

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

AP-20230000019689
A20190003008
CJ 2019/16

WEHENGĀ <i>Under</i>	Section 45, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Succession to Mary Holden also known as Mary Atkins or Mere Hiria or Mary Hiria
I WAENGA I A <i>Between</i>	MARYLYN HURLEY Te kaitono <i>Applicant</i>

Kōtitanga: <i>Hearing</i>	16 December 2024, 2025 Chief Judge's MB 1201-1213 (Heard at Rotorua via Zoom)
Whakataunga: <i>Judgment date</i>	7 August 2026

TE WHAKATAUNGA A KAIWHAKAWĀ MATUA TUARUA C T COXHEAD
Judgment of Deputy Chief Judge C T Coxhead

Hei tīmatanga kōrero

Introduction

[1] Marylyn Hurley filed an application to amend the order made at 3 Auckland Succession MB 173 dated 23 June 1992 relating to the succession to Richard Arthur Atkins. The applicant 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

Kōrero whānui

Background

[2] The Registrar's Report and Recommendation (the Report) dated 30 August 2024 detailing the background of the application is reproduced below:

APPLICATION UNDER SECTION 45 OF TE TURE WHENUA MĀORI ACT 1993 REGISTRAR'S PRLIMINARY REPORT AND RECOMMENDATION

Introduction

1. This application filed by Marylyn Claire Hurley (the applicant) seeks to amend the following orders;
 - (a) Vesting order dated 23 June 1992 at 3 Auckland (Succession) MB 173 relating to Richard Arthur Atkins, deceased.
 - (b) Chief Judge's order dated 18 January 2012 at 2012 Chief Judge's MB 44-50 relating to Mary Holden I or Mary Atkins or Mary Holden of Mere Hiria or Mere Horana, deceased.
2. The applicant claims the said orders are incorrect due to a mistake, error, or omission in the presentation of the facts of the case to the Court because:
 - a) Pukaingataru B12 and Tumu Kaituna 14 shares held in the name of Thomas Ernest Atkins were given to him error. The full shareholding in these two blocks should have been given to Richard Arthur Atkins solely.
 - b) At reference 111 Rotorua MB 139-140 dated 24 July 1949 succession took place to Mary Holden alias Mary Atkins. Richard Arthur Atkins received the above blocks solely therefore, the lands given to Thomas Ernest Atkins in error should be returned to Richard Arthur Atkins in order to fulfil the requirements of the family arrangement which was confirmed by the Māori Land Court on 15 August 1950 at 26 Kaipara MB 279, 18 January 2021 at 2012 Chief Judge's MB 45. On 17 November 1959, the Court orders which followed the terms of the family arrangement:
 - i) 18.01.2012 at CJMB 46
 - ii) 27.05.1971 at 159 ROT MB 284
 - iii) 15.12.1971 at 160 ROT MB 266
 - iv) 28.10.1971 at Sec60 ROT 162/220
 - v) 23.06.1992 at 3 AT(S) 173

Succession claimed in two blocks only. Derivation shown on schedule of Māori land interests 30.01.1992

- vi) 16.10.1996 at CJMB 996 560/561 – Tumu Kaituna amended
 - vii) 18.01.2012 at A19990008282 CJ1999/34 & 2000/7 – Decision of Chief Judge W W Isaac (dismissed)
 - viii) 18.01.2012 A20070013685 CJ2007/058 – Attachment Registrar's report P3
 - ix) 04.10.2000 at 255 ROT 199 & 257 ROT MB 258
- c) I ask that interests in Pukaingataru B12 & Tumu Kaituna 14 which were cancelled incorrectly, be restored in the correct ratio, along with the whānau trust, also cancelled in error.
- d) All interests claimed in succession order at 3 AT(s) 173 on behalf of other whānau members also affected, along with a claim for succession to Michael Wilson by his niece and nephews. I do have details TKFR Ref:3782 MB Ref: 5 AT(S) 63 01.10.1996.
- e) Correction of these errors will enable reapplication for succession to Richard Arthur Atkins, using family arrangement, in the matter of all remaining interests.
3. The applicant claims that she has been adversely affected by the order complained of upon the grounds that "I no longer hold the full number of shares to which I am entitled."

Concise history of Orders sought to be amended

4. The application seeks to amend two orders of the Court – 3 Auckland (Succession) MB 173 dated 23 June 1992 relating to Richard Arthur Atkins and 2012 Chief Judge's MB 44-50 relating to Mary Holden I or Mary Atkins or Mary Holden or Mere Hiria or Mere Horana, deceased (daughter of Hiria Hapimana).
5. The minute at **3 Auckland (Succession) MB 173** dated 23 June 1992 has been reproduced below:

Extract from Minute Book: 3 AT(S) 173
Appln No: 32
Place: Mangere
Date: Tuesday, 23 June 1992
Present: A D Spencer, Judge
D Paewhenua, Clerk of the Court
R E Poulamalu, Succession Officer

32 – SECTION 78A/67 – RICHARD ARTHUR ATKINS DECEASED

Present – Gwendolyn McKain

I am the applicant. The deceased was my brother who died at Auckland on 30 November 1986. Death certificate produced.

I was present at the funeral. The deceased left a will hereby produced not probated and legally married firstly to Hilda Gertrude Howard and secondly to Doris maiden name unknown. I believe they had no children. They married in their late 60's.

COURT – Person entitled according to the will is Dixie Rosemary Atkins of PO

Box 1727, Invercargill solely who has relinquished all her entitlement or rights to the deceased by way of declaration on file dated 7 February 1989. The declaration is dated 7.2.89, taken by a Rotorua solicitor who has not observed the norm of typing or printing his name legibly below his signature. The declaration refers to "all.....interests.....of Māori land" and does not refer to a schedule of interests. A schedule is, however, attached to the declaration and bears the date 7.8.90 and updated 24.10.90, i.e. it was obtained over a year after the declaration and could not have been a part of the declaration when signed.

Nevertheless, orders accordingly Section 78A/67 to persons found entitled in previous case No 33 in their shares in

Pukaingataru B12 \$1 935

Tumu Kaituna 14 \$1 800

Tumu Kaituna 16B – Dixie Atkins may apply within 28 days for a rehearing if she considers she did not properly sign the declaration. Copy to applicant and Dixie Atkins, PO Box 1727, Invercargill (with copy of Pt 12 also to D Atkins).

Judge

6. The Court vested the interests as follows:

<u>Name & Address</u>		<u>Sex</u>	<u>Lands & Shares vested</u>	
			Pukaingataru B12	Tumu Kaituna 14
			0.40000	112.36 44.72
			\$1 935.72	\$1 800.42
1.	Celia Dorothy Harry	fa	1/4	1/4
2.	Gwendolyn Mary McKain	fa	1/4	1/4
3.	Alan Atkins	ma	1/8	1/8
4.	Ronald Atkins	ma	1/8	1/8
5.	Michael Wilson	ma	1/8	1/8
6.	Sharon Wilson	fa	1/24	1/24
7.	Gary Wilson	ma	1/24	1/24
8.	Paul Wilson	ma	1/24	1/24

***Shares in Tumu Kaituna were reduced at 1996 Chief Judge's MB 560-561 dated 16.10.1996 as it was found that the shares of Mary Holden I (daughter of Hiria Hapimana) and Mary Holden II (granddaughter of Hiria Hapimana and child of George Holden) were inadvertently combined.**

7. **2012 Chief Judge's MB 44-50 dated 18 January 2012** dealt with two succession orders which were not made in accordance with the family settlement together with an order made by the Chief Judge.
8. First, on 27 May 1971 at 159 Rotorua MB 284 where successors were determined to be all children of the deceased. It should be noted that there was no mention of the family agreement at these hearings.
9. **159 Rotorua 284 dated 27 May 1971** is reproduced below:

Mary Hiria or Mary Holden – Deceased (Daughter of Hiria Hapimana)
Section 135

Mr Parata for Deputy Registrar

I rely on previous evidence. Deceased died 24.7.1949. No will. Issue:

- | | | |
|--------------------------------|------|---------------------------|
| 1. Celia Harri | f.a. | Remuera |
| 2. Gwen McKain | f.a. | Mt Wellington |
| 3. Ernest Atkins ¹ | m.a. | Henderson |
| 4. Richard Atkins ² | m.a. | Henderson |
| 5. Mary Wilson | f.d. | No will – issue not known |

Court: Persons entitled are Nos 1-5 both inclusive equally as previously determined at Rot 140/273-5 of 14.5.1968.

MR PARATA: I ask for following orders –
Orders Section 136 –

Whakapoungakau 15B Sec. 10 - \$42.55)
 Whakapoungakau 12B Sec 9 – \$26.50) to No. 1 solely
 Whakapoungakau 13B Sec 5 – \$58.98) to No. 2 solely
 Whakapoungakau 16 Sec. 2B2G2E - \$59.65)
 Whakapoungakau 16 Sec. 2B2G1 - \$19.10) to No. 3 solely
 Pukaingataru B12 - \$124.31 to Nos 4 & 5 equally
 Tumu Kaituna No. & 6B Pt - \$18.06)
 Tuku Kaituna 31B - \$6.96) to No. 3 solely

Order Section 32/53 as to Money of B/Card 0/1182:

(i) \$13.50 to Consol. Revenue Account –
 (\$3.00 credit code 0326-2000-20706 appln fee)
 (\$10.50 credit code 0326-2000-26706 costs)

(ii) Balance to all entitled equally

COURT: Orders accordingly

(K. Gillanders Scott)
 Judge
 27/5/71

10. Second, on 23 June 1992 at 3 Auckland (Succession) MB 172 the Court made orders vesting further Māori land interests of the deceased in all children equally with substitution of issue.
11. Dixie Rosemary Atkins (daughter of Richard Arthur Atkins) relinquished her entitlement to her father's interests in favour of others (Richard's siblings and their descendants) by way of declaration dated 7 February 1989.
12. The Chief Judge upheld the declaration and found that there was insufficient evidence to suggest that Dixie did not have capacity at the time of making it³.
13. **3 Auckland (Succession) MB 172 dated 23 June 1992** has been reproduced as follows:

33 Section 135 & 136 – MERE HIRIA DECEASED

Present: Gwendolyn McKain

¹ Also known as Thomas Ernest Atkins.
² Also known as Richard Arthur Atkins.
³ 2012 Chief Judge's MB 44-50, paragraph 8.

I am the applicant. The deceased was my mother who died at Auckland on 24 July 1949. Evidence of death produced – refer previous evidence of 27.5.71 and 140 ROT 273-275.

The deceased left no will and legally married to Charles Henry Atkins who predeceased her about 1947. No other marriages and no children by adoption.

Issue:

<u>Name</u>	<u>Sex / Age</u>	<u>Address</u>
1 Celia Dorothy Harry	fa	32 Benson Road, Remuera, Auckland 5
2 Gwendolyn Mary McKain	fa	1/6 Dingle bank Road, Mt Wellington, Auckland 6
3 Thomas Ernest Atkins	md	(3 issue)
4 Richard Arthur Atkins	md	(1 issue)
5 Edith May Wilson	fd	(3 issue)

Issue of number 3: Married Marjorie Riggall deceased

6 Alan Atkins	ma	209 Arthur Street, Onehunga, Auckland
7 Ronald Atkins	ma	Henderson Valley Road, Henderson, Auckland 8
Maurice Atkins	md	(no issue)

Issue of number 4: Married Hilda Gertrude Howard

8 Dixie Rosemary Atkins	fa	PO Box 1727, Invercargill
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Issue of number 5: Married Ray Wilson deceased

9 Michael Wilson	ma	6 Smedley Street, Manurewa
10 Kenneth Wilson	md	(issue)
David Wilson	md	(1 issue who died in infancy)

Issue of number 10: Married Beverly don't know maiden name

11 Sharon Wilson	f	
12 Gary Wilson	m	
13 Paul Wilson	m	

No 8 Dixie Rosemary Atkins relinquishes all her entitlement in favour of others. Consent produced.

COURT: Persons entitled are numbers 1-5 equally with substitution of issue.

Witness continues - court is asked to make the following orders under Section 136/53 in favour of Nos 1, 2, 6, 7, 9, 11, 12 and 13 in their respective shares as aforementioned as successors upon intestacy.

<u>Waiāriki Lands</u>	<u>Value</u>
1 Paehinahina Mourea	\$524.55
2 Tikitere A	\$3.90
3 Pukaretu	Māori Reserve
4 Whakapoungakau 14	\$11.00

As to monies on Waiāriki beneficiary card number 01182 I ask for order for payment under Section 32/53 in favour of the applicant.

COURT No objections. Orders accordingly. Copy of minutes to applicant.

Search of Mangorewa Kaharoa 6E3/2A2 to be made under name of Mary or Mere Holden and all other names deceased was known by. Those land to be dealt with without further appearance of applicant

14. Third, on 16 October 1996 at 1996 Chief Judge's MB 473, 475, 482-484, 487-488 & 560-561 the Chief Judge made orders to correct the court record where some of interests of the deceased were erroneously included in the estate of Mary Holden II⁴ who was not the same person as the deceased.

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 their application
- a) Copy of the Court order made at 159 Rotorua MB 284 dated 27 May 1971;
 - b) Copy of the Part IV search for Richard Arthur Atkins;
 - c) Extract from Registrar's Report dated 9 September 2008.

Court Research

3 Auckland (Succession) MB 173 dated 23 June 1992

16. These interests were derived on succession to Mary Holden or Mary Atkins at 111 Rotorua MB 139-140 dated 17 July 1959.
17. When making orders the Court took in to account the family agreement whereby Māori land interests were to be vested in Thomas Ernest Atkins and Richard Arthur Atkins. The Court vested the lands of the deceased by way of value as recorded below:

	<u>Block</u>	<u>Value</u>
Thomas Ernest Atkins	Mangorewa Kaharoa 6E3 Sec 2H 4	£60
	Whakapoungakau 12B 9	3
	Whakapoungakau 16 Sec.2B 2G 1	9
	Whakapoungakau 14	1
	Whakapoungakau 11B 6	5
Richard Arthur Atkins	Pukaingataru B12	£33
	Tumu Kaituna 1 & 6B	38
	(Now known as Tumū Kaituna 14)	

2012 Chief Judge's MB 44-50 dated 18 January 2012

⁴ Mary Holden II (granddaughter of Hiria Hapimana) is the niece of Mary Holden I (daughter of Hiria Hapimana).

18. The orders at 2012 Chief Judge's MB 44-50 dated 18 January 2012 related to interests to which the deceased was entitled, but for several reasons, had not been dealt with when succession first occurred in 1959⁵.
19. The Chief Judge raised the question "*was there a mistake or omission on the part of the Court or in the presentation of the facts that lead to the succession orders dated 27 May 1971⁶, 23 June 1992⁷ and 16 October 1996⁸ omitting reference and not adhering to the Family Settlement confirmed by the Court on 15 August 1950?*".
20. The Court noted that unfortunately the original application, which included the family settlement document, was lost. However, the Court had previously confirmed that it had a copy of the settlement which it provided along with the letters of administration to the applicant in a letter dated 28 March 2007. The family settlement document states:

MARY ATKINS DECD

Family Arrangement

1. *The case assets i'e Savings Bank and any accrued age benefit are to go less accounts as stated by Mrs Harry to the 3 girls equally.*
 2. *Any land interests are to go to the sons i'e*
THOMAS ERNEST ATKINS
RICHARD ARTHUR ATKINS equally
 3. *Mrs Harry to be appointed administratrix of personalty – no sureties*
E.MWILSON
TE.ATKINS for myself and for my brother Richard Arthur Atkins.
CD. HARRY
G.MMCKAIN
21. The Court determined that it was the intention of the family arrangement that all/any land interests were to be vested in Thomas Ernest Atkins and Richard Arthur Atkins, equally as to a ½ proportion each and made orders accordingly.

Details of subsequent Orders affecting lands to which this application relates

22. Should the Court consider that amendments be made as requested by the applicant, further research will need to be completed to identify affected consequential orders.

Reference to areas of difficulty

23. There are no areas of difficulty to deal with in this matter.

Consideration of whether matter needs to go to hearing

24. It is recommended that this application be dismissed.
25. The lands referred to at 3 Auckland (Succession) MB 173 dated 23 June 1992 were distributed by the Court according to value. The Court did however take in

⁵ 111 Rotorua MB 139-140.

⁶ 159 Rotorua MB 284.

⁷ 3 Auckland (Succession) MB 172.

⁸ 1996 Chief Judge's MB 473, 475, 482-484, 487-488 & 560-561.

to account the family arrangement in that only Thomas Ernest Atkins and Richard Arthur Atkins received the Māori land interests.

26. The applicant states that interests in Pukaingataru 12 and Tumu Kaituna 14 should be returned to Richard Arthur Atkins in accordance with the family arrangement.
27. Paragraph 25 records a copy of the family arrangement which does not specify how lands should be distributed between Thomas Ernest Atkins and Richard Arthur Atkins other than that they receive interests equally.
28. It should be noted that Dixie Rosemary Atkins⁹ relinquished her entitlement to her father in favour of others (namely Richard's siblings and their successors). Had she not made this gesture she would have succeeded to all of Richard's entitlement solely.
29. The application has been set down for a hearing on 24 September 2024 where the applicant should be given an opportunity to respond to the content of this report.

Recommendation of course of action to be taken

30. If the Chief Judge is of a mind to exercise his 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 to the content of the report in writing no later than 13 September 2024.
 - b) If objections are received then the matter should be referred to the Chief Judge who may consider addressing any objections at the Court hearing which has been set down for 24 September 2024.

Ko te hātepe ture o te tono nei

Procedural history

[3] The matter was heard on 18 June 2024 but was adjourned to allow the Registrar to complete her Preliminary Report.

[4] When the matter was heard on 16 December 2024 and after hearing from the parties, I directed the Registrar to update the report with a new recommendation and to circulate the same to the parties for their response. Thereafter, the matter be referred to me for final determination.

[5] Below is the supplementary report dated 25 May 2026:

⁹ Daughter of Richard Arthur Atkins.

**Te rīpoata tuarua me tana tūtohunga mā tētahi tono i raro i te wehenga 45 o Te Ture Whenua
Māori Act 1993 ki te Kaiwhakawā Matua**
Supplementary 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] The purpose of this report is to:

- a) Outline the true intention of the application filed by Marylyn Claire Hurley (“the applicant”).
- b) Provide a new recommendation to the applicant and affected parties following the hearing of this application held on 16 December 2024 and recorded at 2025 Chief Judge’s MB 1201-1213 (the December 2024 hearing).

[2] This application initially sought to amend the following orders:

- a) A succession order at 3 Auckland Succession MB 173 dated 23 June 1992 relating to Richard Arthur Atkins, her maternal uncle; and
- b) A Chief Judge’s order at 2012 Chief Judge’s MB 44-50 relating to Mary Holden I or Mary Atkins or Mary Holden or Mere Hiria or Mere Horana, her maternal grandmother.

[3] The Registrar’s Report (the Report) dated 30 August 2024 states the applicant claims the order is incorrect due to a mistake, error, or omission in the presentation of the facts of the case to the Court because:

- a) *Pukaingataru B12 and Tumu Kaituna 14 shares held in the name of Thomas Ernest Atkins were given to him error. The full shareholding in these two blocks should have been given to Richard Arthur Atkins solely.*
- b) *At reference 111 Rotorua MB 139-140 dated 24 July 1949 succession took place to Mary Holden alias Mary Atkins. Richard Arthur Atkins received the above blocks solely therefore, the lands given to Thomas Ernest Atkins in error should be returned to Richard Arthur Atkins in order to fulfil the requirements of the family arrangement which was confirmed by the Māori Land Court on 15 August 1950 at 26 Kaipara MB 279, 18 January 2021 at 2012 Chief Judge’s MB 45. On 17 November 1959, the Court orders which followed the terms of the family arrangement:*
 - i) *18.01.2012 at CJMB 46*
 - ii) *27.05.1971 at 159 ROT MB 284*
 - iii) *15.12.1971 at 160 ROT MB 266*
 - iv) *28.10.1971 at Sec60 ROT 162/220*
 - v) *23.06.1992 at 3 AT(S) 173*
Succession claimed in two blocks only. Derivation shown on schedule of Māori land interests 30.01.1992
 - vi) *16.10.1996 at CJMB 996 560/561 – Tumu Kaituna amended*
 - vii) *18.01.2012 at A19990008282 CJ1999/34 & 2000/7 – Decision of Chief Judge W W Isaac (dismissed)*

- viii) 18.01.2012 A20070013685 CJ2007/058 – Attachment Registrar's report P3
- ix) 04.10.2000 at 255 ROT 199 & 257 ROT MB 258
- c) *I ask that interests in Pukaingataru B12 & Tumu Kaituna 14 which were cancelled incorrectly, be restored in the correct ratio, along with the whānau trust, also cancelled in error.*
- d) *All interests claimed in succession order at 3 AT(s) 173 on behalf of other whānau members also affected, along with a claim for succession to Michael Wilson by his niece and nephews. I do have details TKFR Ref:3782 MB Ref: 5 AT(S) 63 01.10.1996.*
- e) *Correction of these errors will enable reapplication for succession to Richard Arthur Atkins, using family arrangement, in the matter of all remaining interests.*

Ko te hātepe ture o te tono nei

Procedural history

- [4] On 18 June 2024 at 2024 Chief Judge's MB 1032-1035, the Court adjourned the application to allow for the Report to be compiled and produced to the applicant and affected parties for feedback.
- [5] On 24 September 2024 at 2024 Chief Judge's MB 1465-1473, the application was further adjourned as it was discovered that the applicant had moved address and therefore did not receive the Report. The application was adjourned to the December 2024 sitting of the Chief Judge.
- [6] During a conversation with the Registrar prior to the December 2024 hearing, it was established that the application related to the orders made at 3 Auckland Succession MB 173 on 23 June 1992 for succession to Richard Arthur Atkins. This was further confirmed at the December 2024 hearing, where the application was adjourned to allow for updated recommendations to be provided to the parties by way of this supplementary report.

Te rangahau a te kooti

Court research

- [7] Evidence presented at the 16 December 2024 (2025 Chief Judge's MB 1201-1213) hearing, by the Registrar, was as follows:

Ms Hika: Thank you Sir. Ms Hurley had put in an application about a number of orders, but after speaking to her, we have narrowed it down to an order that was made at 3 Auckland Succession Minute Book 173 on the 23rd of June 1992 which was a succession to Richard Arthur Atkins. When that application was made later on in 1996, a Chief Judge order was made reducing the shares for that particular succession because there are two Mary Holdens, a junior and a senior and those shares were inadvertently combined together. That 1996 Chief Judge application separated those shares.

In 2012, there was a further Chief Judge application that was made –

The Court: Just so we are clear on that, the consequences of the Chief Judge's order was that the shares that both Richard and who was the other one?

Ms Hika: Richard and is it Ernest?

The Court: Yes, their shares were reduced, is that correct?

Ms Hika: Yes, Sir.

The Court: Yes and that is because the person who they got those shares from, their shares were reduced, because we found out that there were actually two Mary Holdens.

Ms Hika: There are two Mary Holdens and they were inadvertently combined together as one person whereas they should have been separated at that time.

The Court: Two, okay, ka pai.

Ms Hika: And then in 2012, there was a further Chief Judge application that was made and somehow the shares from the succession to Richard were caught up in that when the administrative components of the changing of the orders was done and they shouldn't have been, because they were not in any way related in that 2012 Chief Judge, that is through our research, Sir. They should not have been touched and somehow when it was entered into our records, they were inadvertently deleted when they should not have been.

The Court: Okay, do you want to carry on through then? Because the way, when I read your report, I thought you were recommending that the application, there was no error and that it should be dismissed, but are you now saying that –

Ms Hika: Yes Sir.

The Court: You are saying there was an error?

Ms Hika: Yes Sir. Yes and that was only after speaking to the applicant to narrow it down to what she was actually wanting to amend.

The Court: Okay, so that is the lands referred to at 3 Auckland Succession Minute Book 173 dated the 23rd of June 1992, they were distributed by the Court according to value. The Court did not –

Ms Hika: Yes.

The Court: Well, it says here: "The Court did however take into account the family arrangement and that only Thomas and Richard received the Māori land interest and that is for that one particular block.

Ms Hika: There would've – yes, so the two blocks that were dealt with at that succession were Pukaingataru B12 and Tumu Kaituna 14.

The Court: And, you say the applicant or do you now agree that the – what is your updated recommendation then?

Ms Hika: My updated recommendation is that the shares in Pukaingataru B12 and Tumu Kaituna that were vested after the 1996 Chief Judge order was made, be vested back into those owners again Sir. Does that make sense, Sir?

The Court: Being? And who? Being Richard and?

Ms Hika: So, the owners, their successors would be Celia Dorothy Harry, Gwendolyn Mary McKain, Alan Atkins, Ronald Atkins, Michael Wilson, Sharon Wilson, Gary Wilson and Paul Wilson.

- [8] From the evidence presented by the Registrar, it was determined that the application relates to 3 Auckland Succession MB 173 dated 23 June 1992 on succession to Richard Arthur Atkins. The minute is reproduced below:

173

Extract from Minute Book: 3 AT(S) 173
 Appln No: 32
 Place: Mangere
 Date: Tuesday, 23 June 1992
 Present: A D Spencer, Judge
 D Paewhenua, Clerk of Court
 R E Polamalu, Succession Officer

32 SECTION 78A/67 - RICHARD ARTHUR ATKINS DECEASED

Present: Gwendolyn McKain

I am the applicant. The deceased was my brother who died at Auckland on 30 November 1986. Death certificate produced.

I was present at the funeral. The deceased left a will hereby produced not probated and legally married firstly to Hilda Gertrude Howard and secondly to Doris maiden name unknown. I believe they had no children. They married in their late 60's.

32 SECTION 78A/67 - RICHARD ARTHUR ATKINS DECEASED

Present: Gwendolyn McKain

I am the applicant. The deceased was my brother who died at Auckland on 30 November 1986. Death certificate produced.

I was present at the funeral. The deceased left a will hereby produced not probated and legally married firstly to Hilda Gertrude Howard and secondly to Doris maiden name unknown. I believe they had no children. They married in their late 60's.

COURT

Person entitled according to the will is Dixie Rosemary Atkins of PO Box 1727, Invercargill solely who has relinquished all her entitlement or rights to the deceased by way of declaration on file dated 7 February 1989. The declaration is dated 7.2.89, taken by a Rotorua solicitor who has not observed the norm of typing or printing his name legibly below his signature. The declaration refers to "all.....interests..... of Maori land" and does not refer to a schedule of interests. A schedule is, however, attached to the declaration and bears the date 7.8.90 and updated 24.10.90, i.e. it was obtained over a year after the declaration and could not have been a part of the declaration when signed.

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Tumu Kaituna 16B - Dixie Atkins may apply within 28 days for a rehearing if she considers she did not properly sign the declaration. Copy to applicant and Dixie Atkins, PO Box 1727, Invercargill (with a copy of Pt 12 also to D Atkins).

Judge

[9] The Court vested the interests as follows:

<u>Name & Address</u>	<u>Sex</u>	<u>Lands & Shares vested</u>	
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		0.40000	112.36 44.72
		\$1 935.72	\$1 800.42
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4. Ronald Atkins	ma	1/8	1/8
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8. Paul Wilson	ma	1/24	1/24

*Shares in Tumu Kaituna were reduced at 1996 Chief Judge's MB 560-561 dated 16.10.1996 as it was found that the shares of Mary Holden I (daughter of Hiria Hapimana) and Mary Holden II (granddaughter of Hiria Hapimana and child of George Holden) were inadvertently combined.

[10] Dixie Rosemary Atkins (daughter of Richard Arthur Atkins) relinquished her entitlement to her father's interests in favour of others (Richard's siblings and their descendants) by way of declaration, dated 7 February 1989.

[11] At 1996 Chief Judge's MB 560-561 on 16 October 1996, the Chief Judge made orders to remedy share errors in respect of Mary Holden I and Mary Holden II. As a result, the following consequential amendment was made:

4

11 Amend a vesting order pursuant to Section 78A of the Maori Affairs Amendment Act 1967 made at 3 AT(S) 173 on 23 June 1992 regarding Richard Arthur Atkins as follows:

Tumu Kaituna 14	Delete Shares 112.56	Replace with 44.72 shares
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[12] At 2012 Chief Judge's MB 44-50 (the 2012 Chief Judge's order) on 18 January 2012, the Chief Judge made orders in respect of Mary Holden I also know as Mary Atkins or Mary Holden or Mere Hiria or Mary Hiria or Mere Horana, amending the orders in the schedule by determining Thomas Ernest Atkins and Richard Arthur Atkins as successors to the deceased. The schedule is reproduced below:

2012 Chief Judge's MB 44-50

Schedule

<u>Date</u>	<u>MB Reference</u>
27 May 1971	159 Rotorua MB 284
23 June 1992	3 Auckland Succession MB 172
16 October 1996	1996 Chief Judge's MB 468-473, 475, 482-484, 487-488 & 560-561

[13] The 2012 Chief Judge's application contains a Land Registry Team Member Report dated 28 March 2014. The report identifies the following consequential orders to be amended:

Consequential orders to be amended:

- i. 1996 CJ 560-561, Order of the Chief Judge, 44/93, dated 16 October 1996 – succession to Mary Holden I. Under section 10, in regards to Mangorewa Kaharoa Te Taumata Block, amend the 8 successors to Thomas Ernest Atkins and Richard Arthur Atkins as to a ½ share each.
- ii. 1996 CJ 560-561, Order vesting interest of deceased in successors, 118/93, dated 16 October 1996 – succession to Mary Holden I. Amend the 8 successors to Thomas Ernest Atkins and Richard Arthur Atkins as to a ½ share each.
- iii. 3 AT(S) 172, Order vesting interest of deceased in successors, 136/53, dated 23 June 1992 – succession to Mary Holden I. Amend the 8 successors to Thomas Ernest Atkins and Richard Arthur Atkins as to a ½ share each. Note that original order cannot be located. Have amended a copy of the order, scanned into MLIS, and placed said copy in the records room.
- iv. 5 AT(S) 63, Order vesting interest of deceased in successors, 113,118/93, dated 1 October 1996 – succession to Michael Wilson. Cancel order, as Michael Wilson is not a beneficiary of Mary Holden I.
- v. 255 ROT 199, 257 ROT 258, Vesting Order, 117/93, dated 4 October 2000 – succession to Gwendolyn Mary McKain. Cancel order, as Gwendolyn Mary McKain is not a beneficiary of Mary Holden I.
- vi. 255 ROT 199, 257 ROT 258, Order vesting in a whanau trust, 214,220/93, dated 4 October 2000 – vesting interests of Marylyn Claire Hurley in a whanau trust. Cancel order, as Marylyn Claire Hurley is not a beneficiary of Mary Holden I.
- vii. 255 ROT 199, 257 ROT 258, Trust Order, 219/93, dated 4 October 2000 – trust order of the Marylyn Claire Hurley Whanau Trust. Cancel order, as Marylyn Claire Hurley is not a beneficiary of Mary Holden I, and all current interests in the trust derive from Mary Holden II.

[14] It is noted that the order made at 3 Auckland Succession MB 173 on 23 June 1992 is not recorded as a consequential order to be amended by the 2012 Chief Judge's order, as these interests were owned by Richard Arthur Atkins, not Mary Holden I.

[15] It has been identified that the following interests, held by the successors to Richard Arthur Atkins as determined at 3 Auckland Succession MB 173 on 23 June 1992, were inadvertently removed when the 2012 Chief Judge's order was entered into the Court record:

Pukaingataru B 12

	Name	Person ID	Shares
1	Celia Dorothy Harry	2454870	0.1
2	Gwendolyn Mary McKain	2454947	0.1
3	Alan Atkins	2454808	0.05
4	Ronald Atkins	2455311	0.05
5	Michael Wilson	2455169	0.05
6	Sharon Wilson	2455328	0.01666
7	Gary Wilson	2454931	0.01667
8	Paul Wilson	2455244	0.01667

Tumu Kaituna 14

	Name	Person ID	Shares
1	Celia Dorothy Harry	2806793	11.18
2	Gwendolyn Mary McKain	2806794	11.18
3	Alan Atkins	2806795	5.59
4	Ronald Atkins	2806796	5.59
5	Michael Wilson	2806797	5.59
6	Sharon Wilson	2806798	1.87
7	Gary Wilson	2806799	1.86
8	Paul Wilson	2806800	1.86

- [16] Gwendolyn Mary McKain was succeeded to at 255 Rotorua MB 199, 257 Rotorua MB 258 on 4 October 2000. This order was also cancelled by the 2012 Chief Judge's order. Her 11.18 shares in Tumu Kaituna 14 and 0.1 shares in Pukaingataru B 12 were vested in the following persons:

Tumu Kaituna

	Name	Person ID	Shares
1	Marylyn Claire Hurley	2990185	3.7266667
2	Lennis Gwendolyn Andrews	2990191	3.7266667
3	Anita Kathryn Street	2990192	3.7266666

Pukaingataru B 12

	Name	Person ID	Shares
1	Marylyn Claire Hurley	2990185	0.0333333
2	Lennis Gwendolyn Andrews	2990191	0.0333333
3	Anita Kathryn Street	2990192	0.0333334

- [17] The Court record shows that an error was clearly made when the 2012 Chief Judge's order was entered, inadvertently removing the shares of the persons deemed entitled to succeed to Richard Arthur Atkins at 3 Auckland Succession MB 173 on 23 June 1992.

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

- [18] At 255 Rotorua MB 199, 257 Rotorua MB 258 on 4 October 2000, the Court made succession orders relating to Gwendolyn Mary McKain.
- [19] At 257 Rotorua MB 258 on 4 October 2000, the Court made orders, constituting the Marylyn Claire Hurley Whānau Trust over the interests of Marylyn Claire Hurley and appointing her as the sole responsible trustee.

Ngā āhuatanga i rararu ai

Areas of difficulty

[20] There are no areas of difficulty.

Te tūtohunga hei whai

Recommendation of course of action to be taken

[21] I recommend that:

- a) A copy of this report is sent to parties giving them 28 days in which to comment or respond in writing.
- b) All responses received be referred to the Deputy Chief Judge for consideration, for final orders to be issued on the papers.
- c) If there are no objections, the Deputy Chief Judge directs that the Court amend its records concerning the shares of the successors to Richard Arthur Atkins, as determined at 3 Auckland Succession MB 173 on 23 June 1992, by restoring those persons to their respective shares in the 'Tumu Kaituna 14' and 'Pukaingataru B 12' blocks, then re-entering any subsequent transfers.
- d) The application then be dismissed.

Ngā Ture

The Law

[6] 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.

[7] 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:¹⁰

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

- (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 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.

[8] 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.

[9] 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.¹¹ This means that the applicant must establish on the balance of probabilities that there was a mistake or omission.

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

¹¹ *Tau v Nga Whānau o Morven and Glenavy – Waihao 903 Section IX Block* [2010] Māori Appellate Court MB 167 (2010 APPEAL 167).

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

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

[11] 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 order complained of?
- (b) If so, is it necessary in the interests of justice to remedy the error by amending or cancelling the order?

Kupu whakatau me te Ōta

Decision and Order

[12] What has become clear is that whilst an error did not occur at the orders complained of in the application, an error was made in respect of the administration of entering the consequential orders for 2012 Chief Judge's MB 44-50 dated 18 January 2012, whereby the order made at 3 AT(S) 173 dated 23 June 1992 was incorrectly amended as a consequential order.

[13] The Court record therefore shows that an error was clearly made when the 2012 Chief Judge's order was entered, inadvertently removing the shares of the persons deemed entitled to succeed to Richard Arthur Atkins at 3 Auckland Succession MB 173 on 23 June 1992.

[14] This has been addressed in a supplement report completed by Deputy Registrar Ms Kilmister. The report recommended the dismissal of the application. This was circulated to parties.

[15] Following circulation of the supplementary report no objections were received.

[16] I direct that the Court amend its records concerning the shares of the successors to Richard Arthur Atkins, as determined at 3 Auckland Succession MB 173 on 23 June 1992, by restoring those persons to their respective shares in the 'Tumu Kaituna 14' and 'Pukaingataru B 12' blocks, then re-entering any subsequent transfers.

[17] Once amendments as noted above are completed the application is dismissed.

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

I whakapuakina i te 3:00 pm i Rotorua, i tuawhitu i o ngā rā o Ākuhata i te tau 2026.
Pronounced at 3:00 pm in Rotorua on Friday this 7th day of August 2026.

C T Coxhead
DEPUTY CHIEF JUDGE