IN THE MĀORI LAND COURT OF NEW ZEALAND
AOTEA DISTRICT

A20160001143

UNDER	Section 113,118 of Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Eileen Te Ataakura Kingī also known as Arini Te Ataakura Kingī or Eileen Te Atakura Kingī or Ataakura Kingī or Atakura Korau or Te Ataakura Korau or Eileen Kingī or Eileen Korau or Airini Korau or Airini (Eileen) Te Atakura or Airini Kingī
BETWEEN	RANGIORA TE MAARI Applicant

Hearings: 349 Aotea MB 260-275 dated 8 March 2016
(Heard at Whanganui)

Appearances: Rangiora Te Maari in person

Judgment: 20 July 2016

JUDGMENT OF JUDGE L R HARVEY

Introduction

[1] Eileen Te Ataakura Kingī died on 21 August 2008 without leaving a will. She was married to Raniera Kingī who predeceased her. They had no natural children and it is said that the deceased had three whāngai children.

[2] Rangiora Te Maari now applies for succession to the interests of his aunt. He says that Arapata Tokoarangai Te Maari Junior, Arapata Tokoarangi Piripi Te Maari (Piripi) and Keith Paenga are whāngai of the deceased. According to the evidence there appears to be a consensus from the whānau that all three were whāngai. However, there is disagreement as to the *extent* to which the whāngai children should be entitled to succeed to the Māori land interests of Eileen, if at all.

[3] The applicant argues that he, along with his siblings, are entitled to succeed on the basis that they are the next of kin to the deceased, being her sister's children. He also says that Arapata would be included in any succession as he is a biological child of Mereana Te Maari, a sister to the deceased. This would also mean that Pirpi would subsequently be entitled to succeed to any interests received by Arapata.

[4] The whāngai children argue that they should be entitled to succeed to the deceased's Māori land interests. Keith Paenga submits that some of those interests were derived from Eileen's husbands estate (through which he is related). Accordingly, he asks the Court to make orders in favour of the whāngai children.

Issue

[5] The issue for determination is whether the whāngai children should be formally recognised per s115 of Te Ture Whenua Māori Act 1993 and if so to what extent?

Background

[6] As foreshadowed, Eileen Kingī received part of her Māori land interests through succession to her husband, Rangiora Te Maari, per s 81A of the Māori Affairs Amendment Act 1967 in terms of his will.[1]

[7] The remaining interests were received predominantly from her mother and her brother, Tamati Korau.[2] He died on 14 January 1998 without issue and succession was granted in favour of his sisters Mrs Kingī and Mereana Te Maari.[3]

[8] Mereana Te Maari died on 22 July 2000. She had eight children, Eileen Aiono, Arapata Te Maari Junior, Rangiora Te Maari, Mae Te Maari, Hinewahirangi Mooney, Donald Te Maari, Jean Edwards and Ariel Te Maari.[4] On succession to Mereana Te Maari her interests were vested in whānau trust for her descendants. That trust does not provide for

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1 8 Tākitimu Registrar's MB 138 (8 RGTA 138) and 8 Tākitimu Registrar's MB 294 (8 RGTA 294)
2 127 Gisborne MB 217 (127 GIS 217); 41 Tairāwhiti MB 257 (41 TRW 257); 51 Ruatoria MB 211 (51 RUA 211); and 140 Gisborne MB 71 (140 GIS 71)
3 51 Ruatoria MB 211 (51 RUA 211)
4 131 Napier MB 188 (131 NA 188)

the automatic vesting of further interests.[5] The children of Mereana Te Maari are potentially entitled to succeed to the deceased's estate per s 109(2)(b) of the Act.

The Law

[9] Section 109 of the Act states:

> **109 Succession to Maori freehold land on intestacy**
>
> (1) Subject to subsection (2), on the death intestate of the owner of any beneficial interest in Maori freehold land, the persons primarily entitled to succeed to that interest, and the proportions in which they are so entitled, shall be determined in accordance with the following provisions:
>
> (a) where the deceased leaves issue, the persons entitled shall be the child or children of the deceased living at his or her death, in equal portions if more than 1, together with the issue living at the death of the deceased of any child of the deceased who died before the deceased, that issue to take through all degrees, according to their stocks, in equal portions if more than 1, the portion to which their parent would have been entitled if living at the death of the deceased:
>
> (b) where the deceased leaves no issue, but leaves brothers and sisters, the persons entitled shall be the deceased's brothers and sisters living at the death of the deceased (including brothers and sisters of the half blood descended from the parent or other ascendant through whom the deceased received his or her entitlement to that interest), in equal portions if more than 1, together with the issue living at the death of the deceased of any such brother or sister of the deceased who died before the deceased, that issue to take through all degrees, according to their stocks, in equal portions if more than 1, the portion to which their parent would have been entitled if living at the death of the deceased:
>
> …

[10] Section 109 provides that those primarily entitled to succeed, upon intestacy, are the children of the deceased. Where there are no children, siblings of the deceased are entitled, and failing that the successors are to be ascertained by reference to the derivation of the interests concerned to the persons nearest in the chain of title.

[11] Section 115 of the Act provides for the recognition of whāngai:

> **115 Court may make provision for whangai**
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> (1) In the exercise of its powers under this Part in respect of any estate, the court may determine whether a person is or is not to be recognised for the purposes of this Part as having been a whangai of the deceased owner.

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5 151 Gisborne MB 184 (151 GIS 184)

> (2) Where, in any such case, the court determines that a person is to be recognised for the purposes of this Part as having been a whangai of the deceased owner, it may make either or both of the following orders:
>
> (a) an order that the whangai shall be entitled to succeed to any beneficial interest in any Maori freehold land belonging to the estate to the same extent, or to any specified lesser extent, as that person would have been so entitled if that person had been the child of the deceased owner:
>
> (b) an order that the whangai shall not be entitled to succeed, or shall be entitled to succeed only to a specified lesser extent, to any beneficial interest in Maori freehold land to, or than that, which that person would otherwise be entitled to succeed on the death of that person's parents or either of them.
>
> (3) Every order under subsection (2) shall have effect notwithstanding anything in section 19 of the Adoption Act 1955.

[12] Section 115 enables the Court to make two determinations. Firstly, whether a person is a whāngai of a deceased, and secondly, to what extent, if any, the whāngai is entitled to succeed to the Māori land interests of that deceased.

Discussion

Are Arapata, Piripi and Keith whāngai of the deceased?

[13] Arapata Tokoarangai Te Maari Junior is the natural child of Mereana Te Maari – Eileen's sister. Piripi is the son of Arapata Junior and a grandnephew of the deceased. Keith Paenga is said to be a nephew of Eileen's late husband, Raniera Kīngi.

[14] At the hearing I expressed some hesitation at the fact that both Arapata and his son Piripi were whāngai:[6]

> **The Court:** So how does it work that your husband and your son were whāngai to your husband's biological aunt? How does that work?
>
> **T Te Maari:** Because they loved them, they took them.
>
> **The Court:** The age gap must have been huge.
>
> **T Te Maari:** Yes, but mum and papa were also part of my family too…As they got older they needed somebody, so they asked if they could have my son.
>
> **The Court:** And how old was he when he became a whāngai?
>
> **T Te Maari:** Piripi was about 12 months.
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> …
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> **The Court:** Let me understand this. Your late husband was brought up by Eileen and Raniera as a whāngai. That is correct?

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6 349 Aotea MB 274 (349 AOT 274)

T Te Maari: Yes.

The Court: Does anyone dispute that?

K Paenga: …when her husband, my older whāngai brother left home they took it upon themselves to ask for me. When I left home, they asked for Piripi. So we were brought up with them and those are the three as whāngai.

…

The Court: I have just not encountered a situation where a person is brought up from a young age as a whāngai and then they have a child and that person is also given over as a whāngai years and years later.

T Te Maari: …that was how mum and papa were with their love. It would be hard to explain how people feel and that is why they had whāngai children to bring them up as their own.

[15] Those present at the hearing did not dispute that Arapata, Piripi and Keith are, according to tikanga Māori, whāngai. I agree. The next step then is to consider the extent, if any, to which those whāngai should be entitled to succeed to the deceased's Māori land interests.

To what extent should Arapata, Piripi and Keith be entitled to succeed?

[16] In *Koia – Estate of Hoani Tau Takahi* the necessary approach in considering the extent to which whāngai should be entitled to succeed was reviewed:[7]

> [13] In determining the extent to which a whāngai might receive land interests, the Court examines the whakapapa relationship from the person claiming such status to the whāngai parent. It is invariably essential that some link, according to tikanga Māori, is required to be established, especially where a whāngai child seeks to inherit absolutely. This is because it is usually a widespread and acknowledged practice that Māori land titles, which are for the most part founded on hapū affiliation, should never be diluted by the inclusion of persons who are not members of the hapū in question unless those hapū agree. This was the essential point made by the Māori Appellate Court in *Hohua – Estate of Tangi Biddle or Hohua*.

[17] Determining the extent to which a whāngai child should be entitled to succeed is complicated by the fact that Mrs Kingī has received interests through her husband's estate under the preceding legislation.[8] Moreover, the evidence at the hearing was that Mrs Kingī and her husband did not share any common hapū affiliations. It was said that Mrs Kingī was from Uawa and therefore of Te Aitanga a Hauiti descent.[9]

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7 *Koia – Estate of Hoani Tau Takahi* (2015) 113 Waiariki MB 273 (113 WAR 273)
8 59 Tairāwhiti MB 92 (59 TRW 92) and 8 Tairāwhiti Registrar's MB 294 (8 RGTW 294)
9 349 Aotea MB 271 (349 AOT 271)

[18] Arapata and Piripi are clearly related to Mrs Kingī and have established connections to the lands derived from her side of the family. It is unclear however what connection they have to the lands derived from Raniera Kingī.

[19] At the hearing the evidence before me was that Keith Paenga is a nephew of Raniera Kingī. However the applicant provided a further letter to the Court dated 4 June 2016 where he says that Keith's parents are Chang and Pam (nee Maynard) Paenga suggesting that in fact a blood connection may not exist from Raniera's interests for Keith. In the absence of further evidence I have nothing before me which confirms a blood and therefore hapū connection between Keith and both Raniera and Eileen.

[20] Given the uncertainty of the connection of the whangai children to the lands, particularly those derived from Raniera Kingī, I propose to grant the three whāngai children a life interest in the lands.

To what extent are the children of Mereana Te Maari entitled to succeed?

[21] During the hearing I raised with those present the fact that it was unclear whether, given the fact that Eileen received part of her interests from her husband, the children of Mereana Te Maari should be entitled to succeed to those interests despite the fact that they do not whakapapa to the land.[10]

[22] Per s 109(1) Eileen is the owner of the beneficial interests derived from her husband. Therefore the persons primarily entitled are, in the absence of children, the brothers and sisters of the deceased together with the issue living at the death of the deceased. There is no requirement in that section for association with the hapū associated with the lands.

[23] If an order is made in favour of Mereana's children Arapata will be included in that order. This will also potentially include Pirpi who, as Arapata's son, may be entitled to succeed to Arapata in due course. However Keith will not receive any interests.

[24] In the circumstances, and as foreshadowed, I consider it appropriate to grant the three whāngai children a life interests in all the Māori land interests held by Eileen with the remainder to go to the children of Mereana Te Maari.

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[10] 349 Aotea MB 269 (349 AOT 269)

Advertising costs

[25] The applicant asks the Court to reimburse him for the cost of advertising he undertook on the advice from registry staff. The applicant could not recall who gave him such advice but says it was a member of staff at the Māori Land Court. I consider that the applicant's costs should be reimbursed from the Special Aid fund.

Decision

[26] Arapata Tokoarangai Te Maari Junior, Arapata Tokoarangi Piripi Te Maari and Keith Paenga are, according to tikanga Māori, whāngai of Eileen Te Ataakura Kingī, per s 115 of Te Ture Whenua Māori Act 1993.

[27] Messrs Arapata Te Maari senior and junior and Mr Paenga are entitled to succeed as to a life interest in the estate of Eileen Te Ataakura Kingī with remainder to the uri of Mereana Te Maari.

[28] Advertising costs incurred by the applicant are to be reimbursed per s 98 of Te Ture Whenua Māori Act 1993.

Pronounced at 4.15 pm in Whanganui on Wednesday this 20th day of July 2016

L R Harvey
JUDGE