

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

**A20090015323
CJ 2009/30**

UNDER Section 45 Te Ture Whenua Māori Act 1993
IN THE MATTER OF Frank Hata also known as Pera Frank Hata
EDWARD MATCHITT
Applicant

Judgment: 25 October 2016

DECISION OF CHIEF JUDGE W W ISAAC

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Introduction

[1] This application, filed by Edward Matchitt pursuant to s 45 of Te Ture Whenua Māori Act 1993, seeks to amend an order at 71 Opotiki MB 278-279 (1 December 1997) concerning a succession to Frank Hata.

[2] Edward Matchitt (“the applicant”) is a nephew of Frank and claims that the order is incorrect due to a mistake, error or omission on the part of the Court as the order does not reflect the Court minute which records that Frank’s interest be vested in his siblings with *substitution of issue*.

[3] The interests were vested in Frank’s deceased brother, Hubert Matchitt or Robert Hubert Matchitt, and upon succession to Hubert were then vested in only five of his children as per his Will. Had the Court order at 71 Opotiki MB 278-279 referred to *substitution of issue* then all seven of Hubert’s children would have received Frank’s interests

[4] The applicant claims that his brothers, Bert and Roger Matchitt, have been adversely affected by the order as they have been excluded from succeeding to the interests they should have received from the succession to Frank.

Background

[5] The Case Manager’s Report and Recommendation (“the Report”), dated 29 April 2016, sets out the background to the application. The Report is produced in full as follows:

PRELIMINARY REPORT AND RECOMMENDATION

Details of the mistake or omission alleged by the applicant

1. Edward Matchitt (the applicant) seeks to amend an order made at 71 Opotiki MB 278-279 (1 December 1997) concerning a succession to Frank Hata. The applicant also seeks to amend a consequential order made at 75 Opotiki MB 290-291 (12 June 2001) concerning a succession to Hubert Matchitt.
2. The applicant claims the order at 71 OPO 278-279 is erroneous because the hearing minute records that the Court ordered that Frank’s interests be vested in his siblings with *substitution for issue*. The final order did not refer to *substitution for issue* and the interests were vested in Hubert Matchitt.

3. Hubert died testate on 11 September 1977, probate was granted, and Harata Poiwa Matchitt was appointed as executrix on 25 November 1977.¹ Hubert's interests were succeeded to at 192 Rotorua MB 166-167 (24 May 1979) where the lands were vested in his children as per his Will.
4. The applicant claims the interests Hubert received from Frank should have vested in all of Hubert's children equally as these interests were received in 1997, 20 years after Hubert's death
5. The applicant claims his brothers Bert and Roger are adversely affected by the order complained of as they have been excluded from the distribution of interests received from Frank at 71 OPO 278-279 and then at 75 OPO 290-291

Concise history of Order sought to be amended

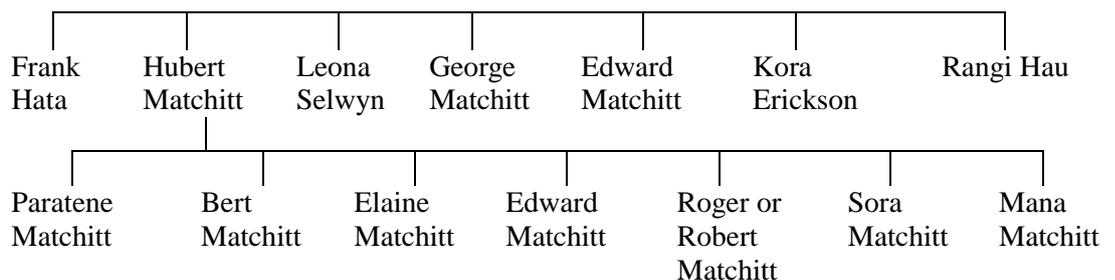
6. At 71 OPO 278-279 the Court determined the following persons were entitled to succeed to Frank and made orders vesting the interests as follows:
7. Te Kaha No 20B was partitioned at 71 Opotiki MB 61-62 (4 March 1997) into Te Kaha 109 and Te Kaha 110 blocks. The successors of the deceased were awarded shares in the Te Kaha 110 block.
8. At 75 OPO 290-291 the Māori land interests that Hubert received from Frank at 71 OPO 278-279 were vested in the following successors as per his Will²;

Block	Shares	Successors	Sex	Proportion
Te Kaha B6W & B6W1B	42.97222	Edward Matchitt	m	1/5
Te Kaha 110 (formerly Te Kaha 20B)	0.52326	Paratene Matchitt	m	1/5
		Elaine Karewha Matchitt	f	1/5
		Sora Florence Matchitt	f	1/5
		Mana Matchitt	m	1/5

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) Copy of the court minute and order complained of;
 - b) Whakapapa

An extract is reproduced as follows:



¹ 4 Registrar's MB 177-178

² The Court relied on previous evidence at 192 ROT 166-167

Details of subsequent Orders affecting lands to which this application relates

10. Vesting from Sora Florence Matchitt to her children at 110 Opotiki MB 273-279 (5 August 2009).
11. In terms of the Will, the Māori land interests were devised as follows:
 - (b) ALL that my dwelling/house and land situated at Te Kaha and owned by me at my death to my said wife absolutely
 - (c) ALL that my interest in Te Piki Number 6 Block and Potikirua Incorporation to my son EDWARD MATCHITT
 - (d) ALL those my interests in Maungaroa Block Number 1 Section 31, Te Kaha Block 2A and Te Kaha Block 46 to my son BERT MATCHITT
 - (e) ALL those my interests in Maori lands or Incorporations under the Maori Affairs Act 1953 not hereinbefore otherwise disposed of to such of them my children PARATENE MATCHITT, ELAINE KOREWHA, ROGER MATCHITT, SORA FLORENCE MATCHITT and MANA MATCHITT as are living at my death and if more than one in equal shares ...
12. The Court order made at 192 ROT 166-167³ is erroneous as the interests that fall into the residue of Hubert's Will were vested as follows:
 - a) Edward Matchitt ma
 - b) Paratene Matchitt ma
 - c) Elaine Karewha Matchitt fa
 - d) Sora Florence Matchitt fa
 - e) Mana Matchitt ma
13. As per Hubert's Will⁴, the persons entitled are as follows:
 - a) Paratene Matchitt
 - b) Elaine Korewha
 - c) Roger Matchitt
 - d) Sora Florence Matchitt
 - e) Mana Matchitt
14. The order at 192 ROT 166-167 should be corrected by deleting the name of Edward Matchitt and replacing it with Roger Matchitt
15. At 28 Waiariki MB 51-53 (3 March 2011) the Court heard an application filed by Edward Matchitt to gift shares he had received from his father to his brother Robert Matchitt⁵. The gifting included those shares Edward had received as a result of the orders made at 75 OPO 290-291.

Details of payments made as a result of the Order

16. We are waiting for a response from the Māori Trustee.

Reference to areas of difficulty

17. Not applicable

Consideration of whether matter needs to go to full hearing

18. Based on the information above, there is sufficient evidence to show that an error was made in the presentation of the facts of the case to the Court.

³ 24 May 1979

⁴ 12 March 1970

⁵ Also known as Roger Matchitt

19. Hubert died on 11 September 1977. The interests he received from his brother Frank at 71 OPO 278-279 should have been vested in all his children as substitution for issue. At 75 OPO 290-291 the interests Hubert received from Frank were only vested in five of his children as per his Will.
20. Taking the information provided into consideration it would be my recommendation that the order at 71 OPO 278-279 stand but that the Court make orders amending the consequential order at 75 OPO 290-291 by including all of Hubert's children as successors.
21. 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

22. If the Chief Judge is of a mind to exercise his jurisdiction, then it would be my recommendation that:
 - a) An order be made pursuant to section 44(1) of Te Ture Whenua Māori Act 1993 amending the order made at 75 Opotiki MB 290-291 (12 June 2001) relating to Hubert Matchitt by:
 - i. Including Bert Matchitt and Roger Matchitt as being persons entitled to succeed; and
 - ii. To adjust the proportional shares from a 1/5 proportion to a 1/7 proportion.
 - b) An order be made pursuant to section 44(1) of Te Ture Whenua Māori Act 1993 amending the order made at 192 Rotorua MB 166-167 (24 May 1979) relating to Hubert Matchitt by:
 - i. Deleting Edward Matchitt as a successor to the interests that fall into the residue of Hubert's estate and including Robert Matchitt as being a person entitled to succeed to the residue estate as to a 1/5 proportion.
 - c) And a further order be made pursuant to section 47(4) of Te Ture Whenua Māori Act 1993 making all other consequential amendments; including
 - i. The vesting from Sora Florence Matchitt to her children at 110 Opotiki MB 273-279 (5 August 2009).
 - ii. Cancelling the transfer of shares, affected by this application, from Edward Matchitt to his brother Robert Matchitt at 28 Waiariki MB 51-53 (3 March 2011)

[6] The Report was distributed to parties on 30 May 2016.

[7] On 20 June 2016 an objection to the Report was received from Counsel for Paratene Matchitt. No grounds were given for the objection and further information was requested. On 14 July 2016 the information requested was forwarded to Counsel. On 29 August 2016 Counsel advised that the objection was withdrawn.

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 Whanau O Morven & Glenavy – Waihao 903 Section IX Block*⁶ and *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)*⁷ the burden of proof rests with the applicant to prove that there was a mistake or error in the order complained of.

[10] Frank Hata deceased on 2 July 1991 leaving no Will or issue. Succession to Frank was first heard at 71 Opotiki MB 235-238 (1 October 1997) and then at 71 Opotiki MB 278-279 (1 December 1997). The hearing minute at 71 Opotiki MB 278-279 records the Court as stating:

...This was adjourned in the 1st of October and the Court there clearly gave a direction what it intended to do which was unless there was other evidence I intended to vest in all the brothers and sisters of the late Frank Hata or their issue...Therefore the Court makes a determination 113/93 as contemplated at the previous hearing that is determining that persons entitled to succeed to Frank Hata deceased are the brothers and sisters both of the half and of the whole to take in accordance with Section 109(1)(b)/93 and where necessary there has been a substitution of issue and special proviso regarding the Te Kaha block to be taken into account.

[11] The order at 71 Opotiki MB 278-279 did not refer to *substitution of issue* and therefore Frank's interests in Te Kaha⁸ were vested in his brothers and sisters, including Hubert.

⁶ [2010] Maori Appellate Court MB 167-216 (2010 APPEAL 167)

⁷ [2009] Chief Judge's MB 209-225 (2009 CJ 209)

⁸ Te Kaha 110 (Formerly Te Kaha 20B) and Te Kaha B6W & B6W1B

[12] Hubert deceased on 11 September 1977 leaving a Will and issue. The Will was probated on 25 November 1977. Succession to Hubert was heard at 192 Rotorua MB 166-167 (24 May 1979).

[13] At 75 Opotiki MB 290-291 (12 June 2001) a further succession was made to additional interests held by Hubert, including the Te Kaha⁹ interests received from the 1997 succession to Frank. Relying on previous evidence at 192 Rotorua MB 166-167, the Court vested the Te Kaha interests in only five of Hubert's children.

[14] Had the Court order at 71 Opotiki MB 278-279¹⁰ referred to *substitution of issue* all seven of Hubert's children would have been included in the succession to Frank's Te Kaha interests.

[15] It is also to be noted that administrative errors were made at 192 Rotorua MB 166-167 and 75 Opotiki MB 290-291 as Edward was named, instead of his brother Roger, as a person entitled to succeed to the interests that fell into the residue of Hubert's Will. Clause (e) of the Will states:

All those interests in Maori lands or Incorporations under the Maori Affairs Act 1953 not hereinbefore otherwise disposed of to such of them my children PARATENE MATCHITT, ELAINE KOREWHA, ROGER MATCHITT, SORA FLORENCE MATCHITT and MANA MATCHITT as are living at my death and if more than one in equal shares

[16] On 6 August 1979 Counsel for the estate forwarded a letter to the Court seeking to amend the order at 192 Rotorua MB 166-167. The order has yet to be amended.

[17] Based on the evidence before me and the Case Manager's Report I am of the view that an error has been made due to a mistake or omission on the part of the Court:

- (a) Frank Hata died in 1991 after Hubert Matchitt who died in 1977. At the time of his death Hubert did not own the interests received from Frank, therefore these interests must then pass on intestacy.

⁹ Te Kaha 110 (Formerly Te Kaha 20B) and Te Kaha B6W & B6W1B

¹⁰ 1 December 1997

- (b) At 192 Rotorua MB 166-167 and 75 Opotiki MB 290-291 clause (e) of Hubert's Will was not taken into consideration and Edward was incorrectly named as a successor to the residue of the estate.

[18] It is therefore appropriate for me to exercise my jurisdiction, in the interests of justice, to amend the orders.

Orders

[19] Accordingly I make an order pursuant to s 44(1) of Te Ture Whenua Māori Act 1993 that the following orders be amended :

- (a) 71 Opotiki MB 278-279 (1 December 1997)
- (i) By including the following successors in place of Hubert Matchitt

Successors	Proportion
Edward Matchitt	1/42
Paratene Matchitt	1/42
Elaine Karewha Matchitt	1/42
Sora Florence Matchitt	1/42
Mana Matchitt	1/42
Bert Matchitt	1/42
Roger Matchitt	1/42

- (b) 75 Opotiki MB 290-291 (12 June 2001)
- (i) By including Roger Matchitt in place of Edward Matchitt in the balance of the lands.
- (ii) By deleting reference to Te Kaha 110 and Te Kaha B6W and B6W1B blocks.
- (c) 192 Rotorua MB 166-167 (24 May 1979)

- (i) By including Roger Matchitt in place of Edward Matchitt in the balance of the lands.

[20] And a further order be made pursuant to s 47(4) of Te Ture Whenua Māori Act 1993 making all other consequential amendments, including the following:

- (a) 110 Opotiki MB 273-279 (5 August 2009)

- (i) Amending the transfer of shares made by Sora Florence Matchitt by deleting reference to Te Kaha 110 and Te Kaha B6W and B6W1B blocks.

- (b) 28 Waiariki MB 51-53 (3 March 2011)

- (i) Cancelling the transfer of shares made by Edward Matchitt to Roger Matchitt.

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

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

Dated at Wellington this 25th day of October 2016

W W Isaac
CHIEF JUDGE