

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

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

**AP-20230000019685
A20190002306
CJ 2019/2**

WĀHANGA Section 45, Te Ture Whenua Māori Act 1993
Under

MŌ TE TAKE Succession to Paurini Paengahuru
In the matter of

NĀ ESTRELITA KAHIKATEA DICKINSON AND
By JULIANA TARAIPINE SMALLMAN
 Ngā Kaitono
 Applicants

Nohoanga: 18 December 2024, 2025 Chief Judge's MB 438-454
Hearing 24 September 2024, 2024 Chief Judge's MB 1683
 18 June 2024, 2024 Chief Judge's MB 1040-1044
 (Heard at Wellington via zoom)

Whakataunga: 29 August 2025
Judgment date

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

Hei tīmatanga kōrero

Introduction

[1] This application was filed on 20 February 2019 pursuant to s 45 of Te Ture Whenua Māori Act 1993 (the Act). It seeks a s 44 order to amend Māori Land Court orders made at 49 Tokaanu MB 187–191 dated 25 September 1969 concerning succession to Paurini Paengahuru (the deceased). It was filed by Estrelita Kahikatea Dickinson and Juliana Taraipine Smallman.

Kōrero whānui

Background

[2] The Registrar's Report and Recommendation dated 18 November 2024 (the Report) sets out the background to the application. The Report is reproduced in full below:

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

Introduction

1. Estrelita Kahikatea Dickinson and Juliana Taraipine Smallman (the applicants) seek to amend an Order made at 49 Tokaanu MB 187-191 (25 September 1969) concerning succession to Paurini Paengahuru ("the deceased").
2. The applicants claim the Order at 49 Tokaanu MB 187-191 is erroneous because:

"The division of shares recorded is not an accurate reflection of the living next of kin of the deceased.

- a) *The Asher line through Matekitawhiti te Wakautā aka Te Hirata Wakautā aka Noti Wakautā married Ngakuru Matenga (15 ATK 39-41) are over represented to the exclusion of the other five (5) children of Kataraina Paurini (sister to Taiaha Paurini and Parati Paurini – see 14 Taupō 147 (12 May 1899).*
- b) *That other descendants of Karamu Paurini namely through Taiaha Paurini and Parati Paurini believe that the Order does not reflect the views of the wider whānau rather the wishes of a number of individuals.*
- c) *Values of shares not accurately reflected e.g. Oasis Motel of Pt Tokaanu Township No.12 Secs 1&2 Block VIII (Block ID 18970) solely to Paekitawhiti Asher not taken into account.*

d) *Assigning shares to a church body and not through whakapapa of living successors e.g. Section 4 Blk IV Tokaanu Township (Block ID 18981)."*

3. The applicants claim they are adversely affected by the Order complained of because:

"We believe an injustice has arise [arisen] because of the Order that many people who were alive at the time and entitled have missed out on an interest and that other people have prospered solely because they presecuted [prosecuted] the application for example it appears that [an] individual family has unfairly been allotted land to the detriment of the other whānau.

a) *Paekitawhiti Asher (mother), John Takakopiri Asher (son-applicant), John Paurini Karamu Asher (grandson) and Richard John Asher (grandson).*

b) *Ngahiiti Te Ao (mother) and Annette Te Hirata Te Rangi (daughter)."*

Concise history of Order sought to be amended

4. This succession was a lengthy case with many hearings over several years.
5. Initially two succession applications were filed. One by John Atirau Asher and the other by Ani Patena also known as Annie Healey. Sometime after the whakapapa filed by Mr Asher and Mrs Healey had been substantially agreed to¹, a third application was filed by Parehuia Steedman.

Minutes

6. 49 Tokaanu MB 187-191 (25 September 1969)—Order complained of. The minutes note that an amicable solution was reached between the parties. On this basis Mr Steedman withdrew the rehearing application and would not proceed with the appeal. The Court approved the settlement reached.
7. An appeal was filed (13 August 1969) by Parehuia Steedman through her solicitor, Mr A G Horsley, against this decision. A copy of the letter sent by the Deputy Registrar to Mr J T Asher and Mr T Patena (27 August 1969) states that:
- "I understand that the appeal is in the nature of a protective appeal, and further action concerning it may be dependent on the outcome of the application under Section 28 for a re-hearing."*
8. An application for rehearing was filed (23 July 1969). As both Mr J A Asher and Mrs Healey were deceased, notice was sent to Mr John T Asher and Mr Tawhi Patena.

¹ 46 Tokaanu MB 78-79 (22 June 1966)

9. 49 Tokaanu MB 103-104 (2 July 1969)—Persons determined entitled are those named on the two whakapapa filed by Mrs Healey and Mr Asher on 9 March 1969 and money from the Māori Trustee to secretary for marae. The minute is partially reproduced (as per the extract held on Court file):

*Date: 2 July 1969
Place: Tokaanu
Judge: D.G. Davis*

*Application No. 159 Paurini Paengahuru : Succession
Application No. 160 Paurini Paengahuru : Succession
Application No. 161 Paurini Paengahuru : Succession
Mr J.T. Asher : Mrs Paakitawhiti Asher : Mr J.W. Steedman : Present*

Court

This has been one of the most difficult cases I have had to decide and this has been made more so by the way it has developed. There were two applications at the start and then the third one came in late, after really an agreement for settlement had been made. The matter has run on over a long period and it is high time it was disposed of and I hope that I will be able to make final Vesting Orders at my last sitting in September. I had hoped to do that today but, although I will make a Determination, the Vesting Orders must wait until those involved have had a chance to decide who goes into the individual blocks. That will also give anyone interested an opportunity of making any further representation they wish to make before final Orders are made.

There are several interests to succeed to but none of these individually are sufficiently valuable to have many successors. The position today is that the aim must be to obtain consolidation not separation or fragmentation, otherwise lands will be lost to the owners. To ensure that the interests are retained a practical solution must be sought. If in making a Determination the Court goes down to living issue, few if any interests will be economic. The practical solution is to make a Determination on the two whakapapa's filed and agreed upon by Mr Asher and Mrs Healey. Then effect will be given to the agreement reached by them at the sitting in March 1964. There have been several hearings since then but nothing has really be added to upset the agreement, although some evidence has been offered in extension of the whakapapa. All people likely to be interested have had ample opportunity to be heard by the Court.

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One valuable part of the succession is the money held by the Māori Trustee \$3,880.58. Again if this is split up amongst all the people who might be legally entitled much of it would disappear and be too small to benefit anybody. I have sought an object which will benefit a large number of people and particularly those who may be legally entitled. I have concluded that maraes are worthy objects for such funds and here we have the local Tokaanu Marae where money can be spent to bring the buildings and the marae generally to a standard where the people will be proud of it. It was the deceased's marae. The expenditure will benefit a wide circle of people and will be a welcome addition to the Tokaanu area. I will make a Section 32 Order for payment to the local

secretary, who Mr J.T. Asher tells me is himself, he assures me that there is a reservation with a local committee.

As to the lands I make a Determination under Section 135 that those entitled are those named on the two whakapapa's filed by Mrs Healey and Mr Asher on 9 March 1964 and appearing at pages 130, 131 and 132 of Tokaanu Minute Book 43. As will be seen they agree substantially as far as they go – see Tokaanu Minute Book 46/78-79. To go any further would as I have said result in fragmentation and loss to all. Having done that I hand to Mr Asher a copy of the Minutes of the hearing on 9 March 1964 and a list of the blocks and the values of the interests and ask him to have for the September sitting a list showing who are to go into each block. The list of the blocks in those Minutes are incomplete and need to be completed from the list of blocks I have handed him. As to Section 4 Block IV I believe it is the land on which the Catholic Church stands and can be vested in the Trustees thereof. I will make a Vesting Order for that when I know the names.

I make an order under Section 32 for payment by the Māori Trustee of the money on Card Wanganui 1157 \$3,880.58 to John Takakopiri Asher, the Secretary of the Tokaanu Tribal Committee, Tokaanu, his address is Box 27, Turangi."

**Emphasis added*

10. 47 Tokaanu MB 90-93 (13 September 1967)—Evidence from Mr Steedman re adoption.
11. 47 Tokaanu MB 5, 7-13 (21 June 1967)
12. 46 Tokaanu MB 291 (1 March 1967)—Court considering extension to whakapapa filed by Mr Steedman in comparison to the whakapapa filed by Mrs Healey and Mr Asher.
13. 46 Tokaanu MB 285-287 (1 March 1967)
14. 46 Tokaanu MB 78-80 (22 June 1966)—Whakapapa filed by Mrs Healey and Mr Asher agree substantially.
15. 45 Tokaanu MB 324-328 (15 March 1966)
16. 45 Tokaanu MB 201-203 (24 August 1965)—Discussion around Tokaanu Township Section 4 Block 4: front area for trustees of the Catholic Church and residue of block to the trustees of the marae.
17. 43 Tokaanu MB 125-128, 130-132 (9 March 1964)—Whakapapa presented by Mr Asher and Mrs Healey and discussion re Catholic Church section.

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

18. The applicant has not provided any evidence in support of this application.

Court research

19. In making the Order at 49 Tokaanu MB 187-191 (25 September 1969) and initially at 49 Tokaanu MB 103-104 (21 July 1969) the jurisdiction of the Court under Sections 135, 136, 137 and 139 of the Māori Affairs Act 1953 (“the Act”) was considered.
20. This legislation was in force from 25 October 1963 to 31 December 1974 and applied to all orders complained of where it dealt with “uneconomic interests”.
21. In particular, Sections 136 and 137 of the Act provides:

136 Disposition on interests of deceased owners of Māori land

- (1) When the Court has defined their several shares and interests in accordance with section one hundred and thirty-five 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 one hundred and thirty-seven 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**², 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 Māori Trustee has, pursuant to section one hundred and thirty-seven of this Act, declined to accept the interest, vest the interest without any payment being required therefore in one of the beneficiaries or in any other person beneficially interested in the land:

² Emphasis added

- (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 Māori Trustee has, pursuant to section one hundred and thirty-seven 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.
- (3) For the purposes of paragraph (c) of subsection two of this section, any agreement or arrangement may, in the case of a person under disability, be entered into or made on his behalf by his trustee appointed under Part 10 of this Act, or if no such trustee is appointed, by any other responsible person.
- (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 one hundred and thirty-seven 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 to by vesting orders.
- (6) Where any beneficial freehold interest in land has been devised by the will of the deceased owner to a 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 relevant vesting order.

137 Disposal of uneconomic interests

- (1) Notwithstanding anything in subsection four of section one hundred and thirty-six hereof the Court shall not vest in the beneficiary or in any person other than the Māori Trustee any interest which, together with any other interest in the same land owned by that beneficiary or other person, would constitute an uneconomic interest (as that term is defined in subsection three hereof), unless:
 - (a) That interest has been specifically devised to the beneficiary by the will of the deceased owner; or
 - (b) The Court is of opinion that the interest either by itself or in conjunction with any other interest in the same or in any other land would, if a partition order were then made, provide for the beneficiary or other person as aforesaid an area of land that would be suitable for use and would in fact be used within a reasonable time as a site for a dwelling for his own occupation

or for occupation by any other Māori or descendant of a Māori or, on the making of a partition order as aforesaid, would provide for such beneficiary or other person as aforesaid an area of land that would, within a reasonable time, be otherwise capable of use with advantage to the owner as a separate unit of occupation or production; or

- (c) The Māori Trustee, pursuant to section one hundred and thirty-nine hereof, declines to accept that interest.
- (2) The Court shall vest in the Māori Trustee all interests that cannot be disposed of in accordance with section one hundred and thirty-six hereof or the foregoing provisions of this section, and with the consent of the beneficiary may vest any other interest in the Māori Trustee.
- (2A) Where the Māori Trustee has agreed to dispose of any interest which, in accordance with subsection (2) of this section, is to be vested in him, any order made under that subsection may vest the interest in the person nominated in that behalf by the Māori Trustee as the person to whom he has agreed to dispose of the interest.
- (3) For the purposes of this section, and generally for the purposes of this Part of this Act, the expression uneconomic interest means a beneficial freehold interest the value of which, in the opinion of the Court, does not exceed the sum of twenty-five pounds.

- 22. Tokaanu Township 12 Sections 1 & 2 Block VIII—These sections are vested in Christine Rewa Panapa, Mark Whitiketike Asher, Michael Southton and Kapara Kevin Mariu as responsible trustees for the Paekitawhiti Asher Trust. The current title is 511580. It is subject to a lease in favour of Thermal Trout Limited on leasehold title 1179494.

Previously these sections along with sections 3, 4 and 5 were managed by the Māori Trustee as responsible trustee on title WNA1/92. There were several leases over the sections managed by the Māori Trustee, including a lease in favour of DW Davis and MCM Davis for a term of 21 years from and including 1 January 1959 (leasehold title 828/84) of sections 1, 2 and 4.

Since that time, sections 1 and 2 have had several lessees with the current lease being held by Thermal Trout Limited trading as Oasis Motels Tokaanu. On 25 January 2010 the title notes that these sections were released from the provisions of the Māori Reserved Land Act 1955.

Details of subsequent Orders affecting lands to which this application relates

- 23. Given the recommendation below, consequential orders have not yet been identified. They will be completed if the Court requires the consequentials to be done.

Details of payments made as a result of the Order

- 24. Not applicable.

Reference to areas of difficulty

25. This application took place over several years in which regular sittings were held to progress the succession. Our records show the succession was the subject to a rehearing and also had an appeal filed against the initial decision both of which were withdrawn. On this basis I submit that there is no error because:
- a) the Court was applying its discretionary powers under section 136, Māori Affairs Act 1953 in determining the successors;
 - b) the affected parties were given many opportunities to file submissions in this matter;
 - c) the Court gave the affected parties an opportunity to consider an arrangement in relation to the uneconomic interests;
 - d) if the lands were to be divided between all the entitled people who were alive at that time then few, if any lands, would be economic and would be lost to the owners;
 - e) no objections were made by the parties to Section 4 Block 4 being left to the Catholic Church as that was the faith of the deceased.
26. Given the extensive evidence presented to the Court, I further submit that this matter should not be relitigated and should be dismissed.

Consideration of whether matter needs to go to full hearing

27. It appears an error was not made. However, due to the age of the application it has been set down for hearing on 18 December 2024.

Recommendation of course of action to be taken

28. If the Chief Judge is of a mind to exercise her jurisdiction, then it would be my recommendation that:
- a) A copy of this report be sent to those affected parties, for whom we have contact **details for, giving them an opportunity to comment or respond, in writing, by midday 11 December 2024, prior to the sitting on 18 December 2024.**
 - b) If no objections are received, then the application be dismissed.
 - c) If objections are received then the matter should be referred to the Chief Judge for directions.

Ko te hātepe ture o te tono nei

Procedural history

[3] The application was first heard on 18 June 2024 and was adjourned for the completion of further research and the Registrar's Report.³ A further adjournment was granted on 24 September 2024.⁴

[4] The final hearing was held on 18 December 2024.⁵ After hearing from the parties, I reserved my decision.⁶

[5] The application file was referred to me for my reserved decision on 4 March 2025.

Te kēhi a ngā kaitono

The case for the applicants

[6] In summary, the applicants stated in the application that the Asher line is overrepresented in the orders for succession to the deceased. The applicants believe that the orders do not reflect the wishes of the wider whānau of the deceased – namely the deceased's other descendants through Taiaha Paurini and Parati Paurini. The orders are further challenged based on the value of the shares for the blocks. Reference was made, as an example, to Part Tokaanu Township No 12 Sec 1 & 2 Block VIII (Block ID 18970) – the land upon which Oasis Motel sits – which was vested in Paekitawhiti Asher. Issue was also taken with the manner in which the Catholic Church block – Tokaanu Township Section IV Block IV (Block ID 18982) – was vested in Bishop J M Liston.

[7] They claim an injustice has arisen because of the orders made, as many people who were alive at the time and were entitled missed out. It was alleged that those who prosecuted the application had been allocated land unfairly to the detriment of other whānau. The applicants produced a series of whakapapa charts with the application.

[8] At the hearing in December 2024, Ms Dickinson presented her written submissions dated 11 December 2024 in support of the application. She submitted, inter alia, that only Paekitawhiti Asher, along with Paekitawhiti's son John Takakopiri Asher and Paekitawhiti's

³ 2024 Chief Judge's MB 1040–1044 (2024 CJ MB 1040-1044).

⁴ 2024 Chief Judge's MB 1683 (2024 CJ MB 1683).

⁵ 2025 Chief Judge's MB 438–454 (2025 CJ MB 438–454).

⁶ At 454.

grandson John Paurini Karamu Asher benefited from the division of land interests. She argued that there were other members of the Paurini whānau living in the Tūrangi area, but they were not selected to benefit from the share and block division. She noted at the hearing that her mother lived in Taumarunui at the time the orders complained of were made. She had eight siblings. She was a sister to one of the people in whom the Waituhi Kuratau block was vested. Her mother received no interest. Ms Dickinson further contended that Wairingiringi Hallet was omitted, yet her son Te Peeti Hallet was included.

[9] Ms Dickinson queried the valuations, or lack thereof, of the shares in the blocks. She suggested a possible value for Part Tokaanu Township No 12 Sec 1 & 2 Block VIII (Block ID 18970) based on, it appears, the total number of shares in the block.

[10] She further submitted that Bishop J M Liston be removed as an owner of Tokaanu Township Section IV BLK IV (Block ID 18982), on the grounds that:

- (a) the Bishop has no whakapapa to the land or the deceased;
- (b) the whenua is sacred to them; and
- (c) it is not in line with the Preamble of the Act that the Bishop be on the title.

[11] Ms Dickinson was supported by Fahran Whippy or Fahran Kohine Rawhiti. She is a descendant of Horonuku Tūkino and others. She was particularly concerned about the marae and the church. She did not agree with the share and block division at the hearing. In earlier correspondence dated 11 December 2024, she claimed the orders were erroneous because the decisions regarding distribution were made at a meeting between JW Steedman and JT Asher, without the descendants of Tupu Parati (Paurini), Takarea Te Heuheu and others present. She wanted the whakapapa clarified so that there was a fairer distribution. She was accompanied by Mark O'Regan, the owner of the Oasis Hotel.

[12] Opa Asher also spoke at the hearing. She is of the Steedman and Asher whānau. She was convinced that some people who were entitled missed out as a result of the orders but produced no evidence in support.

[13] Ms Dickinson claimed that the respondents were not of the Paurini whānau.

Te kēhi a te kaiurupare*The case for the respondents*

[14] Jim Southon responded by supporting the Registrar's Report, which recommended the dismissal of the application. He essentially contended that as the division of shares and blocks was well discussed by the community and the Court at the time of the orders, and the matter should be left there. He also noted that those involved were members of the local tribal committee. He contended that the most valuable shares were in the Waituhi Kuratau block. He submitted that those shares must have gone to those owners following negotiations among the Paurini whānau and queried why only those who prosecuted the application were being targeted. He considered that there was a fair distribution of shares based on value and the people involved at the time.

[15] Hugh Southon supported his brother, Jim. He noted that the leadership of the Tokaanu community in the 1960s were those who prosecuted the application leading to the orders complained of, although he used their European names.

Te ture*The law*

[16] 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 and has been well rehearsed in several judgments. However, for the benefit of the parties, I repeat a summary of the law so as to assist them in understanding this jurisdiction. Section 44(1) provides as follows:

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.

...

[17] In *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)* the principles to be applied in determining applications made pursuant to s 45 were listed as follows:⁷

- (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;
- (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 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.

[18] 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.

[19] As stated in *Tau v Nga Whanau o Morven & 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

⁷ *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)* [2009] Chief Judge's MB 209 (2009 CJ 209) at [15].

into account the nature and gravity of the matter at issue.⁸ This means that the applicant must establish on the balance of probabilities that there was a mistake or omission.

[20] The Court of Appeal has confirmed that the power under s 44(1) falls into two parts:⁹

... 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. ...

Ngā take

Issues

[21] As required by s 44(1), the issues for determination are:

- (a) Whether there was any error, mistake or omission made on the part of the Court in the presentation of the facts of the case to the Court; and if so
- (b) Whether it is necessary in the interests of justice to remedy the mistake or omission.

Was an error made?

[22] It is clear that with respect to the division of shares and blocks, the Court was entitled to give effect to any arrangement reached subject only to the limitations of the relevant legislation at the time. This was provided for at the time in s 136(2)(c) of the Māori Affairs Act 1953. The Court could do this with or without the consent of any potential successor, so long as the Court was satisfied that the arrangement was fair and equitable and was not contrary to the interests of the beneficiaries or other people concerned.

[23] I note that the first decision of the Court was made on 2 July 1969.¹⁰ Following this, Mr Steedman applied for a rehearing. An appeal was also filed in the name of Parehuia

⁸ *Tau v Nga Whanau o Morven & Glenavy – Waihao 903 Section IX Block* [2010] Māori Appellate Court MB 167 (2010 APPEAL 167) at [61].

⁹ *Inia v Julian* [2020] NZCA 423 at [10].

¹⁰ 49 Tokaanu MB 103–104.

Steedman. The rehearing was granted and heard on 25 September 1969.¹¹ The Court minute records that Mr Steedman threatened to take the matter to the Māori Appellate Court.¹² The Court also notes that the matter had been discussed at a meeting held at the “Trust Hall” in Tokaanu on 12 September 1969 between Mr Asher and Mr Steedman. The Court minutes indicate that there was a further meeting of the Paurini whānau held in the “Trust Hall” on 22 September 1969 to consider the matter of succession.¹³ There were six people present, namely Paekitawhiti Ngakuru (alias Asher), Ngahiiti Te Ao (alias Te Rangi), Edward Turanga Paurini, Hohepa Pourini, Parehuia Tupu Paurini, and John Takakopiri Asher. Those present agreed to the scheme of distribution reflected in the orders complained of, including the gift to the Bishop. Other blocks in the estate were awarded to the Maniapoto and Wairoa whānau.¹⁴

[24] Given this amount of activity in Tokaanu and the number of whānau involved, most people who “missed out” when the orders were made could have appealed the decision or sought a rehearing. They did not do so, and it is now too late to contend that they did not know about it and/or should have been included.

[25] As set out at [17] above, 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. Based on the evidence before me, I am not satisfied that the applicants have demonstrated that the evidence before the Court when the orders complained of were made was incorrect.

[26] Therefore, I find there is insufficient evidence to support the position of the applicants and those challenging the orders. There is also no independent expert valuation evidence produced by the applicants. Unfortunately, and as a result, they have not met the required balance of proof to demonstrate there was an error, mistake, or omission in the division of the shares and blocks or in the valuation process that was adopted by the Court.

¹¹ 49 Tokaanu MB 189–191.

¹² 49 Tokaanu MB 189.

¹³ 49 Tokaanu MB 190.

¹⁴ 49 Tokaanu MB 191.

[27] In addition, I note the Court was faced with the possibility that should the shares be divided between too many successors, the value of those shares would become uneconomic. That was a matter identified by the Judge in his first decision when he stated the following:¹⁵

There are several interests to succeed to but none of these individually are sufficiently valuable to have many successors. The position today is that the aim must be to obtain consolidation not separation or fragmentation, otherwise lands will be lost to the owners. To ensure that the interests are retained a practical solution must be sought. If in making a Determination the Court goes down to living issue, few if any interests will be economic. The practical solution is to make a Determination on the two whakapapa's filed and agreed upon by Mr Asher and Mrs Healey. Then effect will be given to the agreement reached by them at the sitting in March 1964. There have been several hearings since then but nothing has really been added to upset the agreement, although some evidence has been offered in extension of the whakapapa. All people likely to be interested have had ample opportunity to be heard by the Court.

[28] Uneconomic shares were classified as shares valued at less than £10 pounds under s 136 (2)(d) of the Māori Affairs Act 1953. Section 137 of that Act provided for the vesting of uneconomic shares in the Māori Trustee. I also note that the decision reached by the Court avoided this possibility. That was the law in 1969 and I cannot change the outcome unless an error was made, and that has not been established in this case.

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

[29] Having found there was no error, mistake, or omission in the making of the orders complained of it is not necessary to decide this issue.

Kupu whakataurua

Decision

[30] The application is dismissed on the grounds that the applicants have not been able to prove, on the balance of probabilities, that there was an error, mistake, or omission in the making of the orders recorded at 49 Tokaanu MB 187–191 dated 25 September 1969 concerning succession to Paurini Paengahuru.

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

¹⁵ 49 Tokaanu MB 103.

I whakapuaki i te 3.00 pm ki Te Whanganui-a-Tara, rua tekau mā iwa o ngā rā o Ākuhata i te tau 2025.

Pronounced at 3.00 pm in Wellington on this 29th day of August 2025.

C L Fox
CHIEF JUDGE