

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

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

**AP-20230000020131
A20220012488**

WEHENG
Under

Sections 113, 115 and 118, Te Ture Whenua Māori
Act 1993

MŌ TE TAKE
In the matter of

Succession to Tamati Noema Tawio (Noema)

I WAENGA I A
Between

ELIZABETH (RAIHA) LARKIN
Te kaitono
Applicant

Kōtitanga: 11 March 2024, 278 Taitokerau MB 206-220
Hearing 20 May 2025, 295 Taitokerau MB 28-60
(Heard at Kaitaia)

Whakataunga: 29 April 2026
Judgment date

TE WHAKATAUNGA A KAIWHAKAWĀ M P ARMSTRONG
Judgment of Judge M P Armstrong

Hei kōrero tīmatanga*Introduction*

[1] Tamati Noema Tawio (Noema) and his wife Nettie raised Elizabeth (Raiha) Larkin from the time she was three weeks old. Noema passed away in 1955. Raiha was 11 years old when he died. She remained with Nettie who continued to raise her for the rest of her childhood.

[2] I have already granted an order recognising that Raiha was Nettie's whāngai. Raiha succeeded to Nettie's land interests pursuant to her will. She now seeks to succeed to Noema as his whāngai. If she does, she will receive all of his land interests.

[3] If Raiha does not succeed, Noema's interests will go to his siblings and on to their successors. Some of those successors oppose Raiha's application. They say Noema raised her as a foster child, not as a whāngai.

[4] In this judgment, I determine whether Raiha was Noema's whāngai and is entitled to succeed.

He aha ngā mātāpono ture hei whakatau*What legal principles apply?*

[5] I can recognise a whāngai as entitled to succeed per ss 114A and 115 of Te Ture Whenua Māori Act 1993 (the Act). In order to succeed, the whāngai must have a relationship of descent. Whether such a relationship exists is determined by the tikanga of the iwi or hapū that associates with the relevant land.¹

[6] Generally, in order to succeed, 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.² Where circumstances arise outside of those general principles, the

¹ Te Ture Whenua Māori Act 1993, s 114A.

² See *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); *Grant v Grant – Succession to Harry Grant* (2021) 104 Tairawhiti MB 122 (104 TRW 122); *Kiro – Succession to Anthony Kiro* (2025) 305 TTK MB 111.

Court will usually require expert evidence on the relevant tikanga to determine whether a person is a whāngai and is entitled to succeed.

Kua aha rā?

What happened here?

[7] Noema and Nettie were married. They lived together in Waitaruke. They did not have any biological children.

[8] Prior to Raiha's birth, Noema and Nettie raised a number of children for a fixed period. Those children all returned to their biological parents. Both sides agree those children were not whāngai entitled to succeed.

[9] Raiha was born on 21 December 1943. Her biological parents are Hone and Maria Erihe. Raiha can whakapapa to Noema through her biological father. She provided a whakapapa which shows that her biological father and Noema were first cousins (their fathers were brothers). This whakapapa does not match the Court's succession records. The Court records show that Noema and Raiha were second cousins (their grandfathers were brothers).

[10] Under either whakapapa, both Noema and Raiha descend from Tamati. All of the land interests that are the subject of this application come from Tamati.³

[11] Noema and Nettie took Raiha shortly after her birth and raised her in their home in Waitaruke. Noema passed away in 1955. He did not leave a will. Raiha continued to live in the family home with Nettie. Four months after Noema died, Miriam Nelson was born. Nettie adopted Miriam and raised her and Raiha as her own children. Miriam and Raiha never returned to their biological parents.

[12] On 18 July 1961, the Court granted a succession order vesting Hone Erihe's Māori land interests in his 7 children equally. That included Raiha.⁴ On 17 January 1983, the Court

³ Graham Williams said that the interests in Taimaro No 1 came from Tamati's wife Maria Paeara. However, the Court records show these interests came from Tamati.

⁴ 87 Northern MB 363 (87 N 363).

granted a further succession order vesting Maria Erihe's Māori land interests in her 6 children equally. That did not include Raiha.⁵

[13] Nettie passed away in 1999. She left a will that gifted her estate in equal shares to "my... daughter Miriam... my foster daughter Elizabeth [Raiha]... and my cousin Rauriti". Last year I granted orders vesting Nettie's land interests in those three equally.⁶ There was no opposition to those orders.

[14] There is opposition to this application. As noted, if Raiha cannot succeed, Noema's interests will go to his siblings and on to their successors. Noema had seven siblings:

- (a) Erihe Tamati;
- (b) Ripeka Tamati;
- (c) Maria Tamati;
- (d) Hoana Tamati;
- (e) Maata Tamati;
- (f) Roka Tamati; and
- (g) Pirihita Tamati.

[15] Only Hoana and Ripeka had children.⁷ The other siblings all passed away without issue. I heard from some of Hoana and Ripeka's descendants. The majority oppose the application and say that Raiha was a foster child not a whāngai. Ripeka's eldest child, Peter Emery, supports Raiha.

⁵ 13 Kaitaia MB 31 (13 KT 31).

⁶ 295 Taitokerau MB 28 (295 TTK MB 28).

⁷ 295 Taitokerau MB 55-56 (295 TTK MB 55-56).

He aha ngā take o te kēhi nei?

What are the issues in this case?

[16] The following questions arise:

- (a) Does Raiha whakapapa to Noema?
- (b) Was she raised by him as a whāngai?
- (c) What about the succession order for Hone Erihe's land?

He whakapapa tō Raiha ki Noema?

Does Raiha whakapapa to Noema?

[17] As noted, generally tikanga requires a whāngai to whakapapa to the whāngai parent, and the land, in order to succeed.⁸

[18] Raiha said her whāngai father, Noema, and her biological father, Hone, were first cousins. She produced a whakapapa to support this. That whakapapa shows Tamati had Tawio who had Noema.

[19] On 13 March 1951, the Court granted a succession order vesting part of Tamati's land interests in Noema. The whakapapa relied on by the Court when granting those orders shows Tamati had Tumu, Tumu had Tawio, and Tawio had Noema.⁹ This conflicts with the evidence Raiha gave that Tamati was Tawio's father. According to the Court records, he was his grandfather.

[20] At the hearing, Graham Williams told me that his whānau agree with the Court records. They say Erihe and Tawio were uncle and nephew not brothers. Interestingly, that conflicts with the written whakapapa Graham filed. That whakapapa says that Tamati had Tawio who had Noema. That is consistent with the whakapapa Raiha produced.

⁸ See *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); *Grant v Grant – Succession to Harry Grant* (2021) 104 Tairāwhiti MB 122 (104 TRW 122); *Kiro – Succession to Anthony Kiro* (2025) (305 Taitokerau MB 111) 305 TTK MB 111.

⁹ 79 Northern MB 252 (79 N 252).

[21] Ultimately it is not necessary to resolve this. Ordinarily, I would place greater weight on the Court records given that the derivation of these lands followed those orders. However, on either whakapapa, Raiha descends from Tamati through Erihe. All of these land interests came from Tamati.¹⁰ Raiha can whakapapa to Noema and to these lands.

He mea whakatipu a Raiha hei whāngai?

Was Raiha raised as a whāngai?

[22] In *Hohua – Estate of Tangi Biddle*, the late tohunga Dr Wharehuia Milroy gave evidence on the tikanga of Ngai Tūhoe concerning whāngai succession.¹¹ He said that:

- (a) Whāngai is the customary practice of taking as one's own, a child of other parents; and
- (b) The whāngai process normally involves taking a child at birth or in early infancy and raising him or her until the whāngai marries.

[23] Dr Milroy also drew a distinction between a whāngai and an atawhai:¹²

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.”

[24] In *Pomare - Peter Here Pomare*,¹³ the late Te Taitokerau tohunga Pā Tate gave evidence on the tikanga that applies to whāngai succession in the Hokianga. While he didn't use the term atawhai in the same way as Dr Milroy, Mr Tate nevertheless referred to similar factors when assessing whether the whāngai can succeed namely the nature and permanency of the relationship between the whāngai child and the whāngai parent.

[25] Most of the facts in this case are not in dispute:

¹⁰ See n 4.

¹¹ *Hohua – Estate of Tangi Biddle* (2001) 10 Waiariki Appellate MB 43 (10 APRO 43).

¹² At [50].

¹³ *Pomare - Peter Here Pomare* (2015) 103 Taitokerau MB 95 (103 TTK 95).

- (a) Noema and Nettie raised a number of children before Raiha was born;
- (b) Those children all returned to their parents;
- (c) Both sides agree those were not full customary adoptions as whāngai;
- (d) Noema and Nettie took Raiha shortly after she was born;
- (e) They raised her together until Noema passed away. Raiha was 11 at that time.
- (f) Nettie continued to raise Raiha.
- (g) Raiha has recently been recognised by the Court as Nettie's whāngai.

[26] The key issue here is what kind of relationship Raiha had with Noema prior to his death. Was it a temporary foster arrangement like he had with the children before Raiha, or was it a full and permanent customary adoption, like Raiha had with Nettie.

[27] Raiha said that she and Noema referred to each other as father and daughter up until his death. She says it was known and accepted in the community and the wider whānau that she was Noema's whāngai. Raiha filed statements from others who support this. Peter, Ripeka's eldest child, sent an email to Graham, where he said:

It is well known in the Rohe, that Raiha was nurtured and raised by Uncle Tom and Auntie Nettie from about six weeks old.

The actions of both parties involved in the adoption process (i.e., Raiha's biological parents and Uncle Tom and Auntie Nettie) would have been determined by the local whanau/hapu/iwi at the time.

In due course, a new relationship was created with new parents, and therefore Raiha being whangai, is recognised under Tikanga Maori; and

In effect, Uncle Tom and Auntie Nettie then became her parents under Tikanga Maori.

[28] Peter was alive when Noema was and so he may be speaking from personal experience, although his brother, Edwin Emery, said he would have been very young at the time. Peter also acknowledged that Raiha would have to "prove her case".

[29] Raiha also filed letters in support from Meri Smith and Moana-nui-a-kiwa Wood. They do not descend from Tamati or Noema but they lived in Waitaruke, they knew Noema, and they support that Raiha is a whāngai.

[30] Miriam Nelson also gave evidence on what her adopted mother, Nettie, told her about Raiha. According to Miriam:¹⁴

During the period of 1929 to '43, Noema and Nettie cared for some of Noema's sister's children ranging from the ages of six to nine. However, in time the children returned to their parents...

The Murray whānau asked Noema and Nettie if they would like their newborn moko as the mum was young and single. To Noema and Nettie's delight, they would finally have their baby, Pepi Waata. Sadly when Pepi Waata turned 18 months, his first family decided they wanted him back.

...

Nettie and Noema was devastated. And on witnessing this, Hone Erihe, Noema's cousin, he made a promise to them that he would give them his next baby. On the 21st of December 1943, Raiha Erihe was born and true to Hone's word, he gave his baby to Noema and Nettie.

...

There was an agreement between Hone Erihe and Noema Tawio that Raiha Erihe would belong to Nettie and Noema. Hone Erihe was still alive when Noema died and made no attempt to reclaim his daughter. Raiha also knew who her biological parents and biological brothers and sisters. That was the way of Māori whanau. So to assume that Noema had intentions of returning Raiha that was not even a fact.

[31] Graham Williams referred to comments from his aunties. He said they knew of Raiha but there was never any discussion about her being adopted. According to those aunties, Noema "was said to have been a mean man for sending the children back to their whānau and it repeatedly upset his wife Nettie who couldn't have her own children." Tracey and Marie Williams made similar comments that "[i]n every case, he's the one that sent them back", "Nettie didn't want to let them go." They infer that Noema would have done the same with Raiha had he lived to do so.

[32] I also received a transcript of a korero between Mei Kelly and Maata Cash. The korero was recorded in 1985. Part of that korero was then transcribed in 2024. Maata was Noema's younger sister. In that transcript, Maata said that Noema never had any children

¹⁴ 295 Taitokerau MB 58-59 (295 TTK MB 58-59).

although she referred to him raising a number of children. Mei asked “[d]id he ever adopt Raiha?” to which she replied “No.”

[33] It is clear that Noema raised a number of children prior to Raiha’s birth. In every case, those children returned to their biological parents. The question here is whether Raiha was different. Did Noema intend to raise her permanently as his daughter?

[34] Miriam’s evidence on this is significant. This shows that Nettie and Noema wanted to keep one of the earlier children, Waata, but had to return him. It was in response to this that Hone promised to give them his next baby. He did so with Raiha. When Noema passed, Hone made no attempt to reclaim Raiha. She stayed with Nettie and was raised as her daughter. This demonstrates that the circumstances surrounding Noema and Nettie taking and raising Raiha were different to those children they raised earlier.

[35] I am conscious that Miriam gave this evidence by retelling what her adopted mother told her. Ordinarily, this is hearsay and would be inadmissible.¹⁵ However, a hearsay statement is admissible if the maker of the statement is unavailable, and the circumstances relating to the statement provide reasonable assurance that the statement is reliable.¹⁶

[36] In this case, Nettie has passed away. She is not available to give evidence.¹⁷ I also consider that the circumstances here provide a reasonable assurance that this statement is reliable. Nettie adopted Miriam and raised her as her daughter. It is not surprising that Nettie would have spoken to her about Raiha and the circumstances surrounding Nettie and Noema taking and raising her. Also, Miriam has nothing to gain in this proceeding. She is not seeking to succeed to Noema. Raiha and Miriam were raised as sisters and I take that close relationship into account. However, I consider that Miriam was giving an honest account of what her mother told her. I consider that her evidence is reliable.

[37] I also note that per s 69 of the Act, I can receive any statement as evidence where it will assist to deal effectively with the matters before me, whether that statement is legally admissible or not. Miriam’s evidence is an exception to the hearsay rule and is admissible,

¹⁵ Evidence Act 2006, s 17.

¹⁶ Section 18.

¹⁷ Section 16.

but even if it weren't, it still assists me to determine this issue and so I can receive it per s 69.

[38] It is also significant that Peter Emery, who is the eldest in his family, recognises Raiha as a whāngai and considers that she is entitled to succeed. His evidence supports what Miriam said that Noema and Nettie took Raiha to raise as their whāngai daughter.

[39] It is clear that Graham, Marie, Tracey and Edwin do not agree with Peter. However, they do not dispute that he made those comments. They just have a different view. The evidence also shows that Graham, Marie, Tracey and Edwin were all born after Noema died. They never met him. They knew of Raiha and Nettie but it appears that their contact with them was limited. That limited contact may now be a significant factor in their view that Raiha was not a whāngai.

[40] I have taken into account their comments that it was Noema who decided to return the other children to their biological parents. Graham said these comments came from his aunts, but he did not specify who that was, or how he came by that information. Graham referred to letters that he filed but those letters do not clarify where this evidence came from. It simply refers to the fact that the other children returned to their biological parents.

[41] As Graham, Marie, Tracey and Edwin were all born after Noema died, they must have heard these comments from someone. That is also hearsay but given the lack of information surrounding those comments, and who made them, I am not satisfied that the statements are reliable. Even if they were, as above, there is a reasonable explanation in this case setting out why the relationship with Raiha was different to those other children who came earlier.

[42] I have also taken into account the transcript of the kōrero with Maata. That too has its problems. The kōrero was recorded in 1985, yet it was only transcribed in 2024. Even then, the transcript is unfinished. It is not clear what parts were transcribed and what was left out.

[43] Even putting those evidential issues to one side, Maata's comments are not clear. She said that Noema did not adopt Raiha. She also went on to say that Nettie adopted Miriam. In

this context, Maata may well have been talking about legal adoption, not customary adoption as whāngai. Miriam was legally adopted, Raiha wasn't. Maata's comments are consistent with that.

[44] Weighing this evidence as a whole, I am satisfied that Raiha was raised by Noema as his whāngai. Noema and Nettie took her as a baby, and they both raised her together until Noema passed away. After he passed, Raiha did not return to her biological parents. She stayed with Nettie and was raised as her daughter. While Noema raised, and returned, a number of children before Raiha, the circumstances around taking Raiha were different. Those circumstances show that a full and permanent customary adoption was intended, not a temporary atawhai relationship.

Ka pāngia te whakataurua nei e te ōta whai pānga mō Hone Erihe?

What about the succession order for Hone Erihe?

[45] As noted, in 1961, Raiha was included in the succession order for her biological father. This was six years after Noema passed. Raiha would have been 17 at that time.

[46] Section 114A(3) of the Act provides that, where a child is a whāngai, the tikanga of the relevant hapu or iwi determines whether there is a relationship of descent between:

- (a) The whāngai child and the whāngai parents; and
- (b) The whāngai child and his or her birth parents.

[47] In *Grant v Grant*,¹⁸ 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. If that is the case, then is the whāngai still considered a child of the biological parents per s 109? In other words, can a whāngai succeed to both their whāngai parents and their biological parents? Succeeding to both is known informally as 'double dipping'. Section 114A(3) is clear that this is determined by tikanga.

[48] There is little evidence on how tikanga treats this situation. Raiha filed a copy of an article in the NZ Herald on whāngai. In that article, the reporter interviewed Hone Sadler,

¹⁸ *Grant v Grant – Succession to Harry Grant* (2021) 104 Tairāwhiti MB 122 (104 TRW 122) at [17].

who at that time was a senior lecturer of Māori studies at Auckland University. Mr Sadler is also a well known kaumatua in Te Taitokerau. Mr Sadler said:

The Māori Land Court acknowledges whāngai children as having rights to inheritance so they can inherit the lands of their whāngai parents. A judge will make a decision based on the circumstances that person was whāngai, whether or not whānau accept them as being a whāngai, whether they received Māori land from their birth parents and the extent the whāngai will receive income from the land.

[49] While Mr Sadler's comments are brief, he confirms that whether the whāngai received land from their birth parents is relevant when deciding whether they should succeed to their whāngai parents.

[50] I asked Raiha why she succeeded to her biological father if she was raised by Noema as his whāngai. She told me that she did so as her biological father provided for her in his will.¹⁹ The Court heard the application to succeed to Hone Erihe on 18 July 1961. Hone's wife, Maria, gave evidence. She told the Court that Hone did not leave a will. Raiha was included in the succession order on the basis of an intestacy.²⁰

[51] Although I have found that Raiha was raised by Noema as his whāngai, she must still demonstrate, in evidence, that she has a relationship of descent, and so is entitled to succeed, pursuant to tikanga. As she has already succeeded to her biological father, I would need clear evidence that the tikanga of the hapū or iwi that associates with this land allows her to also succeed to her whāngai father. There is no such evidence before me.

Te whakataunga

Decision

[52] Raiha can whakapapa to Noema and to these lands. She was raised by him as a whāngai. However, she has already succeeded to her biological father. I do not have sufficient evidence before me to demonstrate that she is entitled to succeed to both her biological father, and her whāngai father, in accordance with tikanga. I cannot determine that she has a relationship of descent and is entitled to succeed per s 114A and 115 of the Act.

¹⁹ 295 Taitokerau MB 45-46 (295 TTK MB 45-46).

²⁰ 87 Northern MB 62 (87 N 62).

[53] Noema did not have any biological children and no one else has claimed to succeed as his whāngai. His siblings are entitled to succeed. All of his siblings have passed away. Only two left children, Ripeka and Hoana.

[54] Per s 109(1)(b) of the Act, I determine that those entitled to succeed to Noema are Ripeka Tamati and Hoana Tamati equally, being his siblings identified in 79 Northern MB 252 (79 N 252). I vest Noema's interests in Ripeka and Hoana, and down to their successors where succession orders have already been granted by this Court.

I whakapuakina i te 4:00pm i Whangārei, rua tekau ma iwa o ngā rā o Aperira i te tau 2026.

Pronounced at 4:00pm in Whangarei, this 29th day of April 2026.

M P Armstrong
JUDGE