

**I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O AOTEA**

*In the Māori Land Court of New Zealand
Aotea District*

**AP-20230000027565
A20220010829
CJ 2022/30**

WEHENG <i>Under</i>	Section 45, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Succession to David Te Au
NĀ <i>By</i>	NATHAN JOHN BEVIN Te Kaitono <i>Applicant</i>
ME <i>And</i>	LANA VAIN WINDERS Te Hunga Whaitake <i>Interested Party</i>

Kōtitanga: <i>Hearing</i>	18 March 2026, 2026 Chief Judge's MB 458-475 (Heard at Wellington via Zoom)
Kanohi kitea: <i>Appearances</i>	A Paul for Applicant L Watson for Interested Party
Whakataunga: <i>Judgment date</i>	8 April 2026

TE WHAKATAUNGA A KAIWHAKAWĀ MATUA C L FOX
Judgment of Chief Judge C L Fox

Hei timatanga kōrero

Introduction

[1] This application, filed by Nathan John Bevin seeks an order pursuant to s 44 of Te Ture Whenua Māori Act 1993 (the Act) to amend a succession order made at 41 South Island MB 9-10 on 24 February 1965 concerning David Te Au.

Kōrero whānui

Background

[2] The Registrar's Preliminary Report and Recommendation (the Registrar's Report) dated 13 February 2026 sets out the background to the application. The Registrar's Report is reproduced in full as follows:

Te rīpoata me tana tūtohunga mā tētahi tono i raro i te wehenga 45 o Te Ture Whenua Māori Act 1993 ki te Kaiwhakawā Matua

Preliminary report and recommendation on an application under section 45 of Te Ture Whenua Māori Act 1993 to the Chief Judge

He kupu arataki

Introduction

1. This application filed by Nathan John Bevin (the applicant) seeks to amend a succession order at 41 South Island MB 9-10 dated 24 February 1965 relating to David Te Au.
2. The applicant claims the said order is incorrect due to a mistake, error, or omission in the presentation of the facts of the case to the court, because:
 - a) The succession orders were inconsistent with the will of David Te Au;
 - b) Thomas Te Au was only entitled to the use and occupation of a dwelling at Colac Bay during his holidays;
 - c) David Te Au II produced the consent forms verbally, but the physical consent forms do not exist on the Court record, therefore indicating that the consent forms were not provided at the time of the hearing or at any time after the court hearing.
 - d) The court transferred an ownership of Māori land interests to Thomas Te Au rather than a life interest relating to the use and occupation of the house on Oraka F block, as stipulated in the will.
3. The applicant claims he is adversely affected by the order upon the grounds that the court transferred Māori land interests to Thomas Te Au, resulting in an unjust enrichment upon Thomas and his descendants, with no compensation afforded to the applicant.

He kōrero tuku iho

Background

4. David Te Au also known as David Kaka Te Au is recorded as a son of Susan Te Au or Tautini or Ballantyne or Lowry (Lowrie) and Ratimira Te Au. David passed on 7 August 1963, leaving five issue, namely Victoria May Roderique, David Te Au II, Hilda Hanning, Ratemira Te Au, and Thomas Te Au.
5. Probate was granted in favour of David Te Au II as sole executor at 40 South Island MB 42-43 dated 25 February 1964.
6. Succession to David Te Au was heard by the Court at 41 South Island MB 9-10 dated 24 February 1965. The court minute is reproduced as follows:

Appln by David Te Au for succession to interests of David Te Au in Oraka F Blk X

Mr Binnie: I appear in support. Died 7.8.63 leaving will. Probate granted M.L.C S.I MB 40/42-3. Will call evidence.

David Te Au/sworn I reside at 32 Lewis St, Invercargill. Deceased my father. I am executor of his will under Probate produced. Father's only issue were myself, Hilda Hanning, Victoria May Roderique & Ratemira Te Au – all are of full age. It is the wish of all four of us that Thomas Te Au, the informally adopted son, should share equally with us. I produce form of consent required by all four children.

Determination that following children of deceased entitled equally pursuant to will of deceased,

- | | |
|--------------------------------|--------------------------------|
| 1. David Te Au II m.a. | 32 Lewis St, Invercargill |
| 2. Hilda Hanning f.a. | 10 Raymond St, Bluff |
| 3. Victoria May Roderique f.a. | 135 Patterson St, Invercargill |
| 4. Ratemira Te Au m.a. | 150 Bay Rd, |

ORDER – M.P. Act 1931 – vesting interest of deceased in Taukihepa (Titi Is.) in above four equally.

ORDERS – Sec 136 – vesting interests of deceased as follows: -

Tautuku Blk IX Sec 1A2 (Value 260) and Oraka F (Value 990) and Waimumu Blk IV Sec 43 (Value 50) in above four forms and Thomas Te Au m.a. of Barrow St, Bluff, equally
Adjourned as to other freehold interests – for arrangement to be considered by beneficiaries.

7. The effect of the order, made under section 136 of the Māori Affairs Act 1953, was vesting the land interests of David Te Au as recorded in the attached schedule in David Te Au II, Hilda Hanning, Victoria May Roderique, Ratemira Te Au, and Thomas Te Au. Order reproduced as follows:

Minute Book: S.I.M.B. 41/ 9 - 10

Order Vesting Interest of Deceased in Successors

(Maori Affairs Act 1953 and/or Maori Reserved Land Act 1955)

In the Maori Land Court
of New Zealand
South Island District.IN THE MATTER of an application
to succeed toDAVID TE AU

Deceased.

At a sitting of the Court held at Invercargill on the 24th day of
February 1965 before Melville Charles Smith Esquire, Judge.

IT IS HEREBY ORDERED that the interests of the above-named deceased in the lands listed in the Schedule hereto be and the same are hereby vested in the person or persons shown in the said Schedule as successors to the said deceased in the shares set out, as from the 7th day of August 1963 the value of the interest of the deceased in each of the said lands being the amount set out opposite the name thereof.

As witness the hand of the ~~Judge~~ and the seal of the Court.
Registrar



J. Shaw
Registrar

200 pads/3/63-6667 W

Block	Value under 1000	Successors and Addresses	Sex and Age	Pro- portion	Share	Title File	
						Noted	Checked
Tautuku Blk IX Sec 1A2	260	David Te Au II 32 Lewis Street, INVERCARGILL	m.a	1/5		S.H.	5
Oraka F	990					S.H.	3
Waimumu Blk IV Sec 43	50	Hilda Hanning 10 Raymond Street, BLUFF	f.a	1/5		S.H.	3
		Victoria May Roderique 135 Patterson Street, INVERCARGILL	f.a	1/5			
		Ratemira Te Au 150 Bay Road, INVERCARGILL	m.a	1/5			
		Thomas Te Au Barrow Street, BLUFF	m.a.	1/5			

8. The effect of the order, made under the Māori Purposes Act 1931, was vesting the land interest of David Te Au as recorded in the attached schedule in David Te Au II, Hilda Hanning, Victoria May Roderique, and Ratemira Te Au. Order reproduced as follows:

Minute Book: S.I.M.B. 42/9 - 10

Order Vesting Interest of Deceased in Successors(Maori Affairs Act ~~1953~~ 1931 and/or Maori Reserved Land Act 1955)In the Maori Land Court
of New Zealand
South Island District.IN THE MATTER of an application
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Deceased.

At a sitting of the Court held at Invercargill on the 24th day of
February 1965 before Melville Charles Smith Esquire, Judge.

It is HEREBY ORDERED that the interests of the above-named deceased in the lands listed in the Schedule hereto be and the same are hereby vested in the person or persons shown in the said Schedule as successors to the said deceased in the shares set out, as from the 7th day of August 1963 the value of the interest of the deceased in each of the said lands being the amount set out opposite the name thereof.

As witness the hand of the ~~Judge~~ and the seal of the Court.
Registrar



John H. H. H.
Registrar

200 pads/5/65-6667 W

Block	Value under 1900	Successors and Addresses	Sex and Age	Pro- portion	Share	Title File	
						Noted	Checked
Taukihepa (Titi Islands)		David Te Au II 32 Lewis Street, INVERCARGILL	m.a.	1/4		P.A.	S
		Hilda Hanning 10 Raymond Street, BLUFF	f.a.	1/4			
		Victoria May Roderique 135 Patterson Street, INVERCARGILL	f.a.	1/4			
		Ratemira Te Au 150 BAY Road, INVERCARGILL	m.a.	1/4			

9. A copy of the deceased's will is reproduced as follows:

This is the last will and Testament of me David Te Au Colac Bay Retired Farmer.

1. I Revoke all former wills And I Declare this to be my last will and testament.

2. I Appoint my son David Te Au of Invercargill Labourer to be the Executor and trustee of this will.

3. I give Devise and Bequeath all my property and assets whatsoever and wheresoever situated unto my trustee Upon Trust to sell call in and convert so much thereof as he in his absolute discretion shall think fit and after payment of all my just debts and funeral and testamentary expenses and death duties to hold the residue upon trust for such of them my said son David Te Au my son Ratemira Te Au and my daughters Hilda Te Au and Victoria May Roderique as shall survive me and if more than one as tenants in common in equal shares. And I Declare that if any one of my said children shall have predeceased me leaving a child or children him or her surviving and living at or (born after my death such child or children i.e. my grandchildren) shall take and if more than one as tenants in common in equal shares the share or interest in my estate which his her or their parent would have taken if he or she had survived me.

4. I Express the wish that my trustee shall permit my adopted son Thomas Te Au together with his wife and children to use and occupy my dwelling house at Colac Bay during his holidays.

Dated this 5th day of January 1960.

David Te Au

Signed and Acknowledged by the Testator David Te Au as and for his Last Will and Testament who at his request in his sight and presence and in the sight and presence of each other have hereunto set our hands as attesting witnesses and we certify that before signing his will the testator who had a perfect understanding of the English language read over the same and understood the same completely.

S.A. Winter
Carrier
DUNEDIN

Wilson E Daniel
Solicitor
RIVERTON

Ngā kōrero taunaki

Supporting or other information

10. The applicant has provided the following in support of his application:

- a) Oraka F ownership breakdown as of 16 February 2019 by Peter Bloor of Land Solutions;

- b) 41 South Island MB 9-10 dated 24 February 1965;
- c) 40 South Island MB 42-43 dated 25 February 1964;
- d) DIA correspondence and death certificates of David Te Au, Charles Bates Waitiri, and Thomas Te Au;
- e) Whakapapa of Elizabeth Johnson or Johnstone also known as Elizabeth Jansen or Elizabeth Waitiri or Elizabeth Hazel Te Au;
- f) Record of Thomas Te Au – Awarua Electoral District 1963-1993;
- g) Will of David Te Au; and
- h) Military records of David Te Au

Te rangahau a te kooti

Court research

11. The lower court documents relating to the succession of David Te Au are extremely limited, there is no physical record of a family arrangement on file to suggest that all siblings agreed to Thomas succeeding equally, although the siblings of David Te Au II have not disputed the entitlement in over 60 years, therefore one would assume it was their wish.
12. Section 136 of The Maori Affairs Act 1953 was applied when dealing with the succession of David Te Au and is as follows:
 136. (1) When the court has ascertained the beneficiaries and has defined their several shares and interests in accordance with section one hundred and thirty-five hereof, it shall, without further application, proceed to dispose of the beneficial freehold interests of the deceased owner in accordance with the following provisions of this section or in accordance with section one hundred and thirty-seven hereof, as the case may require.
 - (2) In the disposition of any beneficial freehold interest in accordance with this section the Court, subject to the provisions of section one hundred and thirty-seven hereof, may exercise with respect to the whole or any part of that interest any jurisdiction which it would have authority to exercise under any of the provisions of this Act if application had been duly made in accordance with this Act or with Rules of Court. Every disposition made by the Court in the exercise of its jurisdiction under this subsection shall be given effect to by a vesting order.
 - (3) For the purpose of giving effect to any agreement or arrangement made between the persons concerned, the Court may in its discretion make an order vesting the share of any beneficiary, in whole or in part, in any other beneficiary or vesting the share of any beneficiary in any other person who is beneficially interested in any land in which the deceased owner had an interest. Any such agreement or arrangement may, in the case of a beneficiary who is a person under disability, be entered into or made on his behalf by his trustee, if a trustee has been appointed under Part X hereof, and, if no such trustee has been appointed, may be entered into, or made by any other responsible person.

- (4) After making such dispositions (if any) as in its discretion it thinks fit to make in accordance with the foregoing provisions of section one hundred and thirty-seven hereof, shall make orders vesting the remaining beneficial freehold interests of the deceased owner in the beneficiaries severally entitled thereto.
 - (5) Where any freehold interest in land has been devised by the will of the deceased owner to the trustee, other than a bare trustee, the trustee shall, for the purposes of this section, be deemed to be the beneficiary. In any case to which this subsection applies, the existence of the trust shall be set forth on the face of the order by reference to the will of the deceased.
13. At number 4. of the deceased's will it permits his adopted son Thomas Te Au together with his wife and children to use and occupy the dwelling at Colac Bay during holidays. However at 41 South Island MB 9-10 David Te Au produced a consent form required by all four children seeking to include Thomas Te Au equally, therefore deviating from the will as all beneficiaries agreed, leaving the court to authorise the action.
14. David Te Au II also states at 41 South Island MB 9-10 that Thomas Te Au was an informally adopted son.
15. 40 South Island MB 42-43 dated 25 February 1964 is partially reproduced as follow:

David Te Au dec
 3/3/684 Probate died 17.8.63
 ????????

Will refer to witnesses Mr Daniel
 Is no longer in law and is ill. Dealt by him. - ?? as to death and family.
 ??? all children are included equally as to "adopted" child no record of legal adoption.
 The others wish him included.
 Probate to David Te Au as sole executor.
 6. Appln for exemption from ??? granted.
16. At 45 South Island MB 181-182 dated 15 August 1969 Victoria May Roderique advised the court David Kaka Te Au was her father, he left a will, probate obtained, will was in favour of his children equally, Victoria May Roderique, David Te Au II, Hilda Hanning, Pioneer Ratamira Te Au, and Thomas Henry Te Au (legally adopted by father to best of my knowledge).
17. A search of the court record has found no birth certificate of Thomas Te Au to substantiate if he was legally adopted by David Te Au and Elizabeth Te Au, although they are listed as his parents on his death certificate, and he is stated as an adopted son in the will of David Te Au.
18. Section 136 of the Māori Affairs Act 1953 did not formally recognize whāngai (customary adoption) for land succession, nor did it accommodate for a lifetime right to a child of the deceased, however if an arrangement was in place at the time to deviate away from the deceased's will it was the court's jurisdiction to dispose of freehold interests in Māori Land, the court was also aware that there was no record of legal adoption.
19. Based on the evidence before the court I find no mistake, error, or omission in the presentation of the facts of the case to the court, the deceased's will named Thomas Te Au as an adopted son, giving him and his whānau rights to stay in the family home during

his holidays, the beneficiaries of the will intended Thomas Te Au to succeed equally therefore deviating away from the will.

The court minute states a consent form signed by all four siblings was produced, however this document has not been located in the court records, this does not say that it did not exist at the time of hearing.

Ngā taipitopito o ngā ōta e whai pānga ana ki te whenua e hāngai ana ki tēnei tono

Details of subsequent orders affecting lands to which this application relates

20. At 56 South Island MB 287-288 dated 8 February 1979 relating to succession of Victoria May Roderique.
21. 7 Te Waipounamu Registrars MB 34 dated 28 March 1985 relating to the estate of David Te Au II vesting beneficial interests in Māori freehold land in an administrator in favour of Lester Te Au.
22. 102 South Island MB 154-155 dated 24 June 2003 relating to succession of Thomas Henry Te Au.
23. 112 South Island MB 294-295 dated 28 November 2005 relating to succession of Hilda Hanning.
24. 116 South Island MB 189-191 dated 1 November 2006 relating to succession of Helene Patricia Te Au, determination of a life interest, and a transfer of shares in Oraka F block to Lana Vaine Williams from Patricia Gail Williams.
25. 2 Te Waipounamu MB 265-266 dated 4 May 2010 relating to a determination of a life interest held by Susan Isobel Te Au.
26. 12 Te Waipounamu MB 199-202 dated 2 May 2012 relating to succession of Thomas Kenneth Te Au.
27. 27 Te Waipounamu MB 191-192 dated 4 December 2014 relating to further interests of David Te Au.

Ngā utunga nā te putanga o te ōta

Payments made because of the order(s)

28. Still to be confirmed by Te Tumu Paeroa.

Ngā āhuatanga i rararu ai

Areas of difficulty

29. There are no areas of difficulty.

Āe rānei, he take o tana haere ki tētahi kootitanga

Consideration of whether matter needs to go to hearing

30. The application should be set down for hearing to afford affected parties the opportunity to respond to the Report and Recommendation.

Te tūtohunga hei whai

Recommendation of course of action to be taken

31. I recommend that:

- a) a copy of this report is sent to parties for whom we have contact details, giving them an opportunity to comment or respond in writing.
- b) if there are no objections, I respectfully seek dismissal of this application.
- c) if objections are received, then the matter should be referred to Chief Judge for directions.

Ko te hātepe ture o te tono nei

Procedural history

[3] A copy of the Registrar's Report dated 13 February 2026 and notice of the hearing was sent to those parties we have contact details for via email dated 16 February 2026.

[4] On 5 March 2026 Ms Lana Winders contacted the case manager to discuss the application, and requested a copy be sent to her. The case manager sent Ms Winders an email requesting she complete a notice of intention to appear upon application and state her intentions prior to disclosing the application and supporting documents.

[5] Ms Winders filed her notice of intention to appear dated 12 March 2026, to which the case manager supplied a copy of the application and supporting documents via email. Counsel for the applicant, Ms Adrienne Paul, was also sent Ms Winders notice to appear on the same day.

[6] The case manager received submissions of counsel in respect of the Registrars Report by way of an affidavit from Nathan John Bevin dated 11 March 2026, and memorandum of counsel in support of the applicants' legal submissions dated 13 March 2026. Ms Winders was also copied into the email thread for her information.

[7] An email was received from counsel for Ms Winders, Mr Leo Watson, on 18 March 2026 prior to the application being heard in Court. Documents attached were, a memorandum of counsel for interested parties dated 18 March 2026, and a Kai Tahu Whakapapa chart. Ms Paul was also copied into this email thread for her information.

[8] Mr Watson also filed an application seeking assistance from the Māori Land Court Special Aid Fund on behalf of Ms Winders dated 18 March 2026.

[9] I heard the application on 18 March 2026, after which the matter was adjourned and I reserved my decision.

[10] On 19 March 2026 a Joint Memorandum of Counsel on behalf of the applicant and Ms Winders was received. The Joint Memorandum of Counsel is partially reproduced as follow:

2. On the afternoon of 18 March 2026 at 4pm, following the hearing of the section 45 application at 11am, counsel Ms Paul was advised by her client Mr Bevin that he had previously communicated with Mr Watson in July 2022 concerning the land at Oraka F. He had sought advice on the legality of a lease on the land. Mr Watson was not able to act and referred Mr Bevin to the Ngai Tahu Law Centre. The request for advice did not relate to the succession of David Te Au's land interests.
3. Ms Paul responsibly raised this with Mr Watson who has immediately taken steps to address this situation, and the parties have agreed to record this formally by way of memorandum to the Court.
 - 3.1 Mr Watson had no recollection of the communication in 2022 when he was approached by Ms Winders on Monday 16 March 2026 to assist with the section 45 application;
 - 3.2 On Monday, Mr Watson had searched his records for "David Te Au" and "Thomas Te Au" but this registered no potential for conflict of interest and therefore he agreed to act;
 - 3.3 No communication between Mr Bevin and Mr Watson in 2022 has been discussed with, or disclosed to, Ms Winders, and will not be disclosed in the future, so as to fully preserve confidentiality of that communication;
 - 3.4 Mr Watson provided no advice as to the succession to the interests of David Te Au. However, the perception of conflict of interest is such that immediate steps must be taken.
4. Mr Watson therefore formally gives notice that he withdraws as counsel on the record for the interested party, Ms Winders.

[11] The hearing minute at 2026 Chief Judge's MB 458-475 dated 18 March 2026 was distributed to parties via email dated 30 March 2026.

Ngā Ture
The Law

[12] 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.

[13] In *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)*, the principles to be applied in determining such applications made pursuant to s 45 of the Act were listed as follows: ¹

- When considering section 45 applications, the Chief Judge needs to review the evidence given at the original hearing and weigh it against the evidence provided by the applicants (and any evidence in opposition);
- Section 45 applications are not to be treated as a rehearing of the original applications;
- The principle of *Omnia Praesumuntur Rite Esse Acta* (everything is presumed to have been done lawfully unless there is evidence to the contrary) applies to s 45 applications. Therefore, in the absence of a patent defect in the order, there is a presumption that the order made was correct;
- Evidence given at the time the order was made, by persons more closely related to the subject matter in both time and knowledge, is deemed to have been correct;
- The burden of proof is on the applicant to rebut the two presumptions above; and
- As a matter of public interest, it is necessary for the Chief Judge to uphold the principles of certainty and finality of decisions. These principles are reflected in section 77 of the Act, which states that the Court orders cannot be declared invalid, quashed, or annulled more than 10 years after the date of the order. Parties affected by orders made under the Act must be able to rely on them. For this reason, the Chief Judge's special powers are used only in exceptional circumstances.

[14] Section 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.

¹ *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)* [2009] Chief Judge's MB 209 (2009 CJ 209) at [15].

[15] As stated in *Tau v Nga Whānau o Morven and Glenavy – Waihao 903 Section IX Block*, the Chief Judge must exercise their jurisdiction by applying the civil standard of proof on the balance of probabilities, having regard to that standard's inherent flexibility that takes into account the nature and gravity of the matter at issue.² This means that the applicant must establish on the balance of probabilities that there was a mistake or omission.

[16] The Court of Appeal has confirmed that the power under s 44(1) falls into two parts:³

The first is an evaluative decision as to whether the order made 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”. The second is a power, which is likely in most cases to involve discretion, to “cancel or amend the order ... or make such other order ... as, in the opinion of the Chief Judge, is necessary in the interests of justice to remedy the mistake or omission”. We note that in making that decision, and exercising that power, the preamble to the Act and ss 2 and 17 are of particular significance.

Kōrerorero

Discussion

[17] The issues for determination are:

- (a) Was an error made in fact or in law or in the presentation of the evidence to the Court which led to an error in the order complained of?
- (b) If so, is it necessary in the interests of justice to remedy the error by amending or cancelling the order?

Was an error made?

[18] The submissions for the applicant were that the Court failed to ascertain whether Thomas was entitled to succeed irrespective of whether there was a family arrangement, as he did not fall under the relevant class set out in s 114 of the Māori Affairs Act 1953 (the 1953 Act). Counsel submitted that the 1953 Act placed restrictions on the disposition of land by will to Europeans. Thomas Te Au was a European. Therefore, the disposition in the deceased's will failed. In reply Ms Winders (granddaughter of Thomas), argued that Thomas

² *Tau v Nga Whanau O Morven & Glenavy – Waihao 903 Section IX Block* [2010] Māori Appellate Court MB 167 (2010 APPEAL 167).

³ *Inia v Julian* [2020] NZCA 423 at [10].

Te Au was in fact Ngāi Tahu through his mother, Elizabeth Hazel Te Au, and whakapapa evidence was produced to demonstrate this. I agree that there is sufficient evidence to demonstrate that Thomas was Ngāi Tahu.

[19] Counsel for the applicant then argued that the “purported family arrangement never existed.” They contended that the “absence of documentary proof indicates that the Court was misled by an error in the presentation of facts.” In reply, counsel for Ms Winders noted that the children of the deceased were represented by counsel, Mr Binnie. David Te Au II was sworn in as a witness. He produced the consent form to the Court. The fact that it cannot be found on file, should not be the basis of challenge for the order made in 1965. I agree with counsel for Ms Winders. The document must have been produced and seen by the Court.

[20] Counsel for the applicant then examined s 136(3) of the 1953 Act, this section governed the arrangements that could be made by the Court. She submitted that as Thomas was outside the bloodline, he could not be the beneficiary of such a family arrangement.⁴

[21] Counsel also cited *Puru – Takou*,⁵ noting that as in the *Puru* case, Thomas lacked the necessary whakapapa connection to the land through David Te Au. Thus, the Māori Land Court incorrectly granted land interests to Thomas. In reply, counsel for Ms Winders noted that Thomas is referred to as the adopted son of the deceased in his will, and Thomas Te Au’s marriage and birth certificates refer to David Te Au as the father of Thomas. He submitted this was sufficient evidence to demonstrate Thomas was in fact adopted. I do not agree with him. Rather, it is clear that Thomas was treated as a whāngai but that is not sufficient to overcome the test in the 1953 Act.

[22] Therefore, I find that the Court was in error and that a mistake was made.

Is it necessary in the interests of justice to remedy the error?

[23] I consider that given the Preamble, ss 2 and 17 of the Act it is in the interests of justice to correct the error made.

⁴ *Manaena v Ihei* (1986) 7 Waiariki Appellate MB 58 (7 AP 58).

⁵ *Puru -Takou* [2018] Chief Judge’s MB 563 (2018 CJ 563) at 573.

Kupu whakataunga

Decision

[24] The application is granted.

Nga Ōta

Orders

[25] I make an order under s 44 of Te Ture Whenua Māori Act 1993 amending the order made at 41 South Island MB 9-10 on 24 February 1965 concerning David Te Au by removing the name of Thomas Te Au from the list of successors and adjusting the shares in favour of his natural children.

[26] A further order is made pursuant to s 47(4) of the Act authorising any consequential amendments to any related orders to reflect the intention of Court.

[27] The case manager is directed to distribute a copy of this decision to all parties.

I whakapuaki i te 11.00 am i Te Whanganui-a-Tara, i te waru o ngā rā o Āperira i te tau 2026.
Pronounced at 11.00 am in Wellington on this 8th day of April 2026.

C L Fox

CHIEF JUDGE