

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

**A20150005614
CJ 2015/39**

UNDER Section 45 of Te Ture Whenua Māori Act 1993
IN THE MATTER OF Neri Te Waru - and a succession order made at 1
Registrar's MB 36 on 12 November 1970
BETWEEN MATEKINO MUCALO
Applicant

Hearing: 12 April 2019, 2019 Chief Judge's MB 397-410
(Heard at Whangārei)

Judgment: 25 June 2019

JUDGMENT OF DEPUTY CHIEF JUDGE C L FOX

Introduction

[1] Matekino Mucalo (the applicant) has filed an application under s 45 of Te Ture Whenua Māori Act 1993 (the Act) to amend the succession order made on 12 November 1970 at 1 Registrars (Taitokerau) MB 36 relating to Neri Te Maru (the deceased).

[2] The applicant claims that the said order is incorrect because of a mistake, error or omission in the presentation of the facts of the case to the Court, in that the land should have been transferred to other members of the whānau and it should not have been converted to general land.

[3] In an affidavit filed with the application Ms Mucalo referred to her uncle Tamati Te Maru (also known as Tom or Thomas Te Maru). She noted that he was one of eight children of Hami Te Maru and Matare Te Maru (nee Rapihana). The applicant's mother was a sister to Tamati. The applicant claimed Tamati and his wife had no children but did have whāngai children – namely, Sid Oma Te Maru, Paul Le Noel and Edward Litchwark. The original issue at the heart of the application concerns the ownership of Pukepoto 8B7A and 8B7B blocks once owned by Tamati.

[4] Tamati acquired these two blocks by purchase. He leased these blocks to Neri Te Maru, who was one of his brothers, on 1 April 1966 for a term of 20 years. That lease was confirmed by the Māori Land Court on 12 September 1966. Tamati then died on 4 December 1966. Tamati left the two blocks by will to his brother Neri. Tamati's estate was subsequently dealt with by the Māori Land Court at 76 Taranaki MB 44 and 6 Kaitaia MB 217.

[5] Neri (the deceased in this case) then died intestate. His wife at the date of death was Martha Te Maru (nee Wiki, and also known as Maata). She applied for and was granted letters of administration to administer the deceased's estate. The order of 12 November 1970 recorded at 1 RG (Whangārei) MB 36 relates to her application for transmission of the deceased's Māori land interests to her as administrator of his estate. I note there are also other blocks that are affected by this application.

[6] The applicant claims that she has been adversely affected by the order complained of because:

- (a) The land has been transferred to successors who do not whakapapa to the land; and
- (b) It is now general land.

Background

[7] The Registrar's Preliminary Report and Recommendation dated 19 March 2019 sets out the background to the application. The report is reproduced in full as follows:

PRELIMINARY REPORT AND RECOMMENDATION

Introduction

1. This application, filed by Matekino Mucalo (the applicant), seeks to amend a succession order at 1 Registrars (Whangarei) MB 36 (12 November 1970) in respect of the interest of Neri Te Maru (the deceased)¹.
2. The applicant claims the said order is incorrect due to a mistake, error or omission on the part of the Court stating that:
 - a) The land should have been transferred to other members of the whānau and not to Martha Te Maru.
 - b) The land should not have been converted to general land under Part I of the Māori Affairs Amendment Act 1967.
3. The applicant claims that she has been adversely affected by the order complained of because the land has been transferred to those who do not whakapapa to the land, and the land is now general land.

Concise history of Order sought to be amended/cancelled

4. The matter was dealt with by S E Peters, Deputy Registrar on 12 November 1970 pursuant to section 81 of the Māori Affairs Amendment Act 1967. The Deputy Registrar made an order vesting the following interests of the deceased in Martha Te Maru as the Administrator of the estate of Neri Te Maru:

Block	Share
Herekino-Manukau 4	3.590
Pukepoto 8B7B	Sole owner
Pukepoto 8B11B	17.5
Pukepoto 8B7A	Sole owner
Pukepoto 8B11A	Sole owner

¹ The associated minute is referenced in MLIS as 1 Registrars (Taitokerau) MB 36, however the corresponding order is referenced in MLIS as 1 Registrars (Whangarei) 36. The series when originally created was recorded as RW, but was later changed to RGTO as there was already a RW series in operation (Rawene).

5. The order was made on the basis that:
- a) Neri Te Maru (also known as Neri Hami Ngarama) died on the 17 June 1969.
 - b) Martha Te Maru had been granted Letters of Administration over the estate of the deceased in the High Court of New Zealand, Whangarei, on the 1 September 1969 (Probate file held at Archives NZ ref: R964892)

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

6. The applicant has provided the following documents in support of their application:
- a) An affidavit in support with the following documents attached:
 - b) Death certificate of Tamati Te Maru
 - c) Birth Certificate of Sid Te Maru
 - d) Death Certificate of Neri Te Maru
 - e) Declaration by Neri Te Maru in support of application for lease
 - f) Confirmation of alienation to Tamati Te Maru (12/2/58)
 - g) Lease of Pukepoto lands from Tamati Te Maru to Neri Te Maru
 - h) Confirmation of lease to Neri Te Maru (12/9/66)
 - i) The will of Tamati Te Maru
 - j) Confirmation of Probate of Tamati Te Maru Will (5/5/1967)
 - k) Kaitaia Minute Book Volume 6, p 217 – 218 (8/7/70)
 - l) Whangarei Minute Book confirming transfer to Martha Te Maru as administratrix (order complained of)
 - m) Pukepoto 8B7A – certificate of title (historic)
 - n) Pukepoto 8B7B – certificate of title (historic)
 - o) Pukepoto 8B7A – certificate of title (current)
 - p) Pukepoto 8B7B – certificate of title (current)

Court Research

7. The order complained of transferred the following interests of the deceased in Martha Te Maru as the Administrator of the estate of Neri Te Maru:

<u>Block</u>	<u>Share</u>
Herekino-Manukau 4	3.590
Pukepoto 8B7B	Sole owner
Pukepoto 8B11B	17.5
Pukepoto 8B7A	Sole owner
Pukepoto 8B11A	Sole owner

8. **Herekino-Manukau 4** – At 9 Kaitaia MB 130 (26 June 1975) Martha Te Maru, transferred the shares in this block to pursuant to section 213 of the Māori Affairs Act 1953 to Isaac² Mareroa by way of sale for a consideration of \$38.18. The following evidence is recorded:

² Recorded as Issac Mareroa in MLIS.

Herekino Manukau 4
213/53
Mr Fountain for purchaser
Receipt filed
Order 213/53 accordingly

9. **Pukepoto 8B7B** – On 7 July 1970 the Deputy Registrar, Whangarei issued a status declaration pursuant to Part I of the Māori Affairs Amendment Act 1967, declaring the land to be general land.
10. According to the historical search title for Pukepoto 8B7B the following instruments have been noted on the title:
 - a) Status Declaration (A506607) produced 27 October 1970
 - b) Succession order vesting the within land in **Neri Te Maru** (101459.1)
 - c) Transmission to **Martha Te Maru** of Kaitaia, Widow as administratrix (101459.3)
 - d) **Transfer to Martha Te Maru** (C.229957.2) – produced 17.1.1991 and entered 8.2.1991
 - e) Transmission to Paul Le Noel and Matekino Mucalo as executors (C.446712.1)
 - f) Transfer to Paul Le Noel (C.446712.2)
 - g) Transmission to Fraser Le Noel as executor (10096585.1)
 - h) Transfer to Sonny Heemi Le Noel (10697270.2)
11. **Pukepoto 8B11B** – Martha Te Maru is still recorded as the administrator of the estate of the deceased holding 17.5 shares (a copy of owner's details report on file)
12. **Pukepoto 8B7A** – On 23 April 1969 the Deputy Registrar, Whangarei issued a status declaration pursuant to Part I of the Māori Affairs Amendment Act 1967, declaring the land to be general land.
13. According to the historical search title for Pukepoto 8B7A the following instruments have been noted on the title:
 - a) Status Declaration (A417755) produced 22 September 1969
 - b) Succession order vesting the within land in **Neri Te Maru** (101459.1)
 - c) Transmission to **Martha Te Maru** of Kaitaia, Widow as administratrix (101459.3)
 - d) **Transfer to Martha Te Maru** (C.229957.2) – produced 17.1.1991 and entered 8.2.1991
 - e) Transmission to Paul Le Noel and Matekino Mucalo as executors (C.446712.1)
 - f) Transfer to Paul Le Noel (C.446712.2)
 - g) Transmission to Fraser Le Noel as executor (10096585.1)
 - h) Transfer to Sonny Heemi Le Noel (10697270.2)
14. **Pukepoto 8B 11A** – On 23 April 1969 the Deputy Registrar, Whangarei issued a status declaration pursuant to Part I of the Māori Affairs Amendment Act 1967, declaring the land to be general land.
15. According to the historical search title for Pukepoto 8B11A the following instruments have been noted on the title:
 - a) Status Declaration (A410237) produced 19 August 1969
 - b) Transmission to **Martha Te Maru** of Kaitaia, Widow as administratrix (101459.3)
 - c) **Transfer to Martha Te Maru** (C.229957.2) – produced 17.1.1991 and entered 8.2.1991
 - d) Transmission to Paul Le Noel and Matekino Mucalo as executors (C.446712.1)

Discussion

16. The order made at 1 Registrar (Whangarei) MB 36 was made in accordance with the legislation in force at the time, namely the Māori Affairs Amendment Act 1967. Section 81(2) of that Act states:

On application by the administrator of an estate comprising interests to which this section applies, the Registrar may make an order vesting those interests in the administrator.

17. Martha Te Maru was the duly appointed administratrix of the deceased's estate following Letters of Administration being granted in her favour by the High Court, Whangarei on the 1 September 1969.
18. There is no mistake, error or omission present in the order complained of.
19. The subsequent transfers and transmissions that have occurred on the title have not been by way of Māori Land Court order, rather by a legal instrument registered against the title, and as such the Chief Judge no longer has any jurisdiction over the land (As the Chief Judge can only amend orders made by the Court).
20. In the interests of finality, I will consider the question of who would have been entitled to the interests of the deceased had they remained Māori freehold land.
21. As the deceased died intestate on 17 June 1969, the legislation in force at the time would have been the Māori Affairs Act 1953 and the Administration Act 1952, which would have determined the persons entitled
22. The relevant section in the Māori Affairs Act 1953 would have been section 76 "Succession to Māori on intestacy" which was in force from 1 April 1968 to 31 December 1974. Section 76 states:

The persons entitled, on the complete or partial intestacy of a Maori or descendant of a Maori who dies after the commencement of this Act, to succeed to his estate, whether real or personal, and the shares in which they are so entitled, shall be determined in the same manner as if the deceased person were a European.

Provided that the right of any person to succeed to any property of a Maori pursuant to this section shall not be affected by the fact that that person or any person through whom his claim was derived, is or was illegitimate.

23. The wording "shall be determined in the same manner as if the deceased person were a European" means that the reference needs to be made to the Administration Act 1952 (which encompassed the administration of estates of deceased persons) and Part III of that Act which deals with the distribution of Intestate Estates. Section 56 of that Act states:

56. (1) Where any person dies intestate as to any real or personal estate, that estate shall be distributed in the manner or be held on the trusts mentioned in this section, namely:

(a) If the intestate leaves a husband or wife, **the surviving husband or wife shall take the personal chattels absolutely, and, in addition, the residue of the estate shall stand charged with the payment of a sum of six thousand pounds³** to the surviving husband or wife with interest thereon from the date of the death at the rate of four per cent per annum

³ The share of the surviving husband of wife was increased from £1,000 under 1952 principle Act to £6,000 under the Administration Amendment Act 1965, s 4.

until paid or appropriated, and, subject to providing for that sum and the interest thereon, the residue of the estate shall be held,

- (i) If the intestate leaves issue, in trust as to one-third for the surviving husband or wife absolutely, and as to the other two-thirds on the statutory trusts for the issue of the intestate:
- (ii) If the intestate leaves no issue, in trust as to two-thirds for the surviving husband or wife absolutely, and as to the other one-third if the intestate leaves both parents, in trust for the father and mother in equal shares absolutely or, if the intestate leaves only one parent, in trust for the surviving father or mother absolutely:
- (iii) If the intestate leaves no issue or parent, in trust for the surviving husband or wife absolutely:

(b) If the intestate leaves issue but no husband or wife, the estate shall be held on the statutory trusts for the issue of the intestate:

(c) If the intestate leaves no husband or wife or issue but both parents, the estate shall be held in trust for the father and mother in equal shares absolutely:

(d) If the intestate leaves no husband or wife or issue but one parent, the estate shall be held in trust for the surviving father or mother absolutely:

(e) If the intestate leaves no husband or wife or issue or parent, the estate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely –

Firstly, on the statutory trusts for the brothers and sisters (whether of full or of half blood) of the intestate; but if no person takes an absolutely vested interest under such trusts; then

Secondly, in trust for the grandparents of the intestate and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then

Thirdly, on the statutory trusts for the uncles and aunts of the intestate, being brothers and sisters (whether of full or of half blood) of a parent of the intestate:

(f) In default of any person taking an absolute interest under the foregoing provisions, the estate shall belong to the Crown as bona vacantia, and in lieu of any right to escheat. The Crown may (without prejudice to any other powers), out of the whole or any part of the property devolving on it, provide for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

(2) A husband and wife shall for all purposes of distribution or division under the foregoing provisions of this section be treated as two persons.

- 24. Under the provision of the legislation that was in force at the time the widow of the deceased was entitled to a payment of £6,000. On 10 July 1967 the Decimal Currency Act 1964 came into effect, under the decimal system two dollars was equivalent to one pound. Therefore, at the time of the deceased's death Martha Te Maru would have been entitled to a payment of \$12,000.
- 25. I have made an estimate of the value of the deceased's estate, as the original application file does not contain a statement of value. The estimate of value is based on the following:

Block	Share	Estimate Source	Estimated Value
Herekino-Manukau 4	3.590	Value of transfer at 9 Kaitaia MB 130	\$38.18
Pukepoto 8B7B	Sole owner	Sale price £475 (15/11/1957) with inflation added annually from 1960 to 19714	\$5,443.62
Pukepoto 8B11B	17.5	LV 6,500 (roll valuation 1/7/1972)	\$650.00
Pukepoto 8B7A	Sole owner	Sale price £1688 (18/2/1958) with inflation added annually from 1960 to 19715	\$1,530.03
Pukepoto 8B11A	Sole owner	Mortgage (27/5/1971)	\$3,680.00
			\$11,341.83

26. I estimate that the total value of the deceased's shares was approximately \$11,341.83
27. Given the value of the shares and the legislation that was in force at the time the deceased's widow would have been entitled to the interests irrespective of whether the land was Māori freehold land or general land.
28. Given the above findings I find that applicant has not proved their case.

Details of subsequent Orders affecting lands to which this application relates

29. At 9 Kaitaia MB 130 (26 June 1975) Martha Te Maru transferred the shares in this block pursuant to section 213 of the Māori Affairs Act 1953 to Isaac Mareroa by way of sale for a consideration of \$38.18.

Reference to areas of difficulty

30. There are questions as to whether status declarations should have been issued by the Deputy Registrar in respect of **Pukepoto 8B7A** and **Pukepoto 8B7B** given that the owner was deceased.
31. Section 6 of the Māori Affairs Amendment Act 1967 stated that the Registrar/Deputy Registrar could only issue a status declaration if they were satisfied of the following: -
 - (a) That the block comprises land to which this Part applies; and
 - (b) That there is no reason to believe that any of the owners, as disclosed by the records of the Court, is deceased; and**
 - (c) That the land is suitable for effective use and occupation; and
 - (d) That a plan of the land sufficient for the purposes of registration of the order constituting the title to the land has been prepared or that a description and diagram thereof has been prepared and duly certified by the Chief Surveyor under subsection (3) of section 5 of this Act,
32. There were Court records showing that the then owner "Tamati Te Maru" was deceased prior to the status declaration being issued. At 76 Taranaki MB 44 (5 May 1967) the Māori Land Court issued a grant of Probate for the estate of Tamati Te Maru.

⁴ The rates of inflation for the years 1960 to 1971 are 1960 (0.7%); 1961 (1.8%); 1962 (2.7%); 1963 (2.0%); 1964 (3.5%); 1965 (3.4%); 1966 (2.8%); 1967 (6.1%); 1968 (4.3%), 1969 (4.9%); 1970 (6.5%) and 1971 (10.4%) <http://www.factfish.com/statistic-country/new%20zealand/inflation%20rate>

⁵ Above n 3.

33. Status declarations were issued on 7 July 1970 (Pukepoto 8B7B) and 23 April 1969 (Pukepoto 8B7A) in contravention of section 6(b) of the 1967 Act, where clear evidence existed that the sole owner of both blocks was deceased.
34. These blocks were then transferred to Neri Te Maru (the subject of this application) at 6 Kaitaia MB 217 – 218 under the terms of the will of Tamati Te Maru.
35. I am of the opinion that the Deputy Registrar erred when he issued status declarations in respect of Pukepoto 8B7A and Pukepoto 8B7B.
36. However, the error does not impact upon the findings of this report.
37. A further status order was issued on 23 April 1969 (Pukepoto 8B 11A). The sole owner Neri Te Maru (the subject of the application) was alive at the time the status declaration was issued, however died two months following.

Consideration of whether matter needs to go to full hearing

38. Based on the information above, there is no evidence to show that an error was made on the part of the Court.
39. It is recommended that the matter be set down for hearing, in Whangarei, to afford the parties further opportunity to present evidence on the matters raised above.

Recommendation of course of action to be taken

40. If the Deputy Chief Judge is of a mind to exercise her jurisdiction, then it would be my recommendation that:
 - a) The application be set down for hearing at the Whangarei Māori Land Court on Friday 12 April 2019.
 - b) 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 by Wednesday 10 April 2019.
 - c) The application be dismissed given the findings of this report.
 - d) If there are any objections the matter, be referred to the Court for directions.

Procedural History

[8] On 19 March 2019, the Registrar's Preliminary Report and Recommendation was distributed to all affected parties for whom addresses were known.

[9] The application was heard before me in Whangārei on 12 April (2019 Chief Judge's MB 397-410) where evidence and submissions were given by parties. The applicant was represented by Mr Hockly who acknowledged immediately that the blocks Herekino-Manukau 4 and Pukepoto 8B7A and Pukepoto 8B7B are now beyond the jurisdiction exercised by the Chief Judge or myself due to the effect of s 48(1). He did pursue the application as it relates to Pukepoto 8B11B, as this is still Māori freehold land. This block is

a Māori Marae reservation administered by trustees. Martha Te Maru is still listed as an owner as administrator for the deceased.

[10] In terms of the Pukepoto 8B11A block, Mr Hockly considered that a possible mistake had been made with respect to the order for change of status made on 23 April 1969. The date of death for the deceased was recorded as 17 June 1969, just under 2 months later. That order was presented for noting on the title of the block on 19 August 1969.

[11] I reserved my decision, indicating that I would issue a preliminary decision. Having revisited all the material on file, I no longer consider that necessary. I now make a final decision for the following reasons.

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 the Chief Judge and myself. These are to be found in the judgment *Ashwell - Rawinia or Lavinia Ashwell (nee Russell)*⁶ and in *Tau v Nga Whanau O Morven & Glenavy - Waihao 903 Section IX Block*.⁷ I do not propose to repeat those principles again in this judgment.

⁶ [2009] Chief Judge's MB 209-225 (2009 CJ 209).

⁷ [2010] Māori Appellate Court MB 167 (2010 APPEAL 167).

[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.

Discussion

[15] There is no need to identify the issues in relation to this application as the record of the Court is clear that no mistake was made in terms of the law or the presentation of the facts as to the succession order complained of, for the reasons set out in the Registrar's report.

[16] In relation to the status order concerning the Pukepoto 8B11A block as per the Registrar's report at paragraph 37, there was no mistake of fact or law and therefore no error in the making of the order. That is because the deceased was alive at the time the order changing the status of Pukepoto 8B11A to General land was made.

Decision/Orders

[17] Accordingly, in terms of s 44(1) of Te Ture Whenua Māori Act 1993, there is no mistake of fact or law or any error. I decline to exercise jurisdiction in terms of s 44 of the Act and the application is dismissed.

[18] As no other party is affected by this decision, the order made final.

[19] The order is made for immediate release pursuant to r 7.5(2)(b) of the Māori Land Court Rules 2011.

Pronounced at 12.30 pm in Gisborne on Tuesday, this 25th day of June 2019.

C L Fox
DEPUTY CHIEF JUDGE