

IN THE MĀORI APPELLATE COURT OF NEW ZEALAND
AOTEA DISTRICT

AP-20230000029257

UNDER	Section 60, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Succession to Philomena Jane Smith
BY	DEPUTY REGISTRAR (Appellant)

Date: 11 September 2023

MINUTE OF THE COURT

[1] The Deputy Registrar has filed an application stating a case to this Court per s 60 of Te Ture Whenua Māori Act 1993 and r 8.26 of the Māori Land Court Rules 2011. The questions stated for the opinion of the Court are:

Section 114A of Te Ture Whenua Māori Act 1993 states that “the tikanga of the relevant hapū and iwi determines whether there is a relationship of descent” that will give a whāngai child the ability to succeed to the land interests of their whāngai parents. The Court has previously considered the application of whāngai tikanga in situations where the whāngai parent has land in more than one hapū rōhe. However, (a) in comparison to the current case, previous decisions have only considered situations where two or three hapū tikanga may apply, as opposed to the large number of iwi and hapū potentially involved in this application; and (b) the Court has taken differing approaches to the application of hapū tikanga depending on the circumstances of the case, either applying different hapū tikanga to each land block depending on the location of the land, or applying the hapū tikanga that aligns with the whakaaro of the whānau to all of the land concerned.

In applying this s 114A:

- What approach should be taken to applying iwi and hapū tikanga under s 114A where there are multiple blocks of Māori freehold land involved, sitting across a number of different hapū and iwi rōhe?
- How is the relevant hapū for tikanga whāngai determined appropriately under s 114A when multiple hapū and iwi are involved?

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[2] This Court has previously commented that:¹

- a. The lower Court should not state a case merely because a question before it is complex or important; and
- b. Questions such as this should be determined in the lower Court where at all possible.

[3] We have reviewed the questions referred to us. We acknowledge that these questions are important, however, these questions should be determined in the lower Court as part of its judicial function of a Court at first instance. If the finding is challenged the issue may come before this Court on appeal. It is not necessary or appropriate to resolve those questions in this Court now by way of case stated.

[4] For these reasons, we decline to offer an opinion on the case stated.

Copy of minute to the parties.



C L Fox
CHIEF JUDGE



C L Wainwright
JUDGE



M P Armstrong
JUDGE

¹ *Paraninihi ki Waitotara Inc – Section 33 Blk VII Waimate SD and Lots 3, 4, 5 and 6 DP 1510 Block III Waimate SD* (1999) 14 Whanganui Appellate Court MB 30 (14 WGAP 30); *Thorpe v Bowers* (2012) 2012 Maori Appellate Court MB 686 (2012 MAC MB 686).