

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

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

AP-20230000027953

A20200002276

WEHENGĀ
Under

Sections 113 and 118, Te Ture Whenua Māori Act
1993

MŌ TE TAKE
In the matter of

Succession to Anthony Waitiri Jeans Kiro

NĀ
By

SANDRA KIRO AND LATOYA MAUREEN
Ngā kaitono
Applicants

Nohoanga:
Hearing

6 July 2020, 214 Taitokerau MB 269-276
14 February 2022, 246 Taitokerau MB 8-13
20 February 2024, 275 Taitokerau MB 54-58
10 March 2025, 289 Taitokerau MB 146-159
(Heard at Kaikohe)

Whakataunga:
Judgment date

17 December 2025

TE WHAKATAUNGA A KAIWHAKAWĀ M P ARMSTRONG

Judgment of Judge M P Armstrong

Hei tīmatanga kōrero*Introduction*

[1] Anthony Kiro died on 23 November 2019. He is survived by his wife Sandra Kiro. They had eight children:

- (a) Aroha Kiro;
- (b) Awhina Kiro;
- (c) Mark Kiro;
- (d) Wesley Kiro;
- (e) Latoya Kiro;
- (f) James Kiro;
- (g) Pounamu Kiro; and
- (h) Jade Kiro.

[2] Anthony also raised his granddaughter Dziah Kiro. Her biological mother is Latoya.

[3] Sandra supports Dziah succeeding to her late husband as a whāngai. There is both support for, and opposition to, Dziah succeeding amongst the eight biological children.

[4] Anthony didn't leave a will. His Māori land interests will go to his eight children equally. The question in this case is whether Dziah should also succeed as a whāngai. In this judgment, I answer that question.

Ngā whakaritenga*Procedural history*

[5] I first heard this application on 6 July 2020. Sandra, Aroha and Awhina attended. Sandra initially advised that all of her children supported Dziah succeeding as a whāngai. However, Aroha advised that two of her siblings, Awhina and Wesley, had not been consulted

on the issue. I adjourned the application and directed that a whānau hui was to be held to discuss whether Dziah should succeed.¹

[6] I heard the application again on 14 February 2022. Sandra, Latoya, James, Dziah and Jade attended. Sandra advised that the whānau meeting was not held. Despite that, Latoya told me that the whānau did have a meeting shortly after Anthony passed away and everyone, including Awhina and Wesley, agreed to Dziah succeeding. At that time, I already had signed consents from Aroha, Mark, Latoya and James supporting Dziah succeeding as a whāngai. Pounamu and Jade were at the hearing where Latoya told me all siblings supported Dziah. Relying on Latoya's evidence, I granted the following orders:²

- (a) Recognising Dziah as a whāngai entitled to succeed; and
- (b) Vesting Anthony's interests in the eight biological children, and Dziah, equally.

[7] As I didn't have any independent evidence that Awhina and Wesley agreed, I made those orders conditional on signed consents from Awhina and Wesley being filed within two months. Those consents were not filed. Instead, Wesley filed a letter stating that he does not agree to Dziah being included in the succession order.

[8] I heard this application again on 20 February 2024. Sandra, Mark, James, Latoya, Aroha, Jade, Pounamu and Dziah attended. Sandra, Latoya and James confirmed that they still support Dziah succeeding. Mark told me that he did support her succeeding but now he wasn't sure. As there was both support for, and opposition to, Dziah succeeding, I directed the whānau to meet, either in person or electronically, to discuss the issue to see if agreement could be reached. I also advised that if agreement was not reached, at the next hearing I would hear any evidence in support or opposition and would then make a decision on the matter.³ Following the hearing, the whānau attempted to discuss this matter but agreement could not be reached.

¹ 214 Taitokerau MB 269-276 (214 TTK 269-276).

² 246 Taitokerau MB 8-13 (246 TTK 8-13).

³ 275 Taitokerau MB 54-58 (275 TTK 54-58).

[9] The final hearing was held on 10 March 2025. Sandra, Awhina, Mark, Aroha, James, Wesley, Pounamu, Jade and Dziah attended. I heard evidence from those who wished to address me and reserved my decision.⁴

He aha ngā mātāpono o te ture?

What legal principles apply?

[10] Although I have already granted orders recognising Dziah as a whāngai and including her in the succession, those orders were conditional on signed consents from Wesley and Awhina being filed. Those conditions were not met. Per s 73(3) of Te Ture Whenua Māori Act 1993, where the conditions in an order are not satisfied, I have the discretion to amend or cancel that order. As the power to amend or cancel the order is discretionary, and not mandatory, I can also confirm that order if I am satisfied, on the evidence before me, that Dziah is a whāngai and is entitled to succeed.

[11] I can recognise a whāngai as entitled to succeed per ss 114A and 115 of the Act. Those provisions were amended by Te Ture Whenua Māori Amendment Act 2020. In *Grant v Grant*, Deputy Chief Judge Fox, as she was then, found that when the Court determines that a person is a whāngai per ss 114A and 115, they are considered a child of the deceased per s 109 of the Act.⁵

[12] Other than this, the 2020 amendments had little impact on the approach taken to assessing whāngai. Before and after the amendments, any succession as a whāngai had to be consistent with the tikanga of the relevant iwi or hapū.

[13] The many decisions in this Court, and the Maori Appellate Court, concerning whāngai demonstrate that, generally, in order to succeed to land, tikanga requires the person to have been raised as a whāngai, and have a close whakapapa between the whāngai child, the whāngai parent, and the land in question.⁶ Where circumstances arise outside of those general principles, the Court will usually require expert evidence on the relevant tikanga to determine whether a person is a whāngai and is entitled to succeed.

⁴ 289 Taitokerau MB 146-159 (289 TTK 146-159).

⁵ *Grant v Grant – Succession to Harry Grant* (2021) 104 Tairawhiti MB 122 (104 TRW 122) at [17].

⁶ *Hohua – Estate of Tangi Biddle or Hohua* (2001) 10 Waiariki Appellate MB 43 (10 APRO 43) at MB 49-50; *Milner v Milner – Estate of Warihi Te Keu Faenza Milner* (2008) 83 Ruatoria MB 108 (83 RUA 108) at MB 114; *Pomare – Estate of Peter Here Pomare* (2015) 103 Taitokerau MB 95 (103 TTK 95).

He aha ngā korero o ngā whānau?*What do the whānau say?*

[14] The views of some of the biological children have changed during the course of this proceeding. However, by the time of the 10 March 2025 hearing, they had all reached a final position.

[15] Sandra, Latoya, James and Pounamu support Dziah succeeding. Aroha, Mark, Wesley and Awhina do not support her succeeding. Jade preferred not to express a view.

[16] Those in support say that Anthony raised Dziah as a whāngai from birth, they had a relationship of father and daughter, and that this relationship continued up until Anthony's death.

[17] Those who do not support say that while legal adoptions have been recognised in their family for succession, whāngai have not. They accept that Anthony raised Dziah from birth, and that he loved her, however, they say that Dziah returned to her biological parents before Anthony died and so she is not entitled to succeed.

E whai mana ana a Dziah ki te whiwhi hei whāngai?*Is Dziah a whāngai entitled to succeed?*

[18] Dziah is Anthony's biological granddaughter. She can whakapapa directly to Anthony, and through him, to his Māori land interests. This case does not turn on whakapapa. Rather, the question is whether she is a whāngai entitled to succeed.

[19] Both sides agree that Anthony raised Dziah from birth and that he loved her. One of the respondents, Wesley, agreed that Anthony cared for Dziah, provided for all of her needs and referred to her as his daughter. There was no real challenge or dispute about that. Ordinarily, those factors would strongly support that Dziah is a whāngai entitled to succeed.

[20] There are two main grounds upon which the respondents oppose Dziah succeeding:

- (a) The first is that Dziah was not legally adopted. The respondents say only legal adoptions, and not whāngai, have been recognised in their whānau for succession; and

- (b) Secondly, that Dziah returned to live with her biological parents before Anthony passed away.

Is there a tikanga that recognises legal adoptions but not whāngai?

[21] Aroha said that both her grandparents, and her great grandparents had biological children, adopted children and whāngai, but that only the adopted and biological children succeeded. She said that this is “the tikanga of our whānau”.⁷

[22] Aroha’s evidence on this was at a very general level. She did not produce any Court documents, or other objective evidence to confirm this. She did not give any details of the whāngai she was referring to. There was no expert evidence given by tohunga on the tikanga concerning whāngai succession in relation to these lands.

[23] Anthony received these land interests from his father James Reuben Kiro. On 1 October 1990, James gifted some of these land interests to Anthony. At the hearing, James told the Court that he had four children.⁸ There was no reference to whāngai or adoption. On 8 May 1996, succession orders were granted vesting James’ remaining land interests in his four children equally: Anthony, Joanne, Terrence and Tui.⁹ James’ wife, Putiputi, told the Court that three of the children were adopted. Again, there was no reference to whāngai.

[24] James Kiro received his lands interests by succeeding to his father Wi Horo Hemi Kiro. On 22 July 1975, the Court vested Wi’s interests in his six children equally: Waitangihaere, James, Ruyes, Marjorie, Len and Anness. The Court minutes record that four of those children were adopted. Once again there is no reference to whāngai.¹⁰

[25] It is difficult to know what to make of this. While no whāngai succeeded to James or Wi, it is not as if there were whāngai seeking to succeed who were rejected by the Court. Rather, there is no reference to whāngai at all in the Court minutes. Aroha’s evidence on this was also at a very general level. I have no detail on the circumstances of the whāngai raised by James or Wi: whether they could whakapapa to their whāngai father and the land, whether

⁷ Above n 4, at 153.

⁸ 20 Auckland MB 133-134 (20 AT 133-134).

⁹ 24 Kaikohe MB 193 (24 KH 193).

¹⁰ 7 Auckland MB 142-143 (7 AT 142-143).

they raised them from birth, or whether they had a relationship of father and child. All of those factors could have affected whether those whāngai were entitled to succeed. That could also have influenced the witnesses who gave evidence during the succession hearings.¹¹

[26] Based on the limited evidence before me, I do not accept that there is a whānau tikanga that recognises legal adoptions but not whāngai for the purposes of succession. No evidence was given by a kaumātua, kuia or tohunga to confirm this. Legal adoptions are recognised for the purpose of succession because of the effect of the Adoption Act 1955. A whāngai is a person adopted in accordance with tikanga.¹² The Adoption Act is a piece of Parliamentary statute that has nothing to do with tikanga. Whāngai is a customary practice based entirely on tikanga. It would be strange indeed for tikanga to recognise a ‘western based’ legislative system of adoption and not a traditional adoption based in Māori customary practice.

[27] I consider that Aroha called this a whānau tikanga merely because whāngai did not succeed to James or Wi. However, that does not make this tikanga in a traditional sense. There may be good reason as to why those whāngai did not succeed based on their circumstances.¹³

What about Dziah returning to her biological parents?

[28] In September 2018, Dziah returned to her biological parents. She would have been around 12 years old at that time. Anthony passed away a little over a year later, on 23 November 2019. While Dziah and Anthony stayed in contact over that period, Dziah did not return to live with Anthony prior to his death.

[29] Aroha said this is consistent with common practice in their whānau where grandparents would raise their grandchildren, but the grandchildren would always return to their biological parents. Aroha said that she was raised by her grandparents and she referred to her grandmother as “mum”. However, Aroha returned to her biological parents and her grandmother told her she was not allowed to call her “mum” anymore. She said this was

¹¹ There is also a question as to whether whāngai were entitled to succeed in 1975 under the Māori Affairs Act 1953.

¹² Te Ture Whenua Māori Act 1993, s 4.

¹³ And the law in place at that time in relation to the 1975 order.

common in their whānau but at no time were they under the illusion that they would succeed to their grandparents' land.

[30] Sandra said there were several reasons why Dziah returned to her biological parents. This was to allow Dziah to establish a good relationship with her biological siblings, to look for work, and also because Anthony had become unwell suffering from Type 2 Diabetes. Sandra said that she and Anthony were still learning how to manage his diabetes at that time. Sandra advised that Anthony and Dziah maintained contact over that period and visited each other. Sandra told me that this didn't change the nature of their relationship, they still referred to each other as father and daughter. Sandra said that Dziah intended to return to live with Anthony again but sadly he passed away.

[31] Dziah confirmed this. She said that she moved back to her biological parents to look for work and to establish a better relationship with her biological siblings. She told me that on the day Anthony died, she had her bags packed and was about to travel back to live with him. She was having lunch in Auckland after which she was going to travel to Anthony's house. While she was eating, she received a phone call advising that Anthony had passed away. Dziah confirmed that she and Anthony still referred to each other as father and daughter throughout this period.

[32] Although she didn't use these terms, Aroha is referring to the difference between a whāngai and an atawhai. In *Hohua – Estate of Tangi Biddle*, the late Professor Wharehuia Milroy gave evidence on the tikanga of Ngai Tūhoe concerning whāngai succession.¹⁴ He said:¹⁵

It must be pointed out that the term “whangai” differs from the term “atawhai” in that the delineation is that “atawhai” tends to equate more with “fostered child” and “whangai” with adopted child.” Other synonyms which are used to describe an “atawhai” child as used by Joan Metge are tiaki (look after) and taurima (to treat with care) and whakatipu (to make grow). These terms are used by Tuhoe as well to establish the difference between a “whangai” and an “atawhai.”

[33] Although Professor Milroy was speaking about Tūhoe tikanga he also added that “[i]t is unlikely that Tūhoe tikanga would be considerably different from other tribal areas”.¹⁶

¹⁴ *Hohua – Estate of Tangi Biddle* (2001) 10 Waiariki Appellate MB 43 (10 APRO 43).

¹⁵ Above n 14, at 50.

¹⁶ Above n 14, at 50.

[34] The key difference between a whāngai and an atawhai is that a whāngai child is taken from a young age and is raised permanently by the whāngai parent. This is a full customary adoption. An atawhai is taken and raised for a period and is then returned to the biological parents. An atawhai is a temporary arrangement rather than a permanent one.

[35] I consider that Aroha was raised as an atawhai by her grandparents. She was taken and raised by them for a period but was then returned to her biological parents. Her grandmother told her not to call her “mum” and that Sandra was her mother. Those circumstances do not apply to Dziah.

[36] Dziah was raised by Anthony from birth. He loved her, cared for her and provided for all of her needs. They had the relationship of father and daughter. They referred to each other that way. This was accepted by the wider whānau. Although Dziah returned to her biological parents, this was not because her relationship, and time, with Anthony had come to an end. I accept Sandra and Dziah’s explanation that she returned to establish a better relationship with her biological siblings, to look for work and because of Anthony’s ill-health. Aroha said that Dziah also moved back to her biological parents because of her own health issues. Even if that was the case, that does not change anything.

[37] I also accept Sandra and Dziah’s evidence that Dziah moving back to her biological parents did not change the nature of her relationship with Anthony. They maintained contact, visited each other and still referred to each other as father and daughter. It is also significant that Dziah was in the process of moving back to live with Anthony but he tragically passed away that same day. This clearly demonstrates that the nature of their relationship, as father and daughter, was maintained and did not come to an end.

[38] That can be contrasted with Aroha being raised by her grandmother. When Aroha returned to her biological parents her grandmother told her not to refer to her as “mum” and that Sandra was her mother. This is clear and unequivocal evidence that the caring arrangement with her grandmother was brought to an end.

[39] There was no such discussion between Anthony and Dziah. There was no instruction to no longer refer to him as her father. Rather, they continued to refer to each other that way. Aroha told me that she thinks Anthony’s view of their relationship did change after Dziah

moved back to her biological parents. However, her evidence on that was vague and I consider it is more likely to be speculation rather than cogent evidence of a change in the relationship.

[40] For these reasons, I consider that Dziah was Anthony's whāngai child. She was not an atawhai. She can whakapapa back to Anthony, and the land, and so is entitled to succeed.

Kupu whakataua

Decision

[41] I find that Dziah has a relationship of descent and should succeed to Anthony as a whāngai. The conditional orders I granted on 14 February 2022 at 246 Taitokerau MB 8 - 13 are now final.

I whakapuaki i te 12:00pm karaka i Whangarei, te tekau ma whitu o ngā rā o Tihema i te tau 2025.

Pronounced at 12:00pm in Whangarei on Wednesday this 17th day of December 2025.

M P Armstrong
JUDGE