

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

**A20150004560
CJ2015/31**

UNDER Section 45, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Tame Horomona and a succession order made at
10 Bay of Islands MB 156 dated 22 January 1934

TE IRIHAPETI POU AND TE RINGAKAHA
TIA-WARD
Applicants

AND GERALDINE MAY and DELARAINÉ
ARMSTRONG
Respondents

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

Appearances: C Terei for Respondents

Judgment: 11 October 2018

RESERVED JUDGMENT OF DEPUTY CHIEF JUDGE CL FOX

Copies to: C Terei, chelseaterei@tukaulaw.co.nz

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 10 Bay of Islands MB 156 dated 22 January 1934 relating to the succession to Tame Horomona.

[2] The applicants claim that the said order is incorrect due to a mistake, error or omission on the part of the Court, on the grounds that the interest of Tame Horomona, in Mimitu Ruarei 6, were incorrectly vested in Heni Tame Horomona

[3] The applicants claim that they have been adversely affected by the order complained of as the interests have been vested in people who do not whakapapa to this block, and they have been left without their entitlement.

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 10 BI 156 (22/01/1934) being a succession to Tame Horomona.
2. The Applicants claim the said order is incorrect due to a mistake, error or omission because.

The interests held by Tame Horomona in Mimitu Ruarei 6 and funds held from the sale of Mimitu Ruarei 21B were in favour of Heni Tame Horomona, however this Tame Horomona left no children.
3. The Applicants claim they are adversely affected as the interests have been vested in people who do not whakapapa to this block, and they have been left without their entitlement.
4. The Applicants seek that the order at 10 BI 156 be cancelled along with orders concerning the sale money for Mimitu Ruarei 21B and other consequential orders.

History of order sought to be amended

5. At 2 CNBI 19 (06/12/1928) Heni Tame Horomona gave evidence that her father, Tame Horomona, died intestate around 1920 and that she was his only child. The following interests were recorded on the minute:

Mimitu Ruarei 6
Mangakowhara B4L

Motatau 3K2
Mimitu Ruarei 21B

6. At 10 BI 156 (22/01/1934) the interests of Tame Horomona in Mimitu Ruarei 6, Mangakowhara B4L and Motatau 3K2 were vested in Heni Tame Horomona.

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

7. The Applicants have provided the following documentation in support of this section 45 application.

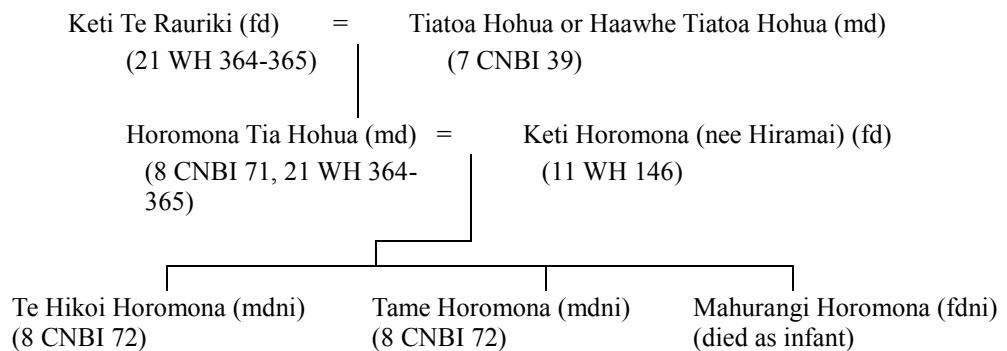
i. Submission (copy attached)

Appendix

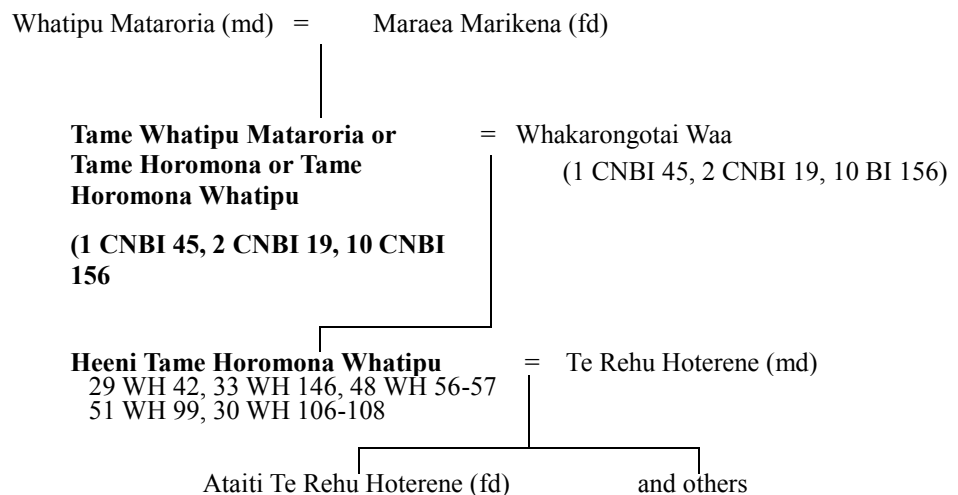
- 1) Whakapapa o Tame Horomona
- 2) Whakapapa o Tame Horomona also known as Tame Horomona Whatipu.
- 3) 95 Takitimu MB 41-66 (4/12/2014)

8. The whakapapa for Tame Horomona is reproduced as follows;

Appendix One



9. The whakapapa for Tame Horomona also known as Tame Horomona Whatipu is reproduced as follow;



Court Research**Mimitu Ruarei 6**

10. Research of the Court record supports the claim that the interests of Tame Horomona were incorrectly vested in Heni Tame Horomona
11. The Mimitu Ruarei Partition Order (13/09/1911) records that Tame Horomona was an owner in the block alongside his brother, father and mother.

Name	Sex and If Minor, Age	Relative Interests
<i>Tame Horomona</i>	m 5	8 "6
Hikoi Horomona	m 4	8 "6
Horomona Tiatoa	m	8 "6
Keti Horomona	f	8 "6

12. At 11 WH 146 (29/01/1914) succession was made to Keti Horomona where Wiremu Poutai gave evidence that she died on 2 October 1913. Her interests were vested equally in her children Tame Horomona (m.7) and Hikoi Horomona (m.6). Horomona Tiatoa was appointed as Trustee.
13. The Mimitu Ruarei No 6 Partition Order (29/1/1914) records that Tame Horomona (m.8) was an owner in the block alongside his brother, Hikoi Horomona (m.6) and father
14. At 8 CNBI 71 (26/06/1940) succession was made to Horomona Tiatoa who held interests in Mimitu Ruarei 6. Ngairo Tiatoa gave the following evidence;
I knew deceased when alive. My brother. Died 1936. No will No issue. Left brothers and sisters. Interest derived through the mother Keti Tiatoa Hohua fa
The mother is still alive the interests will go to her. Ask for orders accordingly. No objections.
15. At 8 CNBI 72 (26/06/1940) succession was made to Hikoi Horomona Tiatoa who held interests in Mimitu Ruarei 6. Ngairo Tiatoa gave the following evidence;
I knew deceased when alive. My nephew. Died 1917. No will. No issue.
Interests derived [*sic*] the grandmother Keti Tiatoa Hohua fa. His father is Tiatoa Horomona (d)

Tiatoa Horomona (d) married to Keti Tou f (d)		
Hikoi Horomona	m	the deceased
Tame Horomona	m (d)	no issue

As the grandmother is still alive his interests will go to her. Ask for orders accordingly no objections

16. At 21 WH 371 (07/12/1943) Mimitu Ruarei 6 was partitioned into Mimitu Ruarei 6B. Heni Tame Horomona was recorded as an owner in the block.
17. At 30 WH 107-108 (02/10/1958) the interests of Heni Tame Horomona were vested in her children. By agreement Mimitu Ruarei 6B was vested in Ataiti Te Rehu Hoterene (Mrs B Armstrong)
18. At 46 WH 96 (18/08/1970) Ataiti Armstrong or Ataiti Te Rehu Hoterene gifted her shares in Mimitu Ruarei 6B to Geraldine May.

Mimitu Ruarei 21B

19. Research of the Court record does not support the claim that the interests of Tame Horomona were incorrectly vested in Heni Tame Horomona
20. The Mimitu Ruarei 21B Partition Order (01/02/1917) records that Tame Horomona (m.11) was an owner in the block alongside his brother, Hikoi Horomona (m.9) and father.
21. The historical record sheet indicates that Mimitu Ruarei 21B was "Sold to Pakeha N.H Huxtable". (10/04/1917 T/2673))
22. The minute at 10 BI 156 (22/01/1934) does not refer to interests in Mimitu Ruarei 21B
23. Although an order at 21 WH 364-365 (06/12/1943) vested the 21B interests of Horomona Tiatoa in his siblings, this was a succession to a block that was no longer Māori freehold land.

Motatau 3K2

24. Research of the Court record does not support the claim that the interests of Tame Horomona were incorrectly vested in Heni Tame Horomona.
25. The Motatau 3K2 Partition Order (30/05/1919) records that Tame Horomona was an owner in the block, however, there is no reference to Hikoi Horomona or his parents as owners in this block.
26. The evidence suggest that this Tame Horomona is the same as Tame Horomona Whatipu as noted at paragraph 8. It is also to be noted that this Tame Horomona owned other Motatau block which Heni also succeeded to.
27. By status order dated 28/01/1969 the Court declared that Motatau 3K2 ceased to be Māori land.

Mangakowhara B4L

28. Research of the Court record does not support the claim that the interests of Tame Horomona were incorrectly vested in Heni Tame Horomona.
29. The Mangakowhara B4L Partition Order (18/01/1916) records that Tame Horomona (m.) was in owner in the block alongside Rongo Tame (f), Heni Tame (f) and four minors, namely Te Ataiti Te Rehu, Moetahi Te Rehu, Ngarongoa Te Rehu and Tame Te Rehu.
30. Here Tame Horomona is noted as an adult. The Tame Horomona who was recorded in the 1917 partition order for Mimitu Ruarei 21B was recorded as a minor aged 11
31. The schedule of ownership orders records that at 10 BI 156 (22/01/1924) the interests of Rongo Tame or Whakarongotai Tame were vested in her daughter Heni Tame Horomona.

Details of subsequent Orders affecting lands to which this application relates

32. At 30 WH 107-108 (02/10/1958) where the interest of Heni Tame Horomona in Mimitu Ruarei 6B were vested in Ataiti Te Rehu (Mrs Armstrong) solely.
33. At 46 WH 96 (18/08/1970) where Ataiti Armstrong or Ataiti Te Rehu Hoterene gifted her shares in Mimitu Ruarei 6B to Geraldine May.

Details of payments made as a result of the Order

34. On 17 November 2015, the Māori Trustee confirmed that payment holds were placed on funds for Mimitu Ruarei 6B and Mangakowhara B4M1 and B4M2 pending the outcome of this section 45 application.

Reference to areas of difficulty

35. In regard to Mangakowhara B4L and Motatau 3K2 research of the Court records does not support the Applicants claim, but rather that the Tame Horomona who held interests in these blocks was the father of Heni Tame Horomona.
36. The Applicants seek compensation from the proceeds of the sale of Motatau 3K2. The Motatau block ceased to be Māori freehold land on 28/01/1969 and the question arises as to whether the Court has jurisdiction to order compensation from the sale of Motatau 3K2.
37. As noted at paragraph 21 Mimitu Ruarei 21B was sold in 1917.
38. The Court records indicate that Geraldine May resides in Australia. Unfortunately, we do not have a phone or email contact for her to confirm her availability to respond to the Report or attend the hearing. Geraldine May is a Trustee on the Ataiti Te Rehu Hoterene Armstrong Whānau Trust and a copy of this Report will be emailed to her sister Lavona Hogan to forward on to Ms May by email if possible.

Consideration of whether matter needs to go to full hearing

39. Based on the information provided there is sufficient evidence to show that an error was made in the presentation of the facts to the Court in that the interests of Tame Horomona in Mimitu Ruarei 6 were wrongly vested in Heni Tame Horomona
40. 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

41. 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 10 Bay of Islands MB 156 (22 January 1934) by re-vesting the Mimitu Ruarei 6 land interests back into the name of Tame Horomona

- d) 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 including the following:
- i. At 30 WH 107-108 (02/10/1959) being a succession to Heni Tame Horomona by deleting the Mimitu Ruarei 6B shares.
 - ii. At 46 WH 96 (18/08/1970) by cancelling the order gifting shares in Mimitu Ruarei 6B to Geraldine May.

[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.

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

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

[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

- (1) were the interests of Tame Horomona in Mimitu Ruarei 6 incorrectly vested in Heni Tame Horomona at 10 Bay of Islands MB 156 dated 22 January 1934, and if so
- (2) was the vesting order erroneous in fact and in law because of a mistake or omission on the part of the Court or the Registrar, and if so
- (3) is it necessary in the interests of justice to remedy the mistake or omission

Discussion

[9] On 25 June 2018 the applicants filed correspondence objecting to the contents of the Registrar's Report on the basis that they only claimed that land to which they were entitled. Those were the blocks Mimitu Ruarei 6 and Mimitu Ruarei 21B.

[10] At the hearing held on 6 July 2018 recorded at 2018 Chief Judge's MB 343-364 the applicants again pointed out that they did not seek to claim shares that did not belong to them. In terms of the Mimitu Ruarei 21B, I adopt the findings of the Registrar at paragraphs 19 - 23 and therefore there is no claim that can be pursued using the sections 44 to 45 jurisdiction. I also refer to section 48(1) and (2) of Te Ture Whenua Māori Act 1993 which indicate that matters such as those raised by the applicant in terms of Mimitu Ruarei 21B can no longer impact the final outcome concerning the sale and payments of that block.

[11] At the hearing, the respondents represented by Ms Terei indicated they did not oppose the application concerning succession to Mimitu Ruarei 6. They wanted it known that during

the time that the interests have been in their whānau, the land has been looked after and the rates have been taken care of. The land is subject to a lease.

[12] Mrs Delaraine Armstrong stated:³

D Armstrong: My name is Delaraine Armstrong and this is my sister Lavona Armstrong and I represent Lavona and Geraldine and Geraldine isn't here this morning, she lives in Brisbane and because of the decision we have come to, we have spent a lot of time, having a look at the research, doing our own whakapapa, looking at that and we have come to the conclusion that we can see that the Māori Land Court made an error in assigning to our great-grandfather, Tame Horomona Whatipu. So we acknowledge that this morning, but what we also want to say is that for 100 years, through four generations, we believe, in good faith, that this whenua was ours and that sister Dine, she wanted to be here and it was my advice to her not to because we were going to seek an adjournment, but having looked at all the information, we thought we should conclude this today. So she definitely wanted to be here but she has been the owner for 50 years and for 50 years she has been a good steward. She looked after the whenua, she kept it when in fact there were offers by one of the larger shareholders who came to her and asked her to sell her shares. She could've sold them. We wouldn't be here today talking about this whenua if she would've sold them. She didn't and she didn't because it's really important to us that we don't sell our tūpuna whenua. Hence that land has been retained for the 50 years that Dine has been the owner.

So it's an emotional morning for us. It's a very emotional morning for Dine in Brisbane not to be here, but we appreciate an error was made and we accept that and gift you back your whenua. But we would also say that we believe we have no responsibility whatsoever beyond caring for the land, that we never made the mistake. In good faith we've looked after it and we do not believe we are responsible beyond that.

³ 2018 Chief Judge's MB 363-364 (2018 CJ 363-364)

Issue 1

[13] Research undertaken by the Chief Registrar supports the claim that the interests of Tame Horomona in Mimitu Ruarei 6 were incorrectly vested in Heni Tame Horomona. Heni Tame Horomona gave evidence that her father was Tame Horomona. She did not tell the Court his full name was Tame Horomona Whatipu also known as Tame Whatipu Mataroria.

[14] As a consequence the Court vested the interest of Tame Horomona in Mimitu Ruarei 6 in her as successor. The problem was that the owner of those shares, Tame Horomona was an entirely different person and he died without issue. Thus the interests of Tame Horomona in Mimitu Ruarei 6 were incorrectly vested in Heni Tame Horomona at 10 Bay of Islands MB 156 on 22 January 1934.

Issue 2

[15] Due to the presentation of facts to the Court, it made a mistake. Thus the vesting order made in favour of Heni Tame Horomona was erroneous as it related to Mimitu Ruarei 6.

Issue 3

[16] I consider it is necessary and in the interests of justice to vary the order made. In terms of the interests held by Tame Horomona in Mimitu Ruarei 6, the vesting order is clearly erroneous. I have had regard to the preamble, Section 2 and 17 of Te Ture Whenua Māori Act 1993 and the fact that land is taonga tuku iho to be retained so far as possible in the hands of the owners, their whānau and their hapū.

Decision/Orders

[17] Accordingly, in terms of section 44(1) of Te Ture Whenua Māori Act 1993, I hereby exercise my jurisdiction to amend and vary the order made at 10 Bay of Islands MB 156 dated 22 January 1934 by re-vesting the Mimitu Ruarei 6 land shares back into the name of Tame Horomona or his successors.

[18] 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 including the following:-

(i) At 30 WH MB 107-109 dated 2 October 1959 being a succession to Heni Tame Horomona by deleting Mimitu Ruarei 6B shares

(ii) At 46 WH MB 96 dated 18 August 1970 by cancelling the order gifting shares in Mimitu Ruarei 6B in Geraldine May.

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

[20] The Case Manager is directed to distribute a copy of this reserved judgment to all parties.

Pronounced at 1.00 pm in Gisborne on Thursday, this 11th day of October 2018.

C L Fox
DEPUTY CHIEF JUDGE