

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

**A20130001188
CJ 2013/5**

UNDER Section 45, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Wharepouri Paoro also known as Wharepouri Hori
or Paoro Te Paoro or Paora Te Paoro

BETWEEN RENA SCOTT
Applicant

AND TEPAEA HORI
Respondent

Hearing: 19 September 2018, 2018 Chief Judge's MB 608-625
(Heard at Whangarei)

Judgment: 20 December 2018

DECISION OF DEPUTY CHIEF JUDGE C L FOX

Copies to: Linda Thornton email: linda@lyallthornton.com

Introduction

[1] Rena Scott (the applicant) applies pursuant to s 45 seeking to have a vesting order made on 27 February 1991 at 7 Registrar Taitokerau (RGTO) MB 58 amended relating to a succession to the interests of Wharepouri Paoro also known as Wharepouri Hori or Paoro Te Paoro or Paora Te Paoro (the deceased), the applicant's great grandfather.

[2] The applicant claims that the order is incorrect due to a mistake, error or omission in the presentation of the facts of the case to the Registrar as her grandfather, Herewini (Jerry) Hori, was omitted from the succession to the deceased. Further the wishes of the deceased, as noted in the Will, were not carried out correctly by the executor.

[3] The applicant claims that she and her family have been adversely affected by the orders complained of because the descendants of Herewini (Jerry) Hori have been disinherited from succeeding to their tupuna lands.

Background

[4] The Registrar's Preliminary Report and Recommendation dated 20 August 2018 sets out the background to the application. The report is reproduced in full as follows:

Introduction

1. This application filed by Rena Scott (the applicant) seeks to amend an order made on 27 February 1991 at 7 Registrar Taitokerau (RGTO) MB 58 (order complained of) relating to a succession to the interests of Wharepouri Paoro also known as Wharepouri Hori or Paoro Te Paoro or Paora Te Paoro (the deceased), the applicant's great grandfather.
2. The applicant claims the said order complained of is erroneous because of a mistake, error or omission in the presentation of facts of the case presented to the Registrar upon the following grounds whereby:
 - a) The applicant's grandfather Herewini (Jerry) Hori, a son of the deceased was omitted from the succession as he had predeceased his father leaving issue;
 - b) In accordance with the Will of the deceased, clause 4 states:

"I direct that all my interests in Māori Lands and in my personality other than hereinbefore referred to shall be dealt with in accordance with the provisions of the Māori Affairs Act 1953"

- c) I believe that my great grandfather's wishes were not carried out correctly by the executor, Wikitoria Henare (daughter of the deceased); and
 - d) No attempt was made by Wikitoria Henare to include my grandfather (Herewini Jury Hori's) only son, my father, Ralph Thompson to succeed.
3. The applicant claims that she has been adversely affected by the order complained of as the descendants of Herewini (Jerry) Hori have been disinherited from succeeding to their tupuna lands and feel detached and removed involuntarily through the actions of Wikitoria Henare.
 4. The applicant is seeking to include her grandfather, Herewini Jerry Hori's name as a child of the deceased so that her father can make succession to those interests.

Concise history of Order sought to be amended/cancelled

5. On 23 May 1973 at 1 Registrar Taitokerau (RGTO) MB 187 the Registrar made an order under section 81 of the Māori Affairs Amendment Act 1967 vesting the following land interests solely into Wikitoria Henare as the executrix of the estate of Wharepouri Paoro also known as Wharepouri Hori or Paoro or Paoro Te Paoro or Paora Te Paoro.

Taitokerau District

<u>Blocks</u>	<u>Shares</u>
Mahimahi E4	10.750
Mahimahi E5	11.666
Matangirau	27.392
Ririwha (Stephensons Island)	1.000
Taupo 24B	1.100

Taitokerau District

<u>Blocks</u>	<u>Shares</u>
Te Touwai B3B	0.3140
Te Touwai B35P	Sole owner

6. On 27 February 1991 at 7 Registrar Taitokerau (RGTO) MB 58 the Registrar made an order pursuant to section 81A of the Māori Affairs Amendment Act 1967 to vest the said interests held by the executrix, Wikitoria Henare in persons beneficially entitled as set out in the schedule below with the respective shares set out opposite their names:

<u>Successors</u>	<u>Mahimahi E5</u>	<u>Mahimahi E4</u>
	<u>11.666</u>	<u>10.750</u>
Tuwaha Hori	2.917	5.375
Wikitoria Henare	2.917	5.375
Esma Waghorn	2.916	
Wairuku Gage	2.916	

<u>Successors</u>	<u>Matangirau</u>	<u>Ririwha</u>
	<u>27.392</u>	<u>1.000</u>
Te Paea Hori	Solely	
Victor Heremaia Henare		Solely
<u>Successors</u>	<u>Taupo 24B</u>	<u>Te Touwai B3B</u>
	<u>1.100</u>	<u>0.3140</u>
Syrenica Brown	Solely	
Wikitoria Henare		Solely

7. In respect of Te Touwai B35P the deceased's sole share was transferred by way of memorandum to Wikitoria Henare on or about 5 April 1978, (reference R8/949) as per the Will of the deceased.

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 letter setting out the grounds of her application;
 - b) Minutes and orders complained of 7 Registrar Taitokerau (7 RGTO) MB 58 and 1 Registrar Taitokerau (1 RGTO) MB 187;
 - c) Probate dated 17 August 1971 of Wharepouri Hori and Will dated 21 February 1961 appointing Wikitoria Henare as sole executrix;
 - d) Email from the applicant, confirming whakapapa of Wharepouri Paoro Hori dated 21 February 2017;
 - e) A certified copy of a birth certificate for Ralph Herewini Thompson recording:

Christian name or first name:	Ralph Herewini
Surname:	Thompson
Surname at birth:	Hori
Date of birth:	18 November 1955

Father: Herewini Hori

Mother: Katherina Hori

Name change to: Ralph Herewini Thompson

- f) Letter dated 28 March 2000, to Fountain Manning & Co Solicitors from Registrar, Lindsay Wilson to file a section 45 application to the Chief Judge;
- g) A letter dated 2 February 2000 from Counsel R H Manning of Fountain, Manning & Co Solicitors, of their concerns that the vesting order was not in accordance with the Will of the deceased whereby Counsel confirms the deceased had eight children namely, Wikitoria Henare, Tuwha Hori, Esma Waghorn, Wairuku Gage, Te Paea Hori, Maata Waikai, Herewini Hori and Douglas Hori;
- h) Letter dated 13 February 1991, of Hemi-Rua Rapata Solicitors of additional interests of vesting, listing Tuwha Hori, Wikitoria Henare, Esma Waghorn, Wairuku Gage, Te Paea Hori, Victor Heremaia Henare, Syrenaica Brown as beneficiaries entitled;
- i) Letter dated 1 October 1990, of Hemi-Rua Rapata Solicitors filing an application pursuant to section 81A of the Māori Affairs Amendment Act 1967 re Mahimahi E5 block;
- j) Letter dated 21 December 1983 from Fountain Manning & Co, Solicitors to Herewini Hori that Wikitoria instructed counsel to distribute a payment of royalty money payable for the sum of \$315.00;
- k) Account statement dated 21 December 1983 from Fountain Manning & Co Solicitors addressed to Wikitoria Henare in respect of the deceased's estate and the distribution of royalties and rent; and
- l) The Court's estate file for Wharepouri Hori reference (Est 1601);

Additional Information of Te Paea Hori and supporting evidence: - (daughter of deceased):

- i. Statement from Te Paea Hori (last surviving daughter of Te Wharepouri Paoro Hori) dated 6 September 2017 and documents filed in support;
- ii. Section 45 application relating to the same order complained of and similar views of the applicant, that the deceased's Will had not been complied with and should have been transferred into all the deceased's children;
- iii. On 7 September 2017, an email from Deputy Registrar, Michael Dittmer that Te Paea was raising similar issues and can be considered in the current application that the shares were not vested equally in terms of the Will of the deceased;
- iv. Te Paea listed ten children of the deceased and Hapaira Hoori nee Mauahara namely:

	Name	Date of birth	Date of death
1.	Wikitoria Henare nee Paoro Hori	17 March 1923	1 July 1998
2.	Maata Hori	26 January 1926	25 October 1988
3.	Jerry Herewini Hori	21 November 1927	28 July 1987
4.	Mere Hori	No record	28 May 1947
5.	Wairuku Hori	8 October 1931	5 January 1992
6.	Esma Waghorn nee Hori	8 May 1939	31 August 2011
7.	Joseph Wharepouri Hori	4 April 1941	3 December 1964
8.	Douglas Hori nee Whangae Epiha Family	3 April 1945	11 February 2003
9.	Te Paea Sophie Hori	6 August 1946	Still living
10.	Tuwha Wharepouri Hori	10 April 1948	1 December 1995

- v. Te Paea claims the whakapapa that the applicant provided has errors and excludes her as a child of the deceased;
- vi. Syrenaica Brown is not a child of the deceased;
- vii. All children of the deceased are affected;
- viii. Te Paea claims that none of her four brothers, Jerry Herewini Hori, Joseph Wharepouri Hori, Douglas Hori and Tuwha Hori left any issue;
- ix. Te Paea requests a DNA test for any person stating that they are a sibling from any of the four brothers listed;
- x. Certified copy of the deceased's death certificate under the name Wharepouri Hori recording;

Name of deceased:	Wharepouri Hori
Date of Death:	10 December 1970
Age and date of birth:	71 years, date of birth not recorded
Age of living daughter:	48, 43, 38, 30, 25
Age of son:	40, 26, 22
Mother:	Haereata Hopi
Maiden name:	Parangi
Father:	Tepaoro Hori
Spouse:	Hapaira Manu

- xi. Certified copy of the death certificate of Hapaira Wharepouri Hori;

Name of deceased:	Hapaira Wharepouri Hori
Date of Death:	17 August 1949
Date of birth:	Not recorded
Age:	43
Age of living daughter:	5
Age of son:	4

Mother: Wikitoria Mangu Mauhara
 Father: Mangu Mauhara
 Spouse: Wharepouri Hori

- xii. Certified marriage certificate of Hapaira Mauge and Wharepouri Hoori;

	Bride:	Bridegroom
Name:	Hapaira Mauge	Wharepouri Hoori
Age:	17	24
Mother:	Wikitoria	Hareata
Surname:	Not recorded	Aperahama
Father:	Mauge Mauhara	Te Paoro Hori
Date of marriage:	26 May 1921	

- xiii. Certified copy of the death certificate for Wikitoria Henare or Paoro:

Name of deceased: Wikitoria Henare
 Date of Death: 1 July 1998
 Age and date of birth: 75 years, 17 March 1923
 Age of living daughter: 55, 38, 36
 Age of son: 48
 Mother: Hapaira Paoro or Mouahara
 Father: Paora Paoro
 Spouse: Jerry Henare

- xiv. Certified copy of the death certificate for Jerry Herewini Hori:

Name of deceased: Jerry Herewini Hori
 Date of death: 28 July 1987
 Age and date of birth: 59 years, 21 November 1927
 Age of living daughter: 35, 26, 17
 Age of living son: 33, 33
 Mother: Hapaira Hori nee Mauhara
 Father: Wharepouri Hori
 Spouse: Erihapeti Arama

- xv. Certified copy of a marriage certificate for Herewini and Herewini Pouri Paoro Hoori:

	Bride:	Bridegroom
Name:	Katie Henare nee Herewini	Herewini Pouri Paoro Hoori
Age:	21	23
Mother:	Waipuna	Hakaira Mangu
Surname:	Ropiha	Mauhara
Father:	Henare Herewini	Pouri Paoro Hoori
Date of marriage:	26 July 1950	

- xvi. Certified copy of the death certificate for Mere Hori:

Name of deceased: Mere Hori
 Date of Death: 28 May 1947
 Age: 17 years
 Mother: Hapaera Hori
 Father: Wharepouri Hori

Spouse: Jerry Henare

xvii. Certified copy of the birth certificate and death certificate of Joseph Wharepouri Hori combined:

Name: Joseph Wharepouri Hori
Date of birth and Death: 4 April 1941 and 3 December 1964
Age: 23 years,
Mother: Hapaira Hori
Father: Wharepouri Hori

xviii. Certified copy of the death certificate of Douglas Papa Pere Epiha:

Name of deceased: Douglas Papa Pere Epiha
Surname at birth: Hoori
Date of Death: 11 February 2003
Age and date of birth: 57 years, 3 April 1945
Age of living daughter: 29
Mother: Haipai or Hapaira Hoori nee Mangu
Father: Bert Hoori
Given name at birth of father: Wharepouri Hoori
Spouse: Maureen Te Huia

xix. Certified copy of the birth certificate of Tepaea Hori:

Name: Tepaea Hori
Date of birth: 6 August 1946
Mother: Hopaira Hori
Father: Wharepouri Hori

xx. A copy of the Will of deceased and probate; and

xxi. A copy of the minutes and orders complained of.

Victor Jeremiah Henare:

- a) Email dated 3 February 2015 from Victor Jeremiah Henare of his concerns regarding the current 45 application stating that;
1. He was raised by adopted parents Jerry Henare and Wikitoria Henare nee Hori;
 2. His biological parents were Rahikoi Brown and Wairuku Brown nee Hori, younger sister of Wikitoria;
 3. Both his biological and adopted mothers are daughters of the deceased and Hapaira Hori nee Mangu;
 4. Ralph Thompson could not succeed to his fathers Will, Herewini or Jerry Hori, due to a surname mismatch Thompson and Hori, therefore, Ralph Thompson could not whakapapa directly into the Hori line; and

5. How the current application is impacting on whānau members that can directly whakapapa to the Hori tupuna.

Court research shows:

9. There is evidence on the Lower Court file from Fountain Manning Solicitors (original counsel for the deceased's estate) dated 2 February 2000 that the deceased had eight children they distributed royalty rentals to from the block Mahimahi E5 namely:

	Name
1.	Wikitoria Henare
2.	Tuwaha Henare
3.	Esmā Waghorn
4.	Wairuku Gage
5.	Te Paea Hori
6.	Maata Waikai
7.	Herewini Hori
8.	Douglas Hori

10. Counsel were concerned that the order did not divide the deceased's Māori land interests equally as should have happened under the Will of the deceased and, how Maata Waikai, Herewini Hori and Douglas Hori were not mentioned at all in the order.
11. There are no Court records held for Maata Hori or Waikai, Herewini or Jerry Herewini Hori, Mere Hori, and Joseph Wharepouri Hori.
12. The Court records show that Douglas Hori succeeded to the estate of Tuwaha Wharepouri at 2 Kaikohe (KH(s) MB 267 dated 29 November 1996.

Details of subsequent Orders affecting lands to which application this relates

13. 2 Kaikohe (KH(s) MB 267 dated 29 November 1996 succession to Tuwaha Wharepouri Hori;
14. 86 Whangarei (WH) MB 138 dated 4 June 1998 and at 87 Whangarei (WH) MB 124 dated 25 November 1998 to correct an error under section 86 of the Act to the estate of Tuwaha Wharepouri Hori;
15. 29 Auckland (AT) MB 138 dated 5 August 2002 constituting the Wikitoria Hoori Henare Whānau Trust;
16. 39 Taitokerau (TK) MB 210-212 dated 23 April 2012 succession to Esmā Waghorn – A20110012283, estate file 5174; and
17. 87 Whangarei (WH) MB 116 dated 4 November 1998 constituting the Wairuku Hori Whānau Trust.

Details of payments made as a result of the Order

18. On 6 December 2013, a letter was sent to the administrator for the Mahimahi E5 Ahu Whenua Trust to place a hold on payments for the affected parties pending the outcome of this application. On 26 June 2014 via memorandum from Karen Nicholas on behalf of the trustees they confirmed doing so. The trustees provided a report on moneys paid out to 6 December 2013 in Mahimahi E5 block as follows:

<u>Name</u>	<u>Sex</u>
Aaron Waghorn	M
Christopher Waghorn	M
Dulcie Waghorn	F
Joanne Waghorn	F
Lawrence Waghorn	M
Lynette Waghorn	F
Rangipikitia Prime	F
Wairuku Hori Whanau Trust	
Wikitoria Hoori Henare Whanau Trust	

<u>Name</u>	<u>Share Holding</u>
Rangipikitia Prime	2.917
Wairuku Hori Whanau Trust	2.916
Wikitoria Hoori Henare Whanau Trust	2.917
Waghorn Family Account	2.916

Year	Rangipikitia Prime		
	Gross Distribution	Maori Authority	Net Distribution
2012	5224.46	1724.06	3500.40
2011	4710.68	918.58	3792.10
2010	4167.14	1250.14	2917.00
2009	5000.57	1500.17	3500.40
2008	3333.71	1000.11	2333.60
2007	2612.23	862.03	1750.20
2006	5435.40	1059.90	4375.50
2004	2176.86	718.36	1458.50
2002	4353.73	1436.73	2917.00
Total	37014.78	10470.08	26544.70

Year	Rangipikitia Prime		
	Gross Distribution	Maori Authority	Net Distribution
2013	7071.52	1237.52	5834.00
Total	7071.52	1237.52	5834.00

Year	Wairuku Hori Whanau Trust		
	Gross Distribution	Maori Authority	Net Distribution
2012	5222.67	1723.47	3499.20
2011	4709.07	918.27	3790.80

2010	4165.71	1249.71	2916.00
2009	4998.86	1499.66	3499.20
2008	3332.57	999.77	2332.80
2007	2611.34	861.74	1749.60
2006	5433.54	1059.54	4374.00
2004	2176.12	718.12	1458.00
2002	4352.24	1436.24	2916.00
Total	37002.12	10466.52	26535.60

Year	Wairuku Hori Whanau Trust		
	Gross Distribution	Maori Authority	Net Distribution
2013	7069.09	1237.09	5832.00
Total	7069.09	1237.09	5832.00

Year	Wikitoria Hoori Henare Whanau Trust		
	Gross Distribution	Maori Authority	Net Distribution
2012	5224.46	1724.06	3500.40
2011	4710.68	918.58	3792.10
2010	4167.14	1250.14	2917.00
2009	5000.57	1500.17	3500.40
2008	3333.71	1000.11	2333.60
2007	2612.23	862.03	1750.20
2006	5435.40	1059.90	4375.50
2004	2176.86	718.36	1458.50
2002	4353.73	1436.73	2917.00
Total	37014.78	10470.08	26544.70

Year	Wikitoria Hoori Henare Whanau Trust		
	Gross Distribution	Maori Authority	Net Distribution
2013	7071.52	1237.52	5834.00
Total	7071.52	1237.52	5834.00

Year	Waghorn Family Account		
	Gross Distribution	Maori Authority	Net Distribution
2011	4709.07	918.27	3790.80
2012	5222.67	1723.47	3499.20
Total	9931.74	2641.74	7290.00

Year	Waghorn Family Account		
	Gross Distribution	Maori Authority	Net Distribution
2013	7069.09	1237.09	5832.00
Total	7069.09	1237.09	5832.00

Reference to areas of difficulty

19. The deceased's Will is dated 21 February 1961 where clause 4 states:

"I direct that all my interests in Māori Lands and in my personalty other than hereinbefore referred to shall be dealt with in accordance with the provisions of the Māori Affairs Act 1953"

20. The deceased died on 10 December 1970, probate of which was granted on 17 August 1971. The deceased wife died prior to the deceased on 17 August 1949.

21. Section 81A of the Māori Affairs Amendment Act 1967 states:

81A. Transfer of interest in Māori Land from Administrator to persons beneficially entitled:

(1) Where any beneficial freehold interest in Māori freehold land is held by any person as the administrator of any estate by virtue of an order made under section 81 of this Act, that person may apply to the Registrar for, and the Registrar may make an order vesting the interests in the person or persons beneficially entitled;

(2) The provisions of subsection (3) and (4) of section 81 of this Act, so far as they are applicable and with the necessary modifications, shall apply with respect to applications and orders made under subsection (1) of this section;

(3) Nothing in this section shall limit or affect any right or remedy to which any person may be entitled in respect of any act done by any other person as administrator of any estate.

22. Section 75 of the Interpretation of Wills states – The Principal Act is hereby amended by repealing section 110 and substituting the following interpretation:

"110. Subject to the provisions of this Act, all the provisions of the law relating to the execution, attestation, construction, validity, and effect of the will of a European shall apply to the execution attestation, construction, validity, and effect of the Will of a Māori".

23. The question in this case is whether the correct jurisdiction was applied; and whether orders should have been made vesting in all children of the deceased who left any issue.

24. The death certificate provided by Te Paea Hori for the deceased, records eight children living at the time of the deceased's death, three sons, and five daughters.

25. The death certificate provided by Te Paea Hori for her mother, Hapaira Wharepouri Hori records nine children living at the time of her death, four sons and five daughters.

26. On 17 August 2018, the applicant confirmed via email that she had applied to the Births, Death and Marriages for her grandfather, Jerry Herewini Hori's death certificate. Confirmation is on file from Dave Scott of Births, death and marriages of payment.

27. There is potential further s 45 for the estate of Tuwaha Hori who died 1 December 1995 no Will, no issue as recorded at 2 Kaikohe (KH(s) MB 241 dated 9 July 1996. Interests were vested in Rangipikitia Prime (defacto), for a life interest with remainder to Wikitoria Henare, Esma Waghorn, Sophie Hori and Douglas Hori as to a 1/4th proportion. It is the remaindermen in question as to whether all siblings of Tuwaha should be included as remaindermen who left any issue.

Consideration of whether matter needs to go to full hearing

28. This is a jurisdictional matter that requires a hearing to determine under which legislation applies to the Will of the deceased and how it should be interpreted.
29. A Court hearing is necessary to afford all parties an opportunity to present their case to the Court.
30. By direction of the Deputy Chief Judge Fox this matter has been set down for hearing at the Māori Land Court, Whangārei on 19 September 2018 at 11.00am.

Recommendation of course of action to be taken

31. If the Chief Judge is of a mind to exercise his jurisdiction, then it would be my recommendation that:
- a) A copy of this report be sent to all affected parties, for whom we have contact details for, giving them an opportunity to comment or respond, in writing, before the scheduled hearing on Wednesday, 19 September 2018.
 - b) As directed the application be heard in Whangārei Māori Land Court on Wednesday, 19 September 2018 at 11.00am

Procedural History

[5] An email of opposition to the application was received from Victor Jeremiah Henare on 3 February 2015. He was raised by his adopted parents Jerry Henare and Wikitoria Henare (nee Hori), the administrator of the estate of Wharepouri Hori. He claims that the applicant's father could not succeed to Jerry Herewini Hori due to a mismatch of his name (Ralph Thompson) with that of the deceased, and he cannot whakapapa to the family line. He was concerned that the application had been filed.

[6] On 20 August 2018 the Registrar's Preliminary Report and Recommendation was distributed to all affected parties, for whom addresses were known.

[7] The application was heard before me in Whangarei on 19 September 2018, whereat evidence was given by parties.

[8] I note that Te Paea Hori also filed an unadvertised application under s 45. Te Paea Hori listed her siblings in the correct order as:

- a) Wikitoria Henare
- b) Maata Hori
- c) Jerry Herewini Hori
- d) Mere Hori (deceased at date of death of Wharepouri Hori)
- e) Wairuku Hori
- f) Esma Waghorn nee Hori
- g) Joseph Wharepouri Hori (deceased at date of death of Wharepouri Hori)
- h) Douglas Hori
- i) Te Paea Hori
- j) Tuwha Wharepouri Hori

[9] Thus, Wharepouri had 10 children but only eight were still alive when he passed away. Te Paea noted that contrary to her father's instructions in his will to follow the Māori Affairs Act 1953, the vesting order completely omitted reference to two of her brothers who were living at his death and they were Herewini Hori and Douglas Hori. Ms Thornton for Te Paea Hori acknowledges that there was a mistake of fact made by the Registrar because at least 2 children of the deceased appear to have been omitted from the vesting order complained of.

[10] Te Paea supports setting aside the order as some of the land interests are more valuable than others and have greater earning potential which should be shared by all the deceased's uri (descendants). In her application she noted that the vesting order does not follow the deceased's will and that the Māori land interests of the deceased should be evenly shared among all the children of Wharepouri Hori.

[11] In terms of the application filed by Rena Scott, Te Paea Hori claims the children of the deceased are not listed properly in the application and Registrar's report. She was also upset that her name was omitted. The applicant acknowledged that Te Paea Hori should have been included in the whakapapa as a child of the deceased.

[12] Te Paea Hori stressed that she did not know the applicant. In earlier correspondence she wanted all those claiming to be his successors to take blood tests. She gave evidence that until recently, she understood that her brother Jerry Herewini Hori (her brother) did not marry and that he died without issue. However, she has since obtained a copy of his death certificate and it shows that he was married and did have issue.

[13] In support she filed a marriage certificate demonstrating that Herewini Hori married Katie Henare Herewini on 26 July 1950. This certificate shows a different spouse or partner than the death certificate identifies. The person on the death certificate identified as the spouse or partner is recorded as Erihapeti Arama. However, the Registration of Death shows Erihapeti as having married the deceased in Grey Lynn when he was 30 years old. The registration of death also indicates he had 5 children but 2 of those children (a son and daughter) were adopted.

[14] I note that the father of Rena Scott was born on 18 November 1955. His surname at birth was Ralph Herewini Hori. His father is listed as Herewini Hori. That is 5 years after the marriage of Herewini Hori to Kate Henare Herewini. His mother by this stage was called Katherina Hori. A certified copy of the entry of Birth in the Registrar-General's Office (No 21619) records that there was an addition or alteration to his name after registration of birth. His surname became Ralph Herewini Thompson. However, his father continued to be listed as Herewini Hori. At the hearing I reserved my decision.¹

¹ [2018] Chief Judge's MB 608-625 (2018 CJ 608)

The Law

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

[16] 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.

[17] 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.

Issues

[18] The issues to determine in this case are:

² [2009] Chief Judge's MB 209-225 (2009 CJ 209)

³ [2010] Maori Appellate Court MB 167 (2010 APPEAL 167)

- (a) Should Jerry Herewini Hori have been included in the vesting order made under s 81A?; and if so
- (b) Was the order complained of erroneous in fact or in law because of any mistake or omission on the part of the Registrar or in the presentation of the facts to the Registrar?; and if so
- (c) Is it necessary in the interests of justice to remedy the mistake or omission by cancelling or amending the vesting order made on February 1991 at 7 Registrar Taitokerau (RGTO) MB 58?

Should Jerry Herewini Hori have been included in the Vesting Order made under s 81A?

[19] The answer to this question turns upon the meaning of s 81A of the Māori Affairs Amendment Act 1967. That provision provided that where an administrator of an estate applied, the Registrar could make an order vesting the interests of the person or persons entitled. In such cases s 81(3) and (4) were to apply, but only in so far as these provisions were applicable and with the necessary modifications.

[20] Section 81 ss (3) and (4) provided as follows:

An application to the Registrar under subsection (2) of this section shall be dealt with by the Registrar without notification or appearance of any party, and, subject to the provisions of this section, the Registrar shall make the order sought as a matter of course.

(4) Any order made by the Registrar under subsection (2) of this section shall take effect and may be registered under the Land Transfer Act 1952 as if it were an order of the Court.

[21] These provisions make it clear that limited notice only needs to be given to potential successors and that the Registrar had to make an order as a matter of course. In the usual case, beneficiaries are named but in this case the will of the deceased refers to the Māori Affairs Act 1953 and its various amendments as the scheme for distribution of his estate. I take this meaning from reading clause 3 which declares a specific devise of his property at

Kaeo in favour of Wikitoria Henare, as he did not want that property divided equally among other members of his family. That would suggest that under clause 4 he wanted equal distribution. Wikitoria Henare did not follow this scheme but rather worked with her lawyer to complete a different scheme of distribution, one that omitted some of her siblings. This should have been queried by the Registrar but it was not.

[22] I find, therefore, that Jerry Herewini Hori along with all his other siblings living at the date of the death of the deceased should have been included in the vesting order made on February 1991 at 7 Registrar Taitokerau (RGTO) MB 58.

Was the order complained of erroneous in fact or in law because of any mistake or omission on the part of the Registrar or in the presentation of the facts to the Registrar?

[23] It is clear that the Registrar had only a limited discretion and the exercise of his jurisdiction depended on the information obtained from the administrator of the estate. However, he did have a copy of the will and there is nothing on record to suggest that he undertook a proper inquiry into its meaning and effect. Consequently there was both an error of law and an error in the presentation of facts to the Registrar.

Is it necessary in the interests of justice to remedy the mistake or omission by cancelling or amending the vesting order made on February 1991 at 7 Registrar Taitokerau (RGTO) MB 58.?

[24] I consider that it is in the interests of justice to remedy the mistake or omission having regard to the errors made by the Registrar. I come to this view due to the Preamble, ss 2 and 17 and with the knowledge that these Māori land interests are taonga tuku iho that should be shared equally by all the family.

[25] However, succession to the estates of those siblings not previously included will have to be completed through the lower Court, as I am not able to say for certain that the applicant Rena Scott is a descendent of Herewini Hori, although it is more than likely. It is better for a full investigation to be undertaken in the Māori Land Court.

[26] I also do not consider, that the money received by the beneficiaries of the previous scheme for distribution approved by the vesting order made at 7 Registrar Taitokerau (RGTO) MB 58 should be made the subject of any repayment regime. Many years have passed and it is clear to me that Te Paea and Herewini could have challenged the vesting order at a time when all the relevant people were still alive. They chose not to do so, and it is a little too late now to be seeking any monetary distributions from the land interests of Wharepouri Hori's estate.

Decision/Orders

[27] Having regard to the above, I hereby exercise my jurisdiction under s 44(1) of Te Ture Whenua Māori Act 1993 amending the order made at 7 Registrar Taitokerau (RGTO) MB 58 to include all the children of the deceased living at the date of death of the deceased.

[28] A further order is made, pursuant to s 47(4) of Te Ture Whenua Māori Act 1993, making all consequential amendments necessary to give full effect to the order made above.

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

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

Pronounced at 4.30 pm in Gisborne on Thursday, this 20th day of December 2018.

C L Fox
DEPUTY CHIEF JUDGE