

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

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

**AP-20230000027587
A20220017909
CJ 2022/49**

WĀHANGA <i>Under</i>	Section 45, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Succession to Ra Herewini also known as Ratutonu Herewini Hona
NĀ <i>By</i>	DAYLE HEREWINI Te Kaitono <i>Applicant</i>

Nohoanga: <i>Hearing</i>	11 August 2023, 2023 Chief Judge’s MB 469 5 December 2023, 2024 Chief Judge’s MB 63-71 (Heard at Wellington via Zoom)
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Whakataunga: <i>Judgment date</i>	3 September 2024
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TE WHAKATAUNGA Ā KAIWHAKAWĀ MATUA C L FOX
Judgment of Chief Judge C L Fox

Hei tīmatanga kōrero

Introduction

[1] On 25 November 2022, Johnstone Ra Herewini filed this application seeking an order to cancel or amend the order of the Māori Land Court made on 30 April 1974 relating to the succession of Ra Herewini also known as Ratutonu Herewini Hona who died in 1972.¹

[2] On 28 August 2023, Amanda Herewini, daughter-in-law of Johnstone Ra Herewini advised that he passed away on 4 July 2023 and that his son, Dayle Herewini, would like to carry on with the proceedings. The proceedings were amended in accordance with s 71 of Te Ture Whenua Māori Act 1993 at hearing to recognise Dayle Herewini as the applicant.

Kōrero whānui

Background

[3] The Registrar's Preliminary Report and Recommendation dated 9 August 2023 sets out the background to the application. The report is reproduced in full as follows:

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

Introduction

1. This application, filed by Johnstone Ra Herewini on 25 November 2022, seeks to cancel the succession order made at 8 Kaikohe MB 104-105 on 30 April 1974 relating to the succession of Ra Herewini or Ratutonu Herewini Hona.
2. The applicant is the son of the deceased. He claims that the order is incorrect due to a mistake, error, or omission in the presentation of the facts of the case to the Court.
3. The applicant claims that his mother succeeded to his father's land interests and then gifted her interest in Kaikou C1A1B to his sister Hine Jean Herewini and her partner Darcy Harding (Henry Herbert Harding).
4. The applicant claims that he is adversely affected by the order because he was brought up on the farm, and to have the land taken away from him and his sons would go against his father's kōrero, "korero tuku iho", and the Act.

Concise history of Order sought to be amended/cancelled

5. The succession to the deceased was heard on 30 April 1974. Below is minute of the proceedings:

Rakuira Herewini applicant sworn. Deceased my husband. Known as Ra Herewini or Ratutonu Herewini Hona. Died 19 April 1972 at Middlemore

¹ 8 Kaikohe MB 104-105 (8 KH 104-105).

Hosp. I attended burial. No will. No property requiring administration.
Legally married.

Order 78A/67

Kaikou C1A1B - \$1160) Rakuira Herewini
Maungapohatu Nth - \$5.33) 80 Settlement Rd
Motatau 3T - \$3.47) Papakura
Order 32/53 Ben Card 948, 21917 to applicant

6. An order was sealed vesting in Rakuira Herewini² solely the above Māori Land interests of the deceased.

Court Research

7. The application for succession to the deceased was filed by Gerald Hiku on behalf of Rakuira Herewini on 21 February 1974. A copy of the application is reproduced below:

M.L.C. 86

APPLICATION FOR SUCCESSION TO DECEASED OWNER IN MAORI LAND.
The Maori Affairs Act 1953, sections 135 to 137
The Maori Reserved Land Act 1955, section 18

In the Maori Land Court
of New Zealand,
Taitokerau District.

**MAORI LAND COURT
WHANGAREI
21 FEB 1974
RECEIVED
TOKERAU DISTRICT**

RATUTORU HEREWINI (alias *Roo ota HEREWINI*), deceased.
(give all known aliases, including maiden name if a married woman)

I hereby apply to the Court to determine the names and shares of the persons legally entitled to succeed to the interests of the above deceased in Maori freehold lands and Maori reserved lands and to dispose of the said interests by vesting orders according to law. The following particulars are true and correct to the best of my knowledge and belief:

- Deceased died on *19-4-72*.
- Deceased normally lived at *83 Settlement Rd. Papakura*.
- Deceased was a male/female aged *68* years or thereabouts.
- Deceased left no will or
Deceased left a will, probate of which has been granted by/applied for in the Maori Land/Supreme Court at
(N.B.- If probate was granted by the Supreme Court, it must be produced at the hearing of this application.)
- Deceased left no issue or adopted children, and attached hereto is a whakapapa (family tree) showing all deceased's relations of the full or half blood or by adoption and a list of their full names and addresses, or Deceased left issue or adopted children, whose names and addresses are set out on the back hereof.
- None of the issue of the deceased were adopted by other persons during deceased's lifetime, or
N.A. The issue of the deceased whose names are shown on the back hereof were adopted by other persons during deceased's lifetime.
- Deceased left no widow or widower, or
Deceased left a widow/widower whose full name and postal address is:
RAKUIRA HEREWINI 80 Settlement Rd. Papakura
- The deceased's land interests to which this application relates are:
KAIKOU C1A1B and others
MOTATAU 3T

Dated the *18th* day of *February* 1974
Applicant (full name): *Gerald Hiku on behalf of widow*
Full postal address: *Whakapapa Rd. 204 RD*

Fee: \$3.

Notes: 1. Strike out words which do not apply.
2. Add further details on separate sheet if necessary.
3. Complete the back hereof.
4. The applicant or a solicitor acting is required to attend to prosecute the application at the Court sitting when it is set down for hearing. If an adjournment to some other sitting is required it may be applied for by letter.

Applications under these sections may only be made where the deceased died before 1 April 1968.

MAORI LAND COURT
Fee £
Paid *21/2/74*
Rec. No. *36825*
Serial No. *3959*

21-2-74

The blocks

8. Henry Herbert Harding and Hine Jean Herewini are the current owners of the block Kaikou C1A1B as to a 0.500 share each out of a total of 1.000 shares.³
9. Rakuira Herewini is a current owner of Maungapohatu North with 13.8 shares.

² Rakuira Herewini's name was corrected to Akuira Herewini pursuant to s 60A of the Māori Affairs Act 1953 at 14 Kaikohe MB 95-97 on 1 October 1984.

³ CFR 410038 North Auckland.

10. On 23 December 1974, Motatau 3T was amalgamated into the Ngatihine Block pursuant to s 435 of the Māori Affairs Act 1953.⁴
11. The Ngatihine block had undergone several partitions. Motatau 3T is now part of Ngatihine H2B. Currently, Rakuira Herewini holds 193 shares in Ngatihine H2B.

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

12. The applicant submitted a letter dated 22 November 2022. He wrote that sometime in 1967, the deceased, in the presence of his mother, verbally left the care of the lands to him never to be sold in any way and in any form:

I Johnstone Rā Herewini the eldest son the Puti Akuira Herewini and Te Ra Tutonu Herewini/Hona filing for injunctions ref, for the sale of all of my father's Freehold lands. To stop any transfer of all of my fathers lands from Māori free hold to General land.

Last to apply for a succession under the lore of Tuko Io which is given verbally, history, heritage and whakapapa.

In the year 1966 I enlisted into the NZ Army, the following year Nov 1967 I was posted to Malaysia, on my two weeks leave prior I spent that time with my father and mother, it was at this time my father gave me his blessings, and also quoted to me the ancient lore of Tuku I.O stating that all his land are now in my care, never to be sold in any way shape or form, our mother was present when I was being given this information by our father. It was then mum said that from me and my three younger siblings, that all our after birth was buried under the largest tree down by our swimming area. Dad then asked me what I remembered about our farm, I said I remembered our four horses. Tony and Prince being our two draft horses, Nelly being the farm hack, and White Socks, being dads race horse, then I mentioned how Dad played the trumpet during the hot summer nights.

Last being bought up by his mum, Ngawaiaora, she, or we lived in a nikau house. I remember the chickens walking through the wall and waking me up by their pecking, funny that, I was five years old, or there abouts, but I remember a lot of things after talking about it with our mum and dad.

However getting back to what my older sister is claiming that our mother gifted to her and her boyfriend, who by the way is no relation, doesn't make sense as our mother was present when Dad stated the Lore, giving the Heritage, History, Whakapapa, our mother has no say in the matter.

13. In support of the application, the applicant submitted copies of the following minutes:
 - (a) 15 Kaikohe MB 308, 27 February 1987 – confirming the transfer of Kaikou C1A1B to Harding and Herewini
 - (b) 14 Kaikohe 95-97, 1 October 1984 - hearing conducted on the application of confirmation of transfer of Kaikou C1A1B to Harding and Herewini
 - (c) 8 Kaikohe 105-106, 30 April 1974 – succession to Ra Herewini
 - (d) 32 Whangārei 229-230, 17 August 1960 – partition of Kaikou C1A1

⁴ 50 Whangārei MB 292 (50 WH 292).

Details of subsequent Orders lands to which this application relates affecting

14. On 21 August 1984, Rakuira Herewini, in consideration of natural love and affection, and by way of gift, executed a memorandum transferring Kaikou C1A1B in favour of Henry Herbert Harding and Hine Jean Herewini. The transfer was confirmed on 27 February 1987 at 15 Kaikohe MB 308.
15. Below are the events surrounding the confirmation of transfer of Kaikou C1A1B to Henry Herbert Harding and Hine Jean Herewini:
 - a. On 4 September 1984, Henry Herbert Harding and Hine Jean Herewini applied for the confirmation of the transfer of the block in their favour.
 - b. On 1 October 1984, Judge McHugh heard from Akuira Herewini and Hine Jean Herewini. The proceedings were adjourned to enable the applicants to present details of the value of the block:⁵

Akuira Herewini: I am the sole owner of Kaikou C1A1B. Jean Herewini is my daughter. They are residing on the land. I wish to gift to them. I wanted to give land to my grandchildren and have my daughter and son in law as trustees. but they had to get a loan and want the land in their own name. My daughter had been there for two yrs. Prior to that she lived in Papakura. Moved up there because no one was living there. I thought it was C1A1A. I only want to transfer one block. I live in Papakura, 132 Settlement Rd – lived there for 30 years. I acknowledge my signature. I do not want them to sell the land. I do not know its value. The land was leased to a Bill Peihopa – I believe he paid the rates. Since the Hardings have been staying there they had paid the rates. They have their house on the land. There are two of my daughters here in addition. I am not going to be cruel. I have signed the paper. They have moved up here and put their home there. I am prepared to give it to them but I don't want it sold.

Hine Jean Herewini: I live on land and am daughter of Akuira. I have been there for 2 yrs. Lived in Papakura – about 30 yrs. Had own home for 17 years. After my father died he asked the boys (2 brothers and 4 sisters) He hoped one of boys would go back. One brother married in Australia and not interested in farm. Second brother went to Australia to live there. The girls are all married. Nobody moved to come back. I got interested and decided to come back. Husband & I were working. Sold house, gave up work and came up. We discussed it with my mum – she was happy to come back. Some of her children wanted her to sell it but I refused. Decided because I was determined to get back we would sell and come back. We built our own home with proceeds from Papakura home. All our rate statements went to my uncle. Rates were outstanding for 35 years. We paid \$1300 back rates and continued to pay them since. We have no intention of selling – it is part of me.

Court: Stood over for details of valuation.

- c. On 17 October 1984, the applicants submitted the following valuation for Kaikou C1A1B as at 1 July 1983:

⁵ 14 Kaikohe MB 95-97 (14 KH 95-97).

THE VALUATION  **OF LAND ACT 1951**

The following is a copy of an entry in the District Valuation Roll for BAY OF ISLANDS COUNTY
Supplementary Valuation Roll for (Name of District)

Valuation Reference: 511/438 Date of Valuation: 1.7.83

Value of Improvements \$ <u>20000</u>	Nature of Improvements DWELLING OTHER BUILDINGS OTHER IMPROVEMENTS FENCING	Occupier (within the meaning of the Rating Act): THE MAORI OWNERS C/- RAY HEREWINI 16 PARANUI VALLEY RD WHANGAREI
Land Value \$ <u>22000</u>		
Capital Value \$ <u>42000</u>		
& Trees \$		

Area: 13.5570 HECTARES Situation: LOVATTS RD

Owner—if other than occupier

Description:
KAIKOU C1A1B BLK XIV MOTATAU SD

Purpose of Issue: SEC 40 VALUATION OF LAND ACT

0302872

Debit Note No. 78293

Fee: \$5.00 Date of Issue: 5.10.84

64318C—300 pads/5/81 MK

[Signature]
For Valuer-General.

- d. On 21 October 1984 and the Court made the following directions:
- On the face of the valuation filed there appears to be gift duty payable unless there is some other arrangement between the parties not yet before the Court. I am prepared to confirm but require transfer to be stamped first or sufficient evidence produced to show gift duty.
- e. On 29 January 1987, the Registrar wrote to the applicants' counsel to arrange for the transfer to be stamped, otherwise, the matter will be referred to the Court to fix a definite time for their compliance, failing which, the matter would be deemed abandoned.
- f. In a letter dated 9 February 1987, the applicants through counsel responded as follows:
- ... we appear to have little alternative but to refer the matter to the Court to fix the time within which requirements must be fulfilled.
- ...
- We do not have sufficient funds to stamp the Transfer, nor do we have sufficient evidence on file for production to the Inland Revenue Department in respect of gift (if any).
- g. On 19 February 1987, the Registrar replied to applicants' counsel, as follows:
- I have discussed the matter with Judge Marumaru and he is of the view that it is not the Court's responsibility to ensure that stamp duty payable (if any) on the instrument of transfer is paid.
- Accordingly, will you please return the transfer to this office for grant of confirmation and completion thereof by certificate of confirmation. Sections 226(3)/53 provides that for the purposes of the Stamp and Cheque Duties Act 1971 the date of the certificate of confirmation is deemed to be the date of execution of the instrument.
- h. On 27 February 1987, the matter came before Judge Marumaru and the Court confirmed the transfer:⁶

⁶ 15 Kaikohe MB 308 (15 KH 308).

Court: Transfer is confirmed accordingly

Order Sec 34(10) for immediate release

The land remains Māori freehold land.

- i. A certificate of confirmation signed by Judge Marumaru is on file.
- 16. On 12 December 2007, an order was made determining Kaikou C1A1B as a Māori freehold land.⁷
- 17. On 24 January 2008, a consolidation order was issued recording Henry Herbert Harding and Hine Jean Herewini as proprietors of Kaikou C1A1B as tenants in common with 0.500 shares each.⁸

Details of payments made as a result of the Orders

- 18. There are no payments made as a result of the order.

Reference to areas of difficulty

- 19. The application could not be served to the affected parties as the applicant had not provided contact details of the affected parties.

Consideration of whether matter needs to go to full hearing

- 20. From the narration of facts above, it appears that an error was made at 8 Kaikohe 104-105 due to a mistake in the presentation of the facts of the case to the Court, as follows:
 - (a) Paragraph 5 of the application filed by Gerald Hiku was not crossed out, giving the Court the impression that the deceased was not survived by any children or any adopted children; and
 - (b) When the application was heard on 30 April 1974, no evidence was given concerning the children of the deceased.
- 21. The applicant claims that as the oldest son of the deceased gives him the right to claim what his father had given him verbally. He claims that the lands will pass on to his son according to the ancient law of Tuko Iho.
- 22. The deceased died intestate on 19 April 1972. He was survived by his wife and children. In accordance with s 76 of the Māori Affairs Amendment Act 1967, the persons entitled to succeed to the deceased's estate and the shares in which they are entitled shall be determined in the same manner as if the deceased were a European. Pursuant to s 77 of the Administration Act 1969, the deceased having been survived by his widow and children, the persons entitled to succeed are his widow and children.
- 23. A court hearing is necessary to enable all parties to respond to the claims made by the applicant.

Recommendation of course of action to be taken

- 24. If the Chief Judge is of a mind to exercise her jurisdiction, then it would be my recommendation that:
 - (a) The applicant be directed to:

⁷ 121 Whangārei MB 67-68 (121 WH 67-68).

⁸ 122 Whangārei MB 40-41 (122 WH 40-41).

- i. submit the whakapapa of the deceased;
 - ii. to provide the contact details of Henry Herbert Harding, Hine Jean Herewini, and those persons affected by this application within 14 days from receipt of this report to enable service of the application to the affected parties.
- (b) A copy of the application and this Report be sent to all affected parties giving them an opportunity to submit their response or comment to the Report within 28 days from date of notice.
- (c) The matter be set down for hearing at the Māori Land Court, at a date and time to be advised in due course, to enable parties to be heard on the matters raised.

Ko te hātepe ture o te tono nei

Procedural History

[4] This matter was heard before me on 5 December 2023. The report of the Registrar was included in the Court submission setting out the grounds upon which the application was filed. In summary, the original applicant Johnstone Ra Herewini challenged the succession order made in 1974 in favour of his mother, Rakuira Herewini. He claimed that under the ancient law of *tuku iho*, the lands were to pass to him. He claimed that his father said “all his lands are now in my [Johnstone’s] care, never to be sold in any way, shape, or form.” He claimed his mother was present when his father said that, and he could not believe his mother had gifted the land to his sister, Hine Herewini.

[5] At the hearing, Dayle Herewini was present. Hine Herewini wanted to participate but was not ready to proceed. The matter was adjourned to be dealt with on the papers once submissions were received from the parties.

[6] Hine Herewini and her partner Henry Harding filed a submission received on 19 February 2024. Hine explained that her parents were Akuira (mother) and Ratutonu Herewini (father). She is one of seven children, two males and five females. Four are deceased, including one of her two brothers, Johnstone the original applicant.

[7] Hine claimed her father spoke to her brothers regarding the farm, wanting one of them to come home to it. One of her brothers, Niko, was moving to Australia. Johnstone at the time was concerned there was no infrastructure. The land was informally leased to a local farmer.

[8] Hine argued that it has been nearly 50 years since her father passed away and only now has this claim been made by Johnstone under *tuku iho*. She claimed that her mother was of sound mind when she arranged the vesting in herself and Henry. Henry and Hine gave up their life in Auckland to live on the farm, investing significant funds in its fencing, infrastructure, and a skylight home as well as paying rates. There were no objections from anyone in the family. I note that the minute of the Court of 1 October 1984 records some of this history and investment.⁹

[9] A response was received from Dayle Herewini on 4 April 2024. He wrote that his father Johnstone's placenta was buried in the *whenua*, along with some of his siblings. His father pursued this issue because he wanted the matter corrected, so that "future generations were not burdened." His father maintained there were errors in the order made. His father believed he was not consulted with or told the full story, and this affected the ability of him, his children and grandchildren to "reconnect or establish closer ties with Kaikou." Johnstone saw the "*whenua* as a connecting point for all *whānau* and wanted things to be right. He only wanted to uphold the values, traditions and benefits that he and his siblings had been taught."

[10] The application was referred to me for judgment on 14 April 2024.

Ngā Ture

The Law

[11] 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, 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.

⁹ 14 Kaikohe MB 95-97.

[12] In *Ashwell – Succession to 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:¹⁰

- (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 application;
- (c) The principle of *Omnia Praseumutur 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.

[13] 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.

[14] As stated in *Tau v Nga Whānau o Morven and Glenavy – Waihao 903 Section IX*,¹¹

¹⁰ *Ashwell – Succession to Rawinia or Lavinia Ashwell (nee Russell)* [2009] Chief Judge's MB 209 (2009 CJ 209) at [15].

¹¹ *Tau v Nga Whānau O Morven & Glenavy – Waihao 903 Section IX* [2010] Māori Appellate Court MB 167 (2010 APPEAL 167) at [61].

the Chief Judge must exercise [their] jurisdiction by applying the civil standard of proof of the balance of probabilities having regard to that standard's inherent flexibility that takes into account the nature and gravity of the matters at issue.

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

[16] The Court of Appeal has confirmed that the power under s 44(1) of the Act falls into two parts:¹²

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

[17] The issues for determination are:

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

Kōrerorero

Discussion

Was any error made in the presentation of facts to the Court or any error made on the part of the Court?

[18] As the Registrar noted, the deceased died intestate (without a will) on 19 April 1972. He was survived by his wife and children. In accordance with s 76 of the Māori Affairs

¹² *Inia v Julian* [2020] NZCA 423 at [10].

Amendment Act 1967, the persons entitled to succeed to the deceased's estate and the shares in which they are entitled had to be determined in the same manner as if the deceased were a European. Pursuant to s 77 of the Administration Act 1969, the deceased having been survived by his widow and children, the persons entitled to succeed were his widow and children. That was the law until 31 December 1974.¹³

[19] This order complained of was made in April 1974. Spouses along with children of a deceased could inherit and orders could be made for succession and vesting of land interests under s 78A of the Māori Affairs Amendments Act 1967.

[20] However, a problem occurred due to the manner in which the facts of the case were presented to the Court before and during the hearing recorded at 8 Kaikohe MB 104-105, namely:

- (a) Paragraph 5 of the application filed by Gerald Hiku was not crossed out, possibly giving the Court the impression that the deceased was not survived by any children or any adopted children; and
- (b) When the application was heard on 30 April 1974, no evidence was given concerning the children of the deceased.

[21] Therefore, it is self-evident that a mistake was made due to the presentation of facts to the Court.

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

[22] I note that none of the children of the deceased challenged the succession before 2022 when this application was filed, nearly 50 years later. All the main parties, including the original applicant and his mother, are now deceased. The land remains in the ownership of the original applicant's sister along with her partner. They have invested a significant amount of time, effort and resources into the property. To allow the other siblings or their successors to inherit the land after so many years, may result in a degree of unjust enrichment.¹⁴

¹³ Māori Affairs Amendment Act 1974.

¹⁴ *Commissioner of Inland Revenue v Stiassny* [2012] NZCA 93 at [92]; and see Andrew S Butler (ed) *Equity and Trusts in New Zealand* (online ed, Thomson Reuters) at [4.2.2] ([https://anzlaw.thomsonreuters.com/Document/145b72a83777d11e9a433a8778062c32f/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0\)](https://anzlaw.thomsonreuters.com/Document/145b72a83777d11e9a433a8778062c32f/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0))

[23] As to the tikanga issues raised, namely the original applicant's status as the first-born male, I note he is not the tuakana or eldest child. Hine is the eldest. No evidence was provided as to why Johnstone's status as the first-born male trumps her status as tuakana. In addition, other tikanga values are at play here, such as the rights of ahi kā to have their possession respected. While Johnstone did live with Hine and her partner on the land for a short period, he does not appear to have made any contribution to its maintenance.

[24] I note, I must take into account the Preamble and ss 2 and 17 of Te Ture Whenua Māori Act 1993. All the descendants of Ratutonu Herewini are entitled to consider this land to be taonga tuku iho. While the evidence of Johnstone was that his father wanted him to have the land, the law as it is now, recognises all the children of a deceased as possible successors. The other descendants of Ratutonu Herewini have not demonstrated any support for this application.

[25] Having regard to all these issues, I am not satisfied that it is in the interests of justice to amend the order made at 8 Kaikohe MB 104-105 on 30 April 1974.

[26] However, Hine should recognise that her siblings, nephews (including Dayle) and her nieces are entitled to see the land as a taonga to which they are attached by whakapapa and that she as kaitiaki should find a way of including them in the land. A whānau trust is a real possibility she should consider.

Kupu whakataunga me ngā ōta
Decision and orders

[27] Given my findings above, I dismiss the application.

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

I whakapuaki i te 2.00 pm i Te Whanganui-a-Tara, i te rā tuatoru o Hepetema i te tau 2024.
Pronounced at 2.00 pm in Wellington on this 3rd of September 2024.

C L Fox
CHIEF JUDGE