

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

**A20130003053
CJ 2013/19**

UNDER Section 45, Te Ture Whenua Māori Act 1993
IN THE MATTER OF Waima D8 Block
CONCERNING RITA ELIZABETH PICKERING
Applicant

Hearing: 19 September 2018, 2018 Chief Judge's MB 578-585
(Heard at Whangārei)

Judgment: 29 November 2018

DECISION OF DEPUTY CHIEF JUDGE C L FOX

Introduction

[1] Rita Elizabeth Pickering (the applicant) seeks an order under s 45 of Te Ture Whenua Māori Act 1993 (the Act) to cancel a vesting order by way of sale made on 17 June 1955 at 27 Hokianga MB 8 regarding the land known as Waima D8 block between brothers Rere Itamara Wharerau and Tamati Rima Wharerau ('the deceased') who is the applicant's father.

[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) The vesting was made without knowledge or consent of the deceased or his children; and
- (b) Fraudulent actions were committed by a person impersonating the deceased in Court.

[3] The applicant claims that she and her whānau have been adversely affected by the orders complained in being displaced from their rightful inheritance.

Background

[4] There have been two Reports of the Registrar that review this matter. The first concerned an application that was later dismissed but with advice that a new application could be filed. That first Report is set out in full below.

APPLICATION UNDER SECTION 45 OF TE TURE WHENUA MĀORI ACT 1993 REPORT AND RECOMMENDATION

Introduction

1. This application filed by Paki Wharerau originally was made pursuant to section 164 of Te Ture Whenua Maori Act 1993 to gift part of the interests of Paki Wharerau and Rameka Wharerau in Rita (Reta) Pickering and 8 others in Waima D8.
2. On 12 April 2006 at 38 Kaikohe MB 20-21, the application was heard by Judge Spencer. At that hearing, Judge Spencer varied the application to an application to

the Chief Judge pursuant to section 45 of Te Ture Whenua Maori Act 1993. An extract from the hearing minutes are produced in full as follows:

Paki Wharerau

Attendance list circulated.

My father was entered as the sole owner in 1955 whereas he should have been 1 of 3 owners. I refer to a Court minute - copy produced but without the minute book reference - which shows the owners as:

<i>1. Rere Itamara Wharerau</i>	<i>30.76 shares</i>
<i>2. Himi Taruke Tamati Wharerau</i>	<i>11.56 shares</i>
<i>3. Hariata Tamati Wharerau</i>	<i><u>12.68 shares</u></i>
	<i><u>55 shares</u></i>

Numbers 2 and 3 were my father's cousins (15/09/52 - 24 HK 282-283)

My 2 brothers and late sister Maraea and myself succeeded our father's interest in 1967. My brothers and I wish to return Himi and Hariata's shares. My sister Maraea's children do not wish to do so.

Richard May: *We have had a whanau meeting. I support the intention but not the procedure.*

Court: *The other 2 brothers, Pereniki and Rameka have also filed applications. It would be preferable to follow the Court's process of correcting such mistakes so that Maraea's whanau can be included in the process.*

The application is varied to s.45/93 and referred to Deputy Chief Judge Isaac, along with Pereniki and Rameka's applications.

- The Court record to be reported on in respect of vesting interests in Waima D8 includes the initial hearing dated 1 May 1942 at 19 Hokianga MB 149-150, the hearing dated 15 September 1952 at 24 Hokianga MB 282-283 and the subsequent orders of exchange dated 12 January 1955 at 26 Hokianga MB 290-292.

Concise history of Order sought to be amended/cancelled

- On 1 May 1942 at 19 Hokianga MB 149-150, the Court heard an application to exchange the interests of Te Rima Tamati Wharerau also known as Tamati Tamati Wharerau in the following land blocks:

Taitokerau District

Blocks	Value of interest exchanged
Orauta No.2 Motatau 2 Sec 60	£116-13-4 £54-4-0

With the land interests of Himi Taruke Tamati Wharerau and Hariata Tamati Wharerau in the following blocks:

Taitokerau District

Blocks	Value of interest exchanged
Waima B15	£133-6-8
Waima D10	£33-6-8

An extract from the hearing minutes are produced in full as follows:

Te Rima Tamati Wharerau alias Sworn

Tamati Tamati Wharerau: I agree to exchanges as set out no equality our arrangement is Hok. Shares for B of Islands shares irrespective of values, and Court will be aware of our wishes in this way in Court proceedings. The other two reside at Orauta, and are in agreement

Court: There is no doubt as to the desirability of these exchanges, giving the shares in Orauta and Motatau to the two who reside in that locality, and the two Waima block shares to the one who resides at Waima. The values are approximately equal and there will be no equality. It will give Rima or Tamati sole ownership of his farm holding Waima B15.

The exchange orders (four) are therefore provisionally approved, to be made final orders as at a suitable date, upon completion of Consolidation titles to the four blocks mentioned. (As an alternative, in completing the Consolidation titles, the exchanges might be affected by transfer in the relative Consolidated Group Blocks (Hokianga A Series and B of I. A Series) with a reference to these minutes).

In the margin of the minute book is the following statement:

These Exchanges as between Hok. & B of I. is completed & orders made HK 26/290-292 (dated 12/1/55)

5. On 15 September 1952 at 24 Hokianga MB 282-283, the Court heard an application to vest the Maori land interests in Waima D8 by two siblings, Himi Taruke Tamati Wharerau and Hariata Tamati Wharerau in their cousin Rere Itamara Wharerau. The hearing minutes are produced in full as follows:

Waima D8Vestings

Mr Bell: I ask Court to consider position of Rere Itamara Wharerau

- | | | |
|----|------------------------------------|-----------------|
| 1. | <i>Rere Itamara Wharerau</i> | <i>30.76 sh</i> |
| 2. | <i>Himi Taruke Tamati Wharerau</i> | <i>11.56 "</i> |
| 3. | <i>Hariata [Tamati Wharerau]</i> | <i>12.68 "</i> |

Tamati Tamati Wharerau is present - he is only brother of 2 & 3 [ineligible] he speaks for family. There are minutes that he was to take their interests by exchange. The intention always was that Rere acquire this block.

<i>Capital value £190 in 1952</i>	<i>Unimp 150</i>
<i>Impts [improvements] will be mainly fencing</i>	<i>Timber 10</i>
	<i>Impts 30</i>

ask for an order under sec 163(a) vesting the interest in Waima D8 of

- | | | |
|------------------------------|----------|-----|
| 2. Himi etc above | 11.56 sh | £40 |
| 3. Hariata [Tamati Wharerau] | 12.68 | £44 |

in Rere Itamara Wharerau m. Subject to payment to MT [Maori Trustee] within 2 mts [months] of consdn [consideration] £84 & Comrn £1 within 2 mts.

Tamati Tamati Wharerau %: I speak for my brother & sister. They don't live here, I know of the old arrangement that Rere will fill this block. Knowing that Rere will not get to a home & dw without these vestings I ask for sale to proceed.

Mr Puriri: Know these people & that Tamati is spokesman.

Court: Will make orders when money available. Mr Puriri will advise them when at Kawakawa Court.

6. On 12 January 1955 at 26 Hokianga M8 290-292, the Court made orders to exchange the interests of Te Rima Tamati Wharerau also known as Tamati Tamati Wharerau in the following land blocks:

Taitokerau District

Blocks	Value of interest exchanged
Motatau 3838281	£99-3-0
Motatau 2 Section 39	£58-14-4
Motatau 1A1A	£5-1-2
Maromaku 83	£0-3-8

With the land interests of Himi Taruke Tamati Wharerau and Hariata Tamati Wharerau in the following blocks:

Taitokerau District

Blocks	Value of interest exchanged
Waima B15	£139-6-10
Waima D8	£24-4-10
Omanaia 30	£7-7-8

7. A copy of the Judge's note from that hearing is produced as follows:

Note:- The above series of exchanges virtually clears Hemi & Hariata out of Hok.[ianga] into B of I. [Bay of Islands] and Te Rima out of B of I. into Hok. Where he becomes sole owner in most cases. He will be charged fees thru [ineligible]. All 3 parties to be notified of the making or completion of these orders, a right of appeal in normal way is allowed, though not requested as this completion is in the interests of all.

Waima D8

24/282-3

Mr [ineligible]: *The Court recorded HK 24/282-3 that vesting in Rere Itamara Wharerau when portion clear. The exchange passing the entitlements of Himi and Hariata to Tamati Tamati Wharerau have since been made (HK 26/291). I now ask for completion of the vesting as for Tamati alias Te Rima [ineligible] to go to Rere. Actually money has been paid.*

Vestings from HK

Court: Portion is clear. The minute of HK 24/283 was held over pending other things, and Order can now issue.

Vesting Order Sec. 213/1953

24.24 shares, being the whole of the int[erest] of:

Te Rima Tamati Wharerau

@ Tamati Tamati Wharerau

Vested in:- Rere Itamara Wharerau

m

m

24.24

solely of Waima

subject to payment of considn. [consideration] £84.

(already paid 13/5/54 R.34028 - Order to be sealed.)

10. On 25 May 2006 at 38 Kaikohe MB 124-128, the Court heard two applications filed by the applicant's brothers Rameka Wharerau (A20060008365) and Pereniki Wharerau (A20060008582). The applications are identical to Paki Wharerau's in the intention to gift Maori land interests in Waima D8 to Rita (Reta) Pickering and 8 others. At that hearing the Court issued the following decision:
- a) A20060008365 - Dismissed upon the request of Rameka Wharerau
 - b) A20060008582 - Adjourned to chambers awaiting a reply from Pereniki Wharerau regarding his intention to continue or to request dismissal of his application

Details of subsequent Orders affecting lands to which application relates

11. On 14 November 1967 at 3 Rawene MB 131, the Court made orders vesting the Estate of Rere Itamara Wharerau in her successors. The interest held in Waima D8 was vested in the following persons:

Name	Proportion
1 Maraea Pumipi	¼
2 Pereniki Wharerau	¼
3 Paki Wharerau	¼
4 Rameka Wharerau	¼

12. On 5 October 1992 at 8 RGTO 102, the Court made orders vesting the Estate of Maraea Pumipi also known as Maraea Wharerau or Maraea Rere Pumipi in terms of her will. The Maori land interests were vested in the following persons:

Name	Proportion
1 Meri Ngaronoa Menzies	1/11
2 Te Atawhai Ahomiro	1/11
3 Te Rahia Davis	1/11
4 Barney William Pumipi	1/11
5 Rore Tupou Pumipi	1/11
6 Fay Pumipi	1/11
7 Ian Arawa Pumipi	1/11
8 John Alfred Pumipi	1/11
9 Marina Pumipi	1/11
10 Marea Sheree Pumipi	1/11
11 Hamiora Wiremu Pumipi	1/11

Details of payments made as a result of the Order

13. The Court is awaiting a report from the Maori Trustee in respect of any payments made in respect of orders to which the application relates.

Reference to areas of difficulty

14. On 17 June 1955 at 27 Hokianga MB 8 the Maori land interest of Te Rima Tamati Wharerau also known as Tamati Tamati Wharerau in Waima D8 was sold to Rere Itamara Wharerau for the consideration of £84. The sale of the interests actions section 48 of Te Ture Whenua Maori Act 1993 which states as follows:

48 Matters already finalised or pending

(1) No order made by the Chief Judge under section 44 of this Act, or made by the Appellate Court on appeal from any such order, shall take away or affect any right or interest acquired for value and in good faith under any instrument of alienation registered before the making of any such order.

(2) No payment made in good faith pursuant to or for the purposes of the original order shall be deemed to have been made without lawful authority merely because that order has been cancelled or amended by an order made under section 44 of this Act.

15. As recorded in the minutes of that hearing, Rere Itamara Wharerau had already paid £84 to the Maori Trustee on 13 May 1954. Section 48(1) of Te Ture Whenua Maori Act 1993 states that the Chief Judge cannot affect an interest acquired for value and in good faith.
16. It is concluded from the minutes referred to in this report that Te Rima Tamati Wharerau also known as Tamati Tamati Wharerau had a clear understanding of the nature of the family arrangement and was also aware of the consideration price for Waima D8.
17. What is relevant is that during his lifetime, Te Rima Tamati Wharerau also known as Tamati Tamati Wharerau took no action to apply for a rehearing or to appeal or in fact apply to the Chief Judge.

Consideration of whether matter needs to go to full hearing

18. There was no error 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 in the Court record dated 15 September 1952 at 24 Hokianga MB 282-283, nor in the subsequent orders of exchange dated 12 January 1955 at 26 Hokianga MB 290- 292.
19. The Court record provides a wealth of information dating from 1942 through to 1955 to suggest that Te Rima Tamati Wharerau also known as Tamati Tamati Wharerau was aware of a family agreement regarding Waima D8 and Rere Itamara Wharerau.
20. Te Rima Tamati Wharerau also known as Tamati Tamati Wharerau may not have consented to the vesting on 17 June 1955 at 27 Hokianga MB 8, however, he provided his consent to the arrangement at earlier hearings (see 15 September 1952 at 24 Hokianga MB 282-283).
21. A Court hearing is not necessary as, on the face of it, there are no grounds to upset the orders to which this application relates.

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) This report be sent to all affected parties to give them an opportunity to comment within 28 days;
 - b) If no objections are received, then the application should be dismissed.
 - c) If objections are received then the matter should be set down for inquiry and report before the Chief Judge pursuant to section 46 of Te Ture Whenua Maori Act 1993.

[5] As a result of the new application, a Supplementary Report dated 7 August 2018 was completed and it sets out the background to the application. The report is reproduced in full as follows:

SUPPLEMENTARY REPORT

Introduction

1. This application was filed by Rita Elizabeth Pickering (the applicant) on behalf of the whānau of Tamati Rima Wharerau ('the deceased') to cancel an order of exchange dated 12 January 1955 at 26 Hokianga MB 290-292 made in accordance with an application of 15 September 1952 at 24 Hokianga MB 282-283 relating to the deceased in respect of the Waima D8 Block.

2. The original application (filed by Paki Wharerau in 2006) was previously a section 164 Te Ture Whenua Māori Act 1993 application (transfer of land or undivided interest by Court vesting orders). This application was varied by Judge Spencer at 38 Kaikohe MB 20-21 on 12 April 2006 to a section 45 Te Ture Whenua Māori Act 1993 application to the Chief Judge because the grounds of the section 164/93 application were based upon an alleged error.
3. A Report and Recommendation dated 25 August 2010 ('the 2010 Report') (copy attached) was prepared and distributed to all affected parties the Court was aware of.
4. The 2010 Report concluded that there was no error in fact or in law due to any mistake or omission on the part of the Court or Registrar or in the presentation of the facts of the case to the Court or the Registrar in the Court record dated 15 September 1952 at 24 Hokianga MB 282-283 nor in the subsequent orders of exchange dated 12 January 1955 at 26 Hokianga MB 290-292.
5. The 2010 Report also concluded that the Court record had provided a wealth of information dating from 1942 through to 1955 that suggested the deceased was aware of a family agreement regarding Waima D8 Block and Rere Itamara Wharerau and that no sufficient grounds existed to change the orders relevant to the application.
6. Point 22(c) of the 2010 Report also recommended that in the event of any objection being raised to the succession, the matter should be set down for hearing.
7. Following the 2010 Report's release, correspondence dated 4 September 2010 objecting to the content of the report was received from the applicant (copy attached). The main content of the objection referred to alleged serious and fraudulent actions committed by a person impersonating the deceased in Court.
8. 2013 Chief Judge's MB 196-203 records the details of a Court hearing in Whangārei on 15 March 2013 which occurred following the dismissal of the 2006 application. Selected extracts of the hearing minutes are reproduced as follows:

Court: At the request of the applicant, the application is now dismissed for want of prosecution. This will not prevent any other party from filing an application under section 45 of Te Ture Whenua, so essentially he doesn't want to go ahead with his application if anyone here wishes to file an application to question orders of the Court you're entitled to do so and in doing that, you would have to specify the orders that you wish to challenge and also set out the reasons, as to why those orders were incorrect.

.....

Court: Well what I can do today is, if you are prepared to file an application, you would have to set out very clearly what your grounds for those orders being wrong with an application to the Chief Judge under s 45 the burden of proof is clearly rests with you.

R Pickering: Yes

- Court: And what you are going to have to show that the Judge was wrong in making the orders or that the evidence he received was incorrect, so that as a result of those things –
- R Pickering: We lost the inheritance.
- Court: - why I should change those orders and correct them. Now that's quite a hard hurdle to jump.
- R Pickering: Yes.
- Court: And it's hard because those orders have been in place for a very long time and under s77 of Te Ture Whenua there is a provision which says basically, if orders have been in place for 10 years, then do not touch them. But I can touch them, if you can show me they are clearly wrong.
- R Pickering: Okay, yes.
- Court: So it is not just vague evidence it has to be very clear evidence and it is not just feelings that whanau have-
- R Pickering: No, no.
- Court: -that this did not take place.
- R Pickering: It's not legal enough is it?
- Court: No.
- R Pickering: No that's not right.
- Court: No, it has to be absolutely clear evidence-
- R Pickering: Yes.
- Court: -that the orders were wrong. Because reading the Court record, it says that there was a wealth of information that your father knew was going on.
- R Pickering: And he said he did not, never did, yeah.
- Court: Well I know, but these are the sorts of issues you are going to have to grapple with.

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) A covering statement to the Māori Land Court dated 25 March 2013 setting out the grounds of the application;
 - b) A copy of the hearing minutes at 2013 Chief Judge's MB 146-147 (dismissal of the original application by Paki Wharerau);
 - c) Glossary of Terms used in Letter from Tamati Rima Wharerau;
 - d) Letter from Tamati Rima Wharerau to Kathy Warnock;

- e) Whānau portrait;
 - f) Exchange minutes at 19 Hokianga 149-150 (1 May 1942);
 - g) Exchange minutes (Family arrangement) at 26 Hokianga MB 290-292 (12 January 1955);
 - h) Exchange minutes at 24 Hokianga 282-283 (15 September 1952);
 - i) Vesting Order at 27 Hokianga 8 (17 June 1955);
 - j) Signature examples for Tamati Rima Wharerau;
 - k) Two maps identifying Waima D8 Block;
10. The 25 March 2013 application made by the applicant records the further following statement:

We consider his [deceased's] Handwritten letter to our very close friend Kathy Warnock the most reliable, truthful Document available for anyone to base an honest search on. We as a family base our Application on the Evidence he gives, since his mind was very clear he worked as an Ordained Minister, a Marriage Celebrant and Translator of Bible Literature till the day he died in October 2002.

11. The content of the deceased's letter to Kathy Warnock (dated by the applicant as having been written in 2000) contains the following commentary:

I was born and brought up in Oratua, Bay of Islands until I was 16 years old, then we had a meeting my mum, brother, and sister and myself. We agreed that my brother and sister have all our mothers land which was over double our fathers, and I take all our dad's land in Waima which was less than half of mums in Bay of Islands.

.....

Now the piece of land I am interested in has already been taken by others in the family, the first on(e) has been dead a long time. It is Waima D8 now I don't know who really is using it or leasing it, or whatever. I never know this because first in 1956 December I shifted to Pukekohe as suggested by the Society to serve where needed.

.....

... I got a real shock when I went up North and found that the place I was depending on was not mine anymore, what is worst still I never had anything to do with it all, I never signed any papers or agreed to such. My brother, sister, and I signed papers agreeing they occupy Bay of Islands our mothers and I occupy Waima our fathers. Nearly all who made such deals have died yes they all are but offspring are there.

12. The 2010 Report notes that on 17 June 1955 at 27 Hokianga MB 8, the Waima D8 Māori land interest of Te Rima Tamati Wharerau (also known as Tamati Tamati Wharerau) was sold to Rere Itamara Wharerau for the consideration of £84. The sale of this interest falls within section 48 Te Ture Whenua Maori Act 1993 which provides:

48 Matters already finalised or pending

- (1) No order made by the Chief Judge under section 44 of this Act, or made by the Appellate Court on appeal from any such order, shall take away or affect any right or interest acquired for value and in good faith under any instrument of alienation registered before the making of any such order.
- (2) No payment made in good faith pursuant to or for the purposes of the original order shall be deemed to have been made without lawful authority merely

because that order has been cancelled or amended by an order made under section 44 of this Act.

13. The applicant has previously disputed that consideration was paid for Waima D8 Block. Recent searches of the Taitokerau Māori Land Court archives carried out by the Records Preservation Officer have not resulted in the location of any further or additional information surrounding the disputed Court records.
14. With Court records recording a signed acknowledgement by a Deputy Registrar that Rere Itamara Wharerau had paid £84 consideration for Waima D8 Block to the Māori Trustee on 13 May 1954 (Receipt No. 34028), under the section 48(1) Te Ture Whenua Māori Act 1993 legislation, the Chief Judge cannot affect any interest acquired for value *and* in good faith.
15. On the point of good faith, the applicant's application of 25 March 2013 advances the following view concerning the motivations of the uncle acquiring Waima D8 Block:

We certainly don't believe that our uncle Rere could or would have instigated this terrible plot against our Father because he was not a well-educated man, and we always knew him to be hard-working and honest, as our Dad was. If he'd been told he had to pay money by someone he knew and trusted, we believe he would have done his best to do so. Perhaps he did not realise that Waima D8 Block had already been transferred to our Dad solely, giving no other relative the right to sell it.

16. Both the historic Court evidence and the applicant's own written personal opinion are supportive of the view that in 1954, Waima D8 Block was acquired for consideration and good faith by Rere Itamara Wharerau.

Details of subsequent Orders affecting lands to which this application relates

17. On 14 November 1967 at 3 Rawene MB 131, the Court made orders vesting the Estate of Rere Itamara Wharerau in her successors Maraea Pumipi, Pereniki Wharerau, Paki Wharerau and Rameka Wharerau.
18. On 5 October 1992 at 8 RGTO 102, the Court made orders vesting the Estate of Maraea Pumipi also known as Maraea Wharerau or Maraea Rere Pumipi in terms of her will to Meri Ngaronoa Menzies, Te Atawhai Ahomiro, Te Rahia Davis, Barney William Pumipi, Rore Tupou Pumipi, Fay Pumipi, Ian Arawa Pumipi, John Alfred Pumipi, Marina Pumipi, Marea Sheree Pumipi and Hamiora Wiremu Pumipi.

Consideration of whether the matter needs to go to full hearing

19. Based on the information above, there is insufficient evidence to show that an error was made in the presentation of the facts of the case to the Court.
20. A Court hearing may be set down for final determination of the application.

Recommendation of course of action to be taken

21. 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 to be sent to **all affected parties, for whom we have contact details for, 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 Te Ture Whenua Māori Act 1993 dismissing the application.
- c) The matter be set down for hearing **at 10:30 am, Wednesday 19 September 2018 at the Whangārei Maori Land Court, Manaia House, Rathbone Street, Whangārei.**

Procedural History

[6] On 7 August 2018 the Supplementary Report was distributed to all affected parties, for whom addresses were known.

[7] The application was heard before me in Whangārei on 19 September 2018, where whanau members expressed the opinion that the person Tamati Tamati Wharerau identified in Court minutes was not Tamati Rima Wharerau or Te Rima Tamati Wharerau or Tamati Tamati Wharerau, the applicant's father.

[8] The applicant and her siblings believe their father was not present when his interests in the Waima D block were vested in Rere Itamara Wharerau at 27 Hokianga MB 8 for £84. They rely upon their father's letter attached to the application and referred to in paragraph 11 of the Registrar's report. They also rely on their father's belief that the land was still his until he became aware of the problem in 2000 by which time he was 86 years old. He died two years later in 2002. In the application, it was also alleged that someone must have pretended to be their father, and that this person lied under oath. I reserved my decision.¹

The Law

[9] 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:

¹ [2018] Chief Judge's MB 578-585 (2018 CJ 578-585)

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.

[10] 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 judgments *Ashwell - Rawinia or Lavinia Ashwell (nee Russell)*² and in *Tau v Nga Whanau O Morven & Glenavy - Waihao 903 Section IX Block*.³ I do not propose to repeat those principles again in this judgment.

[11] 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.

[12] 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.

[13] I do not consider that in this case this standard has been met for the reasons that I am about to give.

Discussion

² *Ashwell - Rawinia or Lavinia Ashwell (nee Russell)* [2009] Chief Judge's MB 209 (2009 CJ 209) at [15]

³ *Tau v Nga Whanau O Morven & Glenavy - Waihao 903 Section IX Block* [2010] Māori Appellate Court MB 167 (2010 APPEAL 167) at [61]

[14] As seen from the first report of the Registrar, the history of this matter commenced in 1942 with an application to exchange the interests of Te Rima Tamati Wharerau also known as Tamati Tamati Wharerau in Orauta No. 2 and Motatau 2 Sec 60. His shares in these blocks were to be exchanged for land interests held by Himi Taruke Tamati Wharerau and Hariata Tamati Wharerau in Waima B15 and Waima D10. While there was no mention of Waima D8, it is clear that all parties understood that the intention of the exchange was for all the lands in the Hokianga to be vested in Tamati Rima Wharerau and all the lands in the Bay of Islands to be vested in Himi and Hariata. Unfortunately, the order for this exchange was not made until 12 January 1955 when further lands were included along with Waima D8.⁴ The full history is recorded in the first Registrar's Report dated 25 August 2010.

[15] It seems clear from that history that the applicant's father was fully aware of the exchanges and the consolidation of his interests.

[16] During the Court hearing, I indicated at the hearing of this matter that I would have the Registrar send me the block file to review the original application associated with the vesting. I note that while I have not seen the block order file as indicated, I have seen further relevant material sent from the Whangarei Registry. That material is reproduced below in chronological order as it concerns Waima D8:

Ref HK 24/282

Re : Vesting in Waima D8 – Interests of

9113 Himi Taruke Tamati Whanau	£40.1.2
9112 Hariata “ “	<u>£43.18.10</u>
	£84

Note on block a/c says “Hold for Completion side Mr Bell – 14.10.54”

Purchase money has been received. I distributed to the above in amounts as shown against each.

Please say if these funds are still to be held.

(Sgd)
27 Apr 1955

WAIMA DEVELOPMENT SCHEME

Date: 15.6.55 Previous ref: Ours/Yours of 14.6.55

Attention Senior Court Clerk

The vesting order vesting the interest of Himi Taruke Tamati Wharerau and Hariata Tamati Wharerau does not appear to have been received on the accounts section.

An Order of Exchange HK 26/291 is held and has been acted on, in that funds held for Himi and Hariata have been paid to Te Rima alias Tamati Tamati Wharerau. The full sum of £84 held in the block account has therefore been paid to Tamati and would seem to conflict with the intention mentioned in para 2 of your memo.

Please advise what the position now is.

(Sgd) for District Officer

1123/HK.

WAIMA D8 VESTING

21.6.1955

Reference yours of 15/6/55 and mine of 14/6/55 (and T.V.J.34).

This matter has now been adjusted or settled. Actually the Vesting Order had not been finally made on 15/9/52 (Hk.24/283) but was drawn up (perhaps should not have been). The making of a final Order was held over for attention to other matters. These later received attention and we have the Exchange Order of 12/1/55 (Hk. 26/291) whereby the interests of Himi and Hariata passed to Tamati.

It is noted from your memo. That the money in any case has gone to Tamati (the rightful person). A Vesting Order has now been made on 17/6/55 (Hk. 27/8) to complete:-

“The interest of Te Rima alias Tamati Tamati Wharerau vested in Rere Itamara Wharerau, subject to payment of consideration £84.0”

The fact that the consideration (£84) has already been paid to Tamati is noted in the minutes and therefore the Order has been signed and sealed. Duplicate herewith for accounts records.

(Sgd) for REGISTRAR

[17] This further material suggests that there was a delay to the issue of the vesting order due to the need for the exchange orders being made. While that took place Tamati Rima Wharerau received the £84 pounds for his interests in the Waima D8 block through the office of the Māori Trustee.

[18] This new material also indicates that he was regularly in touch with Māori Affairs. He was very good at following up on his leasing arrangements and monitoring his interests in other Waima blocks as can be seen from the letters below.

<p>Maori Affairs Auckland</p>	<p>Waima Northland 23-7-54</p>
<p>Dear Sir,</p>	
<p>Re – Block Waima D20 – Mohi Wikitahi as one of the three owners</p>	
<p>It was over two months ago when I got the Solicitor Mr Borrows of Kaikohe to make negotiation with trustee for abovenamed person to have block of land mentioned, leased to me.</p>	
<p>As yet it seems to be no reply. Could you help me with some information?</p>	
<p>Also I will be in Auckland on the 22nd of October, would it be convenient for me to call at your office to discuss certain things in connection with property under development.</p>	
<p>Yrs faithfully Tamati Wharerau Waima Northland</p>	
<p>[Note on file] – Legal Offr Lessee is asking when lease will be ready for him and says he will be in Ak on 22/10/54. Will lease be ready then pls?</p>	
<p>Dev Offr: This was attached to MT file for Mohi Pine Wikitahi, under the impression that the letter referred to that beneficiary's lease of Waima land to Ben Wharerau, where the MT is trustee for Mohi. This does refer to land in which Mohi has an interest, but the MT has not been appointed trustee in respect of it. The writer of this letter may be a Client. Referred accrdly.</p>	

Tamati Wharerau
96 Helvetia Rd
Pukekohe

9th Dec 1958

TO; Court, Whangarei

I am writing re survey of house section at Waima Number Waima D56C1. I inquired there at your office about 5 weeks ago but have not received information as yet. Would you kindly find out for me the cost of surveying just the house section and also when it could be done?

My solicitor is awaiting this information then he could write you asking to have same done.
Thanking you kindly.

Tamati Wharerau
Alias Te Rima Wharerau

Tamati Wharerau
86 Helvetia Road
Pukekohe

22-6-59

District Officer
Whangarei

Re Survey Cost etc! Waima D Blocks

I have received letter from your office re above.

I will not be able to attend the meeting at Waima on 26th of June to discuss matters pertaining to survey etc!

However I would like the total amount chargable to me so that I could pay for the same. It is not a matter of letting you know, how I will pay for it, because you know that I have always paid my way by cheque. And I only hope that after all this I could gain possession of title to my house property Waima D56C1. Such was promised when I made final payment of the mortgage on the property.

Let me know the amount for Waima D56C1 & C2 as well as D10 in full.

Thanking you kindly.

Tamati Wharerau

1133/Hk & 1140/Hk

16 July 1959

Mr Tamati Wharerau,
86 Helvetia Road,
PUKEKOHE.

Dear Mr Wharerau,

I thank you for your letter of 22 June 1959.

Other Waima D blocks in which you hold an interest are as follows:-

Waima D10 – Total Survey cost £20. This block is owned by yourself and Hone Heke Hami Turi (deceased) in equal shares. The area of the block is 6 acres 1 rood 08 perches. Your share of the survey cost amounts to £10. -. -. The other block is Waima D56C2 – Total Survey cost £27. This land is owned by yourself and three others. You own 50 shares out of a total of 80, and the other three owners own ten shares each. Apportioned, your share of the survey cost would amount to £16.17.6. The other three owners would each be liable for £3.7.6. The total area of this block is 8 acres 1 rood 28 perches. I understand that you may be prepared to pay the whole of the survey costs and arrange to collect the amount owing by the other owners from the successors or in the case of 56C2, where one of the owners is still living – that is Eruini Hohepa – from Eruini, himself. The Department is anxious to get the whole of the survey costs paid for the two sections mentioned. If you are not prepared to pay the full amount, perhaps you would agree to the land being leased to someone in the district, in order that the costs may be recouped. Would you please let me have your advice in the near future.

Yours faithfully
(Sgd) for Registrar

FROM: Whangarei Office

TO: District Officer
(Tokerau) Auckland

HOKIANGA DEVELOPMENT SCHEME : TE RINA TAMATI WHARERAU

6.10.64

Block referred to is Waima D20 – Te Rina Tamati Wharerau is endeavouring to get a lease

I return herewith letter received from Tamati Wharerau. The unit holding of Tamati Wharerau in Waima B15 has been no record on my file of the (... indecipherable)

1133-1140 HK

Tamati Tamati Wharerau
84 Helvetia Road
Pukekohe

21st April 1969

The Registrar,
Maori Land Court,
Whangarei

Dear Sir,

Re Waima D56C3

The above block was surveyed some time ago but there was a need to adjust the eastern block boundary, owing to the original block boundary actually passing through the building on the block.

In order that the new line can be properly defined by survey, would you please obtain an estimate of the cost of surveying this new line and if at all possible have this work done by way of a compiled plan as to eliminate as much as possible the cost of surveying.

I will be passing through to Waima on the 24th April will all in the office there. Thanking you.

T Wharerau

[19] I therefore do not consider that it would be in the interests of justice to exercise jurisdiction under s 44 of Te Ture Whenua Māori Act 1993 to unsettle the various arrangements agreed to by the applicant's father. That is because I find that Tamati Rima Wharerau agreed that the Waima D8 block should be vested in Rere Itamara Wharerau. Nor do I accept that there was someone present in the Court fraudulently representing him in 1952. In addition, given his letters with the Department of Māori Affairs, he must have known that he had no interest in Waima D8.

[20] I accept that in his 80s he held a different view of the matter as recorded in his letter attached to the application, but by then it was far too late to unsettle what had been in place for several decades.

Decision/Orders

[21] Having regard to the above, I decline to exercise my jurisdiction under s 44 of Te Ture Whenua Māori Act 1993. The application is dismissed.

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

Pronounced at 2.00 pm in Gisborne on Thursday this 29th day of November 2018.

C L Fox
DEPUTY CHIEF JUDGE