

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

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

AP-20230000021529

A20230009224

CJ 2023/28

WEHENGĀ
Under

Section 45, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Otutahuna No. 3

NĀ
By

LYNETTE ROSEMARY DIXON
Te Kaitono
Applicant

Kōtitanga: 18 March 2026, 2026 Chief Judge's MB 625-632
Hearing (Heard at Wellington via zoom)

Whakataunga: 29 April 2026
Judgment date

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

Hei tīmatanga kōrero

Introduction

[1] This application is filed by Lynette Rosemary Dixon (“the applicant”), pursuant to s 45 of Te Ture Whenua Māori Act 1993 (“the Act”), and it seeks an order under s 44 to amend succession orders made on 1 July 1940 at 8 CNBI 51-53 in relation to Peka Rata also known as Pea Rata.

[2] The applicant claims that the 1940 order is incorrect due to a mistake, error, or omission on the part of the Court because her grandfather, Toko Kepa Rata, did not receive his entitlement in Otutahuna No. 3.

Kōrero whānui

Background

[3] The Registrar’s Preliminary Report and Recommendation (the Registrar’s Report), dated 19 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 Lynette Rosemary Dixon (“the applicant”), seeks to amend succession orders made at 8 CNBI 51-53 dated 1 July 1940 in relation to Peka Rata alias Pea Rata.

[2] The applicant claims the orders are incorrect due to a mistake, error, or omission on the part of the Court, stating that:

Toko Kepa Rata did not receive his entitlement to Otutahuna 3.

Instead Henare Tia Keepa, Rapata Tito and Tiuka Huirua Tito was granted a Certificate of Title on 19 June 1940, 12 days before the Succession Orders were adjudicated and awarded to Toko Kepa solely.

[3] The applicant claims that her whānau have been adversely affected because their connection to the whenua “has been extinguished thereby displacing the direct descendants without their entitlement.”

He kōrero tuku iho

Background

- [4] Succession to Peka Rata was heard by the Court at 8 CNBI 51-53 dated 1 July 1940 where various land interests were vested in the children of her brother Te Kepa Rata. An extract of the minute at 8 CNBI 53 records that shares in Otutahuna 3 were vested in Toko Kepa Rata from Peka Rata and his brother Pomare Kepa Rata.

Handwritten notes:

~~Succession to Peka Rata 1.10.40~~
 Otutahuna 3 7.10.40
 18.10.40
 to:- Toko Kepa Rata ma Satey 18.10.40

Handwritten notes:

Pomare Kepa Rata. dead. Otutahuna 3. (10.9.40)
 20/10/40
 to:- Toko Kepa Rata ma Satey

- [5] A copy of the order, where Toko Kepa Rata succeeded to Peka Rata, is reproduced below.

B.L.C.-14

SUCCESSION ORDER
(Rule 51.)

Handwritten: Handed 1/10/40

The Native Land Act, 1931.

CON. B. 1. 8/52-Sub 19/190
 IN THE NATIVE LAND COURT
 OF NEW ZEALAND,
 TOKOPU DISTRICT.

Block

OTUTAHUNA 3

In the matter of the above-mentioned land, and of the interest of
 PEKA RATA alias PEA RATA
 deceased, therein.

At a sitting of the Court held at Otaka
 on the 1st day of July, 1940,
 before Frank Oswald Victor Acheson, Esquire, Judge.

It is hereby determined that⁽¹⁾

Toko Kepa Rata m.

1. the persons entitled to succeed to the interest of the above-named deceased in the said land, and it is hereby ordered that the said interest shall vest in the above-named successors, ~~solely~~ *equally or in the shares set out after the name of each* above-named successor, ~~solely~~ *equally or in the shares set out after the name of each* respectively as from the 22nd day of August, 1940.

From CHARGED: Maurice Vincent Bell, Commissioner.
 As witness the hand of the Judge and the seal of the Court.

Handwritten: M. Bell
 Commissioner

Ngā kōrero taunaki

Supporting or other information

- [6] The applicant has provided the following documents in support of her application:
- a) Whakapapa as set out below:

Te Kepa Rata and Pae Hori Kingi were our great grandparents.
 Peka Rata aka Pae Rata was our great grandaunt.
 Te Toko Kepa Rata and Makiari Karena Kepa were our grandparents
 Taruke James Mervin Kemp and Merepaea Kemp were our parents

- b) Copy of the death certificates for Toko Kepa Rata (deceased 9 March 1977) and Makiari Kemp.
- c) Copy of death certificates for Taruke James Kemp and Merepaea Kemp
- d) Copy of the birth certificate for Lynette Rosemary Kemp.
- e) Certificate of Title (NA726/230) for Otutahuna No.3 issued on 19 June 1940. The document records a transfer dealing (192131.1) to Henare Tia Keepa, Rapata Tito and Tiuka Huirua Tito dated 30 September 1975.

Te rangahau a te kooti

Court research

- [7] There are various Court documents which record Toko Kepa Rata as an owner in Otutahuna No.3, including the succession order schedule below.

Otutahuna No 3

SUCCESSION ORDER SCHEDULE

N.B.—The succession order itself should be referred to for search purposes.

Division.	Deceased.	Date.	Successors.	Sex, Age.	Int.
	<i>Peka te Rata</i> <i>C.B. 8/52. 22. 8. 34.</i> <i>Wb 19/90</i>	<i>1. 7. 46</i>	<i>Toko Kepa Rata</i>	<i>m</i>	<i>Solo.</i>
	<i>Pomare Keepa Rata</i> <i>C.B. 8/52. 22. 8. 34.</i> <i>Wb 19/90.</i>	<i>1. 7. 46</i>	<i>Toko Kepa Rata</i>	<i>m</i>	<i>Solo.</i>
<i>Exchange Order</i>					
	<i>Whole interests of</i>	<i>29.8.46</i>	<i>vested in</i>		
	<i>Henare Keepa Rata @</i>	<i>1 5/16</i>	<i>2 Toko Kepa Rata @ Toko Keepa</i>	<i>m</i>	<i>Solo</i>
	<i>Pera Keepa Rata @ Pera Keepa</i>	<i>1 5 5/16</i>			
	<i>Likiriri Keepa Rata @ Lia Keepa</i>	<i>5 7</i>			
	<i>Te Iwiringaro - @ Iwiringaro</i>	<i>1 5 7</i>			
	<i>Waara - @ Waara Keepa</i>	<i>1 5 7</i>			
	<i>Hgarani Tano Keepa @ Hgarani Tano</i>	<i>1 5 21</i>			
	<i>Te Kirikiriki - @ Kirikiriki</i>	<i>1 5 21</i>			
	<i>Te Kirikiriki Keepa @ Kirikiriki</i>	<i>1 5 21</i>			
	<i>Wb 23/19</i>				

- [8] Toko Kepa Rata is no longer an owner in Otutahuna No. 3 because the block was sold in 1975.

Otutahuna No. 3 sold to the Hatoi No. 1 Trust

- [9] At 50 Whangarei MB 368-369 dated 22 May 1975 an order issued confirming the resolution of assembled owners to sell Otutahuna No. 3 to the Hatoi No. 1 Trust for “the sum of the latest special Government valuation plus 15% thereof.”
- [10] A copy of the above minute and order are noted in the List of Documents attached to this Report, along with the Management Structure Details report for the Hatoi No.1 Ahu Whenua Trust.
- [11] Also attached is a copy of the Otutahuna No.3 Schedule of Ownership Orders from 24 November 1958, where Toko Kepa Rata is recorded as an owner, to 22 May 1975, where the Hatoi Trust is recorded as the sole owner.

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

- [12] There are no subsequent orders affected by this application

Te utunga nā te putanga o te ōta

Payments made because of the order(s)

- [13] There are no issues as to payments made as a result of the orders complained of.

Ngā āhuatanga i rararu ai

Areas of difficulty

- [14] The applicant claims that Henare Tia Keepa, Rapata Tito and Tiuka Huirua Tito were granted title to Otutahuna No.3. The Certificate of Title for Otutahuna No.3 issued on 19 June 1940. The document records a transfer dealing (192131.1) to Henare Tia Keepa, Rapata Tito and Tiuka Huirua Tito dated 30 September 1975.

Āe rānei, he take o tana haere ki tētahi kootitanga

Consideration of whether matter needs to go to hearing

- [15] The Court records does not support the applicant's claim that Toko Kepa Rata “did not receive his entitlement” in Otutahuna No. 3, at 8 CNBI 51-53 dated 1 July 1940,
- [16] The Court record (minutes, orders, succession order schedules) indicates that Toko Kepa Rata did receive shares in Otutahuna No. 3, from succession to Peka Rata alias Pea Rata.
- [17] However the Otutahuna No.3 shares were sold at 50 Whangarei MB 368-369 dated 22 May 1975 and are now administered by the Hatoi No.1 Ahu Whenua Trust.
- [18] Section 48(1) of Te Ture Whenua Māori Act 1993 provides that “No order made by the Chief Judge under section 44 of this Act shall take away or affect any right or interest acquired for value and in good faith.”
- [19] A Court hearing is still necessary to afford parties an opportunity to be heard and present their case. The application has been set down for hearing, via Zoom at 1.15pm on Wednesday 18 March 2026.

Te tūtohunga hei whai

Recommendation of course of action to be taken

[20] 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 Report) be sent to parties, for whom we have contact details for, giving them an opportunity to comment or respond in writing by 4pm on Thursday 12 March 2026.
- b) As it has not been proven that an error was made at 8 CNBI 51-53 dated 1 July 1940, the application should 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

[4] A copy of the Registrar's Report was distributed to parties for whom contact details were held on 19 February 2026.

[5] On 9 March 2026, an email was received from Peara Pearl Mamae who objected to the Registrar's Report on the basis that the recommendation to dismiss the application lacked evidence.

[6] The hearing of the application took place on 18 March 2026.¹

[7] At the hearing Peara Pearl Mamae spoke for the applicant. She stated that:²

Right, if we go back to the dates that were presented in 1934 it was when Peka Rata had passed. In 1934 Peka had given her shares or her gifts to Toko Rata Kepa. In 1940 he was taking steps – sorry in 1946 he was taking steps to gather all the shares together. He wanted to, I forget the word that you use when you get shares or gift shares from the other people in that block, well he was undergoing that process and that is clear in the report or in the evidence or the paperwork that was given.

Now, if we have a look at the dates there seems to be a date that is in question which was June 1940 where the three who are on the certificate of title went for this to be titled before the Court sitting in July first. Now that in itself tells me that oh hang on this person had already gone to Court, got the certificate of title, sorry the person had already gone to the land registry and registered his name or their names on the certificate of title before the Court had already given it in July 1940.

Now, that's telling me these people went ahead and put their names down and they also went to the Taitokerau Māori Trust Board on the same date they issued

¹ 2026 Chief Judge's MB 625-632.

² 2026 Chief Judge's MB 627.

that certificate of title to these three people. Where is the evidence that they were entitled? There is none. That's why I say Toko Kepa Rata did not get his shares or his gifts and that he was in the process of acquiring that block. You've got the one person, his name was Henare Tia Keepa stating that his father has relinquished all rights to any further block because he got another block, and he thought that that was enough shares for him. Instead, you find that his son's name is on that certificate of title. There's a lot of questions that need to be addressed. There seems that a lot of paperwork that's gone astray.

[8] Prior to the hearing, Ms Mamae filed 138 questions that she wanted answered. When she raised this at the hearing, I reminded her that it is not the Court's job to answer questions, rather it's job was to hear the case for the applicant.

[9] I did say I would explain some matters relevant to the application in my judgment. I attempt to do so here.

[10] A Crown grant is a document that records the transfer of land from the Crown to a private individual. Most Māori land was not derived this way although there are pockets where such grants were made. Most Māori land titles was once owned by Māori collectively, and in accordance with custom. When the Native Land Court was constituted, it investigated such titles. It then made orders recording the names of the owners. Certificates of title were later issued recording that ownership.

[11] From 1905, Māori Land Boards took over the administration of Māori land. The Otutahuna block was subject to certain restrictions prior to revesting in the owners in 1915. The block was later vested in the Taitokerau Māori Land Board.

[12] A Certificate of Title for the Otutahuna No 3 block was issued under the authority of Part XIV of the Native Land Act 1931. That Part of the 1931 Act was entitled "Native Land for European Settlement" and the land was vested on trust for the benefit of owners in the Taitokerau Māori Land Board. From 21 July 1939, the Otutahuna No 3 block became subject to the Native Land Amendment Act and Native Land Claims Adjustment Act 1929. This was the legislation that authorised Sir Apirana Ngata's land development schemes.

[13] The land was then transferred to the Māori Trustee on trust for the owners by virtue of s 7 of the Māori Land Amendment Act 1952. That legislation abolished the Māori Land Boards and transferred the land vested in the Boards to the Māori Trustee. This transmission

occurred on 5 November 1954. Then the land was leased to Edward Hugh Bill for 21 years from 1 February 1973, registered on 21 August 1974. The final transmission of ownership was registered on 30 September 1975 in favour of Henare Tia Keepa, Rapata Tito and Tiuka Huirua Tito.³ This change in ownership occurred following a meeting of owners discussed in the Registrar's Report. The current Record of Title records the names of these owners, whilst noting the land is subject to trust and naming the trustees as Ngaro Waetford, Rama Tito, Syd Diamond and Teihi Tito.

Ngā Ture

The Law

[14] 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.

[15] In *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)*, the principles to be applied in determining such applications made pursuant to s 45 are set out as follows:⁴

- When considering s 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);
- Section 45 applications are not to be treated as a rehearing of the original application;

³ See Transfer 192131.1.

⁴ *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)* [2009] Chief Judge's MB 209 (2009 CJ 209).

- The principle of *Onia 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 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.

[16] 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 that was not available or not known of at the time the order was made, or through submissions on the law.

[17] 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.⁵ This means that the applicant must establish on the balance of probabilities that there was a mistake or omission.

⁵ *Tau v Nga Whānau o Morven & Glenavy – Waihao 903 Section IX Block* [2010] Māori Appellate Court MB 167 (2010 APPEAL 167).

[18] The Court of Appeal has confirmed that the power under s 44(1) of the Act falls into two parts:⁶

The first is an evaluative decision as to whether the order made was “erroneous in fact and 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

[19] 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?

Te uiuinga tuatahi

Issue 1 – Was there an error?

[20] My jurisdiction under s 44 is restricted to analysing whether a mistake or error was made in the presentation of facts to the Court or in the law, or in the order complained of. In this case I agree with the Registrar's Report that the Court record does not support the applicant's claim that Toko Kepa Rata “did not receive his entitlement” in Otutahuna No. 3, at 8 CNBI 51-53 dated 1 July 1940. He clearly did receive shares.

[21] Those Otutahuna No.3 shares were sold following a meeting of owners and the alienation resolution of the owners was approved by the Māori Land Court as recorded at 50 Whangarei MB 368-369 dated 22 May 1975. The block is now administered by the Hatoi No.1 Ahu Whenua Trust.

⁶ *Inia v Julian* [2020] NZCA 423 at [10].

[22] Therefore, I find that the applicant has been unable to demonstrate on the balance of probabilities that an error was made.

Te uiuinga tuarua

Issue 2 – Is it necessary in the interests of justice to correct the error, if one exists?

[23] As the applicant has not been able to establish there was an error on the balance of probabilities, there is no need to address this issue.

Kupu whakataunga

Decision

[24] The application is dismissed.

[25] A copy of this decision is to be distributed to all parties.

I whakapuakina i te 2.00 pm i Te Whanganui-a-Tara, i rua tekau mā iwa o ngā rā o Āperira i te tau 2026.

Pronounced at 2.00 pm in Wellington on this 29th day of April 2026.

C L Fox

CHIEF JUDGE