

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

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

**AP-20230000019665
A20180006647
CJ 2018/26**

WĀHANGA
Under

Section 45, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Succession to Pukawa Ngataua

NĀ
By

TE URUNGA EVELYN AROHA KEREOPA
Te Kaitono
Applicant

Nohoanga:
Hearing

18 June 2024, 2024 Chief Judge's MB 1028-1031
26 March 2024, 2024 Chief Judge's MB 418-421
(Heard at Wellington via zoom)

Kanohi kitea:
Appearances

Siaosi Loa for Applicant

Whakataunga:
Judgment date

4 February 2025

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

Copies to: Siaosi Loa, C/- Tamaki Legal, PO Box 75517, Auckland. Siaosi@tamakilegal.com

Hei tīmatanga kōrero

Introduction

[1] This application was filed on 3 September 2018 pursuant to s 45 of Te Ture Whenua Māori Act 1993 (the Act). It seeks a s 44 order to amend orders made at 93 Otorohanga MB 20 dated 23 July 1974, 2 Whanganui Sec 81 MB 253 dated 21 December 1977, 7 Whanganui Sec 81A MB 138 dated 9 July 1984 and 9 Whanganui Sec 81A MB 117-118 dated 14 November 1986 relating to Pukawa Ngataua (the deceased). It was filed by Evelyn Kereopa on behalf of the descendants of the deceased, his children from his first marriage.

Kōrero whānui

Background

[2] The Registrar's Preliminary Report and Recommendation (the Report) dated 31 May 2024 sets out the background to the application. The Report is reproduced in full below:

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

Introduction

1. This application filed by Te Urunga Evelyn Aroha Kereopa (the applicant) seeks to amend succession orders at 93 Otorohanga MB 20 (23 July 1974), 2 Whanganui Sec 81 MB 253 (21 December 1977) and 7 Whanganui Sec 81A MB 138 (9 July 1984) and 9 Whanganui Sec 81A MB 117-118 (14 November 1986) relating to Pukawa Ngataua.
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) Rina Ngataua failed to notify the Court that she was the second wife of Pukawa Ngataua and that Pukawa Ngataua had seven natural children to his first wife that were entitled to succeed the land interests upon her death or remarriage.
 - b) Subsequently those same land interests were vested in Rina's children.
3. The applicant claims that she and the seven natural children of Pukawa Ngataua have been adversely affected by the order complained of upon the grounds that they have been alienated from the land interests of their tipuna.
4. The applicant seeks to have the orders cancelled and distributing the deceased's interests in all seven children equally.

Concise history of Order sought to be amended/cancelled

Succession to Pukawa Ngataua also known as Pukawa Tukino or Pukawa Ramarihi or Pukakawa Raumarihi

5. 2 Registrar MB 172 (5 March 1974)—Interests vested in Rina Ngataua as administratrix. The minute is reproduced as follows:

172

316 Estate Pukawa Ngataua - Dec.
Sec 81/67

Deceased died 18th October 1970 - intestate
 L/A 850/71 granted Supreme Court
 Hamilton 28th September 1971 to

Rina Ngataua
 of Taumarunui - administratrix
Sec 81/67 Orders vesting in administratrix

X Hurakia A1
 X Pouakani c no 18 Sec 2
 X Waihaha 4

3.

DATA PREPARED BY
 no

26/3/74

DATA CHECKED BY
 8

28/4/74

3/3/74

Deputy Registrar
 5.3.74

6. 167 Rotorua MB 294 (31 May 1974)—Interests vested in Rina Ngataua solely. The minute is reproduced as follows:

294

103
 216 Estate Pukawa Ngataua - Dec.
 Sec 213(4).

112
 X Mrs Sumner - for Deputy Registrar
 Rina Ngataua of Taumarunui - administratrix
 Sec 81/67 orders made Reg 2/172 to
 5-3-1974

Section 213(4) Orders in terms of
 application are sought as follows:

X Hurakia A1
 X Pouakani C No 1B Sec 2
 X Waihaha 4
 To

Rina Ngataua - absolutely.

Court: *order accordingly.*

CERTIFIED IN ORDER
 FOR SIGNATURE

[Signature]
 30/5/74

[Signature]

K. Gillanders Scott
 Judge.

31/5/74

7. 6 Tokaanu (Alienation) MB 382 (17 June 1974)—Interests vested in Rina Ngataua solely. The minute is reproduced as follows:

382

EXTRACT FROM TOKAANU M.B. (ALN) 6/382

DATE: 17 June 1974
 PLACE: Wanganui
 JUDGE: W. C. Nicholson

Application (Unadvertised)

Pukawa Ngataua, Deceased

Application by Administrator
 to vest interests in person
 beneficially entitled

Court:

Order - Sec. 213(4) - vesting the interests of Rina Ngataua
 as administrator of the estate of the above deceased, in the
 undermentioned lands, in Rina Ngataua of Taumarunui, Widow,
 solely and beneficially.

Name of Land		Interest	
Ohura South A3 E2 C2B	.3738	out of	5.9798 shares
Hangitoto Tuhua 21B 2B 1B	.0357	" "	1.0000 "
" " 37B1	.2024	" "	15.5715 "
" " 37B4	.5000	" "	62.4752 "
" " 80B 102 Lot 2	.1420	" "	183.3000 "
" " 80B 102 Lots 6 & 7	.1420	" "	183.3000 "

[Signature]

8. 93 Otorohanga MB 20 (23 July 1974)—Interests held by Rina Ngataua as administrator vested in her solely. The minute is reproduced as follows:

20

Place: Hamilton
 Present: K.B. Cull, Esquire, Judge
 Date: 23 July 1974

Exparte No. 34042

Estate of Pukawa Ngataua

Section 213(4)/1953

Rina Ngataua f.a. of Taumarunui has made an application for orders vesting interests set out in the Schedule hereto held by her as the Administratrix of the above estate in the person whose name is set out in the said Schedule solely as the person beneficially entitled.

Orders Section 213(4)/53 accordingly.


 Judge

SCHEDULE

Name of Land	Shares to be vested	Total shares in block	Name, sex and age of beneficiaries	Share
Te Hape B	24.0096	7838.4125	Rina Ngataua f.a. C/- Mrs Morgan, B.D. 4, TAUMARUNUI.	solely

9. 2 Whanganui Sec 81 MB 253 (21 December 1977)—Succession to Pukawa Ngataua also known as Pukawa Tukino or Pukawa Ramarihi or Pukawa Raumarahi—Interests vested in Rina Ngataua as administrator. The minute is reproduced as follows:

253

AT WANGANUI 21 DEC 1977

TRANSMISSION TO ADMINISTRATOR: SEC. 81/1967

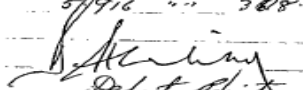
DECEASED: PUKAWA NGATAUA, OIA
 PUKAWA TUKINO, OIA
 PUKAWA RAMARIHI, OIA
 PUKAWA RAUMARIHI

DATE OF DEATH: 12th October 1970

ADMINISTRATOR: RINA NGATAUA

NAME OF LAND:

NAME OF LAND	SHARES OWNED BY ESTATE
Pukawa B	3.14628 out of 3540.0000
Pukawa 242	5000.00 198.528
Ohara South A ³ 8 ² C ¹ B	0834 3.2000
Ohara South A ³ 8 ² C ³ B ² A	0333 1.0000
Pangitohi Tuhua 66A 3 ^c	0238 29.428
Pangitohi Tuhua 80B 1, B ²	1667 3.0000
Tararua	57916 308.50


 Deputy Registrar

10. 7 Whanganui Sec 81A MB 138 (9 July 1984)—Interests held by Rina Ngataua as administrator vested in her solely. The minute is reproduced as follows:

138

Section 81A/1967 *Taringamotu*
 Place *Taringamotu*
 Present *T. H. [Signature]*
 Registrar/Deputy Registrar
 Date *9 July 1979*
 Application No *Previous Order Puhara Ngataua*
 Estate of *Deceased*
 Application Section 81A/1967 *P. [Signature]* In support
 On the *21* day of *December* 19 *77* (Reg. MB *20253* the 1st and
 interests of the deceased were vested in *Rina Ngataua*
 As Administrator/Executrix who now seeks to vest the interests in the
 persons legally entitled thereto.
 Registrar/Deputy Registrar
 Order Sec. 81A/1967 vesting the interests of the applicant/s as follows:

Block	Share	Successor	Share
<i>Puhara B</i>	<i>3.14628</i>	<i>Rina Ngataua</i>	<i>3.14628</i>
<i>" 2G2</i>	<i>5000</i>	<i>solely</i>	<i>5000</i>
<i>Okura South A3E2C1B</i>	<i>0834</i>		<i>0834</i>
<i>" " A3E2C3B2A</i>	<i>0333</i>		<i>0333</i>
<i>Pangitote Tuhua 66A3C</i>	<i>0238</i>		<i>0238</i>
<i>" " 80B1B2</i>	<i>1667</i>		<i>1667</i>
<i>Taringamotu</i>	<i>20.811</i>		<i>20.811</i>

[Signature] Registrar

11. 4 Whanganui Sec 81 MB 103 (12 July 1984)—Succession to Rina Ngataua also known as Rina Wharekura Paehua or Adams—interests vested in Monika Morgan as executrix.

103

4 ADV 103

Section 81/1967

Place Whanganui

Present R. G. Morgan

Registrar/Deputy Registrar

Date 12 July 1984

Application No: 49017

Estate of Rina Ngataua

Application Section 81/1967 to vest the interest of the deceased in:

..... Mohika Morgan As Administrator/trix

..... R. G. Morgan Executrix/trix

..... In support. Application supporting documents and searches produced.

The deceased died on or about the 9th day of November 1930

and Probate/Order to Administer/Order to Administrator (with Will Annexed) issued by the High Court on the 5th day of March 1981 reference No. P 1921 83

Registrar/Deputy Registrar

Order Sec. 81/1967 vesting the interests of the deceased in

BLOCK

Pukawa B	3.14628	out of 3540.00000
Pukawa 2G2	.5000	" " 198.5280
Ohura South A3E2C1B	.0834	" " 3.2000
Ohura South A3E2C3B2A	.0333	" " 1.0000
Ohura South A3E2C2B	.3738	" " 5.9798
Rangitoto Tukua 66A3C	.0238	" " 29.4286
Rangitoto Tukua 80B1B2	.1667	" " 3.0000
Taringamotu	20.811	" " 3618.500
Pukemakoiti	.141400	" " 100.000000
Hauhungaroa 6B	.8777	" " 13.5000
Rangitoto Tuhua 21B2B1B	.0357	" " 1.0000
Te Tarata	224.6013	" " 290,000.0000

R. G. Morgan
Registrar

12. 9 Whanganui Sec 81A MB 117-118 (14 November 1986)—Succession to Rina Ngataua also known as Wharekura Paehua or Adams—interests vested in Mohika Morgan, Gay Herbert and Janet Horua.

117

Section 81A/1987

Place: WAIKANAHIPresent: J. H. TAIPANA

Registrar/Deputy Registrar

Date: 14.11.86Application No: 82/49027Estate of: KING NEATAHA Deceased

Application Section 81A/1987

..... H. L. STEVENSON in supportOn the 12 day of July 1984 (Reg. MB 1102) the land
interests of the deceased were vested inAs Administratrix who now seeks to vest the interests in the
persons legally entitled thereto.

Registrar/Deputy Registrar

Order Sec. 81A/1987 vesting the interests of the applicant as follows:

Block Share Successor Share

Land	Shares held by Executrix being Vested by this Order	Name and Address of each Beneficiary	Shares Vested in Each Beneficiary By this Order
Pukawa B	3.14628	Monika Morgan	f 1/2 1.57314
		Gay Herbert	f 1/4 .78657
		Janet Horua	f 1/4 .78657
Pukawa 2G2	.5000	Monika Morgan	f 1/2 .2500
		Gay Herbert	f 1/4 .1250
		Janet Horua	f 1/4 .1250

CONTINUED 118

9 RGNG Minute Book				
2.				
Ohura South A3E2C1B	.0834	Monika Morgan	f 1/2	.0417
		Gay Herbert	f 1/4	.0209
		Janet Horua	f 1/4	.0208
Ohura South A3E2C3B2A	.0333	Monika Morgan	f 1/2	.0166
		Gay Herbert	f 1/4	.0083
		Janet Horua	f 1/4	.0084
Ohura South A3E2C2B	.3738	Monika Morgan	f 1/2	.1869
		Gay Herbert	f 1/4	.0935
		Janet Horua	f 1/4	.0934
Rangitoto Tuhua 66A3C	.0238	Monika Morgan	f 1/2	.0119
		Gay Herbert	f 1/4	.0059
		Janet Horua	f 1/4	.0060
Rangitoto Tuhua 80B1B2	.1667	Monika Morgan	f 1/2	.0833
		Gay Herbert	f 1/4	.0417
		Janet Horua	f 1/4	.0417
Taringamotu	20.811	Monika Morgan	f 1/2	10.405
		Gay Herbert	f 1/4	5.203
		Janet Horua	f 1/4	5.203
Pukemokoiti	.141400	Monika Morgan	f 1/2	.070700
		Gay Herbert	f 1/4	.035350
		Janet Horua	f 1/4	.035350
Hauhungaroa 6B	.8777	Monika Morgan	f 1/2	.4389
		Gay Herbert	f 1/4	.2194
		Janet Horua	f 1/4	.2194
Rangitoto Tuhua 21B2B1B	.0357	Monika Morgan	f 1/2	.0179
		Gay Herbert	f 1/4	.0089
		Janet Horua	f 1/4	.0089
Te Tarata	224.6013	Monika Morgan	f 1/2	112.3007
		Gay Herbert	f 1/4	56.1503
		Janet Horua	f 1/4	56.1503

[Signature]
R. P. S. R. R.

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

13. The applicant has provided copies of the minutes/orders complained of in support of her application.

Court Research

14. Held on file 74-39087 for Pukawa Ngataua is a copy of a certificate of value.

CERTIFICATE OF VALUE

The Maori Affairs Amendment Act 1967, Section 78 (4)

In the Maori Land Court
of New Zealand
Aotea District

IN THE MATTER of the estate of
PUKAWA NGATAUA deceased.

DATE OF DEATH:

11.10.70

APPLICATION having been duly made, pursuant to and for the purposes of Section 78 (4) of the Maori Affairs Amendment Act, 1967 by the administrator of the estate of the abovementioned deceased, I, MAURICE SYDNEY BYRES, Deputy Registrar of the Maori Land Court for the abovenamed District, do, pursuant to and for the purposes of Section 78 (4) aforesaid, HEREBY CERTIFY that, in my opinion, the undivided interest in each piece of Maori freehold land respectively mentioned in the First Column of the Schedule hereto of the person named opposite that piece of land in the Second Column of such Schedule, has the value set forth opposite such piece of land in the Third Column of such Schedule.

NOTE HOWEVER, that the names set out in the said Second Column are, from a search of the records of the Maori Land Court and of the Maori Trustee in this district, believed by me to relate to the same one person - namely the said deceased - but no assurance is given that this is so, or that the interests referred to in the said Schedule comprise the whole of the interests in Maori freehold land, of the said deceased.

AS WITNESS my hand the seal of the Court this 4th day of June 1971.



DEPUTY REGISTRAR

THE SCHEDULE

First Column	Second Column	Third Column
Land	Names	Value of undivided interest
Ohura South A3E2 C2B	Pukawa Ngataua	\$675.11
Rangitoto Tuhua 21B 2B 1B	Pukawa Ngataua	\$15.71
Rangitoto Tuhua 37B1	Pukawa Ngataua	\$4.29
Rangitoto Tuhua 37B4	Pukawa Ngataua	\$17.13
Rangitoto Tuhua 80B1C2 Lot 2	Pukawa Ngataua	\$3.14
Rangitoto Tuhua 80B1C2 Lot 6 and 7	Pukawa Ngataua	\$2.40



15. Held on estate file 316 for Pukawa Ngataua are letters of administration from the Supreme Court at Hamilton dated 28 September 1971 (P. No. 850/71) in favour of Rina Ngataua.
16. Held on probate file 82-49027 for Rina Ngataua are:
 - a) Probate P192/81 granted by the High Court at Hamilton on 5 March 1981.
 - b) Will dated 21 January 1980. I note Monika Morgan is Rina's daughter and Gay Herbert and Janet Horua are Rina's grandchildren.
 - c) Part 4 search which details the interests derived from the estate of Pukawa Ngataua.

- d) A note stating Rina married Wharekura Paehua who died on 29 October 1961. Then married Pukawa Ngataua who died on 12 October 1970.
- e) Letter from Court to Messrs Phillips & Powell, Barristers and Solicitors dated 6 July 1984.

6 July 1984

Messrs Phillips & Powell
Barristers and Solicitors
PO Box 6
OTOROHANGA

Dear Sirs

ESTATE OF RINA NGATAUA

Thank you for your letter of 25 June 1984.

The Section 81 Order dated 29 January 1974 did include an interest in Taringamotu block. Why this interest was not vested in the beneficiary or form part of the Section 213 (4)/53 Order dated 17 June 1974 is not clear.

There are a number of interests held by Rina Ngataua as administrator of the estate of Pukawa Ngataua. To avoid further delay and additional expense to your client, we propose to issue a further Section 81A Order to transfer the interests to the beneficiary Rina Ngataua. We will then proceed with the present application and issue a Section 81 Order for transmission of interest of Rina Ngataua to the executrix Monika Morgan.

The proposed arrangement between the beneficiaries and the children of Pukawa Ngataua can be dealt with when the Section 81A application is lodged. It will be necessary to obtain consents of all parties to the arrangement.

Yours faithfully



(A E Tatana)
for Registrar

- f) Letter from Phillips & Powell, Barristers & Solicitors dated 25 June 1984

F. L. PHILLIPS, L.L.B.
J. R. POWELL, M.A., L.L.B.

Phillips & Powell
BARRISTERS & SOLICITORS

TELEPHONES: 8059
8058
P.O. Box 6
Telegrams: "POWPHILL"

Please make appointments for interviews

27 Maniapoto Street,
Otorohanga
15th June 1984

The Registrar
Maori Land Court
Private Bag
WANGANUI

28 JUN 1984
RECEIVED
WANGANUI

Dear Sir

Mr. Asana.
Would you please look into this.
S. J. 28/6/84

re: Estate of Rina Ngataua 14/31011

We thank you for your letter of the 15th June. We find that we do have a copy of a vesting order made pursuant to Section 213(4) on the 17th June 1974; whereby six undivided interests in Maori Land owned by the late Pukawa Ngataua were vested in Rina Ngataua. These blocks were the same as those included in the order made pursuant to Section 81 of the Maori Affairs Amendment Act 1977 on the 29th January 1974, except that this order included the share in the Taringamotu Block.

We are advised by the solicitors who acted in the estate of the late Pukawa Ngataua, that the vesting of the estate was made strictly in accordance with the provisions of the Administration Act which meant that the late Rina Ngataua was entitled to the whole of her late husband's estate. We would have thought therefore that the application pursuant to Section 21(3)(4) which resulted in the Order being made on the 17th June 1974 would have included the interest in the Taringamotu Block. We should be grateful if you could check this point please.

We are advised by Mrs Morgan, the executrix of the estate

of the late Rina Ngataua, that despite the fact that these interests were vested in her late mother in accordance with the law existing at the time of the date of death of the late Pukawa Ngataua, she and the other beneficiaries under her late mother's will, wish that the interests which Rina Ngataua received from the Estate of Pukawa Ngataua should be vested in the children of Pukawa Ngataua.

The late Pukawa Ngataua did not leave a will and Rina Ngataua was appointed administrator under a grant of Letters of Administration. If therefore there are still some interests remaining in her name as administrator of the estate, then it would appear that a fresh grant of Letters of Administration de bonis non administratus will have to be made, and we naturally wish to avoid having to do this if possible as it is an expensive process.

Yours faithfully,
PHILLIPS & POWELL

Per: *[Signature]*

Registrar.

Para 1 is correct. Tarringtons should have been included in S. 212(u) order. After this order further interest were found and another S. 81A order made (CP 14.B.2/253 of 21.12.77) unfortunately no follow up S. 81A/6 order was made. See last para above. I don't see that by any alternative. Your comments & directions please.

Details of subsequent Orders affecting lands to which this application relates

17. At 6 Whanganui Sec 81 MB 78-79 (30 April 1991) and 15 Whanganui Sec 81A MB 162-163 (31 October 1997) the Court made succession orders relating to Monika Morgan.

Reference to areas of difficulty

18. I note the letter from Phillips & Powell, Barristers & Solicitors dated 25 June 1984 above which states that the solicitors who acted in the estate of Pukawa Ngataua (Driver, Wadsworth & Bowler, Barristers & Solicitors), that the vesting of the estate was made strictly in accordance with the provisions of the Administration Act which meant that the late Rina Ngataua was entitled to the whole of her late husband's estate.
19. Rina held the authority to administer the estate. She had obligations under the Administration Act 1969 and had legal representation in the estate of Pukawa Ngataua.
20. Consideration to Section 77 of the Administration Act 1969 is required. It states:

77. Succession to real and personal estate on intestacy—

(1) Where any person dies intestate as to any real or personal estate, that estate shall be distributed in the manner or be held on the trusts mentioned in this section, namely:

(a) If the intestate leaves a husband or wife, the surviving husband or wife shall take the personal chattels absolutely, (but subject, in the case of any such chattels that are subject to a hire purchase agreement within the meaning of the Hire Purchase Agreements Act 1939, or to an agreement that would have been such a hire purchase agreement if the purchaser were not engaged in the trade or business of selling goods of the same nature or description as the goods referred to in the agreement, to the rights of the vendor under the agreement) and, in addition, the residue of the estate shall stand charged with the payment of a sum of twelve thousand dollars to the surviving husband or wife with interest thereon from the date of the death until paid or appropriated, at the rate from time to time prescribed by or under section 39 of this Act, and, subject to providing for that sum and the interest thereon, the residue of the estate shall be held,—

(i) If the intestate leaves issue, in trust as to one-third for the surviving husband or wife absolutely, and as to the other two-thirds on the statutory trusts for the issue of the intestate:

21. If orders are cancelled, this succession would still fall under the Act in force at the time of death. Further, if a one third (for Rina) and two thirds (for issue) split is considered by the Court, any interests which may then be “uneconomic” would also need to be dealt with as appropriate.

Consideration of whether matter needs to go to hearing

22. As this is an aged application it has been set down for hearing on 18 June 2024.

Recommendation of course of action to be taken

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

- a) a copy of this report be sent to **those affected parties, for whom we have contact details for, giving them an opportunity to comment or respond, in writing prior to the hearing on 18 June 2024;** and
- b) this matter be set down for hearing.

Ko te hātepe ture o te tono nei

Procedural history

[3] An initial hearing took place on 26 March 2024.¹ The matter was adjourned to allow time for the Case Manager to conduct more research in order to complete the Report.

[4] Notice of the next hearing was sent to all parties on 23 April 2024.

[5] On 31 May 2024, a copy of the Registrar's Report was sent by post to the parties and sent by email on 5 June 2024.

Te Nohonga a Te Kooti

The Hearing

[6] The hearing was held on 18 June 2024.

[7] Mr Loa appeared for the applicant. He addressed the commentary regarding the Administration Act 1969, submitting that it did not apply to the estate of a deceased Māori at the time the initial orders were made. Rather, he submitted, the Māori Affairs legislation applies. Under s 117 of the Māori Affairs Act 1953, the interests were to be succeeded to in accordance with Māori custom. He undertook to provide written submissions on the issues and file those on the Friday following the hearing.

[8] Submission from Mr Loa were subsequently filed on 19 July 2024. He reiterated the facts noting inter-alia that:

- (a) The deceased was the great grandfather of the applicant.
- (b) He had seven biological children prior to his marriage to Rina Ngataua.
- (c) The deceased died on 12 October 1970.
- (d) Rina became the administratrix of the deceased's estate and then the sole beneficiary of the Māori land interests of the deceased.
- (e) Over the decade 1970-1980 she received most of the land interests of the deceased.

¹ 2024 Chief Judge's MB 418-421.

- (f) She died on 9 November 1980.
- (g) She left by will dated 21 January 1980 her estate to Monika Morgan (her daughter) and Gay Herbert and Janet Horua (her grandchildren). I note that Monika's father was not the deceased. Her father was Wharekura Te Paehua.

[9] Mr Loa noted that Rina became the administratrix of the deceased's estate on 28 September 1971, under the Administration Act 1969. He then addressed the different orders and the relevant law that applied. He submitted that errors of fact and law were made. He noted that Rina failed to advise the Court that there were seven children from the deceased's first marriage. The subsequent vesting in Monica Morgan as the executrix of Rina's estate and transmission to Rina's successors, counsel submitted, were also errors of law.

[10] Counsel submitted, therefore, that I should use my jurisdiction under s 44 to correct these errors.

[11] No representatives of the respondents were present. I indicated I would deal with the matter by issuing a preliminary reserve decision, so that the respondents could be given notice, and have the opportunity to be heard on my preliminary views. The file was referred to me for that judgment in January 2025.

Te Ture

The Law

[12] 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, 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.

[13] In *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)* the principles to be applied in determining applications made pursuant to s 45 were listed as follows:²

- (a) When considering section 45 applications, the Chief Judge needs to review the evidence given at the original hearing and weigh it against the evidence provided by the Applicant (and any evidence in opposition);
- (b) Section 45 applications are not to be treated as a rehearing of the original applications;
- (c) The principle of *Omnia Praesumuntur Rite Esse Acta* (everything is presumed to have been done lawfully unless there is evidence to the contrary) applies to section 45 applications. Therefore, in the absence of a patent defect in the order, there is a presumption that the order made was correct;
- (d) Evidence given at the time the order was made, by persons more closely related to the subject matter in both time and knowledge, is deemed to have been correct;
- (e) The burden of proof is on the applicant to rebut the two presumptions above; and
- (f) As a matter of public interest, it is necessary for the Chief Judge to uphold the principles of certainty and finality of decisions. These principles are reflected in section 77 of the Act, which states that the Court orders cannot be declared invalid, quashed or annulled more than 10 years after the date of the order. Parties affected by orders made under the Act must be able to rely on them. For this reason, the Chief Judge's special powers are used only in exceptional circumstances.

[14] 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.

² *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)* [2009] Chief Judge's MB 209 (2009 CJ 209) at [15].

[15] 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.³ 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) falls into two parts:⁴

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 (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?

Was an error made?

[18] I note that one letter on the personal file of the deceased from the applicant's whānau received by the Māori Land Court in Rotorua on 28 July 1986. It is reproduced in full below:

³ *Tau v Nga Whānau O Morven & Glenavy – Waihao 903 Section IX Block* [2010] Māori Appellate Court MB 167 (2010 APPEAL 167).

⁴ *Inia v Julian* [2020] NZCA 423 at [10].

Registrar Rotorua Māori Land Court
Private Bag, Rotorua

Dear Sir or Madam

My cousins's Grandfather is Ngataua Kopere, his son is Pukawa Ngataua & this man[']s son is Tom Pukawa Ngataua but now known as Tom Pukawa. His father died 12th October 1970 to their understanding. They thought I had something to do with their father's land because he was very close to me, well it was wrong.

Pukawa Ngataua married Mere Ngarara the issues were 7. The second marriage was to Pakena Wharekura no issue so Sir my plea here is I think the children has a right to be succeeded to their father but if I am correct please in reply, reply to Mr Tom Pukawa (Ngataua), 5 Don Place, Otara, Sth Auckland.

I would be grateful if you could check this out and get back to Tom Pukawa (Ngataua).

Thank you very much.

Yours faithfully
Mrs T O Vahaakolo

[19] This letter makes it clear that the deceased did have two families and that the children of the first marriage were omitted from the succession.

[20] The reason for this relates to the law as it was when this estate was first dealt with by the Court. Counsel is correct that the vestings in favour of Rina as administratrix are unimpeachable. They were made in accordance with the law at the time.

[21] With respect to the first vesting in Rina solely on 31 May 1974 recorded at 167 Rotorua MB 294, s 76 of the Māori Affairs Act 1967 applied, providing that those entitled to succeed were to be determined in the same manner as if the deceased were a European. Therefore, the provisions of the Administration Act 1969 became relevant. The application of s 77 of the 1969 Act meant Rina could only take one-third of the deceased's land interests and the remaining two-thirds should have gone to all the children of the deceased.

[22] However, the Court made the orders pursuant to s 213(4) of the Māori Affairs Act 1953, after receiving an application from Rina's solicitors. Section 213(1) gave the Court jurisdiction to give effect to an arrangement or agreement made between the persons concerned, so the Court could make vesting orders for the transfer of any interest in any land

to a Māori or the descendent of a Māori. Section 213(4) provided that on hearing such an application, where it appeared to the Court that “some modification in favour of the owners should in justice be made in the terms of the arrangement or agreement, the Court may, with the consent of the alienee, modify the terms of such arrangement or agreement.” In this case the alienee was Rina as the administratrix who agreed to an arrangement where she became the sole beneficiary. The Court should have been advised that there were at least seven children from the first marriage. The Court was never advised of this. Furthermore, there was no notice to the deceased’s children, thus preventing them arguing for their entitlement. This was an omission in the presentation of facts leading the Court to make the order in error.

[23] With respect to the interests vested by order pursuant to s 213(4) at 6 Tokaanu (Alienation) MB 382 (17 June 1974), 93 Otorohanga MB 20 (23 July 1974) the same errors occurred.

[24] As for the order made at 9 July 1984, recorded at 7 Whanganui MB 138, that was made pursuant to s 81A of the Māori Affairs Amendment Act 1967. This was done after the death of Rina. Again, there was an omission in the presentation of facts leading the Court to make the order in error. The orders made for succession to Rina’s estate, were also therefore made in error.

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

[25] After taking into account the Preamble ss 2 and 17, I consider that all these errors need to be remedied.

Kupu whakatau me te Ōta e whakairo ana au
Decision & Proposed Order

[26] The orders vesting the deceased’s interests in Rina Ngataua will be cancelled. The parties will need to file for new succession orders in the Māori Land Court so that all entitlements can be properly the subject of evidence.

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

I whakapuaki i te 2.00 pm i Pēwhairangi, i te rā tuawhā o Pepuere i te tau 2025.
Pronounced at 2.00 pm in the Bay of Islands on this 4th day of February 2025.

C L Fox
CHIEF JUDGE