

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

A20180008474

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

IN THE MATTER OF Succession to Maraea Ututaonga

BETWEEN DENNY UTUTAONGA
Applicant

Hearing: 27 May 2019, 194 Taitokerau MB 30-35
(Heard at Whangarei)

Judgment: 10 September 2019

JUDGMENT OF JUDGE T M WARA

Introduction

[1] This application concerns succession to the interests of Maraea Ututaonga.

[2] Maraea Ututaonga died intestate on 5 April 1993. She was never married and had no biological children. She was the daughter of Te Here Ututaonga and Ngakiri Cherrington and had 11 siblings who are all deceased.

[3] The application for succession filed by Denny Ututaonga states that she had two tamariki whāngai: Mr Ututaonga and Maraea Gibbs. Mr Ututaonga seeks to be the sole successor on the basis that he was her whāngai and this position is supported by Mrs Gibbs.

[4] The issues for determination are whether Mr Ututaonga is a tamaiti whāngai of Maraea Ututaonga and whether he is entitled to succeed.

Is Mr Ututaonga a tamaiti whāngai entitled to succeed?

[5] The Court may make provision for whāngai per s 115 of Te Ture Whenua Māori Act 1993. This provides a two-step approach. The first step is to determine whether or not a person is to be recognised as having been a tamaiti whāngai of the deceased owner. If that person is recognised as a whāngai, the second step is to determine whether he or she should 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 the child of the deceased owner.

[6] The application of s 115 was considered in *Hohua – Estate of Tangi Biddle or Hohua*,¹ and *Milner v Milner*.² While these decisions were not based on Ngapuhi tikanga, I am of the view that the tikanga would not be considerably different.

[7] In *Hohua – Estate of Tangi Biddle or Hohua*, the Māori Appellate Court listed a number of characteristics of Tuhoe tikanga that would apply to tamaiti whāngai, including:³

¹ *Hohua – Estate of Tangi Biddle or Hohua* (2001) 10 Waiariki Appellate MB 43 (10 APRO 43).

² *Milner v Milner – Succession to Warahi Te Keu Faenza Milner* (2008) 83 Ruatoria MB 108 (83 RUA 108).

³ *Hohua – Estate of Tangi Biddle or Hohua* (2001) 10 Waiariki Appellate MB 43 (10 APRO 43) at 49.

- (a) The whāngai would be a blood relative;
- (b) The process of whāngai normally involve taking a child at birth or in early infancy and raising it with its whāngai parent or parents until the whāngai marries;
- (c) If there were no relatives and the whāngai assumed the responsibilities of caring for the adoptive parents till old age then the whāngai would receive the whole of the interest of the matua whāngai.

[8] In *Milner v Milner* Dr Hirini Mead gave the following evidence concerning tamaiti whāngai:⁴

...a [tamaiti] whāngai is somebody who has been taken into another family and raised by that family, as though that person was one of their own. This person lives with them for many years, grows up with that whanau – not only the whanau whaiti, that is the household but within the greater whanau so that the matter is open - everybody knows that so-and-so is a tamaiti whāngai of so-and-so, because they see the evidence right before their eyes.

[9] Dr Hirini Mead further states that there are four main questions to be answered to establish whether a person was a tamaiti whāngai. These are:⁵

- (a) Did the person grow up within the whānau?
- (b) Was this well-known among the whānau?
- (c) Was this an accepted thing among the whānau?
- (d) Did the person become integrated into the whānau?

⁴ *Milner v Milner – Succession to Warahi Te Keu Faenza Milner* (2008) 83 Ruatoria MB 108 (83 RUA 108) at 114.

⁵ *Ibid*, at 115.

Discussion

[10] Mr Ututaonga states that he is the son of Wiremu Ihaka Ututaonga, who is the brother of the deceased. He says he was raised as a whāngai of the deceased until he was approximately three years old, when his father took him from the deceased's care. He was then raised by his parents in Christchurch and was not aware of the whāngai relationship until the deceased informed him when he was in his early 20s.

[11] Mr Ututaonga's evidence is corroborated by Mrs Gibbs, who advised the Court that she was raised by the deceased from when she was ten days old until she died. She says the deceased was her mother, and lived with her, or next door to her, and her children call the deceased "Nana". Mrs Gibbs was seven years old when Mr Ututaonga was taken into the deceased's care, and recalls her mother being devastated when he was taken from her. Mrs Gibbs' evidence was accepted by the applicant.

[12] Taking into account the relevant principles concerning tamaiti whāngai, I cannot find that Mr Ututaonga was a whāngai child of the deceased. The reality is, he refers to her as his aunt, and while he was raised by her as an infant, he wasn't integrated into her whānau as he returned to his father's care in Christchurch. He was not aware of his connection to the deceased until he was in his 20s, and the claim of whāngai follows other proceedings that affect the lands where he lives.

[13] On the other hand, Mrs Gibbs appears to be a tamaiti whāngai, in that she was raised by the deceased, referred to her as her mother, maintained a close relationship throughout her lifetime and her children referred to her as their nana. However, her position is that she would like Mr Ututaonga to have the land because he's the true Ututaonga and lives on the land.

Decision

[14] I grant the following orders pursuant to Te Ture Whenua Māori Act 1993:

- (a) Section 115 determining that Maraea Gibbs is a whāngai of the deceased but is not entitled to succeed as if a natural child of the deceased;

- (b) Section 113 determining that Ihipera Joyce; Tamati Ututaonga; Makere Chapman; Wiremu Ututaonga Jnr; Whare Ututaonga; Hone Ututaonga; Roy Ututaonga; Paratene Ututaonga; Rapata Ututaonga and Perei Ututaonga are entitled to succeed in equal shares; and
- (c) Section 118 vesting the deceased's Māori land interests in those persons determined entitled.

Pronounced in open Court in Whangarei at 2:05pm on Tuesday this 10th day of September 2019.

T M Wara
JUDGE