

I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TE WAIARIKI
In the Māori Land Court of New Zealand
Waiariki District

AP-20230000019699
A20190006427
CJ 2019/32

WĀHANGA Section 45, Te Ture Whenua Maori Act 1993
Under

MŌ TE TAKE Succession to Tiemi Karepe, Te One Karepe,
In the matter of Hoani Karepe and Porokuru Te Kiwi

NĀ JOHN HOANI CRIBB
By Te Kaitono
Applicant

Nohoanga: 20 June 2024, 2024 Chief Judge’s MB 945-958
Hearing (Heard at Wellington via zoom)

Whakataunga: 4 February 2025
Judgment date

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

Hei tīmatanga kōrero

Introduction

[1] These applications were first filed in 2019 pursuant to s 45 of Te Ture Whenua Māori Act 1993 (the Act). The applicant seeks s 44 orders to cancel:

- (a) succession orders made at 32 Tauranga MB 117-119 dated 30 May 1972 relating to the Māori land interests of Te One Karepe, Tiemi Karepe and Hoani Karepe; and
- (b) succession orders recorded at 155 Rotorua MB 234 dated 30 November 1970 relating to the Māori land interests of Porokuru Te Kiwi.

[2] Detailed whakapapa evidence was filed with the application along with background regarding each of the above people and their whānau. The grounds for bringing the application are set out in the Registrar's Preliminary Report.

Kōrero whānui

Background

[3] The Registrar's Preliminary Report and Recommendation (the Report) was circulated to the parties on 13 June 2024 and is reproduced in full below:

APPLICATION UNDER SECTION 45 OF TE TURE WHENUA MĀORI ACT 1993 PRELIMINARY REPORT AND RECOMMENDATION

Introduction

1. These applications, filed by John Hoani Cribb (the applicant) pursuant to section 45 of Te Ture Whenua Māori Act 1993 (the Act), seek to amend succession orders made at 32 Tauranga MB 117-119 dated 30 May 1972 relating to Te One Karepe, Tiemi Karepe, and Hoani Karepe; and 155 Rotorua MB 234 dated 30 November 1970 relating to Porokuru Te Kiwi¹.
2. The applicant claims that there was a mistake, error or omission in the presentation of the facts of the case to the Court because:
 - (a) At 32 Tauranga MB 117-119 (32 T 117-119) the land interests were vested in the wrong successors. Te One Karepe died leaving seven children who are the rightful beneficiaries. Tiemi Karepe died without issue, in a previous succession order his land interest were vested in his brothers and sisters. Hoani Karepe is the applicant's

¹ This application was lodged under the name of Hare Karepe but was amended, with the consent of the applicant, as Porokuru Te Kiwi is the subject of the order complained of.

grandfather. He had twelve children who are the rightful beneficiaries to succeed to his interests.

- (b) At 155 Rotorua MB 234 (155 ROT 234) Adelaide Thompson succeeded to the shares of Porokuru Te Kiwi in Tumu Kaituna 11B2 solely. The three named in the residue clause of his will are Adelaide Thompson, Eldridge Thompson and Hara Cribb. The applicant submits that Adelaide Thompson stated in her evidence to the Court that "the owners agreed that she take the total shares of this block and the others would take similar shares in other blocks."² The applicant states that when the order at 155 ROT 234 was made, Hara Cribb was deceased and would not have known about Adelaide's proposal.
3. The applicant claims that the beneficiaries / families of the deceased have been adversely affected by the orders complained of because lands have been taken through incorrect evidence. Although the whānau land interest are small, they have already lost land through Public Works, the Māori Trustee and confiscation.
4. The applicant seeks to have the orders complained of cancelled and the blocks vested in those entitled successors from the previous successions.

Concise history of Order sought to be amended/cancelled

Previous evidence referred to in order complained of:

5. Succession to Teone Karepe was first heard at 31 Tauranga MB 346 dated 15 February 1972 where Evadne Emmaleen Kuini Neilson gave the following evidence:

122 Teone Karepe decd

Sec 136/53

Same Witness: The deceased is the father of Te Ata my grandmother. See Appln 71 Otaki MB 57/118

Court: The interests here are too (*illegible*) – to disregard or to (*illegible*) – of the family.

Adjourned to next sitting for consideration of an arrangement. See 71 for copy of minute.

6. At 57 Otaki MB 118 dated 1 November 1923, referred to above, the land interests of Teone Karepe alias Teone Kiripi, in Pukatea No. 1C No. 2, were vested equally in:

Tiemi Karepe
Te Ata Karepe
Hami Karepe
Tukotahi Karepe
Te Hinu Karepe
Tame Karepe
Hoani Karepe

7. Succession to Tiemi Karepe was first heard at 31 Tauranga MB 347 dated 15 February 1972 which is reproduced as follows:

² Section 45 Application, supporting document page 6.

124 Tiemi Karepe or Karepe or Cribb**Sec 136/53****Same witness:****Court:** Adjourned for consideration of arrangement See Appln 71 for previous evidence at Nelson MB 11/67.

8. At 11 Nelson MB 67 dated 1 February 1949, referred to above, succession orders issued for Tiemi Karepe. Hoani Karepe gave evidence that Tiemi deceased without a will and without issue. His interests, in Edgecombe Blk X Sec.12 Gore S.D³, were vested in his siblings with substitution for issue, as follows:

Hinu Karepe	1/6	Allan Karepe	1/24
Eunice Joseph ⁴	1/6	Tukotahi Karepe	1/6
Hoani Karepe	1/6	Annie Wilkinson	1/24
Sophie Karepe	1/24	Sophie Lelievre	1/24
John Karepe	1/24	Nettie Smith	1/24
Thomas Karepe	1/24	Daphne Watson	1/24

Order complained of - Succession to Tiemi Karepe and Teone Karepe

9. At 32 Tauranga MB 117-119 dated 30 May 1972 the Court made orders pursuant to sections 135 and 136 of the Māori Affairs Act 1953. The minute is reproduced as follows:

111 Tiemi Karepe or Karepe or Cribb**109 Teone Karepe 1 or Hoani Karepe****Sec 135/53****Lawyer Mr Gitto**

Court: These two applications first came before the Court at Tauranga during the sitting of Court there commencing on the 15 February 1972. There were several other applications for succession to other relatives in this family group, but for only very minor interests both in land and money held. Orders were made (*illegible*) – in favour of the applicant in those applications. Following the sitting, applications for rehearing were filed and notice of intention to appear on these two (*illegible*) – applications were duly reviewed.

The applications for rehearing were quickly disposed of when it became apparent the extent of the value of the land interests and money involved. As to the present applications the interests are of minor value and it soon became apparent that if the parties were able to discuss the matter an arrangement satisfactory to all could possibly be accomplished. The responsibility for this fell to Mr Gitto who has now submitted a Memorandum setting the terms of settlement and seeking orders in terms of this family arrangement.

V/Orders as follows:

- a) As to the interests of Teone Karepe and Tiemi Karepe deceased in Edgecombe Blk X Sec 1 Pukatea 1A
 - “ 1A Two separate searches -same name -different values 55c and 40c Wairau XII 12D2 Orakauhamu 26B2F - in Evadne Emmaleen Kuini Neilson solely
- b) The interests of Tiemi Karepe in Edgecombe Blk X Sec 10 value \$80 to Daphne Watson solely

³ Current title Edgecombe Block X Section 12C.

⁴ Share amended at 2 CJTK 40 on 5 September 1952. Eunice Joseph found to be the only child of Te Amohanga Karepe (male). George Karepe was said to be the son of Tukotahi Karepe. Order to be amended by deleting the name of George Karepe and amending the share of Eunice Joseph from 1/12th to 1/6th.

- c) The interests of Teone Karepe in Edgecombe Blk X Sec 12C value \$256.64 to Sophie Lelievre and Evadne Emmaleen Kuini Neilson

10. Orders issued as follows:

Succession to Hoani Karepe or Teone Karepe I or Teone Kiripa or Kiripi or Karepe

Block	Successors	Value	Share	Pro-portion
Edgecombe Block X Section 1	Evadne Emmaleen Kuini Neilson	\$23.00	.30000	solely
Pukatea 1A	Evadne Emmaleen Kuini Neilson	\$0.95	13.06875	solely
Wairau Blk X11 Section 12 D2	Evadne Emmaleen Kuini Neilson	\$37.86	.31652	solely
Orakauhamu 26B2F	Evadne Emmaleen Kuini Neilson	\$0.86	.10714	solely
Edgecombe Block X Section 12C	Sophie Lelievre Evadne Emmaleen Kuini Neilson	\$256.64	3182.0 3182.0	½ ½

Succession to Tiemi Karape or Tiemi Karepe

Block	Successors	Value	Share	Pro-portion
Edgecombe Block X Section 10	Daphne Watson	\$80.00	1.0000	solely
Wairau Blk X11 Section 12 D2	Evadne Emmaleen Kuini Neilson	\$37.86	.31652	solely
Orakauhamu 26B2F	Evadne Emmaleen Kuini Neilson	\$0.86	.10714	solely

Succession to Porokuru Te Kiwi

11. At 155 Rotorua MB 234 dated 30 November 1970 the Court made orders pursuant to sections 135 and 136 of the Māori Affairs Act 1953. The minute is reproduced as follows:

258 Porokuru Te Kiwi - Deceased

Section 135

Will 244

Mr EMMANUEL: for Deputy Registrar

The deceased died 11.9.1936. Left Will 244. Land on application falls into residue clause and is devised to three persons equally.

COURT: Persons entitled are the three named in residuary clause of the Will.

Mr EMMANUEL: I ask for the following order –

Order Section 136

Tumu Kaituna 11B2 \$3 to Adelaide Thompson, f.a. solely.

COURT: Order accordingly

12. Orders issued as follows:

Succession to Porokuru Te Kiwi

Block	Successors	Value	Share	Pro-portion
Tumu Kaituna 11B2	Adelaide Thompson	\$3.00		solely

13. The residue clause in the will of Porokuru Te Kiwi states:

I GIVE AND DEVISE AND BEQUEATH the residue of my estate both real and personal to my trustee to divide the same equally between the said Adelaide Thompson, the said Eldridge Thompson and Hara Cribb of Feilding in the Provincial District of Wellington half-caste native woman in equal shares.

14. Previous evidence records that Porokuru Te Kiwi was succeeded to at 101 Rotorua MB 27 dated 29 March 1955. As per his will the land interests in Kaimai No.2D and Ongaonga No.1A were vested in Adelaide Thompson, Eldridge Thompson and the successors of Hara Cribb, as follows:

Adelaide Thompson	1/3	Wirihana Cribb	1/36
Eldridge Thompson	1/3	Riria Cribb	1/36
Rangi Cribb	1/36	Wiremu Cribb	1/36
Uira Cribb	1/36	Taare Cribb	1/36
Tony (Thomas)		Tenga Cribb	1/36
Cribb	1/36	Lou Tamati Cribb	1/36
Henare Cribb	1/36	Kiwi Cribb	1/36
Rina Cribb	1/36		

Identification of evidence that may be of assistance in remedying the mistake or omission

15. The applicant has provided the following documents in support of this section 45 application:
- (a) Email document setting out critical statements of the applicant and the Karepe/Cribb whānau land blocks for succession. Received 28 March 2024.
 - (b) Additional research document on descendants of Te One John Hoani Karepe. Received 8 June 2020.
 - (c) Research document undertaken for the interests of the Karepe/Cribb whānau including whakapapa for descendants of Hara and Jack Hoani Karepe/Cribb and minutes of the Māori Land Court. Received on 18 July 2019.

Court Research

16. The Court research shows that the shares in the blocks, that are the subject of this section 45 application, were derived as follows:
- (a) Edgecombe Block X Section 1 (current title Section 1 Block X Gore Survey District)

Teone Karepe received shares in this block from succession to Kerehi Reweti at 37 WAI 390 dated 10 October 1910. The shares were vested in;

Te One Makarika	1/2
Mere Karepe	1/10
Te Wiwini	1/10
Pirihira Wirihana	1/10
Kaaro Wirihana	1/10
Teone Karepe	1/10

- (b) Pukatea 1A (Refer NZ Gazette 27/1/1972 No.6 Page 159 Land taken for road)

Derivation could not be located however the ownership list for Pukatea No 1 Section A dated 30 September 1969 records **Teone Karepe** as an owner with 5.54375 shares.

- (c) Wairau Blk X11 Section 12 D2 (current title Wairau Block XII Subdivision 12D Sec 2)

Tiemi Karepe, Hoani Karepe, Te Ata Karepe, Hami Karepe, Tukotahi Karepe, Te Hinu Karepe, Tame Karepe received shares in this block from succession to Tame Karepe or Tame Wiremu at 57 Otaki MB 118 dated 1 November 1923.

They also received shares in Wairau Blk X11 Section 12 D from succession to their father, **Teone Karepe**, at 17 Wellington MB 337 dated 5 June 1911. At the hearing James Cribb gave evidence that his father died in August 1905.

- (d) Orakauhamu 26B2F

Tiemi Karepe, Hoani Karepe, and their five siblings recorded above, received shares in this block from succession to Mary Karepe alias Mary Cribb at 57 Otaki MB 119 dated 1 November 1923

- (e) Edgecombe Block X Section 12C

Derivation could not be located however the ownership list for Edgecombe Blk X 12C dated 6 November 1956 records **Hoani Karepe**, Te Hinu Karepe and Tukotahi Karepe as owners in the block. The interests of Tiemi Karepe were vested in his siblings at 11 NE 67. (refer paragraph 8 above).

- (f) Edgecombe Blk X Sec 10 (current title Section 10 Block X Gore Survey District)

Tiemi Karepe, Hami Karepe and Tukotahi Karepe received shares in this block from succession to Teone Karepe at 7 Nelson MB 30 dated 14 September 1911

- (g) Tumu Kaituna 11B2 (current title Tumu Kaituna No11B Sec.2)

Porokuru Te Kiwi received shares in this block from the succession to Tupaoa Pehitahi dated 16 May 1913.

17. The orders complained of (32 T 117-119 and 115 ROT 234) were made under section 136 of the Māori Affairs Act 1953, which empowered the Court to dispose of beneficial freehold interests under the following terms, at that time:

136 Disposition of interests of deceased owners of Maori land

- (1) When the Court has ascertained the beneficiaries and has defined their several shares and interests in accordance with section 135 of this Act, it shall, without further application, proceed to dispose of the beneficial

freehold interests of the deceased owner in accordance with the provisions of this section or in accordance with section 137 of this Act, as the case may require.

- (2) In disposing of any beneficial freehold interest of a deceased owner as aforesaid, the Court may, in its discretion, exercise any of the following powers, that is to say:

- (a) The Court may exercise with respect to the whole or any part of the 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 and with Rules of Court:
- (b) The Court may, with the consent of a beneficiary, vest the whole or any part of the share of that beneficiary in any other person or persons:
- (c) The Court may give effect to any arrangement or agreement whereby the share of any beneficiary is to be vested in any other beneficiary or in any other person who is beneficially interested in any land in which the deceased had a beneficial freehold interest:

Provided that, if the Court is satisfied that any projected arrangement or agreement is fair and equitable and is not contrary to the interests of the beneficiaries or other persons concerned, it may give effect to the projected arrangement or agreement, notwithstanding that any of the persons concerned has not consented thereto or objects thereto:

- (d) Where the value of the interest of a deceased owner in any land does not, in the opinion of the Court, exceed ten pounds, the Court shall, if the Maori Trustee has, pursuant to section 137 of this Act, declined to accept the interest, vest the interest without any payment being required therefor in one of the beneficiaries or in any other person beneficially interested in the land:
- (e) Where the value of the interest of a deceased owner in any land, in the opinion of the Court, exceeds ten pounds, but the value of the share or shares to which any one or more of the beneficiaries would be entitled is less than ten pounds, the Court shall not vest those shares in the beneficiaries who would be entitled but shall, if the Maori Trustee has, pursuant to section 137 of this Act, declined to accept the interests, distribute those shares, without any payment being required therefor, amongst the other beneficiaries who are otherwise entitled to shares of a value of ten pounds or more. If none of the beneficiaries is entitled to an interest of the value of ten pounds or more, the Court may, without any payment being required therefor, vest the interest of the deceased in one or more of the beneficiaries to the exclusion of the others in such a manner that no beneficiary in whom an interest is so vested shall receive an interest of a value of less than ten pounds.

...

- (4) After making such dispositions (if any) as in its discretion it sees fit to make pursuant to the provisions of subsection two of this section, the Court, subject to the provisions of section 137 of this Act shall vest the remaining beneficial freehold interests of the deceased owner in the

persons severally entitled to succeed thereto.

- (5) All dispositions made by the Court pursuant to the foregoing provisions of this section shall be given effect to by vesting orders.

...

18. In summary compliance with sections 135 and 137 of the Māori Affairs Act 1953 was required as follows:
 - (a) Section 135 of the Māori Affairs Act 1953 required the Court to determine names and shares of the persons beneficially entitled to freehold interests in Māori land; and
 - (b) Section 137 of the Māori Affairs Act 1953 oversaw the disposal of any uneconomic interests held in Māori land.
19. In making the orders at 32 T 117-119 the Court met the requirements of section 135 of the Māori Affairs Act 1953 by making reference to previous succession orders⁵ to Teone Karepe and Tiemi Karepe, where the names of their successors and their entitlements were recorded.
20. Reference to the previous successors to Porokuru Te Kiwi was not recorded 155 ROT 234.
21. Section 137(3) of the Māori Affairs Act 1953 defines the term “uneconomic interest” as “a beneficial freehold interest the value of which, in the opinion of the Court, does not exceed the sum of twenty-five pounds”.
22. When decimal currency was introduced⁶, the New Zealand dollar replaced the pound at a rate of two dollars to one pound (e.g. twenty-five pounds equated to fifty dollars, 10 pounds equated to twenty dollars).
23. It is noted that application of the section 136 provision was therefore generally guided by the value of the Māori Land interest being vested.
24. In utilising those provisions, under either sections 136 (d) or (e) of the Māori Affairs Act 1953, the Court must be satisfied that the Maori Trustee has declined to accept the interest.
25. In terms of these section 45 application, the 1972 succession file for Teone Karepe and Tiemi Karepe, and the 1970 file for Porokuru Te Kiwi cannot be located in the records of the Māori Land Court. This does not mean that evidence that the Māori Trustee declined to accept the interests, was not presented to the Court at the original hearing.
26. Because of the value of the interests affected (\$0.86 to \$256.64⁷) the Court then had the discretion to vest the interests in one of the beneficiaries, or in any other persons beneficially interested in the land, to the exclusion of the others.

Details of subsequent Orders affecting lands to which this application relates

Tumu Kaituna No 11B Sec 2

27. At 6 Registrar's MB 34 dated 29 January 1985 interests of Adelaide Rangitetaea Thompson or Rangitetaea Kokiri vested in administrator.

⁵ Refer paragraph 6 and 8 above.

⁶ 10 July 1967

⁷ Refer paragraph 10

28. At 208 Rotorua MB 195 dated 28 August 1985 interests held by administrator, Adelaide Rangitetaea Martina Thompson, vested in:
- Adelaide Rangitetaea Martina Thompson (current owner)
Gloria Jane Frances Wratt
Ngaoha Rae Teresa Horan (current owner name amended)
Tautari Eldridge James Thompson (current owner)
Joseph Thompson (current owner)
Kokiri Samuel Peter Thompson
Rawinia Beverly Marie Seymour
Sheree Patricia Piwari (current owner)
29. At 7 Registrar's 22 dated 24 May 1991 and 7 Registrar's MB 28 dated 26 June 1991 the interests of Kokiri Samuel Peter Thompson were vested in the appointed executrix, Edith Mary Onehi. At 221 Rotorua MB 147 dated 19 June 1991 the appointed executrix vested the shares in Stacy Te Rongomate Thompson.
30. At 15 Waiariki MB 240-242 dated 2 September 2010 succession to Gloria Jane Frances Wratt, interest were vested in Jason Richard Jan Larkins and Darren Huiarangi Wratt.
31. At 186 Taitokerau MB 126-131 dated 20 February 2019 the interests of Rawinia Beverly Maria Seymour were vested in the James and Rawinia Seymour Whānau Trust.
32. At 141 Waiariki MB 185-186 dated 1 June 2016 the name Ngaoha Rae Teresa Horan was amended to Teresa Ngaoha Rae O'Brien.

Details of payments made as a result of the Order

33. To date, no details have been sought regarding any payments made, in respect of the land affected, as a result of the orders made.

Reference to areas of difficulty

34. The original succession file for Teone Karepe and Tiemi Karepe (32 T 117-119) could not be located in the records of the Māori Land Court (Waikato Maniapoto District). A request has been sent to the Te Waipounamu District and they have provided some information from the block order files for Wairau 12D2 and Orakauhamu 26B2F. Similarly the succession file for Porokuru Te Kiwi (155 ROT 234) has not been located however a copy of his will and documents from the block order file for Tumu Kaituna 11B2 have been provided.
35. The Memorandum setting out the whānau arrangement is not available to review for this section 45 application, however, this evidence was presented to the Court at the original hearing. Although a search of interests schedule, indicating that the Māori Trustee declined the interests, is not available this does not mean that this evidence was not presented at the original hearing.
36. As noted at paragraph 2b above, the applicant states that Adelaide Thompson gave evidence to the Court about an agreement between those named in the residue clause. The minute at 155 ROT 234 does not record this evidence. A document search of the electronic record from 1/07/1970 – 30/11/1970 has not provided any results. It would be helpful if applicant provides a copy of the minute he refers to.

37. The Māori Land Court record indicates that Evadne Emmaleen Kuini Neilson is a current owner in the blocks she received from the 1972 orders complained of. There are no updated contact details for her.
38. The probate file for Tiemi Teone Karepe alias James John Cribb (16979) is on the Court record. Probate was granted at 28 Tokaanu MB 237-238 dated 3 December 1946. The minute states that Tiemi died on 2 August 1946, his will is dated 27 January 1945. The sole beneficiary of his estate is his nephew Teone Tawhiorangi Wilkinson, a child of his younger sister Hinu Karepe and Hori Wilkinson.

Court's Approach

39. The Court's approach with an application of this nature is:
 - (a) weigh the evidence provided by the applicant against the evidence provided at the original hearing;
 - (b) A challenge to original evidence must be balanced against the presumption that everything has been done lawfully unless there is evidence to the contrary; and
 - (c) That the 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.

Consideration of whether matter needs to go to full hearing

40. In regard to the succession to Teone Karepe and Tiemi Karepe there is insufficient evidence to show that a mistake, error or omission was made in the presentation of the facts of the case to the Court.
41. The interests were dealt with under the provision of section 136 of the Māori Affairs Act 1953. The matters were heard on 15 February 1972 and as noted above the Court met the requirements of section 135 of the Māori Affairs Act 1953 by making reference to previous succession orders⁸ to Teone Karepe and Tiemi Karepe, where the names of their successors and their entitlements were recorded.
42. The matter was then heard on 30 May 1972 and a family arrangement was presented, as noted by the Court:

As to the present applications the interests are of minor value and it soon became apparent that if the parties were able to discuss the matter an arrangement satisfactory to all could possibly be accomplished. The responsibility for this fell to Mr Gitto who has now submitted a Memorandum setting the terms of settlement and seeking orders in terms of this family arrangement.
43. In consideration of the value of the interests affected (\$0.86 to \$256.64⁹) the Court had the discretion to vest the interests in one of the beneficiaries, or in any other persons beneficially interested in the land, to the exclusion of the others.
44. Therefore, my recommendation is that there are no amendments to the succession orders concerning the land interests of Teone Karepe and Tiemi Karepe at 32 Tauranga MB 117-119 dated 30 May 1972.

⁸ Refer paragraph 6 and 8 above.

⁹ Refer paragraph 10.

45. In regard to the succession to Hoani Karepe the derivation evidence shows that there was a mistake, error or omission made in the presentation of the facts of the case to the Court because:
 - (a) At 31 Tauranga MB 346 (refer paragraph 5) Evadne Neilson gave evidence that Teone Karepe, the deceased, was the father of Te Ata, her grandmother.
 - (b) At 32 Tauranga MB 117-119 (refer paragraph 9) the Court made orders vesting the interests of Teone Karepe 1 or Hoani Karepe in various successors. The assumption was made that Teone Karepe 1 and Hoani Karepe were the same person. However, the derivation research at paragraph 16(c-e) indicates that the shares succeeded to in Wairau Blk X11 Section 12 D2, Orakauhamu 26B2F and Edgecombe Block X Section 12C belonged to Hoani Karepe, the son of Teone Karepe.
46. In regard to the succession to Porokuru Te Kiwi, it appears that an error was made in the presentation of the facts to the Court.
47. At 155 Rotorua MB 234 dated 30 November 1970 the Court made orders pursuant to sections 136 of the Māori Affairs Act 1953. However, the Court was not made aware that Porokuru Te Kiwi had been previously succeeded to, at 101 Rotorua MB 27 dated 29 March 1955, where his interest were vested in Adelaide Thompson, Eldridge Thompson and the descendants of Hara Cribb, as per his will.
48. Section 133 of the Māori Affairs Act 1953 provided that:
 - (1) This Part of this Act, in so far as it relates to the disposal on the death of the beneficial owner thereof of freehold interests in Māori land, shall apply with respect to all such interests that form part of the estate, whether testate or intestate, of:
 - (a) Any Māori or any descendant of a Māori who dies after the commencement of this Act:
 - (b) Any Māori who has died before the commencement of this Act if in respect of his interests a succession order has **not** been made:
 - ...
49. Section 136 of the Māori Affairs Act 1953 should not have applied to the order complained of, because:
 - (a) Porokuru Te Kiwi received his shares in Tumu Kaituna 11B2 in 1913. He died in 1936.
 - (b) The Court was not aware of a previous succession in 1955, at 101 Rotorua MB 27, where the names of the beneficiaries and their entitlement was recorded.
 - (c) There was no family arrangement.
50. A Court hearing is still necessary to afford all parties an opportunity to be heard and present their case. The application is set down for hearing via Zoom on Thursday 20 June 2024.

Recommendation of course of action to be taken

51. If the Chief Judge is of a mind to exercise her jurisdiction, then it would be my recommendation that:

- (a) A copy of the Preliminary Report and Recommendation (the Registrar’s Report) be sent to all affected parties, for whom we have contact details.
- (b) Given the late distribution of the Registrar’s Report the hearing scheduled for 20 June 2024 continue, then the matter be adjourned to give parties further time to review the Registrar’s Report and file written submissions , before a decision issues.
- (c) Based on the content of the Registrar’s Report it is recommended that orders be made pursuant to section 44(1) of Te Ture Whenua Māori Act 1993 (the Act):
 - (i) Amending the succession order at 32 Tauranga MB 117-119 dated 30 May 1972, relating to Teone Karepe 1 or Hoani Karepe, by deleting Wairau Blk X11 Section 12D2, Orakauhamu 26B2F and Edgecombe Block X Section 12C from the schedule of blocks;
 - (ii) Revesting the following interests into the name of Hoani Te Karepe, the son of Teone Karepe;

Wairau Block X11 Subdivision 12D Sec 2 (formerly Wairau Block XII Section 12D2)	.31652 shares
Orakauhamu 26B2F	.10714 shares
Edgecombe Block X Section 12C	3182.0 shares
 - (iii) Cancelling the succession order at 155 Rotorua MB 234 dated 30 November 1970 relating to Porokuru Te Kiwi.
 - (iv) And a further order be made pursuant to section 47(4) of the Act making all consequential amendments necessary to give full effect to the above order, including amending and/or cancelling those referred to at paragraphs 27 – 32 of the Registrar’s Report relating to Tumu Kaituna No 11B Sec2.

Ko te hātepe ture o te tono nei
Procedural history

[4] On 9 November 2023, I directed that all s 45 applications older than three years had to be heard in March 2024.

[5] On 26 March 2024 a hearing was held, whereat the case manager sought and was granted an adjournment to June 2024 to allow her to complete the Registrar’s Report.¹⁰

¹⁰ 2024 Chief Judge’s MB 524-527.

[6] On 28 March 2024, the applicant filed further submissions and evidence. Those matters have been taken into account in the Registrar's Report.

Te Nohonga a Te Kooti

The Hearing

[7] A further hearing was held on 20 June 2024.¹¹ At that hearing, the applicant did not add significantly to the information he had already provided. Others in attendance were Brett Cribb, Amanda Cribb, John Hoani Cribb, Susie Te Rure, Collen De Castro and Liz Savage.

[8] I reserved my decision, and the file was referred to me for judgment in January 2025.

Ngā Ture

The Law

[9] The Chief Judge's jurisdiction to amend or cancel an order of the Māori Land Court is set out in s 44(1) of Te Ture Whenua Māori Act 1993 (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, 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.

[10] 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:¹²

- (a) 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 Applicant (and any evidence in opposition);
- (b) Section 45 applications are not to be treated as a rehearing of the original applications;

¹¹ 2024 Chief Judge's MB 945-958.

¹² *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)* [2009] Chief Judge's MB 209 (2009 CJ 209) at [15].

- (c) 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 section 45 applications. Therefore, in the absence of a patent defect in the order, there is a presumption that the order made was correct;
- (d) 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;
- (e) The burden of proof is on the applicant to rebut the two presumptions above; and
- (f) 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 s 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.

[11] Section 44 of the Act 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.

[12] 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.¹³ This means that the applicant must establish on the balance of probabilities that there was a mistake or omission.

[13] The Court of Appeal has confirmed that the power under s 44(1) of the Act falls into two parts:¹⁴

...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.

¹³ *Tau v Nga Whānau o Morven & Glenavy – Waihao 903 Section IX Block* [2010] Māori Appellate Court MB 167 (2010 APPEAL 167).

¹⁴ *Inia v Julian* [2020] NZCA 423 at [10].

Ngā Take
Issues

[14] The issues for determination are:

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

Was an error made?

[15] Having reviewed the Court record, minutes relied upon by the applicant and taking into account the findings of the Registrar set out in paragraphs 40-49 of the report above, I consider there was no error in fact or law with respect to the orders made at 32 Tauranga MB 117-119 dated 30 May 1972 relating to the Māori land interests of Teone Karepe and Tiemi Karepe.

[16] As for those part of the orders made at 32 Tauranga MB 117-119 concerning the interests of Hoani Karepe; there was a mistake, error or omission in the presentation of facts to the Court as set out in the Registrar's Preliminary Report at paragraph 45.

[17] With respect to the succession orders recorded at 155 Rotorua MB 234 dated 30 November 1970 relating to the Māori land interests of Porokuru Te Kiwi, there was also a mistake, error or omission in the presentation of facts to the Court as set out in paragraphs 47-49 of the Registrar's report.

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

[18] I consider that it is necessary in the interests of justice to correct these errors. I arrive at this conclusion taking into account the Preamble of the Act, ss 2 and 17 of the Act, and the public interest in maintaining an accurate Court record.

[19] I would first like to ensure that all affected parties receive notice of the orders I propose to make, so the Registrar will be directed to send notice to as many people as possible as identified by the applicant in the material filed with the applications and or their successors. This may be completed with the support of an advertisement in the New Zealand Herald.

Kupu whakataunga me ngā Ōta
Decision & Orders

[20] The Registrar through the case manager is directed to give notice of this judgment and proposed orders to as many people as possible listed in the material filed with the original applications, or if deceased, send notice to their successors.

[21] After three months from the date of this decision, during which time notice should be given as per paragraph [19] above, and if there are no objections, the matter should be referred to chambers for orders to be made pursuant to section 44(1) of Te Ture Whenua Māori Act 1993 (the Act):

- (i) Amending the succession order at 32 Tauranga MB 117-119 dated 30 May 1972, relating to Teone Karepe 1 or Hoani Karepe, by deleting Wairau Blk X11 Section 12D2, Orakauhamu 26B2F and Edgecombe Block X Section 12C from the schedule of blocks;
- (ii) Revesting the following interests into the name of Hoani Te Karepe, the son of Teone Karepe;

Wairau Block X11 Subdivision 12D Sec 2 (formerly Wairau Block XII Section 12D2)	.31652 shares
Orakauhamu 26B2F	.10714 shares
Edgecombe Block X Section 12C	3182.0 shares
- (iii) Cancelling the succession order at 155 Rotorua MB 234 dated 30 November 1970 relating to Porokuru Te Kiwi.

[22] A further order will be made pursuant to section 47(4) of the Act making all consequential amendments necessary to give full effect to the above orders, including amending and/or cancelling those referred to at paragraphs 27 – 32 of the Registrar's Report relating to Tumu Kaituna No 11B Sec 2.

[23] The Case Manager is directed to distribute a copy of this judgment to all parties.

I whakapuaki i te 3.00 pm i Pēwhairangi, i te rā tuawhā o Pēpuere i te tau 2025.
Pronounced at 3.00 pm in the Bay of Islands on this 4th day of February 2025.

C L Fox
CHIEF JUDGE