

**IN THE MĀORI LAND COURT OF NEW ZEALAND
TAIRAWHITI REGISTRY**

**A20150005663
CJ 2015/38**

UNDER Section 45 of Te Ture Whenua Māori Act 1993

IN THE MATTER OF Pani Te Wairemana Morris or Pani Wairemana
Akuhata Morris - Succession orders made at 134
Napier MB 73 on 3 December 1992

WIREMU MORRIS
Applicant

Judgment: 28 September 2016

DECISION OF CHIEF JUDGE W W ISAAC

Introduction

[1] This application filed by Wiremu Morris (“the applicant”) pursuant to section 45 of Te Ture Whenua Māori Act 1993 (“the Act”) seeks to amend a succession order at 137 Napier MB 17 (7 February 1994) relating to Pani Te Wairemana Morris or Pani Wairemana Akuhata Morris (“the deceased”)

[2] The applicant claims that the order complained of is incorrect due to a mistake, error or omission in the presentation of the facts of the case to the Court as the interests in Hahau A12 were left to him as per the Will¹ of his grandmothers, the deceased.

Background

[3] The Case Manager’s Report and Recommendation (“the Report”) dated 4 December 2015 sets out the background to the application. The Report is produced in full as follows:

PRELIMINARY REPORT AND RECOMMENDATION

- 1) This application filed by Wiremu Morris (the applicant) seeks to amend a succession order relating to the Estate of Pani Te Wairemana Morris or Pani Wairemana Akuhata Morris (the deceased) in the following:
 - a) 134 Napier MB 73 and 122 dated 3 December 1992
 - b) 137 Napier MB 17 dated 7 February 1994
- 2) The applicant claims the said order is incorrect due to a mistake, error or omission in the presentation of the facts of the case to the Court or the Registrar as the deceased left Hahau A12 to him in his grandmothers will.
- 3) The applicant claims that he has been adversely affected by the order complained of as he should have received Hahau A12 solely.

Concise history of Order sought to be amended

- 4) The matter was heard by the Court on 3 December 1994 at 134 Napier MB 122 and the minute is reproduced as follows:

T Rau Gerrard sworn: I am a sister to the applicant. The deceased who was known by all above names was my mother who died at Te Puia Springs on or about 17 November 1990. Death Certificate has been filed. I was present at the funeral. The deceased was married to John Paku Morris who is now deceased.

No other marriages. The deceased left a Will (produced) and had the following children.

¹ Dated 8th March 1981

<u>Name</u>	<u>Sex</u>	<u>Address</u>
1. Tai Heke Morris		77 Paraone Rd, Gisborne
2. Te Rau Huia Gerrard		2 Rutherford Rd, Napier
3. Apirana Turee Morris		7 Wallace Pl, Napier
4. John Morris		C/- 71 Lowe St, Box 109, Gisborne
5. Oriwia Haipiria Crawford		C/- Post Office, Te Araroa
6. Ngatiporou Taringakore Morris		60 Atherfold Cres, Napier
7. Delta Malaysia Morris		C/- Post Office, Te Araroa
8. Heni Manunga Backhop		deceased
9. Horiaana Korea		deceased
10. Te Ahau Waitoa		deceased

There are legal adoptions. Details: Delta Malaysia Morris, C/- PO, Te Araroa - into family.

There are outstanding debts owing for legal expenses incurred from this estate.

Court: Refer to 134 Napier Minute Book 73.

- 5) 134 Napier MB 73 dated 3 December 1992 is reproduced as follows:

Sir before we finish. The matter of the adoption. Is that all settled?

Court: I'm not worried if the family gift it. Your sister was legally adopted into the family. I have no problem with that. I'll adjourn this and see how you get on. We'll also check the beneficiary card for the other money. I think you can stay on the card until we see where it is going.

This matter adjourned to the February Court. In the meantime could up to date beneficiary searches be obtained as to the money on the beneficiary card.

- 6) 137 Napier MB 17 dated 7 February 1994 is reproduced as follows:

Court: Mrs Te Rau Gerrard appeared and advised that her brother Ngati Porou Taringakore Morris died in 1993 and she was present at his funeral. He left one issue, Stanley Boy Morris. Court is now in a position to vest the interests. The Court vests the maori land interests of the deceased, equally, in 1-7 at 134 Napier Minute Book Folio 122 and makes a further order with substitution of the issue of no 6 (Ngati Porou Taringakore Morris). Copy of minutes to Mrs Gerrard.

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

- 7) The applicant has provided the following in support of the application:

- a) Copy of the Court minute complained of
- b) Copy of the will for Pani Te Wairemana Morris dated 8 March 1981

- 8) The will of Pani Tewairemana Morris is reproduced as follows:

This is the last Will and Testament of Mrs Pani Tewairemana Morris and this revokes all previous Wills & Testament.

House; Horoera Rd, Te Araroa, I wish this to become a family home.

Furniture & all belonging in the home are to remain in the House.
The family home is not to be sold.

Land. Marangairoa A40 and others as per Schedule and also Hahau Block (grandson)

The Schedule list to be equally divided between each of my children,
 Heni Manunga Backhop
 Oriwia Haipiria Crawford,
 Ngatiporou Taringakore Morris
 John Morris,
 Apirana Turei Morris,
 Te Rau Huia Gerrard,
 Tai Heke Morris,
 Delta Malaysia Morris

The Hahau Block to be given to my grandson Wiremu Morris.

I appoint as my trustees, my solicitors, Wilson, Barber & Co with the request that Mr Weatherhead act my behalf.

Court Research

- 9) In terms of the will of the deceased, Wiremu Morris, a grandson of the said deceased, is to receive the Māori land interests in the Hahau block.
- 10) The deceased was an owner in the Hahau A12 Block, holding 3.17700 shares. This interest was inadvertently vested into numbers one to seven as set out paragraph 4 above.
- 11) The Court is aware that the above deceased died leaving a will as set out at 134 Napier MB 122. The Court does not refer to the will when making final orders at 137 Napier MB 17.

Details of subsequent Orders affecting lands to which this application relates

- 12) There are no subsequent orders.

Details of payments made as a result of the Order

- 13) The Māori Trustee has confirmed by letter dated 18 November 2015 that they receive funds for Hahau A12 and that payments have been made since 7 February 1994 as follows:

<i>Client Record</i>	Name	Current Balance	Funds Held	Payments Made
			<i>From Hahau A12 after 7/02/1994</i>	
CLI-00024413	Tai Derbyshire (Tai Heke Morris)	\$0.00	\$0.00	\$22.58
CLI-00154955	Teri Morris (Te Rau Huia Gerrard)	\$0.00	\$0.00	\$22.57
CLI-00052568	Apirana Turei Morris	\$0.00	\$0.00	\$22.57
CLI-00024415	John Morris	\$0.00	\$0.00	\$22.57
CLI-00154957	Oriwia Haipiria Crawford	\$389.56	\$5.80	\$16.77
CLI-00063588	Stanley Boy Morris	\$10.61	\$0.00	\$22.57
CLI-00028942	Delta Malaysia Morris	\$306.00	\$5.80	\$16.77

Reference to areas of difficulty

- 14) There are no areas of difficulty.

Consideration of whether matter needs to go to full hearing

- 15) A Court hearing is not necessary and the matter can be dealt with on the papers before the Court.

Recommendation of course of action to be taken

- 16) 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 the Act amending the succession order complained of at 87 Opotiki MB 75 dated 6 December 2004, by deleting Tui Warmenhoven and replacing her with William Morris
 - c) And a further order be made pursuant to section 47(4) of the Act making all other consequential amendment.
 - d) If objections are received then the matter should be referred to the Court for directions.

[4] The Report was distributed to parties on 26 February 2016 and no objections have been received to it.

[5] On 5 August 2016 correspondence was sent to parties advising that the recommendation at paragraph 16(b) of the Report was incorrect as the wrong minute book reference was referred to. Parties were notified that the recommendation at paragraph 16(b) should read as follows:

If no objections are received, then the order be made pursuant to section 44(1) of the act amending the succession order complained of at 134 Napier MB 17 (7 February 1994) by deleting the persons set out in the order being Tai Heke Morris, Te Rau Huia Gerrard, Apirane Turee Morris, John Morris, Oriwia Haipiria Crawford, Stanley Boy Morris and Delta Malaysia Morris and replacing them with William Morris

[6] Parties were given until 19 August 2016 to file objections. Correspondence was received from Taiheke Taikato Morris-Derbyshire stating that she did not object to Wiremu Morris taking ownership of the Hahau A12 as stated in the Will of the deceased.

Discussion

[7] 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.

[8] 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*² and *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)*³ the burden of proof rests with the applicant to prove that there was a mistake or error in the order complained of.

[9] The applicant has requested that the Chief Judge amend the succession order to have the interest in the Hahau A12 Block vested in him solely in terms of the Will.

[10] At 137 Napier MB 17 the Court vested the interests of Pani Te Wairemana Morris or Pani Wairemana Akuhata Morris in her successors. The Court did not take into consideration the Will⁴ of the deceased as recorded at 134 Napier MB 122 (3 December 1992).

[11] In support of this s45 application the applicant provided a copy of the Will of Pani Wairemana Akuhata Morris which was presented to the Court at 134 Napier MB 122. The Will states that the "... Hahau Block to be given to my grandson Wiremu Morris"⁵

[12] Based on the evidence before me and the Case Manager's Report I am of the view that an error was made in the presentation of the facts of the case to the Court at 137 Napier MB 17 as the Will was not taken into consideration.

² [2010] Maori Appellate Court MB 167-216 (2010 APPEAL 167)

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

⁴ dated 8th March 1981

⁵ Will of Pani Te Wairemana Morris (8 March 1981)

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

Orders

[14] Accordingly I make an order pursuant to s 44(1) Te Ture Whenua Māori Act 1993 that the order at 137 Napier MB 17 be amended by

- (a) Deleting the successors, Tai Heke Morris, Te Rau Huia Gerrard, Apirane Turee Morris, John Morris, Oriwia Haipiria Crawford, Stanley Boy Morris and Delta Malaysia Morris in the Hahau A12 Block; and
- (b) Vest the 3.17700 shares in the Hahau A12 Block into Wiremu Morris solely

[15] 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) Amending the order pursuant to s 164 of Te Ture Whenua Māori Act 1993 at 350 Aotea MB 142-149 (11 March 2016) by deleting the Hahau A12 interest

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

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

Dated at Wellington this 28th day of September 2016

W W Isaac
Chief Judge