

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

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

**AP-20230000027492
A2021000005568
CJ 2021/13**

WĀHANGA <i>Under</i>	Section 45, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Succession to Mai Hoani also known as Rangiteuia Hoani or Rangiteuia Rere Kiuha
NĀ <i>By</i>	HIRA MARTIN KELLY II AND JOANNE KELLY Ngā kaitono <i>Applicants</i>

Nohoanga: 20 June 2024, 2024 Chief Judge's MB 1065-1066
Hearing 26 September 2024, 2024 Chief Judge's MB 1906-1915
(Heard at Wellington via zoom)

Whakataunga: 24 January 2025
Judgment date

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

Hei timatanga kōrero

Introduction

[1] This application was filed by Hira Martin Kelly II and Joanne Kelly (“the applicants”) and was accepted in 2021. The applicants seek an order pursuant to s 44 of Te Ture Whenua Māori Act 1993 (the Act) to amend succession orders recorded at 79 Hauraki MB 193-194 dated 4 April 1966 relating to the estate of Mai Hoani also known as Rangiteuia Hoani or Rangiteuia Here Kiuha, (“their grandmother”).

Kōrero whānui

Background

[2] The Registrar’s Preliminary Report and Recommendation (“the Registrar’s Report”) dated 20 September 2024 sets out the background to the application. The Registrar’s 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 Hira Martin Kelly II (applicant) seeks to amend a succession order dated 4 April 1966 at 79 Hauraki MB 193-194 relating to the estate of Mai Hoani alias Rangiteuia Hoani or Rangiteuia Here Kiuha (grandmother).
2. The applicant claims his father, Hira Kelly (1) is a child of the deceased and should have been included. He further claims the interests of the deceased should have gone to all persons entitled.
3. The applicant has been adversely affected by the omission and seeks to amend the orders by including his father and siblings equally.

Concise history of Order sought to be amended/cancelled

4. A copy of the minutes of the orders complained of is set in full below:

35

Mai Hoani

① Rangitēnia Hoani

② ~ Herekūhā dead

S135

Maida Tereiti Herbert (Mrs) applicant 40
 dead was my mother's mother, died on 24/8/48
 at Paeroa, Mother told me, No will.
 married once only = Kere Meneta, dead.

Issue 1. Mary September (Mrs) Whangamata

2. Jack Kelly m.a. Paeroa

3. Anita Tapara (Mrs) Oturohanga

4. Dolly Dehar (v) Putaruru

5. Ruka Kelly m.a. Paeroa

6. Peri Campbell (Mrs) Oturohanga

7. Jimmy Kelly m.a. ~~Maratā Pūkani~~ Tokoroa ~~Totara~~8. Tereiti Ruby Savage ~~for issue~~

9. Hira Kelly m.a. issue.

Issue of No 8 -

(back of paper)

10. Eileen Archani Kerpur to 33 brother's bus, Tokoroa

11. Maida Tereiti Herbert to 84 Tawa St, Whangamata

12. Benny Savage (Jnr) m.a. Arapuni Rd, Putaruru

13. Rosalind Ruby Tereiti to 84 Tawa St, Putaruru

14. Andrew Tine Savage m.a. Luncraig Rd, Auckland

15. Virginia Fantine Davis to 100 Bay of Islands

16. Michael David Savage to 100 Bay of Islands

17. Katherine Savage to 100 Bay of Islands

18. Savage to 100 Bay of Islands

Issue of No 9 -

19. Wayne Kelly m 17 yrs

20. Katie ~ F 16 ~

21. Hira ~ M 14 ~

to mother Hira Kelly
Tirau

② HOS 1, 7, 10 - 18 9 19-21 entitled.

Order (S32) for pay to ~~those who have lost to the estate~~

to 10 of £3.00 travelling expenses

to 11 of £3.00 ~ ~ ~ & fee & of

bal on B C 20766 & 12326 to those entitled, shares
of nos 16 to 18 to father & shares of 19 to 21 to
mother.

Orders (S136) - to nos 1 to 6 equally, in

Papakaraka SC2B1B value £85:

to no 7 solely, in

Moeau 4A2 value £14:

to nos 10, 11, & 12, 19, 20 & 21 equally in

Pukemokemoke 1C value £60:

to no 11 solely in

Ngahutukoi E2A value £2.

Touka Order for 19, 20 & 21 to mother.

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

5. The applicant provided the following documents in support of his application:

- a) A copy of the minute and order complained of;
- b) A copy of minutes from 74 Hauraki MB 178-179 of 15/6/1954 of an earlier determination order to the deceased and succession to Keremeneta alias Keremeneta Wiriharai (grandfather).

Court Research:

6. The deceased died intestate on 24 August 1948. The order at 79 Hauraki MB 193-194 (4 April 1966) was made under section 136 of the Māori Affairs Amendment Act 1953 (as amended by the Māori Purposes Act 1963) as follows:

136 Disposition of interests of deceased owners of Maori land

- (1) When the Court has defined their several shares and interests in accordance with section 135 of this Act, it shall, without further application, proceed to dispose of the beneficial freehold interests of the deceased owner in accordance with the provisions of this section or in accordance with section 137 of this Act, as the case may require.
- (2) In disposing of any beneficial freehold interest of a deceased owner as aforesaid, the Court may, in its discretion, exercise any of the following powers, that is to say:
 - (a) The Court may exercise with respect to the whole or any part of the interest any jurisdiction which it would have authority to exercise under any of the provisions of this Act, if application had been duly made in accordance with this Act and with Rules of Court:
 - (b) The Court may, with the consent of a beneficiary, vest the whole or any part of the share of that beneficiary in any other person or persons:
 - (c) The Court may give effect to any arrangement or agreement whereby the share of any beneficiary is to be vested in any other beneficiary or in any other person who is beneficially interested in any land in which the deceased had a beneficial freehold interest:

Provided that, if the Court is satisfied that any projected arrangement or agreement is fair and equitable and is not contrary to the interests of the beneficiaries or other persons concerned, it may give effect to the projected arrangement or agreement, notwithstanding that any of the persons concerned has not consented thereto or objects thereto:
 - (d) Where the value of the interest of a deceased owner in any land does not, in the opinion of the Court, exceed ten pounds, the

Court shall, if the Maori Trustee has, pursuant to section 137 of this Act, declined to accept the interest, vest the interest without any payment being required therefor in one of the beneficiaries or in any other person beneficially interested in the land:

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

...

What happened to the affected blocks:

Block	
Papaaroa 5C2B1B	Currently Maori Land
Moehau 4A2	Currently Māori Land
Ngahutoitoi E2A	Now Ngahuatoitoi E2C at 89 H 246 of 10 December 1985.3
Pukemokemoke 1C	Sold (see paragraph 7)

Pukemokemoke 1C:

7. The alienation file 17/1887 shows Pukemokemoke 1C comprised of 351 acres 3r and 37p with 244 owners and total shareholding of 85.7095. The order complained of shows other relatives, the applicant and his two siblings Wayne and Katie Kelly. The historical list of owners records their shares and Lena Kelly (mother and trustee) for the minors.

Shareholder No	Name	Sex	Address	Shares
11	Benny Savage (Jnr)	Ma	Pinedale, Arapuni Rd, Putaruru	.1667
24	Eileen Arohanui Harpur	Fa	26 Crathie Cres, Tokoroa	.1666
51	Hira Kelly II	m 14 yrs	Tirau	.1667
78	Katie Kelly	f 16 yrs	Tirau	.1667
96	Maida Tereiti Savage	Fa	84 Tawa St, Murupara	.1666
232	Wayne Kelly	m 17 yrs	Tirau	.1667

8. The block was sold as evident by minutes from 7 Waikato Maniapoto MB 13 (11 March 1970) and alienation notice TN 25/119 executed on 12 May 1970 between the Māori Trustee and Thorp Brothers Limited.

TN 25/119

ALIENATION NOTICE

Maori Trust Office

District Maori Land Court. ~~Maori Trust Office~~

Minute Book Ref: _____ File Ref: 7/288 Private Reg. Hamilton

TO THE

A. ☐ Chief Surveyor, Lands and Survey Department, P.O. Box 460, Hamilton

B. ☐ Branch Manager, Valuation Department, P.O. Box 943, Hamilton

C. ☐ The Clerk, *Ohinemuri County Council, P.O. Box 17, Paeroa.

FOR THE 2 - Alienation Clerk 17/1887

D. ☐ Subject file.

E. ☒ Senior Court Clerk (file register). *Local body, catchment, drainage, or rabbit board.

PLEASE NOTE THAT THE FOLLOWING ALIENATION WAS

☐ Confirmed by the Maori Land Court on _____

☒ Executed, ☒ by the Maori Trustee, ☐ ~~by the Maori Trustee~~ on 12 May 1970

DETAILS OF THE ALIENATION ARE AS FOLLOWS

Land: Pukeokemoke 10

Total area: 352a. Or. 00p. Area alienated if less than whole: _____

Alienor: The Maori Trustee

Alienee: Thorp Brothers Limited ☐ Maori. ☒ European.

Address: Paeroa

NATURE OF ALIENATION

1. Transfer—Consideration: \$10,700

Land declared/deemed to be ☐ Maori land, ☒ European land.

2. Lease: _____ years from _____ ☐ Right of renewal, ☐ No right of renewal.

Rental: _____ per annum for first _____ years, _____ % UV/CV for balance of term.

☐ Compensation for improvements. ☐ No compensation for improvements.

3. Mortgage: _____ years from _____ Principal: _____ Repayable: _____

Interest: \$ _____ percent.

4. Licence (Part _____/1953) ☐ Occupation, ☐ Timber, ☐ Minerals.

Term: _____ years from _____ ☐ Renewable, ☐ Not Renewable.

☐ Rent, ☐ Royalty. Consideration: \$ _____

PLEASE NOTE THE FOLLOWING DEALING RE LEASE/MORTGAGE

1. Land: _____

2. ☐ Lease, ☐ Mortgage to _____

3. Dealing to be noted:

(a) Transferred to _____ on _____

(b) ☐ Surrendered, ☐ Re-entered on _____

(c) Discharged on _____

TITLE CHARGES

Amount _____ Amount _____

Rates—Charging Orders _____ period: _____ Compromise: _____

Survey—Charging Orders _____ dated: _____ Compromise: _____

Other charges: _____

(Ivan A. Hansen)
for MAORI TRUSTEE

14 MAY 1970

DISTRIBUTION
For Office use only

1. Housing mortgages	—	—	—	—	—	(Housing)	A	B	C	D	E
2. Part XXV/83—Leases, mortgages, Board Maori Affairs, etc.	—	—	—	—	—	(Develop)	A	B	C	D	E
3. Maori reserved land—Leases Parts XXII: XXV/83—Sales, leases, etc.	—	—	—	—	—	(Trust, Legal)	A	B	C	D	E
4. Maori reserved land, Maori reserved land—Leases	—	—	—	—	—	(Trust, Legal)	A	B	C	D	E
5. Part XXV/83—Alienations confirmed by Maori Land Court	—	—	—	—	—	(Alienations)	A	B	C	D	E
6. Section 211/83—Housing orders, etc.	—	—	—	—	—	(Court)	A	B	C	D	E
7. Loans/Mortgage dealings	—	—	—	—	—	(Various)	A	B	C	D	E

MA. 811

ENTERED BY: [Signature] 13,000/11/88-3500 W.E.

CHECKED BY: _____

RELEASED BY: _____

9. A copy of the notice of the meeting of owners and proxy form was distributed to owners (5 November 1969). Owners who attending the meeting and voted or represented by proxy are recorded from 1-56.
10. Maida Tereiti Herbert is the only beneficiary who provided a proxy (dated 20 November 1969) for Eileen Harpur or Ben Savage to act as her proxy.

11. Fifty-six owners who attended the meeting, forty-five shareholders voted in favor of the sale. Shareholding combined 16.4785 shares. Eleven voted against, amounting to 2.2580 shares. Tamehanga Hautonga did not vote his shareholding was .1439 shares.
12. There is no record on file Lena Kelly attended the meeting.
13. The total amount of shares represented at the meeting was 18.8804 shares out of a total shareholding of 85.7095 shares

Details of subsequent Orders affecting lands to which this application relates:

14. Succession to Mary September (Mrs) 101 Hauraki MB 35-36 of 7/10/1999,
15. Succession to Anita Tapara – 95 Waikato 92-95 of 3/8/2001,
16. Succession to Ruka Kelly – 121 Waikato Maniapoto MB 90-92 of 20/5/2016,
17. Succession to Jimmy Kelly – 88 Hauraki MB 94 of 27 November 1975

Details of payments made as a result of the Order

18. A request was made on 20 September 2024 to the Māori Trustee for a copy of the receipt of purchase price paid not on the alienation file and, funds paid to Lena Kelly as trustee for the minors..

Reference to areas of difficulty

19. The lower court file could not be located. PF 4062 held for the deceased holds information of further interests vested at 101 Hauraki MB 33-34 (7 October 1999 and copies of the orders complained of.

Consideration of whether matter needs to go to hearing

20. Based on the value of the shares held by the deceased, section 136 Māori Affairs Act 1953 and its amendments, the Court had discretionary powers when vesting the interests of the deceased in beneficiaries. Hira Kelly I was not left out. His children were substituted in place of him in Pukemokemoke 1C. There appears to be no error made.
21. The application should go to hearing for an opportunity to hear from parties to the report with final determination of the court.

Recommendation of course of action to be taken

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

- a) A copy of this report be sent to **those affected parties, for whom we have contact details for, giving them an opportunity to comment or respond to the report.**
- b) The application be set down for hearing on Thursday, 26 September 2024 at 10.45am via zoom to hear from parties

Ko te hātepe ture o te tono nei

Procedural history

[3] The Registrar's Report was distributed to parties on 23 September 2024.

Te Nohonga a Te Kooti

The Hearing

[4] On 26 September 2024, a hearing was held. I heard evidence from Joanne Kelly, daughter of the applicant, Hira Martin Kelly II who gave his apologies.

[5] I adjourned the application for two months to allow the applicants time to read the report and make submissions. No submissions have been filed. The file was referred to me on 22 January 2025 for judgment.

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 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.

[7] In *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)*, the former Chief Judge set out the principles to be applied in determining such applications made pursuant to s 45 as follows:¹

- (a) 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);
- (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 s 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

¹ *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)* [2009] Chief Judge's MB 209 (2009 CJ 209) at [15].

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.² 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:³

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

[11] 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?

Was an error made?

[12] I note paragraph 20 of the Registrar's report. The applicant has not been able to demonstrate on the balance of probabilities that an error, mistake or omission was made.

² *Tau v Nga Whānau O Morven & Glenavy – Waihao 903 Section IX Block* [2010] Māori Appellate Court MB 167 (2010 APPEAL 167).

³ *Inia v Julian* [2020] NZCA 423 at [10].

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

[13] As no error has been established, there is no need to address this issue.

Kupu whakataunga

Decision

[14] As the applicant has not been able to demonstrate an error was made, the application is dismissed.

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

I whakapuaki i te 5.00 pm i Turanganui-a-Kiwa, rua tekau ma whā o Hānuere i te tau 2025.
Pronounced at 5.00 pm in Gisborne on this 24th day of January 2025.

C L Fox
CHIEF JUDGE