IN THE MĀORI APPELLATE COURT OF NEW ZEALAND
WAIKATO MANIAPOTO DISTRICT

A20100005313
CJ 2010/3

UNDER	Section 45, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	PAPAMOA 2 SEC 2B3C3B1 and an order made at 80 Tauranga MB 242-243 on 30 March 2005
BETWEEN	MARAMA RAMEKA Applicant

Judgment: 09 June 2016

DECISION OF CHIEF JUDGE W W ISAAC

Introduction

[1] This application, filed by Marama Rameka, pursuant to s 45 of Te Ture Whenua Māori Act 1993, seeks to amend an order at 80 Tauranga MB 242-243 (30 March 2005) concerning the transfer of shares in Papamoa 2 Sec 2B3C3B1 to Charles Warren Wahanui Rameka

[2] Marama Rameka ("the applicant") claims the order at 80 Tauranga MB 242-243 is incorrect due to a mistake, error or omission in the presentation of the facts of the case to the Court as he did not understand that he was transferring his shares to his nephew Charles.

[3] The applicant seeks to have the order cancelled.

Background

[4] The Case Manager's preliminary Report and Recommendation ("the Report"), dated 20 May 2016, sets out the background to the application. The Report is produced in full as follows:

APPLICATION UNDER SECTION 45 OF TE TURE WHENUA MĀORI ACT1993
REPORT AND RECOMMENDATION

Introduction

1. This application has been filed by Marama Rameka (the applicant) and seeks to cancel a vesting order dated 30 March 2005 at 80 Tauranga MB 242-243 relating to Papamoa 2 Sec 2B3C3B1.
2. The applicant claims he did not understand that he was giving his shares to his nephew Charles Warren Wahanui Rameka.
3. The applicant states that he has been adversely affected as he "needs his shares".

Concise history of Order sought to be amended/cancelled

4. The matter was heard by the Court on 30 March 2005. The applicant and the donee were both present at the hearing. At 80 Tauranga MB 242 the minute records that the applicant stated:

> Donor, **Marama Rameka**, sworn;
>
> I wish to gift my shares in the above land. I am aware of their value. I have no children.

5. The Court made an order under section 164 of Te Ture Whenua Māori Act 1993 (the Act), vesting his shares in Papamoa 2 Sec 2B3C3B1 into the donee.

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

6. The applicant has provided a medical certificate dated 1 March 2010 advising that he has "profound hearing loss in both ears" and has "difficulty communication". He has also provided a copy of a 1999 audiologist report stating that he will be provided with a hearing aid.

Details of subsequent Orders affecting lands to which this application relates

7. There are no subsequent orders.

Details of payments made as a result of the Order

8. Not applicable.

Reference to areas of difficulty

9. There are no areas of difficulty.

Consideration of whether matter needs to go to full hearing

10. The Court's approach with an application of this nature is:

    11. To weigh the evidence provided by the applicant against the evidence provided at the original hearing;

    12. A challenge to original evidence must be balanced against the presumption that everything has been done lawfully unless there is evidence to the contrary; and

    13. That the evidence given at the time the order was made, by persons more closely related to the subject matter in both time and knowledge, is deemed to have been correct.

14. The minute at 80 Tauranga MB 242 records that the applicant and the donee were present at the hearing and that the applicant agreed to gift his shares to the donee.

15. There is insufficient evidence to prove that an error was made by the Court or that the applicant did not understand that he was giving his shares to the donee.

16. The application does not need to go to a hearing as the matter can be dealt with on the papers filed.

Recommendation of course of action to be taken

17. If the Chief Judge is of a mind to exercise his jurisdiction, then it would be my recommendation that the application be dismissed.

[5] The Report was referred to me for directions on 20 May 2016.

Discussion

[6] Pursuant to s 44 of Te Ture Whenua Māori Act 1993 the Chief Judge may cancel or amend an order made by the Court or a Registrar, if satisfied that the order 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. The Chief Judge may also make such other orders as, in the opinion of the Chief Judge, is necessary in the interests of justice to remedy the mistake or omission.

[7] In *Tau v Nga Whānau o Morven & Glenavy – Waihao 903 Section IX Block* the Māori Appellate Court held that the Chief Judge must exercise his jurisdiction by "applying the civil standard of proof of the balance of probabilities having regard to that standard's inherent flexibility that takes into account the nature and gravity of the matters at issue".[1]

[8] Further, in *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)* I summarised certain principles relating to s 45 applications as follows: [2]

- When considering section 45 applications, the Chief Judge needs to review the evidence given at the original hearing and weigh it against the evidence provided by the Applicant (and any evidence in opposition);
- Section 45 applications are not to be treated as a rehearing of the original application;
- The principle of *Omnia Praesumuntur Rite Esse Acta* (everything is presumed to have been done lawfully unless there is evidence to the contrary) applies to section 45 applications. Therefore in the absence of a patent defect in the order, there is a presumption that the order made was correct;
- Evidence given at the time the order was made, by persons more closely related to the subject matter in both time and knowledge, is deemed to have been correct;
- The burden of proof is on the applicants to rebut the two presumptions above; and
- As a matter of public interest, it is necessary for the Chief Judge to uphold the principles of certainty and finality of decisions. These principles are reflected in s 77 of the Act, which states that Court orders cannot be declared invalid, quashed or annulled more than 10 years after the date of the order. Parties affected by orders made under the Act must be able to rely on them. For this reason, the Chief Judge's special powers are used only in exceptional circumstances.

[9] Section 45 is a unique section amongst the Courts of New Zealand. It was evidently felt that, as a titles Court, the principle of indefeasibility was extremely important and consequently orders should not be easy to overturn. The exceptions contained in s 45 explicitly refer to situations where the Court has not made a correct decision because of a flaw in the evidence presented, or in the interpretation of the law, and it is necessary in the

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[1] *Tau v Nga Whānau o Morven & Glenavy – Waihao 903 Section IX Block* (2010) 2010 Māori Appellate Court MB 167 at [61]

[2] *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)* [2009] Chief Judges MB 209 (2009 CJ 209) at [15]

interests of justice to correct this. For this reason s 45 applications must be accompanied by proof of the flaw, identified through the production of evidence.

Error of fact

[10] The applicant has requested that the Chief Judge cancel the vesting order, at 80 Tauranga MB 242-243, on the basis that he did not understand that he was transferring his shares in Papamoa 2 Sec 2B3C3B1 to his nephew.

[11] In support of this s 45 application the applicant has provided a medical certificate, dated 1 March 2010, advising that he has "profound hearing loss in both ears" and has "difficulty communicating". He has also provided a 1999 audiologist report stating that he will be provided with a hearing aid. While this information speaks to the applicant's hearing disability it does not confirm that the applicant did not understand what he was doing when he agreed to the transfer of shares at the 2005 hearing.

[12] Further, the Court record shows that the 2004 application initiating the vesting order was signed by the applicant on 21 December 2004, along with a consent form agreeing to transfer his shares to his nephew. The applicant was also recorded as being present at the hearing of 30 March 2005 along with his nephew. The applicant also stated in his sworn evidence:[3]

> I wish to gift my shares in the above land. I am aware of their value.

[13] In my view the applicant clearly knew what he was doing and advised the Court accordingly. It seems that his circumstances may have changed and he has now changed his mind and no longer wishes his nephew to have the shares.

[14] This change of mind does not substantiate that the Court order was made in error or that there was an error in the presentation of the facts of the case to the Court.

[15] As a result I dismiss this application.

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[3] 80 Tauranga MB 242

[16] A copy of this decision is to be distributed to all parties.

Dated at Wellington this 9th day of June 2016

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W W Isaac
CHIEF JUDGE