

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

**A20120003062
CJ 2012/04**

UNDER Section 45, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Takou Block and vesting orders made at 23
Kaikohe MB 115 on 8 June 1995 and at 92
Whangarei MB 43 on 30 March 2001

JACQUELINE PURU
Applicant

Hearings: 23 April 2018, 2018 Chief Judge's MB 59-67
5 July 2018, 2018 Chief Judge's MB 287-306
(Heard at Takou Bay)

Judgment: 7 September 2018

JUDGMENT OF DEPUTY CHIEF JUDGE C L FOX

Introduction

[1] Jacqueline Puru (the applicant) seeks an order under s 45 of Te Ture Whenua Māori Act 1993 (the Act) to amend vesting orders made on 8 June 1995 at 23 Kaikohe MB 115 and on 30 March 2001 at 92 Whangarei MB 43 relating to the interests of Meeke Waikato Puru, in Takou block.

[2] The applicant claims 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 not all of the persons that received land interests were biological children of Meeke Waikato Puru.

[3] The applicant claims that she has been adversely affected by the orders complained of, as a trustee for the block, and due to four of her siblings missing out on their share entitlement.

Background

[4] The Registrar's Report and Recommendation dated 5 April 2018 sets out the background to the application. The report is reproduced in full as follows:

REPORT AND RECOMMENDATION

Introduction

1. This application has been filed by Jacqueline Puru (the applicant) and seeks to cancel/amend vesting orders made on 8 June 1995 at 23 Kaikohe MB 115 and on 30 March 2001 at 92 Whangarei MB 43 relating to the interests of Meeke Waikato Puru, in Takou block.
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) Not all of the persons that received land interests were biological children of Meeke Waikato Puru, namely:
 - i. Patricia Francis Puru (23 Kaikohe MB 115)
 - ii. Bobby Parata (92 Whangārei MB 43)
 - iii. Tania Tepania (nee Parata) (92 Whangārei MB 43)
 - iv. Norma Samuels (92 Whangārei MB 43)
 - b) The rest of the family were not consulted about the vestings taking place.

3. The applicant claims that she has been adversely affected by the orders complained of, as a trustee for the block, and due to four of her siblings missing out on their share entitlement.

Concise history of Orders sought to be amended/cancelled

4. The first order was made on 8 June 1995 at 23 Kaikohe MB 115. A copy of the minute is reproduced below:

53 S.164/93 Takou

Meeke Puru ofo

Also present: Patricia Puru

I have 13 children. We have discussed this as a family - some are taking interests in Matauri and others in Takou. There is a minimum share qualification of 200 shares to qualify for a house site.

Court: Order accordingly.

Copy to applicant.

5. The effect of this order, made under section 164 of Te Ture Whenua Māori Act 1993 (the Act), was vesting 200.000 shares of Meeke Waikato Puru, in Takou block, in Patricia Francis Puru, solely, by way of gift.
6. The second order was made on 30 March 2001 at 92 Whangarei MB 43. A copy of the minute is reproduced below:

122 S.164/93 Takou

Meeke Waikato Puru:
(Attendance list circulated)

I refer to the notice sent by the Court to Bobby Parata, the correct address is 68 Arcus Street, Whangārei.

I have 16 children. I am gifting to 10 of them, some are abroad. The children of my second marriage are not my birth children but are my whangai. They are also of Takou through their father Barney Parata whose great great grandfather was Reihana Puru.

Joseph Kawe Puru: I attend with my brother Heremaia. We tautoko the application.

Meeke Puru: I wish to gift 200 shares each to the following:

Hohepa Kawe Puru
Heremaia Puru
Bobby Parata
Tania Tepania
Ngaki Puru
Curtis Puru
Tangi Young
Norma Samuels
Luana Puru
Hemi Tana Puru

I understand the value of the gifts is \$564 each.

Court Orders accordingly vesting 200 shares in each of the abovenamed 10 persons.

Copy to applicant, those who attended and Rosemary Puru c/o Ngaki Puru, 21 Umu Place, Mangere, Auckland.

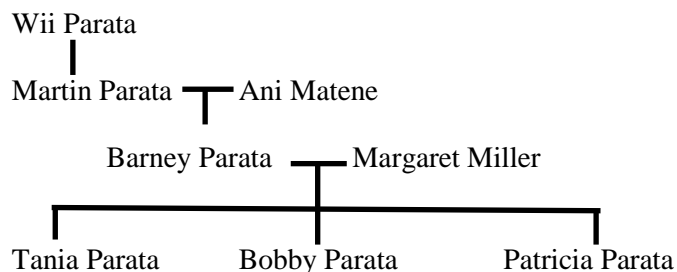
7. The effect of this order, made under section 164 of the Act, was vesting 2,000.000 shares of Meeke Waikato Puru, in Takou block, in the following persons, by way of gift:
- | | | | |
|----|------------------|---|----------------|
| a) | Hohepa Kawe Puru | m | 200.000 shares |
| b) | Heremaia Puru | m | 200.000 shares |
| c) | Bobby Parata | m | 200.000 shares |
| d) | Tania Tepania | f | 200.000 shares |
| e) | Ngaki Puru | | 200.000 shares |
| f) | Curtis Puru | m | 200.000 shares |
| g) | Tangi Young | | 200.000 shares |
| h) | Norma Samuels | f | 200.000 shares |
| i) | Luana Puru | f | 200.000 shares |
| j) | Hemi Tana Puru | m | 200.000 shares |

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

8. The applicant has provided the following documents in support of her application:
- a) An undated written statement which, in part, reiterates the following points:
- In regards to the vesting order made on 8 June 1995 at 23 Kaikohe MB 115
- i. Patricia Francis Puru is not 1 of the 13 biological children of Meeke Waikato Puru;
 - ii. Her correct legal name is Patricia Parata;
 - iii. She was not legally adopted by Meeke Waikato Puru;
 - iv. This gifting of shares application was not discussed with the family;
 - v. Patricia Parata is a daughter of Margaret Puru (nee Miller) and Barney Parata. Margaret was the second wife of Meeke Waikato Puru; and
 - vi. Patricia Parata does not whakapapa to the Takou whenua.

In regards to the vesting order made on 30 March 2001 at 92 Whangarei MB 43

- vii. Bobby Parata, Tania Tepania (nee Parata) and Norma Samuels are whangai children, not biological children of Meeke Waikato Puru;
 - viii. They were not legally adopted by Meeke Waikato Puru;
 - ix. This gifting of shares application was not discussed with the family;
 - x. Bobby Parata and Tania Tepania (nee Parata) are the children of Margaret Puru (nee Miller) and Barney Parata. Margaret was the second wife of Meeke Waikato Puru;
 - xi. Norma Samuels is the daughter of Norman Samuels and Ngaronoa Puru (the applicant's mother); and
 - xii. They do not whakapapa to the Takou whenua.
- b) Affirmation by affidavit, dated 24 February 2012, stating that Patricia Puru's correct and legal name is Patricia Francis Parata. She is not one of her siblings, biological or otherwise, and her father, Meeke Puru, is not Patricia's father.
- c) An undated written statement regarding the vesting order made at 92 Whangarei MB 43 which, in part, provides the following information:
- i. My father stated the three whangai children are also of Takou through their father, Barney Parata, whose great great grandfather was Reihana Puru;
 - ii. On 18 September 1901 at 31 Northern MB 5 it shows that the applicant's great great grandfather, Hone Puru, received shares in Takou, but Reihana Puru was shown as deceased;
 - iii. This implies that Reihana Puru had no issue, otherwise his children would have received his shares; and
 - iv. Several whakapapa, including the following one:



- d) Supporting letters from other biological children of Meeke Waikato Puru, namely:
- i. Tangi Aroha Young; and
 - ii. Rosemary Puru.

e) Birth certificate for Patricia Francis Parata showing the following:

- i. Date of Birth: 2 May 1975
- ii. Mother: Margaret Ann Miller
- iii. Father: Whanu Pani Parata

Details of subsequent Orders affecting lands to which this application relates

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

Details of payments made as a result of the Orders

10. There have been no payments made, in respect of the land affected, as a result of the orders made.

Reference to areas of difficulty

11. One area of difficulty to deal with in this matter is setting out in full the whakapapa of Patricia Francis Puru, Bobby Parata, Tania Tepania (nee Parata) and Norma Samuels.

12. This will show their relationship to Meeke Waikato Puru and/or to the land, Takou block (through Reihana Puru), which will then help determine if they were entitled to receive shares under section 164 of the Act, as part of the preferred classes of alienees.

13. It is noted that Court evidence recorded at 31 Northern MB 5 shows 'Reihana Puru' as being deceased in 1901, but it does not state the he left no issue.

14. Another area of difficulty is that reference is made several times to 'four of Meeke Waikato Puru's biological children not receiving their shares'. However, names and contact details for those four children have not been provided.

Consideration of whether matter needs to go to full hearing

15. A Court hearing is necessary to afford the parties an opportunity to present their case to the Court.

16. By direction of the Deputy Chief Judge dated 2 March 2018, this matter has been set down for hearing at the Māori Land Court in Whangārei on 23 April 2018.

Recommendation of course of action to be taken

17. 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 be sent to **those affected parties, for whom we have contact details for, giving them an opportunity to comment or respond, in writing, before the scheduled hearing on Monday 23 April 2018.**

- b) As directed by the Deputy Chief Judge, the application be heard in the Whangārei Māori Land Court on Monday, 23 April 2018 at 10:00am.
- c) Notice of hearing to be issued to all parties affected, for whom the Court holds contact details.

Procedural History

[5] On 5 April 2018, the Registrar's Report and Recommendation was distributed to all affected parties, for whom addresses were known.

[6] The application was heard before me in Whangarei on 23 April 2018, where the application was adjourned to enable evidence from the donor (and applicant's father), Meeke Waikato Puru, to be given.¹

[7] A further hearing was held before me in Takou Bay on 5 July 2018, where evidence was given by the parties.² At that hearing, it was established that Patricia Francis Puru, Bobby Joe Parata and Tania Tepania (the Parata children) were not the biological children of Mr Meeke Puru but were whāngai. Nor was Norma Samuels, who was a child of his first wife. Hapū tikanga evidence given by Waitai Tua at the hearing, was that whāngai do not take interests in land unless they can whakapapa to the land.

The Law

[8] 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

¹ 2018 Chief Judge's MB 59-67 (2018 CJ 59-67).

² 2018 Chief Judge's MB 287-306 (2018 CJ 59-67).

opinion of the Chief Judge, is necessary in the interests of justice to remedy the mistake or omission.

[9] 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 – Succession to Rawinia or Lavinia Ashwell (nee Russell)* 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.

[10] 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.

Issue

[11] The issue to determine in this case is whether the people who are whāngai of Mr Meeke Puru are people to whom his Māori land interests can be alienated to in terms of s 164 of the Act

Discussion

[12] Section 164 of the Act provides the Māori Land Court with power to make a vesting order for the transfer of any Māori freehold land or any undivided interest in any such land to any person/s to whom that land or interest may be alienated. The people to whom the land can be alienated are listed in Part 7 of the Act. In Part 7 is s 148 which restricts alienation to the preferred classes of alienees recognised by the Act. The provision states:

³ *Ashwell – Succession to Rawinia or Lavinia Ashwell (nee Russell)* [2009] Chief Judge's MB 209 (2009 CJ 209) and *Tau v Nga Whanau O Morven & Glenavy - Waihao 903 Section IX Block* [2010] Maori Appellate Court MB 167 (2010 APPEAL 167).

148 Alienation of undivided interests

- (1) An owner of an undivided interest in any Maori freehold land may alienate that interest to any person who belongs to 1 or more of the preferred classes of alienee.
- (2) An owner of an undivided interest in any Maori freehold land may grant a mortgage in respect of that interest to a State Loan Department.
- (3) Except as provided in subsections (1) and (2), no owner of an undivided interest in any Maori freehold land has the capacity to alienate that interest separately.
- (4) Without limiting any of the foregoing provisions of this section, no owner of an undivided interest in any 2 or more areas of Maori freehold land pursuant to an aggregation order made under section 308 has the capacity to alienate that owner's interest in any of those areas separately; and where any such owner alienates less than the whole of that owner's interest in those areas, the alienation shall affect that owner's interests in each of those areas proportionately.

[13] The preferred classes of alienees recognised by the Act are listed in s 4 and these comprise the following:

preferred classes of alienees, in relation to any alienation (other than an alienation of shares in a Maori incorporation), comprise the following:

- (a) children and remoter issue of the alienating owner:
- (b) whanaunga of the alienating owner who are associated in accordance with tikanga Maori with the land:
- (c) other beneficial owners of the land who are members of the hapu associated with the land:
- (d) trustees of persons referred to in any of paragraphs (a) to (c):
- (e) descendants of any former owner who is or was a member of the hapu associated with the land

[14] The 'children' referred to in s 4(a) must be biological or legally adopted children and the 'remoter issue' referred to includes grandchildren. Patricia Francis Puru, Bobby Joe Parata, Tania Tepania and Norma Samuels are not biological children of Mr Meeke Puru and thus do not fall under this provision as members of the preferred classes of alienees.

[15] That leaves categories listed in s 4(b) or (e). The evidence before the Court is that Norma Samuels is from a different hapū and that she is clearly not able to fall under s 4(b)

or (e) as a member of the preferred classes of alienees. The Parata children, although whāngai, are not whanaunga to Mr Meeke Puru so are not able to fall under s 4(b).

[16] The Parata children are the biological children of Barney Parata. Mr Meeke Puru claimed he was told that Barney's great great grandfather was Reihana Puru, who died in 1901. Reihana was never a legal owner in the Takou block. His name only appears in the Court's record on an application for succession to Tari Puru. At 31 Northern MB 5 on 18 September 1901 it is recorded that he predeceased Tari Puri, who was his sibling. No uri or children from him were recorded and a search of the records can find no evidence of any succession to Reihana. On that basis, it cannot be said that he was an owner of the Takou block and thus the Parata children do not fall under s 4(e) as members of the preferred classes of alienees.

[17] Taking into account all the above, the Parata children and Norma Samuels are not members of the preferred classes of alienees and no order should have been made in their favour under s 164. Therefore, an error of law was made due to a mistake or omission in the presentation of facts to the Māori Land Court.

[18] Furthermore, there is no evidence to link Reihana Puru as the tipuna of the Parata whānau. Wi Parata was the named ancestor in the uncontested whakapapa provided to the Court. The evidence given in Court before me was that the Parata whānau come from the bottom of the North Island – near Otaki.

[19] Given that is the case, it is likely that the person referred to in the whakapapa on file is the famous Wi Te Kakakura Parata who lived in Waikanae near Otaki. According to the Dictionary of New Zealand, he was of Ngāti Toa and Te Atiawa (sometimes referred to as Ngāti Awa) heritage through his mother. His father was a Pākehā whaler – George Stubbs. His mother, Metapere Wai-Punahau, was the daughter of Te Rangihiroa, younger brother of Te Pehi Kupe.⁴ When one considers the entry in the Dictionary of New Zealand relating to Te Pehi we see that he was born at Kawhia. The Dictionary states:⁵

⁴ Hohepa Solomon "Parata, Wiremu Te Kakakura" (first published in 1993, updated June 2017) Dictionary of New Zealand Biography, Te Ara - the Encyclopedia of New Zealand <<https://teara.govt.nz/en/biographies/2p5/parata-wiremu-te-kakakura>>.

⁵ Steven Oliver "Te Pehi Kupe" (first published in 1990) Dictionary of New Zealand Biography, Te Ara - the Encyclopedia of New Zealand <<https://teara.govt.nz/en/biographies/1t55/te-pehi-kupe>>.

He was the elder son of Toitoti and was descended in the senior line from Toa Rangatira, the eponymous ancestor of Ngati Toa. His mother was Waipuna-a-hau, a woman of the Ngati Hinetuhi section of Ngati Mutunga in Taranaki.

[20] So, it is unlikely that Reihana Puru is the great great great grandfather of the Parata children through his paternal line. However, I acknowledge that the maternal line is not known. Even if a relationship could be established with Reihana Puru, as he was never an owner of the Takou block, the Parata children could not be said to fall under s 4(e).

[21] As a result of the above, I consider that it is necessary in the interests of justice for the orders made at 23 Kaikohe MB 115 and at 92 Whangarei MB 43 to be cancelled. That means the shares will be re-vested in Mr Meeke Puru.

[22] The shares will then be in his name to either apply to the Court to vest in a whānau trust or to leave by will to whom Mr Meeke Puru considers appropriate, but in line with the restrictions of the Act. He should take legal advice on the matter.

Decision and Orders

[23] Accordingly, in terms of s 44(1) of the Act, I hereby exercise my jurisdiction and cancel the vesting orders made on 8 June 1995 at 23 Kaikohe MB 115 and on 30 March 2001 at 92 Whangarei MB 43, relating to the interests of Meeke Waikato Puru in Takou block, in respect of the following persons:

- (a) Patricia Francis Puru
- (b) Bobby Parata
- (c) Tania Tepania (nee Parata)
- (d) Norma Samuels

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

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

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

Pronounced at 3.15 pm in Gisborne on Friday, this 7th day of September 2018.

C L Fox
DEPUTY CHIEF JUDGE