

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

**A20150004561
CJ 2015/32**

UNDER Section 45, Te Ture Whenua Māori Act 1993

IN THE MATTER OF The Petuere me Hemo Wharemate Whānau Trust
and an order made at 30 Kaikohe MB 308-309
dated 29 April 2001

BETWEEN TE IRAHAPETE POU AND TE RINGAKAHA
TIA-WARD
Applicants

Hearing: 6 July 2018, 2018 Chief Judge's MB 343-364
(Heard at Whangarei)

Judgment: 11 October 2018

RESERVED JUDGMENT OF DEPUTY CHIEF JUDGE CL FOX

Introduction

[1] Te Irihapeti Pou and Te Ringakaha Tia-Ward (the applicants) seek an order under section 45 of Te Ture Whenua Māori Act 1993 (the Act) to cancel an order made at 30 Kaikohe MB 308-309 (29 April 2001) constituting the Petuere me Hemo Wharemate Whānau Trust (the Trust).

[2] The applicants claim that the said order is incorrect because of a mistake, error or omission on the part of the Court, on the grounds that the land interests of Petuere Rauriki or Petuere Raurihi, in Maungapohatu North and Orakau, were wrongly vested in the Trust.

[3] The applicants claim that they have been adversely affected by the order complained of as Petuere Raukiri is the great grandfather of Te Irihapeti Pou and she has been unable to succeed to his interests.

Background

[4] The Registrar's Report and Recommendation (the Report) sets out the background to the application. The Report is reproduced in full as follows:

Introduction

1. This application, filed by Te Irihapeti Pou and Te Ringakaha Tia-Ward (the Applicants), seeks to cancel an order of the Court at 30 Kaikohe MB 308-309 (29 April 2001) constituting the Petuere me Hemo Wharemate Whānau Trust.
2. The Applicants claim the said order is incorrect due to a mistake, error or omission because;

The interests vested in to the trust under the name Petuere Raurihi in Maungapohatu North and under the name Petuere Rauriki in Orakau do not belong to the Petuere subject of the whānau trust.
3. The Applicants claim they are adversely affected as Petuere Rauriki is the great grandfather of Te Irihapeti and she has been unable to succeed to his interests.
4. The Applicants seek that the order be amended and the interests of Petuere Rauriki or Petuere Raurihi be removed from the Trust and vested in the successors referred to at 11 WH 178 (10/06/1914)
5. The Applicants also seek that the interests derived from Ketu Tiatua (the daughter of Petuere Rauriki) be vested in her successors referred to at 95 TTK 41-66 (04/12/2014)

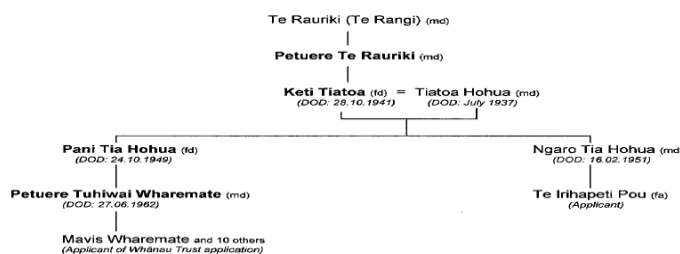
History of order sought to be amended

6. On 5 December 2000 Mavis Wharemate Croft filed an application with the Court to constitute the Petuere me Hemo Wharemate Whānau Trust and vest the interests of her parents, Petuere Rauriki Tuhiwai Wharemate and Hemo Horomona Matarae Wharemate Kopa, into the persons appointed as Trustees
7. At 30 Kaikohe MB 308-309 orders were made constituting the Petuere me Hemo Wharemate Whānau Trust (the Trust) with the interests of 12 people being vested into the persons appointed as Trustees
8. The interests of Petuere Raurihi in Maungapohatu North (9.8600) and Petuere Rauriki in Orakau (1.000) were vested in the Trustees.

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

9. In support of their application the Applicants have provided a Report (copy attached) and the whakapapa of Petuere Tuhiwai Wharemate.

Whakapapa Petuere Tuhiwai Wharemate



Court Research

Maungapohatu North

10. The Order declaring Owners on Report of Papatupu Committee (29/08/1906) records that Petuere Rauriki was an owner in the Maungapohatu block. Ketī Tīatoa was also recorded as an owner.
11. The Maungapohatu North Ownership Schedule (31/12/1958) records that Petuere Raurihi was an owner in the block alongside Petu Tuhiwai Wharemate. (P T Wharemate)

Petu Tuhiwai Wharemate	m	.40 shares
Petuere Raurihi (d)	m	9.86 shares
12. P T Wharemate received his interests from his mother Te Rere Tīa Hohua or Te Rere Tīatoa at 25 BI 199-300 (26/06/1951).
13. Te Rere Tīatoa received her interests from her mother Ketī Tīatoa or Ketī Tīatoa Hohua at 21 WH 365 (06/12/1943).
14. The 1958 LHO also records that at 1 KH 129-131 (05/06/1963) the Maungapohatu North interests of P T Wharemate were vested in William Wharemate solely with Hemo Kopa appointed as a Trustee

15. At the hearing Hemo Kopa gave evidence that her husband P T Wharemate died intestate on 29/06/1962. His interests were vested in his 11 children, namely;

Hemo Ata Wharemate
Annie Wharemate
Winstone Wharemate
William Wharemate
Mavis Wharemate
Te Whata Wharemate
Terere Wharemate
Sammy Wharemate
Maureen Wharemate
Robbie Wharemate
Ada Wharemate

Orakau

16. The Order declaring Owners on Report of Papatupu Committee at 5 TOK 232 (29/08/1906) records that Petuere Rauriki was an owner in the Orakau block.
17. Keti Tiatoa was not recorded as an owner in the block and there is no evidence that P T Wharemate succeeded to interests in this block from his mother or grandmother.

Petuere me Hemo Wharemate Whānau Trust. (the Trust)

18. The land interests of 10 of the children referred to a paragraph 15 were vested into the Trustees alongside those of their parents Petuere and Hemo. Seven of the children referred to at paragraph 15 were appointed as Trustees.

Details of subsequent Orders affecting lands to which this application relates

19. There are no subsequent orders affected by this application.

Details of payments made as a result of the Order

20. The Orakau block is not administered by a Trust. Further information would need to be requested from the Maungapohatu North Ahu Whenua Trust.

Reference to areas of difficulty

21. The Applicants seek that the order be amended and the land interests of Petuere Rauriki or Raurihi be vested in successors referred to at 11 WH 178 (10/06/1914) and 95 TTK 41-66 (04/12/2014).
22. Should the Court rule in favour of the Applicants it is my recommendation that the land interests be re-vested back into the name of Petuere Rauriki or Raurihi and that the Whangarei Registrar lodge a further succession application to ensure that all successors are captured.
23. There appears to be an error in the record as two successions took place for Tuhiwai Wharemate at 37 BI 89-90 (03/01/1962) The minute records that Petu Wharemate gave evidence that this deceased was his father who died on 10/08/1961. Orders were drawn at 37 BI 90 vesting the land interests in,

Petu Wharemate
Ngairo Komene
Ira Parekura
Rehu Kopa
Teauraki Wharemate.

24. Another order was drawn at 37 BI 89 vesting the same land interests in seven of the children of P T Tuhiwai as recorded at paragraph 15. The matter will be referred to the Whangarei Registrar for review.

Consideration of whether matter needs to go to full hearing

25. Based on the information available there is sufficient evidence to show that an error was made in the Courts' administration of the application and in the presentation of the facts of the case to the Court.
26. Petuere Rauriki or Raurihi and Petuere Rauriki Tuhiwai Wharemate are not the same person. The land interests of Petuere Rauriki or Raurihi were incorrectly vested in the Trustees.
27. 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

28. 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 6 July 2018.
 - b) A copy of this report be sent to all affected parties, for whom we have contact details for, to give them an opportunity to comment in writing or respond at the hearing.
 - c) An order be made pursuant to section 44(1) of Te Ture Whenua Māori Act 1993 amending the order at 30 Kaikohe MB 308-309 (29 April 2001) in respect of the land interests derived from Petuere Rauriki or Raurihi by;
 - i. Deleting reference to the following land interests:

<u>Block</u>	<u>Share</u>
Maungapohatu North	9.860
Orakau	1.000
 - ii. Re-vesting the above land interests back into the name of Petuere Rauriki Raurihi
 - d) That the Registrar of the Whangarei Māori Land Court be directed to lodge a further succession application to the land interests of Petuere Rauriki or Raurihi
 - e) And a further order be made pursuant to section 47(4) of Te Ture Whenua Māori Act 1993 making all other consequential amendments necessary to give effect to this order.

[5] On 21 June 2018, the Report was distributed to all parties for whom addresses were known.

The Law

[6] The Chief Judge's jurisdiction to amend or cancel an order of the Māori Land Court is set out in section 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.

[7] 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)*¹ and in *Tau v Nga Whanau O Morven & Glenavy - Waihao 903 Section IX Block*.² I do not propose to repeat those principles again in this judgment.

[8] However, for the benefit of the parties, I note that section 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

[9] The issues to determine in this case are:-

¹ [2009] Chief Judge's MB 209-225 (2009 CJ 209)

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

- (1) whether Petuere Rauriki or Raurihi and Petuere Rauriki Tuhiwai Wharemata are the same people, and if not
- (2) whether there was a mistake in the presentation of the facts to the Court, and if so
- (3) whether it is necessary in the interests of justice to remedy the mistake or omission

Discussion

Issue 1

[10] It is clear from the research undertaken by the Registrar and the evidence provided by the applicant in these proceedings that Petuere Rauriki or Raurihi and Petuere Rauriki Tuhiwai Wharemate were not the same people. Petuere Rauriki was the maternal great grandfather of Petuere Rauriki Tuhiwai Wharemate.

Issue 2

[11] Due to the manner in which the facts were presented to the Court, it made a mistake when it vested the interests of Petuere Rauriki or Raurihi in the Maungapohatu North and Orakau blocks in the Trustees of the Petuere me Hemo Wharemate Whānau Trust at 30 Kaikohe MB 308-309.

Issue 3

[12] As a result of my findings above, I turn now to consider whether it is necessary in the interests of justice to cancel or amend the order vesting these interests in the Trustees of the Petuere me Hemo Wharemate Whānau Trust.

[13] In my view the applicants have successfully demonstrated that a mistake was made. Taking into account the preamble Sections 2 and 17 of Te Ture Whenua Māori Act 1993 including that land is taonga tuku iho and that it should be retained by the owners, their whānau and the hāpu associated in accordance with tikanga to the land, I will grant the

application. I consider it is necessary in the interests of justice to vary that part of the vesting order made by the Court at 30 Kaikohe MB 308-309 concerning the interests of Petuere Rauriki or Raurihi in the Maungapohatu North and Orakau blocks.

Decision/Orders

[14] Accordingly, in terms of section 44(1) of Te Ture Whenua Māori Act 1993, I hereby exercise my jurisdiction to vary the order made at 30 Kaikohe MB 308-309 by partially terminating the Petuere me Hemo Wharemata Whānau Trust over the Maungapohatu North and Orakau interests and revesting those interests back in Petuere Rauriki or Raurihi or his successors.

[15] A further order is made, pursuant to section 47(4) of the Act, making all consequential amendments necessary to give full effect to the order made above.

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

[17] The Case Manager is directed to distribute a copy of this reserved judgment to all parties and to refer to the District Registrar, Whangarei the issues identified at paragraph 21 – 24 of the Chief Registrar's report.

Pronounced at 11.50 am in Gisborne on Thursday, this 11th day of October 2018.

C L Fox
DEPUTY CHIEF JUDGE