

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

**A20130001673  
CJ 2013/8**

UNDER Section 45, Te Ture Whenua Māori Act 1993  
IN THE MATTER OF Toetoe No 6 block (Matururoimata Cemetery)  
CONCERNING TANGI MATIU  
Applicant

Hearing: 19 September 2018, 2018 Chief Judge's MB 587-607  
(Heard at Whangarei)

Judgment: 7 November 2018

---

**DECISION OF DEPUTY CHIEF JUDGE C L FOX**

---

## Introduction

[1] Tangi Matiu (the applicant) seeks an order under s 45 of Te Ture Whenua Māori Act 1993 (the Act) to cancel the combined partition orders made on 22 November 1971 at 47 Whangarei MB 193-194 in relation to Toetoe 1C2B2E and Rewarewa C blocks, and the recommendation to set aside Toetoe No 6 block (Matururoimata Cemetery) as a Māori Reservation.<sup>1</sup>

[2] The applicant claims that the said orders are incorrect due to a mistake, error or omission in the presentation of the facts of the case to the Court, because:

- (a) Proper consent from the original owners was not obtained; and
- (b) The nine persons put forward, as proposed trustees, were not intended to become the owners of the urupā, and not all of them can whakapapa to the whenua.

[3] The applicant claims that he has been adversely affected, by the orders complained of, because the urupā is not being used for the purpose that it had originally been created for.

## Background

[4] The Registrar's Preliminary Report and Recommendation dated 5 September 2018 sets out the background to the application. The report is reproduced in full as follows:

### PRELIMINARY REPORT AND RECOMMENDATION

#### Introduction

1. This application has been filed by Tangi Matiu (the applicant) and seeks to cancel the combined partition orders made on 22 November 1971 at 47 Whangarei MB 193-194 in relation to Toetoe 1C2B2E and Rewarewa C blocks, and the recommendation to set aside Toetoe No 6 block (Matururoimata Cemetery) as a Māori Reservation.
2. The applicant claims that the said orders are incorrect due to a mistake, error or omission in the presentation of the facts of the case to the Court, because:

---

<sup>1</sup> 47 Whangarei MB 193-194 (47 WH 193-194).

- a) The Court failed to obtain proper consent from the original owners, before granting the combined partition and setting Toetoe No 6 block (Maturuimata Cemetery) aside as a Māori Reservation; and
  - b) When the Court appointed the nine trustees to also be the owners in Toetoe No 6 block (Maturuimata Cemetery), the Court failed to determine if those nine persons could whakapapa to the whenua.
3. The applicant claims that he is adversely affected by the orders complained of, because the urupa is not being used for the purpose that it had originally been created for.

**Concise history of Orders sought to be cancelled**

4. The application for a combined partition was first heard by the Court on 18 November 1970 at 46 Whangarei MB 180. A copy of the minute is reproduced below:

Pt Toetoe 1C2B2E & Rewarewa C  
182/53

Mr Webb in support - questions of consent of owners. Have consent of sole owner of Toetoe 1C2B2E - Tanu Alex @ Taniora Haora Areka (so identified by adjoining owner present).

Only owner of Rewarewa C present is Katherine Ray Hemo Clark entitled on succession to Rewata Pirinihia (3028.500 x 11638.500) who states that she has told the other owners. Only Haora Hema Matiu objects - he believes the piece he thinks is his.

Mr Webb - if partition order made want creation of a reserve and appoint trustees (all have consented) as per list. Reservation to be called "MATURU ROIMATA" cemetery.

Court: Consent of Māori Trustee (in respect of Rewarewa C to be obtained) and Court will make order as applied for. Reservation.

5. On 22 November 1971 at 47 Whangarei MB 193-194 the Court made orders, under section 182 of the Māori Affairs Act 1953 (the 1953 Act), for the combined partition of several blocks of land known as Toetoe 1C2B2E and Rewarewa C.
6. A copy of the minute is reproduced below:

Pt Toetoe 1C2B2E and Te Rewarewa C  
182/53

Ref. WH 46/180

Order 182/53 Combined partition

Toetoe 6 to comprise an area of 2 roods 08 perches approx having a frontage to Toetoe Rd commencing at the eastern boundary of Toetoe 1C2A thence 100 links on Toetoe Rd, the north-eastern boundary 457 links parallel to the N-E boundary of Toetoe 1C2A thence 162.5 links on the S-E boundary parallel to the S-E boundary of 1C2A thence in a

line parallel to the N-E boundary 150 links to the said Toetoe 1C2A as shown on plan at folio [194] the whole of the existing cemetery in Toetoe 1C2B2E to be included within the said boundary and to be in the names of:

Taniora Haora Areka	m	
Te Manakitanga Areka	m	
Hemi Rapata @ James Phillips	m	
Kathleen Ray Clark	f	
Mac Herewini	m	
Sydney Rapata	m	
Frederick Hadfield	m	
Ani Karanui	f	
Hohepa Hemara	m	Jointly

being the MATURUROIMATA cemetery and released as to pt Rewarewa C 438(3)/53 from trust.

Toetoe 1C2B2E Residue to be the balance of the former Toetoe 1C2B2E in the name of its present owner.

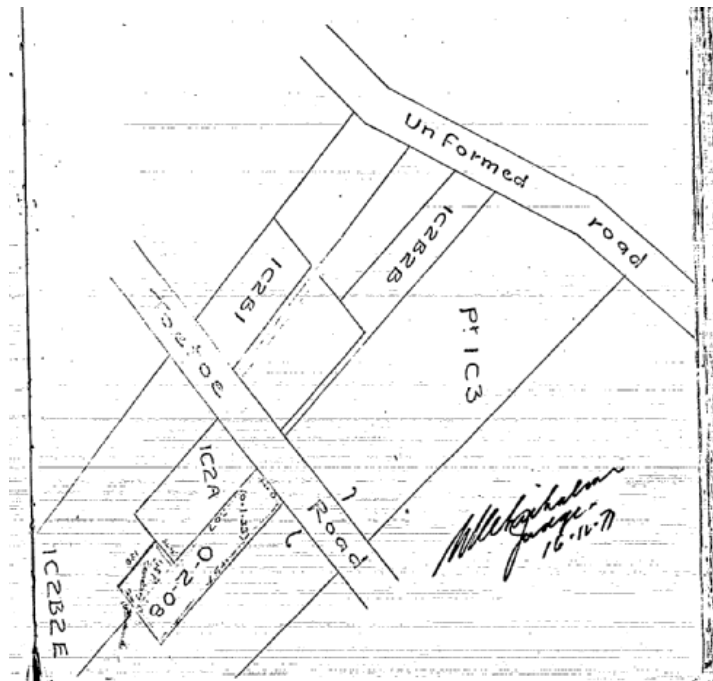
Te Rewarewa C residue to be the balance of the former Te Rewarewa C in its present owners in their existing shares.

Subject to condition that Toetoe 6 be completed by survey within 6 months.

Recommendation 439/53 Toetoe 6 to be set aside as a Māori Reservation as a cemetery "MATURUROIMATA cemetery" for the use of the Māori people of the locality. Upon gazetting the owners above-named to be appointed trustees.

Orders above to issue as at 22 November 1971.

Copy minute to Mr Webb.



7. One of the newly created titles was Toetoe No 6 block (Matururoimata Cemetery), containing 0 acres 2 roods 7.8 perches (2220 square metres), which was vested into the names of the following persons, jointly:
- |    |                               |   |
|----|-------------------------------|---|
| a) | Taniora Haora Areka           | m |
| b) | Te Manakitanga Areka          | m |
| c) | Hemi Rapata or James Phillips | m |
| d) | Kathleen Ray Clark            | f |
| e) | Mac Herewini                  | m |
| f) | Sydney Rapata                 | m |
| g) | Frederick Hadfield            | m |
| h) | Ani Karanui                   | f |
| i) | Hohepa Hemara                 | m |
8. The Court also made a Recommendation, under section 439 of the 1953 Act, that Toetoe No 6 block (Matururoimata Cemetery) be set apart as a Māori Reservation for the purpose of a cemetery for the common use and benefit of the Māori people of the locality.
9. The Māori Reservation was subsequently gazetted on 11 January 1973 at New Zealand Gazette No 1, page 38 (8 TNTOK 815).

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

10. The applicant has provided the following documents in support of his application:
- a) A signed covering letter recording his recollections of the history regarding this urupa;
  - b) A timeline of events from 1 July 1970 through to the lodging of his Chief Judge's application;
  - c) Toetoe 1C3 (Area 8a 3r 18p) - 'Schedule of Ownership Orders' showing Haora Areka Hema as sole owner holding 100.000 shares;
  - d) Toetoe 1C3 - 'Succession Order Schedule' showing succession from Mihi Mangu Whareumu to Haora Areka Hema, solely;
  - e) Toetoe 1C3 (Area 8a 3r 18p) - A compiled list of owners as at 9/12/58 showing Haora Areka Hema as sole owner;
  - f) Toetoe 1C2B2E (Area 5a 1r 32p) - A compiled list of owners as at 26/6/63 showing Taniora Haora Areka as sole owner;
  - g) Typed extract from 46 Whangarei MB 180 dated 18 November 1970;
  - h) Letter dated 28 April 1971 from Connell, Trimmer, Lamb & Gerard, Barristers and Solicitors, Whangarei to the Registrar, Māori Land Court, Whangarei;

- i) Memorandum dated 31 May 1971 from the Assistant District Officer, on behalf of the Māori Trustee, to the Deputy Registrar re having no objections;
  - j) Partition Order for Toetoe No 6 block (Matururoimata Cemetery) dated 22 November 1971, with annotations (no plan or list of owners attached);
  - k) Letter dated 2 July 1970 from Katherine Ray Hemo Clark to Connell, Trimmer, Lamb & Gerard, Barristers and Solicitors, Whangarei re their consent;
  - l) Whakapapa; and
  - m) Sketch plan of the cemetery area and surrounding blocks.
11. Court research shows that 'Toetoe 1C3' block, solely owned by Haora Areka Hema, was one of several blocks amalgamated by the Court, on 24 November 1965 at 42 Whangarei MB 54-57, to create 'Rewarewa C' block.
12. The combined partition application affected only two blocks, 'Toetoe 1C2B2E' and 'Rewarewa C', whose respective ownerships were as follows:
- a) Taniora Haora Areka was the sole owner of 'Toetoe 1C2B2E' block; and
  - b) 'Rewarewa C' block was vested in the Māori Trustee as trustee, on 24 November 1965 at 42 Whangarei MB 54-57, and had the following owners:

Name	Shares
Erica Louisa Hetaraka	85.000
Haora Areka Hema or Haora Areka Hema Matiu	4250.000
Hemi Rapata	800.000
Heperi Kake	170.000
Hinerangi Maria Burling	200.000
Karuru Kake	180.000
Te Manakitanga Areka	2180.000
Māori Trustee as administrator of the estate of Rewatu Whareumu or Rewatu Pirinihia or Rewatu Pirinihia Whareumu or Rewatu Pirinihia Wharemu	3028.500
Paki Hetaraka	85.000
Te Poro Kake	220.000
Te Raupia Kake	280.000
Rihi Kake	150.000

Taniora Haora Areka	6.666
Taura Hapurona and Te Aurere Hapurona (Jointly)	3.334
<b>Total Shares</b>	<b>11638.500</b>

13. In a letter dated 25 September 1970 (Attachment 'A'), Taniora Haora Areka or Tanu Alex (through his solicitor in Hamilton) gave consent, as sole owner of the land, for part of Toetoe 1C2B2E block to be added to the cemetery.
14. In a memorandum dated 31 May 1971 (Attachment 'B'), the Māori Trustee gave consent for Part Rewarewa C block to be added to the cemetery area on the former Toetoe 1C2B2E block.

Likewise, the Māori Trustee did not object to the laying off of a roadway along the south western boundary of the Rewarewa C block to give access from Toetoe Road, to the cemetery area.

15. The new cemetery title created, Toetoe No 6 block (Matururoimata Cemetery), was vested in the following nine persons, jointly:
- a) Taniora Haora Areka m
  - b) Te Manakitanga Areka m
  - c) Hemi Rapata or James Phillips m
  - d) Kathleen Ray Clark f
  - e) Mac Herewini m
  - f) Sydney Rapata m
  - g) Frederick Hadfield m
  - h) Ani Karanui f
  - i) Hohepa Hemara m
16. The residue titles created were vested in the current owners of the respective blocks, in their same shares.
17. It is noted that of the nine persons named, only three of them were actually owners in the blocks being partitioned, namely:
- a) Taniora Haora Areka Toetoe 1C2B2E and Rewarewa C blocks
  - b) Te Manakitanga Areka Rewarewa C block
  - c) Hemi Rapata or James Phillips Rewarewa C block
18. No record of any succession or vesting orders can be found, in respect of the other six persons named, that would enable them to have become 'owners' in the affected land at that time.
19. Kathleen Ray Hemo Clark subsequently succeeded to the interests of Rewatu Whareumu or Rewatu Pirinihia or Rewatu Pirinihia Whareumu or Rewatu Pirinihia Wharemu, in Rewarewa C Residue (3028.500 shares) and other blocks, on 3 July 1973 at 49 Whangarei MB 13.

20. On the Court application (File No 13611) is an undated document headed "List of proposed trustees for Maturu Roimata Cemetery" (Attachment 'C'), which lists the nine persons the land was vested in upon partition.
21. It is noted that in 1971, section 182 of the Māori Affairs Act 1953 stated that:

**182 Partition of combined areas**

(1) Any area of land owned or partly owned by Maoris (whether Maori land or European land) and any other area or areas of land may for the purposes of partition be treated by the Court as a single area of land owned in common by the owners of the several areas, and the Court may make an order or orders of partition in respect thereof:

Provided that no European land other than European land owned by Maoris, shall be dealt with under this section except with the consent in writing of the owner or owners and of every other person having a legal or equitable estate or interest therein, and no Crown land shall be so included without the consent of the Land Settlement Board under the Land Act 1948.

(2) Where by a partition order under this section any European land is acquired by a Maori in severalty or is acquired by a Maori in common with any other person or persons (whether Maoris or Europeans) it shall, unless otherwise specified in the order, become Maori freehold land.

(3) For the purpose of giving effect to any order of partition under this section the Court may cancel or vary any existing partition order or other order, although that order has already been registered or provisionally registered under the Land Transfer Act 1952.

(4) The provisions of section 61 hereof shall apply with respect to the cancellation or variation of any partition order or other order pursuant to this section, and to any consequential amendments required to be made in his register by the District Land Registrar.

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

22. There are subsequent orders affected in respect of both the trust over the land, and relating to the transfer of shares by owners:
- a) Toetoe 6 (Matururoimata Cemetery) Māori Reservation Trust:
- i. On 14 February 2011 at 22 Taitokerau MB 65-70 an order was made, pursuant to section 338(7) of Te Ture Whenua Māori Act 1993 (the Act), vesting Toetoe No.6 in the following trustees:
- Kathy Clark or Kathleen Ray Hemo Clark  
Tangi Matiu  
Lucretia Takimoana  
Ponawai Marks or Punawai Mark  
Lorraine Howson
- ii. On 14 September 2011 at 29 Taitokerau MB 290-296 a recommendation was made, pursuant to section 338(5)(d) of the Act, to redefine the class of persons the Māori Reservation is for the benefit of.



- iii. The redefinition was subsequently gazetted on 13 December 2012 at New Zealand Gazette No 148, page 4423 (15 TNTOK 714).
- b) Share transfers in Toetoe No 6 block (Matururoimata Cemetery):
  - i. Succession order in respect of Ani Karanui, made on 3 July 2009 at 10 Whangarei Succession MB 129-131 and 153, pursuant to section 118 of the Act.
  - ii. Succession order in respect of Tai Aperahama Rapata, made on 26 July 2013 at 64 Taitokerau MB 43-52, pursuant to section 118 of the Act.
  - iii. Succession orders in respect of Hohepa Hemara, made on 10 February 2017 at 146 Taitokerau MB 68-69, pursuant to sections 81 and 81A of the Māori Affairs Amendment Act 1967.
  - iv. Order vesting interests of Phillip James Hemara in the trustees of the Hohepa and Remo Hemara Whānau Trust, made on 17 May 2017 at 369 Aotea MB 275-276, pursuant to section 220 of the Act.

#### **Details of payments made as a result of the Orders**

23. There have been no payments made, in respect of the land affected, as a result of the orders made.

#### **Reference to areas of difficulty**

24. One area of difficulty to deal with relates to providing sufficient notice of this application to the affected parties, such parties being:
  - a) The five current trustees of the 'Toetoe 6 (Matururoimata Cemetery) Māori Reservation' trust, including the applicant;
  - b) The 22 current owners of 'Toetoe No 6 block (Matururoimata Cemetery)', as recorded in Māori Land Court records; and
  - c) The current gazetted beneficiaries of the Toetoe 6 (Matururoimata Cemetery) Māori Reservation, being "the Māori people within the locality of Toetoe Road who can whakapapa to their tupuna listed in the First Schedule", namely:
    - i. Kathy Whareumu Clark
    - ii. Taniora Haora Areka
    - iii. Te Manakitanga Areka
    - iv. Hemi Rapata
    - v. Mac Herewini
    - vi. Sydney Rapata
    - vii. Frederick Hadfield
    - viii. Ani Karanui
    - ix. Hohepa Hemara

25. From researching Court records, contact details were found for some of the above parties, and by letters dated 31 August 2018 notice of the hearing was sent to 46 persons.
26. I note however that those contact details date back as far as 2009, and therefore some of the letters are expected to be returned unclaimed.
27. The applicant claims that of the nine persons appointed, some do not have any whakapapa connection to the cemetery, yet members of their whānau are being buried there.
28. Information, contained on the combined partition application file, indicates that the parties intention may have been to only appoint the nine named persons as 'trustees' of the Māori Reservation.
29. On 22 November 1971 at 47 Whangarei MB 193-194 however, the Court specifically stated "Upon gazetting the **owners** above-named to be appointed trustees", with the "above-named" being reference to Taniora Haora Areka and the eight others listed.

#### **Consideration of whether matter needs to go to full hearing**

30. A Court hearing is necessary to afford the parties an opportunity to present their case to the Court.
31. By direction of the Deputy Chief Judge dated 9 April 2018, this matter has been set down for hearing at the Māori Land Court in Whangarei on 19 September 2018.

#### **Recommendation of course of action to be taken**

32. If the Deputy Chief Judge is of a mind to exercise her 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, before the scheduled hearing on Wednesday 19 September 2018.**
  - b) As directed by the Deputy Chief Judge, the application be heard in the Whangarei Māori Land Court on Wednesday, 19 September 2018 at 12:00pm.

#### **Procedural History**

[5] The Chief Judge has delegated responsibility for hearing all s 45 applications from the Taitokerau District to the Deputy Chief Judge.

[6] On 6 September 2018, the Registrar's Preliminary Report and Recommendation was distributed to all affected parties, for whom addresses were known.

[7] The application was heard before me in Whangarei on 19 September 2018, whereat evidence was given by parties.<sup>2</sup>

[8] Mr Tangi Matiu is the son of Haora Areka Hema or Haora Areka Matiu, one of the original owners of the Rewarewa C parent block in existence before the combined partition in 1971. He is also a child of Rewatu Wharemu, who was also an original owner. He explained that after being away for 40 years he returned in 2001 to live on the Toetoe lands after building a house there. It was then he decided to get control of the cemetery back. He is concerned that people who are not entitled are burying their deceased family members in the cemetery without obtaining permission from the rightful land owners. Other people from his family stood to support his evidence.

[9] Also present was Kathleen Clark who was in Court in 1971 when the combined partition orders were made. She supported the applicant Tangi Matiu. She readily acknowledged that those who were in Court with her on the day the orders were made were not owners. Rather she considers that their names were listed because they had buried family members in the cemetery and that was what they told the Court.

[10] I then heard from Hana Owen via AVL from Wellington. She advised that she was the 11<sup>th</sup> child of Hohepa Hemara and Remo (Rhiparemo) Mocaraka. She listed their hapū from the Hokianga and the Bay of Islands. They moved from the Hokianga, finally settling in Onerahi - Whangarei in 1952. They connected with Rewa Whareumu, an original owner in the land, and they were active in the community. Both of her parents are buried in the Matururoimata Cemetery. She then sent in her notes which record:

*"We the Hemara whānau do not own land at Toetoe.*

*Hohepa Hemara was a trustee.*

*Hohepa Hemara is not an owner of the land CJ 2013/8 – Toetoe No 6 Block (Matururoimata Cemetery – and a Partition order made at 47 Whangarei MB 193-*

---

<sup>2</sup> Chief Judge's MB 587-607 (2018 CJ 587-607).

*194 on 22 November 1971. ... therefore to return then ownership of the land back to the rightful owners.*

*We support the kaupapa of the whānau to reclaim what is theirs.*

*I wish to say to the whanau, to you Tangi, Kath, Lucvretia, Ponawai, Lorraine, my deepest apologies for the stress you have all gone through. I know Hohepa and Remo Hemara would not have wanted this to happen to you all as do we, their whānau. All our aroha to you all."*

[11] She was supported by Phillip Hemara and Henare Morgan. Anahera Heta and Kathleen Clark wanted an assurance that the families of those buried in the cemetery who do not have rights as owners or descendants of owners, will not be required to remove their loved ones from the urupā. Mr Matiu noted that his mother authorised the burials and he would not go against that.

## **The Law**

[12] The Chief Judge's jurisdiction to amend or cancel an order of the Māori Land Court is set out in s 44(1) of the Act:

### **44 Chief Judge may correct mistakes and omissions**

(1) On any application made under section 45 of this Act, the Chief Judge may, if satisfied that an order made by the Court or a Registrar (including an order made by a Registrar before the commencement of this Act), or a certificate of confirmation issued by a Registrar under section 160 of this Act, 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, cancel or amend the order or certificate of confirmation or make such other order or issue such certificate of confirmation as, in the opinion of the Chief Judge, is necessary in the interests of justice to remedy the mistake or omission.

[13] The principles that are applied to s 45 decisions have been previously set out in numerous decisions made by myself and the Chief Judge. These can be found in the

judgments *Ashwell - Rawinia or Lavinia Ashwell (nee Russell)*<sup>3</sup> and in *Tau v Nga Whanau O Morven & Glenavy - Waihao 903 Section IX Block*.<sup>4</sup> I do not propose to repeat those principles again in this judgment.

[14] However, for the benefit of the parties, I note that s 44 explicitly refers to situations where the Court has made an incorrect decision due to a flaw in the evidence presented, or in the interpretation of the law, and it is necessary in the interests of justice to correct its record. For this reason, s 45 applications must be accompanied by proof of the flaw identified, either through the production of evidence not available or not known of at the time the order was made or through submissions on the law.

### Issues

[15] The issues to determine in this case are:

- (a) Whether the combined partition order made on 22 November 1971 at 47 Whangarei MB 193-194 was erroneous in fact or in law because of any mistake or omission on the part of the Court or in the presentation of the facts of the case to the Court; and if so
- (b) Whether in my opinion, it is necessary in the interests of justice to remedy the mistake or omission.

### Discussion

#### *Issue (a)*

[16] It is clear that the Court had the jurisdiction to make the combined partition order under s 182 of the Māori Affairs Act 1953. That provision provided that:

#### **182 Partition of combined areas**

(1) Any area of land owned or partly owned by Maoris (whether Maori land or European land) and any other area or areas of land may for the purposes of partition be treated by the Court as a single area of land owned in common by the owners of the several areas, and the Court may make an order or orders of partition in respect thereof:

---

<sup>3</sup> *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)* [2009] Chief Judge's MB 209 (2009 CJ 209) at [15].

<sup>4</sup> *Tau v Nga Whanau o Morven Glenavy – Waihao 903 Section IX Block* [2010] Māori Appellate Court MB 167 (2010 APPEAL 167) at [61].

...

(2) Where by a partition order under this section any European land is acquired by a Maori in severalty or is acquired by a Maori in common with any other person or persons (whether Maoris or Europeans) it shall, unless otherwise specified in the order, become Maori freehold land.

(3) For the purpose of giving effect to any order of partition under this section the Court may cancel or vary any existing partition order or other order, although that order has already been registered or provisionally registered under the Land Transfer Act 1952. ...

[17] Two blocks were affected by this combined partition and they were Toetoe 1C2B2E and Te Rewarewa C. The first block was owned solely by Taniora Haora Areka and he consented to the combined partition. At the time, the Te Rewarewa C block was vested in the Māori Trustee and that office consented to the combined partition. The Māori Trustee also gave consent to the laying of a roadway to give access to the cemetery. The Māori Trustee held the legal title at the time so no issue regarding consent arises.

[18] As a result of the combined partition orders 3 blocks were created: Toetoe 6 – the Maturu Roimata Cemetery, Toetoe 1C2B2E Residue, and Te Rewarewa C residue. Toetoe 6 was eventually set aside as a Māori Reservation for the purposes of an urupā for the common use and benefit of the Māori people of the locality.

[19] The sole problem was that the order for the new Toetoe 6 – the Maturu Roimata Cemetery listed the wrong people on the ownership list. It listed 6 people as owners who were not owners of the original parent block in 1971. The true intention of the Court seems to have been to include these people as trustees for the purposes of the reservation. These people were:

- (a) Kathleen Ray Clark
- (b) Mac Herewini
- (c) Sydney Rapata
- (d) Fredrick Hadfield
- (e) Ani Karanui

(f) Hohepa Hemara

[20] Nor were they successors to any of those owners in 1971 that would have enabled them to become “owners” in the affected land at the time. Kathleen Ray Hemo Clark subsequently succeeded to the interests of an owner but not until 3 July 1973.<sup>5</sup>

[21] Thus, there was an error in the presentation of the facts to the Court and as a result the combined partition order made on 22 November 1971 at 47 Whangarei MB 193-194 was erroneous in fact and in law.

*Issue (b)*

[22] I turn now to whether in my opinion, it is necessary in the interests of justice to remedy the mistake or omission.

[23] I note that to some extent the desire of the applicant and his supporters to control who is buried in the reservation has been achieved. He is now a trustee on the reservation.<sup>6</sup>

[24] Secondly an order made in 2011 redefines the class of persons for whom the Māori Reservation was set aside for. It is now for the benefit of the Māori people within the locality of Toetoe Road who can whakapapa to their tipuna listed in the first schedule over Toetoe 6 listed in the second schedule of the order.<sup>7</sup> The problem is that the first schedule repeats the error of 1971 by listing all nine people declared as owners of Toetoe 6 in 1971.

[25] Therefore, the error is being perpetuated in successive orders and it must be corrected. In keeping with the Preamble, ss 2 and 17 of Te Ture Whenua Māori Act 1993 that land is a taonga tuku iho that should be retained by the owners, their whānau and hapū, I conclude that it is necessary in the interests of justice to remedy the mistake or omission.

---

<sup>5</sup> 49 Whangarei MB 13 (49 WH 13).

<sup>6</sup> 22 Taitokerau MB 65-70 (22 TTK 65-70).

<sup>7</sup> 29 Taitokerau MB 290-296 (29 TTK 290-296).

## Decision/Orders

[26] Accordingly, in terms of s 44(1) of Te Ture Whenua Māori Act 1993, I hereby exercise my jurisdiction and amend the combined partition order made on 22 November 1971 at 47 Whangarei MB 193-194, in relation to Toetoe No 6 block, by adding the words “as responsible trustees”, following the word “Jointly” in the second column of the schedule.

[27] A further order is made, pursuant to s 47(4) of Te Ture Whenua Māori Act 1993, making all consequential amendments necessary to give full effect to the order made above, including:

- (a) Amending the order made pursuant to s 338(5)(d) redefining the class of persons for whom the Māori Reservation was set aside for made at 29 Taitokerau MB 290-296 (29 TTK 290-296) by amending the first schedule to show the names of all owners, in the Toetoe 1C2B2E and Rewarewa C blocks, as at 22 November 1971.
- (b) Amending the following orders by deleting any reference to Toetoe No 6 block:
  - (i) Succession order in respect of Ani Karanui, made on 3 July 2009 at 10 Whangarei Succession MB 129-131 and 153, pursuant to s 118 of the Act.
  - (ii) Succession order in respect of Tai Aperahama Rapata, made on 26 July 2013 at 64 Taitokerau MB 43-52, pursuant to s 118 of the Act.
  - (iii) Succession orders in respect of Hohepa Hemara, made on 10 February 2017 at 146 Taitokerau MB 68-69, pursuant to s 81 and s 81A of the Māori Affairs Amendment Act 1967.
  - (iv) Order vesting interests of Phillip James Hemara in the trustees of the Hohepa and Remo Hemara Whānau Trust, made on 17 May 2017 at 369 Aotea MB 275-276, pursuant to s 220 of the Act.



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

[29] The Case Manager is directed to distribute a copy of this decision to all parties.

Pronounced at 10.45 am in Gisborne on Wednesday this 7<sup>th</sup> day of November 2018.

C L Fox  
**DEPUTY CHIEF JUDGE**