Rihia Te Wairata also known as Hori Rihia II

Albert Te Rangihakaarahia Ketu

Details of subsequent Orders affecting lands to which this application relates:

14. Tame Rawiri otherwise known as Tame Ketu or Tame Ngaoma or Tame Kitemete – Succession order at 2 Tokaanu Succession MB 78-80 (7 July 1975)
15. Tokaanu B2C4B No. 2A - Consolidated order and status determination at 235 Aotea MB 186-187 (12 June 2009)
16. Albert Te Rangihakaarahia Ketu also known as Albert Ketu – Succession and orders constituting the Albert and Sophia Ketu Whanau Trust at 113 Aotea MB 102-111 (22 March 2002)
17. Hori Rihia-Ketu Whanau Trust – Order constituting the Hori Rihia-Ketu Whanau Trust at 200 Aotea MB 193-206 (25 February 2008)
18. Tokaanu B2C4B No. 2A – Order determining right of occupancy at 39 Aotea MB 110 (13 May 1994).

The Court determined that the three-bedroom house situated on the Tokaanu block was the sole property in law and equity of Te Iria Ida Kaipara. The MoC sets out errors and omissions in the presentation of the facts to the Court namely:

13.6.5 Claude Te Waa was not notified of the application at all. He has submitted to the Court several items of correspondence to confirm that the Māori Land Court had his contact details in Shannon on file. This omission denied him the opportunity to be heard on the application.

13.7 Therefore, these errors were critical to the Court's determination of ownership:

13.7.1 The Court proceeded on the erroneous premise that the applicants Te Iria, and the witness Hori, were owners in the land. This was not the case, as set out in the sections above concerning the correct interpretation of the Will; and

13.7.2 The Court assumed that the other owners "agreed" when this was not the case. That error is addressed in more detail here.

13.8 The applicant says that he was not consulted by his whāngai sister Te Iria before she erected a house onto the Tokaanu B2C4 B2A block.

13.9 Te Iria confirmed back in 1984 that she had not sought permission from Claude. In a letter in Te Iria's handwriting to her brother Hori Rihia dated 16 February 1984, (attached and marked "O"), she states:

"As you know by now I have moved a house on to our grandmother's property up by the road. I realise now I've done something wrong in not contacting Albert and Claude first".

19. In 1988 Lorita May Gay was appointed as Power of Attorney to oversee the interests of Ms Kaipara, which includes the three-bedroom house. At 327 Aotea MB 163-175 (20 October 2014) the Court dismissed an injunction application filed by the applicants to prevent Lorita May Gay and Sarita Hug from alienating and injuring the Tokaanu block as Ms Kaipara is on the title as still having an interest.

Details of payments made as a result of the Order

20. A Beneficiary Rent Search to Te Tumu Paeroa was not requested because there had been no previous or existing Māori Trustee involvement with this block.

Reference to areas of difficulty

21. An area of difficulty arises in that the Licensed Interpreter, Alfred Grace, drafted the original Will in Māori and the English version, yet the "marriage clause" was not reflected in the English version. As noted at 33 Tokaanu MB 131-133 (9 June 1955) Mr Grace met with the deceased, explained the Will to her, in Maori, and confirmed that she was satisfied that the Will carried out her wishes.
22. The applicants have requested consequential amendments be made to Computer Interest Register ('CIR') 488941. Legal title to Tokaanu B2C4B No. 2A is recorded under CIR 488941 (issued 4 August 2009) as part of the then Maori Freehold Land Registration Project. The MOC submits that CIR 488941 contains the current incorrect ownership details:

Claude Turetangata Te Waa for *life or until remarriage with remainder* to Claude Turetangata Te Waa, Te Iria Ida Kaipara, Hori Rihia Te Wairata (also known as Hiri Rihia II) and Albert Te Rangiwhakaarahia Ketu

Should the Court concur with the evidence provided by the applicants, any errors in the recording of the registered proprietors of CIR 488941 may be corrected upon the issuing of an order formally extinguishing any interest held by Te Iria Ida Kaipara, Hori Rihia Te Wairata and Albert Te Rangiwhakaarahia Ketu in Tokaanu B2C4B No. 2A.

23. The applicants have further requested the Court to order that a full survey be made pursuant to section 332 of the Te Ture Whenua Māori Act 1993, with the MOC submitting the following:

12.6 It is desirable that a Computer Freehold Register title be obtained, given that it is the stronger form of title. This occurs once a survey plan is obtained.

12.7 In order to obtain a Computer Freehold Register title for the Tokaanu B2C4 B2A block the applicant requests an order for a full survey pursuant to section 332 of the Act.

Consideration of whether matter needs to go to full hearing

24. Based on the information provided it appears that an error has been made in the presentation of the facts to the Court at 33 Tokaanu MB 251-252 as the intention of the deceased, as recorded in the Māori version of her Will was not reflected in the English translation of the Will or the Court order.
25. Mr Te Waa has not received the interest in the land that was devised to him.
26. 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

27. 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 working 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 at 33 Tokaanu MB 251-252 (14 October 1955) by specifying that the interests of the deceased, in Tokaanu B2C4B No. 2A, be vested in:

Tame Ketu
for life

Albert te Rangiwahakaarahia Ketu
Hori Rihia te Wairata alias Hori Rihia No. 2
Te Iria Ida Kaipara
until marriage with remainder to

Claude Turetangata Te Waa or his issue
 - (c) A further order be made, pursuant to section 47(4) of Te Ture Whenua Māori Act 1993, making all other consequential amendments necessary; or
 - (d) If objections are received, then the matter should be referred to the Chief Judge for directions.

[6] On 2 and 8 February 2018, the Case Manager's Report and Recommendation was sent to all parties known to the Court.

[7] Two submissions were received to the Report from counsel for the applicants, Mr Leo Watson, one Notice of Support from Maxine Ketu and two submissions from Daniella Cesca on behalf of Ida Te Iria Kaipara Hiri.

[8] The first response dated 28 February 2018 was from counsel for the applicants who made the following submissions:

2. Remedies sought and Comment on Recommendations

2.1 The application applied for the following Court orders to be amended:

- i. To amend order for succession to the estate of Te Ringahuia or Rangihuia or Takiora te Rangitaku or Rangitakatu made at **33 Tokaanu Minute Book 251-252** on 14 October 1955;*
- ii. To amend order for succession to the estate of Tame Ketu or Rawiri or Ngaoma or Kitemate made at **2 Tokaanu Succession Minute Book 78-79** on 7 July 1975;*
- iii. To amend consolidated Order recording ownership in the Tokaanu B2C4 B2A block made at **235 Aotea Minute Book 186-187** on 12 June 2009;*
- iv. To amend the Order of the Court determining ownership of the house on the Tokaanu B2C4 B2A block in Te Iria Kaipara made at **39 Aotea Minute Book 110** on 13 May 1994; and*
- v. In addition, The applicant seeks the following orders, pursuant to section 44(1) that are necessary in the interests of justice to remedy the mistake or omission: To order the requisitioning of a full survey of the Tokaanu B2C4 B2A block under section 332 of the Act, given that there is no current Computer Freehold Register (CFR), just a Computer Interest Register (CIR), as the block was not surveyed at the time of partitioning.*

2.2 Using the numbering above, the Report appears to recommend remedies which do not all accord with what is sought in the application, and therefore Counsel submits:

- (i) Report recommends the Order as sought in the application;
- (ii) No recommendation made in the Report. Therefore, counsel respectfully requests that this be included as a consequential amendment to the Orders;

(iii) No recommendation made In the Report. Therefore, counsel respectfully requests that this be included as a consequential amendment to the Orders;

(iv) Report recommends the Order as sought in the application;

(v) Report notes this request, but makes no specific recommendation. Therefore, counsel respectfully requests that this be included in the recommended Orders;

2.3 The other substantive issue relates to the status of the house on Tokaanu B2C4B2A, whether it remains on the land, and the circumstances of the occupation of the house over many years. For example, the Memorandum of Counsel in support of the application notes that there has been no rental paid to the applicant for occupation of the house. Therefore, the applicant reserves his position in relation to any consequential orders which may be required to deal with this issue.

[9] On 4 April 2018, Daniella Cesca responded on behalf of her mother Ida Te Iria Kaipara Hiri (with the support of Loretta May Gay, Sarita Hug and Virginia Lillian Church) ('the respondent') opposing and seeking dismissal of the application. The intentions expressed in the deceased's will were further interpreted by the respondent as permitting relocation of a house onto the land by Ida Te Iria Kaipara Hiri.

[10] Additional correspondence was sent to the Court by Daniella Cesca on 29 April 2018 containing the following statement:

A) Concerning the first part of the E mail:

"Te Ringahua Rangitakatu and succession orders made at 33 (ATK) Tokaanu 251-252 (14th October 1955)"

We have no objection to this Minute Book entry being amended to allow our cousin Claude to succeed to the house and section which is the subject of the above order made on 14th October 1955 as per our Kui Te Ringahua's 1951 will.

.....

We also ask the Judge not to amend the order's made at 39 Aotea Minute Book page 110 dated 13th May 1994 where the Court determined the ownership of the house pertaining to this order and the order was allowed to stand with Te Iria Ida Kaipara being the owner determined and:

We ask the Judge for further directions.

[11] On 3 May 2018, counsel for the applicants responded and advanced that the following course of action be considered by the Court for progression of the application:

2.3 ...It now explicitly includes a statement that Ida Te Iria Kaipara Hiri has no objection to the orders being sought to amend the previous Court Orders made at 33 Tokaanu MB 251-252 (14 October 1955).

2.4 The applicant acknowledges this concession and is grateful that this will now allow the key error/omission to be dealt with expeditiously and without the need for an expensive and protracted hearing.

.....

2.7 Given that there is no objection to the orders sought concerning ownership of the land itself, it is respectfully submitted that the appropriate next steps are:

2.7.1 For the Chief Judge to determine the application for Orders in chambers and on the papers, without the need for a hearing (the Orders are set out in paragraph 2 of Counsel's memorandum in support dated 5 October 2017); and

2.7.2 To direct that the issue of the ownership of the house and associated buildings be addressed by way of a Registrar's application under section 18(1)(a) of the Act, and set down for a timetabling conference and hearing in the Aotea Māori Land Court.

Discussion

[12] 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.

[13] The applicants have requested that the Chief Judge amend the order that is the subject of this application. In terms of *Tau v Nga Whānau O Morven & Glenay – Waihao 903 Section IX block*³ and *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)*⁴ the burden of proof rests with the applicants to prove there was a mistake or error in the order complained of.

[14] That an error was made is acknowledged by all parties. There is also confirmation that Mr Ketu should now succeed to the land in question in accordance with the intentions of the deceased's te reo Māori version of the will.

[15] Having regard to the documents filed and in particular to the content of the deceased's te reo Māori version of the will, I am satisfied that there was an error in the presentation of the facts to the Court in 1955, in that the 'marriage clause' contained in the deceased's te reo Māori will was not reflected in the subsequent English translation of that will. Therefore, I agree with the application that Claude Ketu, also known as Claude Turetangata Te Waa did not receive the interest in the land devised to him in the deceased's te reo Māori version of the will at 33 Tokaanu MB 251-252.

Orders

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

- (a) Section 44(1) amending the succession order dated 14 October 1955 at 33 Tokaanu MB 251-252 to identify that the interests of the deceased in Tokaanu B2C4B No 2A be vested in:

³ [2010] Māori Appellate Court MB 167 (2010 APPEAL 167)

⁴ [2009] Chief Judge's MB 209-225 (2009 CJ 209)

Tame Ketu
for life

Albert te Rangiwhakaarahia Ketu
Hori Rihia te Wairata alias Hori Rihia No. 2
Te Iria Ida Kaipara
until marriage with remainder to

Claude Turetangata Te Waa or his issue

- (b) Section 44(1) that all matters of ownership concerning the house and any other building currently in situ on Tokaanu B2C4B No 2A be completed by further application to be filed pursuant to section 18(1)(a) in the Aotea Māori Land Court.
- (c) Section 47(4) that all consequential amendments are made where necessary.
- (d) Section 332(1)(a) and (b) requiring a full survey of Tokaanu B2C4B No 2A.

[17] A copy of this decision is to go to all parties.

Dated at Gisborne this 7th day of August 2018.

W W Isaac
CHIEF JUDGE