IN THE MĀORI LAND COURT OF NEW ZEALAND
WAIARIKI DISTRICT

I TE KOOTI WHENUA MĀORI O AOTEAROA
TE ROHE O TE WAIARIKI

A20180001964

UNDER	Section 115, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Succession to Eric Eria Moses also known as Eric Mohi or Eria Mohi
BETWEEN	DONNA MOSES-HEENEY Applicant

Hearing: 11 June 2018, 190 Waiariki MB 23-40
(Heard at Whakatane)

Judgment: 14 November 2018

JUDGMENT OF JUDGE C T COXHEAD

Tēnā koutou i ō tātou aituā maha e ngapu nei te whenua i tō rātou hinganga. Hēoi anō, e tāea te aha atu i te tangi, i te maumahara ki a rātou me tā rātou i mahi ai? Nō reira, waiho rātou ki a rātou, ko tātou ki a tatou.

Hei tīmatanga kōrero - Introduction

[1] An application for succession to Eric Eria Moses also known as Eric Mohi or Eria Mohi was filed on 2 March 2018. The deceased was married to Mere Moses and they had 16 natural children, two of whom were adopted out and one who died without children. In addition, Eric and Mere had two whāngai children.

[2] The whāngai, Phillipa Moses and Erica Nuku, are natural granddaughters of the deceased, through their mother Edith Pewhairangi. The whānau have agreed that Phillipa and Erica should be recognised as whāngai of the deceased, however, there is disagreement as to whether they should be entitled to succeed as if they were natural children.

[3] The matter was last heard on 11 June 2018 and several whānau members provided their views to the Court.[1] It was noted that the original intention was to form a whānau trust to vest all the interests received from the deceased. However, it was subsequently proposed that some shares remain in the individual's names for block voting purposes. Further clarification was also required as to the proposed trustees.

[4] At the conclusion of the hearing, I indicated that I would issue a decision regarding the entitlement of the whāngai to succeed, following which the remainder of the application could be considered.

Ngā Kaupapa - Issues

[5] The issues currently for determination are whether Phillipa Moses and Erica Nuku should be recognised as whāngai of Eric Moses and, if so, whether they should be entitled to succeed as if they were his natural children.

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1 190 Waiariki MB 23-40 (190 WAR 23-40).

Te Ture - The Law

[6] Section 115 of Te Ture Whenua Māori Act 1993 makes provision for the recognition of whāngai. It states:

> **115 Court may make provision for whangai**
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> (1) In the exercise of its powers under this Part in respect of any estate, the court may determine whether a person is or is not to be recognised for the purposes of this Part as having been a whangai of the deceased owner.
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> (2) Where, in any such case, the court determines that a person is to be recognised for the purposes of this Part as having been a whangai of the deceased owner, it may make either or both of the following orders:
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> (a) an order that the whangai shall be entitled to succeed to any beneficial interest in any Maori freehold land belonging to the estate to the same extent, or to any specified lesser extent, as that person would have been so entitled if that person had been the child of the deceased owner:
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> (b) an order that the whangai shall not be entitled to succeed, or shall be entitled to succeed only to a specified lesser extent, to any beneficial interest in Maori freehold land to, or than that, which that person would otherwise be entitled to succeed on the death of that person's parents or either of them.
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> (3) Every order under subsection (2) shall have effect notwithstanding anything in section 19 of the Adoption Act 1955.

[7] The Act defines "whāngai" as a person adopted in accordance with tikanga Māori.[2] Section 115 therefore allows the Court to give effect to tikanga Māori in considering succession to a deceased owner, and prescribes a two-step approach. Firstly, a determination of whether a person is to be recognised as a whāngai of the deceased and, secondly, to what extent they should be entitled to succeed to the Māori land interests of the deceased.

[8] The Court has considered the determination of whāngai and their rights to succeed on several occasions.[3] In doing so, the Court often takes into account a range of evidential material, including as to the nature and length of the relationship between the whāngai and their adopted parent, recognition of the relationship by the whanau or other members of the

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2 Te Ture Whenua Māori Act 1993, s 4.

3 See *Hohua – Succession to Tangi Biddle or Hohua* (2001) 10 Rotorua Appellate MB 43 (10 AP 43); *Karauti – Succession to George or Hori Kiwa Tukua* (2000) 116 Otorohanga MB 81 (116 OT 81); *Milner v Milner – Succession to Warihi Te Keu Faenza Milner* (2008) 83 Ruatoria MB 108 (83 RUA 108); *Bennett – Succession to Ronald Clifford Bennett* (2014) 101 Waiariki MB 290 (101 WAR 290); *Koia – Succession to Hoani Tau Takahi* (2015) 133 Waiariki MB 273 (133 WAR 273)

community, the whakapapa connections of the whāngai, whether there is a blood relationship to the deceased and the tikanga of the relevant iwi or hapū. Ultimately, the Court exercises its discretion after considering all the evidence and having regard to the relevant legislative provisions.

Kōrerorero - Discussion

[9] In the present case, there appeared to be no disagreement that both Phillipa Moses and Erica Nuku were raised by the deceased as whāngai. The evidence given was that both children were raised from babies by the deceased and his wife Mere. It was noted that, while the whāngai grew up in their grandparent's household, they maintained their connection with their mother and spent holidays with her. Phillipa advised that she and Erica referred to the deceased and Mere as their mum and dad and they did not intend to succeed to the interests of their biological mother. Several of the natural children gave evidence that they consider Phillipa and Erica as siblings, while others stated they have always considered them to be nieces. Despite the disagreement as to the extent of their entitlement to succeed, all present agreed that Phillipa and Erica should be recognised as whāngai of the deceased.

[10] The concern regarding the extent of their succession seems to stem from the fact that Phillipa and Erica are natural grandchildren of the deceased. The applicant pointed out that there were a large number of grandchildren and it would be breaking the generational line for them to succeed as children. She also noted that both Phillipa and Erica have already succeeded to her mother Mere and that was allowed out of respect to the deceased. However, now that both parents are deceased, the scenario for the whānau has changed. Aroha Hudson and Marilyn Marama Moses, natural daughters of the deceased, also opposed succession by Phillipa and Erica. In their view, it was more correct for Phillipa and Erica to succeed through their mother, as is their entitlement. The overall concern appeared to be whether it would be more appropriate for Phillipa and Erica to succeed in the normal course of events as grandchildren and whether they would be "double dipping" if they also inherited shares from their natural mother Edith.

[11] In *Taylor v Taylor – Succession to Waerena Taylor* the Court considered succession by a whāngai who was also a natural grandchild of the deceased.[4] The Court made the following comments:

> [19] The present situation is not uncommon. Grandparents raise a grandchild from an early age. That grandchild is then in effect adopted by the grandparents in accordance with tikanga Māori as a whāngai. For some hapū it is acceptable for a grandchild raised as a whāngai to be entitled to succeed. In other cases it is not. A third variation is where those children of the deceased who agree to inclusion of a whāngai do so by way of gift of part of their entitlement to their whāngai sibling who in fact is in reality their irāmutu.
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> [20] While it would have been preferable for the family to resolve this issue amongst themselves, including by way of the device of the whānau trust, regrettably that has not been possible. Even so, there is still the opportunity for a whānau trust to be created in the name of the deceased, for the widower Mr Taylor to be the sole trustee and for the beneficiaries of the trust to be all of the deceased's children and grandchildren.

[12] In *Pulham – Succession to Tiro Taupaki* the Court also considered the position of several grandchildren who were raised by the deceased and whether they should be determined as whāngai. The Court noted:[5]

> [19] Section 115 recognises that in some circumstances individuals may be "adopted in accordance with tikanga Māori" and are therefore "whangai" but that they should not be treated as if they were a child of the deceased *for the purposes of succession*. The Court can take into account the considerable variability and fluidity of tikanga concerning whangai and the broad range of circumstances of whangai within whanau. Where a whangai is a grandchild of the deceased a key issue is whether that grandchild should succeed alongside his or her biological parent/aunts/uncles as if a child of the deceased or whether he or she should wait to succeed with his or her biological siblings/cousins. Ultimately, the Court must do what it considers is *tika* in light of all the circumstances.

[13] In that decision, the Court held that, while the grandchildren should be regarded as whāngai of the deceased, they should not be entitled to succeed as if they were children of the deceased. In concluding as such, the Court noted that the grandchildren all regarded each other as cousins and the deceased herself appeared to consider the whāngai as her grandchildren rather than her children. There was no wish expressed by the deceased for them to be treated equally with her children and the whānau arrangements were such that one of the natural children returned to look after the deceased and also raised the whāngai. The Court expressed concern that the grandchildren could therefore inherit interests three

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4 *Taylor v Taylor – Succession to Waerena Taylor* (2014) 102 Waiariki MB 258 (102 WAR 258).
5 *Pulham – Succession to Tiro Taupaki* (2010) 9 Taitokerau MB 209 (9 TTK 209).

times through the deceased, the natural child who also raised them and their biological parent. In the circumstances, the Court considered it would be wrong to treat these grandchildren as equals of their biological parents, aunts and uncles and thereby award them greater interests than their own siblings and cousins.

[14] The situation with Phillipa and Erica is not uncommon. Grandparents often raise a grandchild from an early age. That grandchild is then in effect adopted by the grandparents in accordance with tikanga Māori as a whāngai. With many matters that come before this Court it would have been preferable for the family to resolve this issue amongst themselves.

[15] In this case there is majority support from the siblings for Phillipa and Erica succeeding as natural children. From the natural children, seven have indicated their support for succession (including Edith before her death) while three do not agree to Phillipa and Erica succeeding as natural children. In terms of the other three deceased children, the children of two of them have indicated their support for Phillipa and Erica succeeding and only the children of Gary have not advised their position in writing (although the applicant noted their support).

[16] Of importance is the fact that Phillipa and Erica have confirmed that they will not be succeeding to their biological mother's Māori land interests. This has also been acknowledged on behalf of the other children of Edith. As has been indicated, the land interest are to be vested into a whānau trust. This issue of succession will become irrelevant as once a whānau trust is established no further successions need take place.

[17] There is no issue regarding their whakapapa link to the deceased as they are natural grandchildren. All whānau appear to recognise them as whāngai of the deceased. It is also telling that both Phillipa and Erica were recognised as whāngai entitled to succeed as if they were natural children when the succession for Mere Moses was ordered.

[18] As noted above, importantly it is intended that all interest are to be vested in a whānau trust. This will minimise any impact of Phillipa and Erica's succession as children rather than grandchildren.

Kupu whakatau - Decision

[19] The Court determines pursuant to section 115 that Phillipa Tania Moses and Erica Matewai Nuku are whāngai of the deceased, Eric Eria Moses, and are entitled to succeed as if they are natural children.

Me aha ināianei? - What are the next steps?

[20] Having now determined the issue relating to the whāngai, the remainder of the application can proceed.

[21] I note the application included the constitution of the Eric Eria and Mere Moses Whānau Trust. While there was some discussion at the previous hearing regarding the reservation of some shares in the names of individual owners, the application currently before the Court is to vest all lands in the whānau trust. Therefore, the applicant must confirm the details of the whānau trust application.

[22] I make the following directions:

(a) The applicant is to confirm in writing what the whānau has agreed in relation to the Māori land interests to be vested in the whānau trust;

(b) The applicant is to confirm in writing the agreed nominated trustees for appointment to the whānau trust;

(c) The applicant is to file such documents within four (4) weeks of the date of this decision; and

(d) The application is adjourned to chambers. If the documents are not received within the timeframes noted the application is to be set down for further hearing in Whakatane.

Pronounced at 2.00pm in Rotorua on Wednesday this 14th day of November 2018.

C T Coxhead
JUDGE