

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

**A20160001234
A20160001400**

UNDER Sections 113, 118 and 214, Te Ture Whenua
Māori Act 1993

IN THE MATTER OF Wiremu Papa Hemana or Wiri Hemana or
Wiremu Hemana or Piriwiritua Hemana

BETWEEN MARGARET TUKERANGI
Applicant

Hearing: 14 June 2016
28 June 2016
17 October 2016
(Heard at Auckland)

Judgment: 18 October 2016

ORAL JUDGMENT OF JUDGE M P ARMSTRONG

Introduction

[1] Margaret Tokerangi and Patrick Hemana have filed separate applications to succeed to the Maori land interests of Wiremu Papa Hemana.

[2] The issue in this case is whether Margaret should be recognised as Wiremu's whāngai, and whether she should be entitled to succeed.

[3] As with all oral decisions, I reserve the right to amend this decision but any such amendments shall only be as to form not as to substance and not to change the outcome of the decision that I am about to make.

Background

[4] Wiremu Papa Hemana passed away on 19 September 2004. He did not leave a will. He was married to Huhana Hemana. They did not have any children together. Their marriage was dissolved.

[5] Wiremu then entered into two de-facto relationships, firstly with Te Waiarani Olive Victoria Hose, and then with Christine Tokerangi. Wiremu had four biological children with Te Waiarani: Delphine, Patrick, Junior and Pare-Huia. Wiremu and Te Waiarani also adopted a further daughter, Helen. With Christine, Wiremu had three further biological children Eve, Winnie and Wiremu Jnr. The applicant, Margaret, claims that Wiremu and Christine raised her as their whāngai daughter.

[6] There is no dispute that Wiremu's interests should go to all of his children in equal shares. The issue is whether Margaret should be recognised as Wiremu's whāngai, and whether she should also be entitled to succeed.

[7] Wiremu's children are divided on this issue. Junior, Helen, Winnie and Wiremu (jnr) agree that Margaret should be recognised as Wiremu's whāngai and entitled to succeed as if a natural child. Patrick, Delphine and Pare-Huia accept that Margaret should be entitled to succeed but as to a life interest only.

[8] I was advised that due to serious health issues, Eve lacks capacity and is unable to express a view on the matter.

The Law

[9] Section 109 of Te Ture Whenua Māori Act 1993 (“the Act”) provides that as Wiremu did not leave a will, his interests go to his children in equal shares.

[10] Section 115 of the Act also empowers the Court to make provision for whāngai. Whāngai is defined in s 4 of the Act as “a person adopted in accordance with tikanga Maori.” Tikanga Maori is defined as “Maori customary values and practices”.

[11] Section 115 of the Act provides a two step approach. The first step is to determine whether or not a person is to be recognised as having been a whāngai of the deceased owner. If that person is recognised as a whāngai, the second step is to determine whether he or she shall be entitled to succeed, and if so, whether to the same or any lesser extent as that person would have been entitled if he or she had been a child of the deceased owner.

Should Margaret be recognised as a whāngai?

[12] Several decisions have considered the issue of whāngai succession, including *Hohua – Estate of Tangi Biddle* and *Milner v Milner – Estate of Warihi Te Keu Faenza Milner*.¹

[13] I adopt the principles set out in those decisions.

[14] In *Milner*, Dr Hirini Mead identified four main questions to determine whether a person is a whāngai:²

- (a) Did the person grow up within the whānau?
- (b) Was this well known among the whānau?

¹ *Hohua – Estate of Tangi Biddle or Hohua* (2001) 10 Waiariki Appellate MB 43 (10 APRO 43); *Milner v Milner – Estate of Warihi Te Keu Faenza Milner* (2008) 83 Ruatoria MB 108 (83 RUA 108).

² *Milner v Milner – Estate of Warihi Te Keu Faenza Milner* (2008) 83 Ruatoria MB 108 (83 RUA 108).

- (c) Was this an accepted thing among the whānau?
- (d) Did the person become integrated into the whānau?

[15] In the present case, Margaret has filed a letter from her biological mother, Anita Tokerangi. In that letter, Anita states that when she was five months pregnant with Margaret, Wiremu and Christine asked if they could take Margaret as their own.

[16] Margaret gave evidence that Wiremu and Christine took her at birth and raised her as their whāngai daughter. Margaret also advised that she spent a lot of time with Wiremu's mother, Ngakuru Hemana, who Margaret referred to as her grandmother. This was due to schooling and later health issues when Christine suffered a stroke.

[17] Margaret said that she was always known as Wiremu's whāngai and that this was accepted by Wiremu's whanau and the wider community.

[18] Junior, Winnie and Wiremu (jnr) have signed a letter acknowledging Margaret "as the whāngai daughter of our Dad from birth". Junior, Helen, and others, also attended a whanau hui on 22 December 2015 where those in attendance acknowledged Margaret as Wiremu's whāngai.

[19] Margaret also produced evidence demonstrating that a number of Wiremu's wider whanau, and members of the local community, support her being recognised as a whāngai.

[20] Patrick accepts that his father took some role in raising Margaret but he says that he is unsure about the extent of that role. Patrick advised that he does not accept that Margaret is a whāngai as, when she was a baby, his father told him that Margaret was not his sister.

[21] Delphine did not dispute that her father raised Margaret, but she considered that Margaret should only be entitled to succeed to a life interest.

[22] Pare-Huia supported Patrick and Delphine's views.

[23] I accept Margaret's evidence that she was taken by Wiremu from birth and raised as his whāngai daughter. This is supported by the letter from Margaret's biological mother, and the evidence in support from Junior, Winnie, Wiremu (jnr), Helen, and Wiremu's wider whanau and the local community.

[24] While Patrick, Delphine and Pare-Huia do not acknowledge Margaret as a whāngai, there was no real dispute that their father raised her. It is clear that their real concern is that Margaret should only be entitled to succeed to a life interest.

[25] For these reasons, I consider that Margaret should be recognised as Wiremu's whāngai daughter.

Should Margaret be entitled to succeed?

[26] Having found that Margaret should be recognised as Wiremu's whāngai, I must now consider whether she should be entitled to succeed, and if so, to what extent.

[27] Patrick argues that Margaret is related by blood to Christine, but not to Wiremu, and as such she should only be entitled to succeed to a life interest.

[28] Margaret accepts that she is not related by blood to Wiremu. However, she asserts that she can whakapapa to the hapū that associate with the lands in question, and as such she should be entitled to succeed as if a natural child.

[29] Wiremu holds interests in land around the Kaipara harbour and in particular:

- (a) Oruawharo A6C2A and A6C2B, near Oruawharo;
- (b) Otakanini C2B3A and C2B4B, near Parakai; and
- (c) Te Araparera 2 Aggregated block, near Makarau.

[30] Margaret gave evidence that:

- (a) the hapū that associates with the Oruawharo blocks is Te Uri o Hau;

- (b) the hapū that associates with the Otakanini blocks is Ngati Whatua Tuturu;
and
- (c) the hapū that associates with the Araparera block is Ngati Rongo.

[31] Margaret spoke of the whakapapa connections on her biological mother's side back to Ngati Whatua. Margaret also advised that through these connections, she can whakapapa to all three of those hapū that associate with these lands according to tikanga.

[32] Evidence was also presented by Rangi Edmonds. Mrs Edmonds is Wiremu's first cousin. She advised that she grew up with Wiremu and is one of the last remaining survivors of their generation. Mrs Edmonds confirmed that Te Uri o Hau, Ngati Whatua Tuturu and Ngati Rongo are the hapū that associate with these lands. Mrs Edmonds also agreed that Margaret could whakapapa back to these hapū and to the lands which are the subject of this proceeding.

[33] Mrs Edmonds said that it is widely known amongst their whanau that Margaret was Wiremu's whāngai. She referred to other examples within their whanau where whāngai had succeeded, and she considered that Margaret was also entitled to succeed according to the tikanga which applies to these lands. Mrs Edmonds said that her view is shared by her brother who is a kaumatua for the area.

[34] Margaret also filed a letter from Brenda Christiansen dated 18 May 2016. Ms Christiansen is the Chief Executive of Nga Maunga Whakahii o Kaipara, the post-settlement governance entity for Ngati Whatua o Kaipara. In that letter, Ms Christiansen states:

NMWOK recognises both direct descendants and whāngai relationships as members.

We can confirm that:

- (1) Margaret Tania Tokerangi is acknowledged through her whāngai relationship as a registered beneficiary by NMWOK.

[35] Margaret has also filed evidence showing that Junior, Winnie, Wiremu (jnr) and Helen, agree that Margaret should be entitled to succeed as if a natural child. Margaret has

filed further evidence demonstrating similar support from Wiremu's wider whanau and the local community.

[36] Patrick acknowledged that Margaret had received support from some of his siblings, and from wider members of the whanau. Patrick also advised that he did not have personal knowledge of the tikanga of Te Uri o Hau, Ngati Whatua Tuturu and Ngati Rongo concerning whāngai succession. Patrick considered that his brother Junior had extensive knowledge on matters concerning their hapū and iwi.

[37] I am satisfied that the tikanga that applies to these lands allow Margaret to succeed as if a natural child.

[38] While Margaret has been unable to demonstrate a direct whakapapa connection to Wiremu, she has shown that she can whakapapa to the various hapū that associate with these lands according to tikanga. Mrs Edmonds is an elder of this whanau. She has confirmed that Margaret can whakapapa to these hapū, and to these lands, and that she is entitled to succeed according to tikanga. This is also supported by some of Wiremu's children, members of Wiremu's wider whanau and the local community, and the letter from Brenda Christiansen, on behalf of the post-settlement governance entity for Ngati Whatua o Kaipara. I have also placed weight on the fact that Patrick acknowledged that his brother Junior has extensive knowledge on matters concerning their hapū and iwi, yet Junior supports Margaret's succession as if a natural child.

Decision

[39] I grant the following orders per Te Ture Whenua Māori Act 1993:

- (a) Section 115 determining that Margaret Tukerangi is recognised as a whāngai of Wiremu Papa Hemana and is entitled to succeed as if a natural child;
- (b) Section 113 determining that those entitled to succeed are the persons numbered 1 to 9 at 132 Taitokerau MB 215-216 in equal shares;
- (c) Section 118 vesting Wiremu Hemana's interests in those determined entitled; and

- (d) Section 242 determining that any funds held with respect to these interests are to be paid to the persons entitled.

[40] These orders are to issue forthwith pursuant to rule 7.5(2)(b) of the Maori Land Court Rules 2011.

[41] The applications filed by Patrick and Margaret to constitute whanau trusts with respect to these interests are to be set down for further hearing on a date to be determined by the registrar. At that hearing I will also consider whether Eve's shares should be vested into a kaitiaki trust given her health issues and lack of capacity.

Pronounced at Auckland at 9:30am on the 18th day of October 2016.

M P Armstrong
JUDGE