

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

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

AP-20230000019720

A20200001085

WĀHANGA
Under

Section 43, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Taiharuru 2C

I WAENGA I A
Between

HAKI MAHANGA
Te kaitono
Applicant

ME
And

BENJAMIN JOSEPH MAHANGA
Te kaiurupare
Respondent

Nohoanga:
Hearing 27 February 2025, 286 Taitokerau MB 157-171
26 March 2024, 278 Taitokerau MB 221-233
(Heard at Whangarei)

Kanohi kitea:
Appearances Ms L Thornton, for the applicant
B Mahanga in person

Whakataunga:
Judgment date 17 March 2025

TE WHAKATAUNGA Ā KAIWHAKAWĀ TKTAR WILLIAMS
Judgment of Judge TKTAR Williams

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Hei tīmatanga*Introduction*

[1] This is an application by Mr Haki Mahanga (“Haki”) seeking a rehearing of an application heard on the 21st of February 2019. In 2018, Haki filed an application seeking to transfer shares held by him in Taiharuru 2C by way of gift to his nephew, Benjamin Joseph Mahanga (“Ben”).

[2] Haki now seeks a rehearing, rescinding the transfer of shares on the basis that there was a failure by Ben to perform an underlying agreement between them in return for the gift of the shares by Haki.

Kōrero Whānui*Background*

[3] The Taiharuru 2C block is an area of 8.1163 hectares more or less in which there were 55 owners holding a total of 100 shares. Haki held 0.2727 shares in the block.

[4] By application dated 12 September 2018, Haki applied to transfer his shares to Ben by way of gift. Ben is a nephew to Haki. Arthur Mahanga is Ben’s father. He is a brother to Haki. The application form states that Haki was transferring his shares by way of gift as he has no children to leave his shares to in Taiharuru 2C.

[5] The application was heard on the 21st of February 2019 in front of His Honour Judge Patrick Savage. Both the applicant and the respondent attended the hearing.

[6] At the hearing the Court specifically asked Haki if the transfer was by way of gift, and whether anyone objected to the transfer. The Court also put to Haki the fact that despite the shares being worth \$2,325.00, were they still to be transferred by way of gift. Haki confirmed with the Court that they were being provided as a koha and there were no objections.

[7] There was no suggestion to the Court that there was any underlying agreement required for the transfer of the shares from Haki to Ben.

[8] Therefore, the Court dispensed with the need for a special valuation and made orders that day in accordance with the application.

[9] The court record then shows that in June 2019, Haki emailed the case manager, asking that the application for transfer of shares to Ben be put on hold.

[10] Following further exchanges of correspondence between the Court and legal representatives for Haki over the July and August period, he finally filed an application seeking a rehearing on the 4th of October 2019.

Ngā Take *The issues*

[11] The issues to be determined are:

- (a) Has the application for a rehearing been filed within the appropriate statutory period?
- (b) If not, has the applicant satisfied the Court that it could not reasonably have been made sooner?
- (c) Are there any natural justice issues that apply?

Te Ture *The Law*

[12] The Court's jurisdiction with regard to rehearing can be exercised if the following criteria are met:

- (a) Any person interested in any matter in respect of which the Court has made an order may file an application for the rehearing of an application;
- (b) A rehearing is not to be granted on an application made more than 20 days after the order, unless the judge is satisfied that the application could not reasonably have been made sooner;¹ and

¹ Te Ture Whenua Māori Act 1993, s 43(2).

- (c) An affidavit in support should be filed, setting out the circumstances that give rise to the rehearing. This should include details of the order for which the rehearing is sought.

[13] In addition, in *Henare v Māori Trustee*, the Māori Appellate Court noted that a rehearing requires the balancing of two considerations:²

1. Ensuring there is proper administration of justice; and
2. Balancing that with the need for final court proceedings rather than allow an unsuccessful party another opportunity to argue their case without good reason.

[14] The Court in *Henare* also identified circumstances in which a rehearing may be justified, which are:³

1. A judgment has been obtained by an unfair or improper practise of the successful party, to the prejudice of the opposite parties; or
2. Material evidence has been discovered since the hearing which could not reasonably have been foreseen or known before the hearing; or
3. Any witness has been guilty of such misconduct as to affect the result of a hearing; or
4. A rehearing appears necessary in order to avoid possible injustice to the applicant and there is no injury or prejudice to the opposing party.

[15] However, the Court can also state that an application for a rehearing will not be allowed merely for the purposes of preparing omissions in the presentation of an earlier case or for reshaping that case.⁴

² *Henare v Māori Trustee – Parengarenga 3G* [2012] Māori Appellate Court MB 1 (2012 APPEAL 1) at [14].

³ At [19].

⁴ *Henare v Māori Trustee*, above n 2, at [20].

[16] Further, even where it is established that there has been a miscarriage of justice such that a rehearing is justified, the justification is discretionary, and a Court may very occasionally consider it inappropriate to grant a rehearing.⁵

Te Hatepe Ture ō te Tono
Procedural History

[17] The first call of this matter was scheduled for the 29th of November 2023.

[18] The court issued some pre-court directions that needed to be satisfied prior to the hearing proceeding so the matter was adjourned to 26 March 2024.

[19] At the reconvened hearing held on 26 March 2024, attended by counsel for Haki, Haki himself and Ben, the Court considered that further evidential information needed to be filed by Haki in order to support the assertion that an application for rehearing had been applied for diligently and that evidence which had been filed late by both parties could be served on each other, along with the opportunity to respond to that evidence.

[20] Following the filing and service of further evidence, a final hearing was held on 27 February 2025.

[21] This decision follows the hearing held that day.

Was the application for a rehearing sought within the appropriate statutory period?

[22] The application seeks a rehearing of orders made by Judge Savage on the 21st of February 2019. The orders note that they were to issue forthwith pursuant to rule 7.5(2)(b) of the Māori Land Court Rules 2011.

[23] The court file shows that a copy of the minutes from the Court hearing of 21st of February 2019 were provided to Haki on the 23rd of May 2019.

[24] It also shows that a copy of the orders from the Court were provided to Haki on the 16th of July 2019.

⁵ *Henare v Māori Trustee*, above n 2, at [21].

[25] As has already been indicated, the application for rehearing was filed on 4 October 2019.

[26] Orders of the Court are effective from the time and date upon which those orders are made. In this situation that is the 21st of February 2019. As such the date by which an application for rehearing should have been made was 21 March 2019 to meet the statutory requirement.

[27] Even if we take a starting date of 16 July 2019 (which I do not accept as being the appropriate starting date), which was the date that a copy of the order from the Court was provided to Haki, then a rehearing application should have been made by the 13th of August 2019.

[28] As will be obvious, neither of those dates were complied with.

Has the applicant satisfied the Court that it could not have reasonably been made sooner?

[29] In his affidavit dated 4 October 2019, Haki advised the Court that he had contacted the Māori Land Court on or about the 10th of June, enquiring as to whether the land shares were still in his name. He also says that he emailed the Māori Land Court in July 2019 asking the Māori Land Court to put a hold on his application.⁶

[30] It is at that point that Haki informs the Court staff that purportedly, there was a verbal agreement between himself and Ben, that Ben would build a house for Haki at Pataua but for some reason Ben provided a building for him on Taiharuru 2C. He says this was meant to be in exchange for providing the shares by way of koha⁷.

[31] However, Haki says that what was provided for him by Ben was inappropriate and inadequate for his use and despite further attempts at resolving the issue, the relationship between them broke down irreconcilably. Therefore, he did not want to reside in the building provided for him by Ben or be on the Taiharuru 2C land block with his nephew. He wanted the return of his shares.⁸

⁶ Affidavit of Haki Mahanga, October 2019 at [19].

⁷ At [5].

⁸ At [14].

[32] Haki goes on to say that he approached the Waitemata Community Law Centre in or about July 2019 for assistance. However, despite engaging the Waitemata Law Centre, there were further delays, apparently due to further information being sought, meaning the rehearing application was not filed until 4 October.

[33] Despite this, Haki acknowledges that orders were granted by the bench on the 21st of February 2019⁹. What is also clear is that Haki and his advisors had the orders in July 2019¹⁰ and at the very least could have filed the rehearing application soon thereafter. The fact is that he did not.

[34] The evidence filed by counsel for Haki, establishes that the Community Law Centre were not contacted until 23 July 2019, well after the date by which a rehearing application should have been made.

[35] I consider that the application could reasonably have been made sooner either by the applicant himself or by counsel retained on his behalf.

[36] I add that an email asking the court to put a hold on an application is insufficient to constitute a rehearing application, particularly as the application had already been dealt with in a hearing of the Court.

[37] Further, there was no affidavit filed at that time setting out the circumstances that give rise to a rehearing or details of the order for which the rehearing is sought.

Are there any natural justice principles that apply?

[38] Haki says that there was a verbal agreement between himself and his nephew Ben that in exchange for the transfer of shares by way of gift or koha, Ben would construct a house for him on the land. The application, however, is silent on this issue. Further, it tells the court that he is providing the shares to Ben as he has no children.

[39] At no time during the hearing in February 2019, was the Court made aware of any agreement reached between Haki and Ben. There is also the confirmation by Haki at the

⁹ Affidavit of Haki Mahanga, 13 January 2025, para 9

¹⁰ *ibid*

hearing, that despite being made aware of the value of shares, that the shares were being transferred as a koha to Ben.

[40] Furthermore, at the hearing of this rehearing application, there was nothing that counsel for Haki or Haki himself could put to the Court to support his assertion that a verbal agreement had been made between himself and Ben for the transfer of the shares.

[41] At the hearing held on 27 February, the Court also questioned Ben about the existence of the purported agreement and the basis upon which the shares were being transferred to him by Haki Mahanga.

[42] His evidence was that there was no verbal agreement between them which required him to build a house for Haki on the Pataua or Taiharuru land. He said that Haki had land elsewhere and that Haki proposed to build on that land rather than on Taiharuru 2C.

[43] Furthermore, as Ben was leasing neighbouring lots of land to the Taiharuru 2C block which his uncle was aware of, his evidence was that it made sense for him to receive these shares on the Taiharuru 2C land block in order to construct a house for himself so he could meet the outstanding land rates, as well as manage the ongoing farming activities he had on that, and neighbouring lands.

[44] As such it was his evidence to the Court that there was no verbal agreement made between himself and Haki on the grounds outlined by the Applicant.

Kōrerorero

Discussion

[45] When the application for rehearing was first filed, s 43 of the Te Ture Whenua Māori Act 1993 provided for 28 days by which an application for rehearing should be filed.¹¹

[46] That timeframe was subsequently amended so that s 43(2) now provides that an application must be made within 20 working days of the order and unless that occurs then a rehearing shall not be granted.

¹¹ Te Ture Whenua Māori (Succession, Dispute Resolution, and Related Matters) Amendment Act 2020, s 17.

[47] It is clear to the Court that the application filed on the 4th of October 2019 was filed well out of time.

[48] Haki would also like the Court to take into consideration delays that occurred once counsel was instructed. However, he had a physical copy of the order in July 2019, and the file note provided by Lawyer, Rangi Maihi dated 24 July 2019, indicated that on that date, Haki attended on the lawyer with the Court papers on the transfer of shares to his nephew.¹² A simple application and supporting affidavit could have been made shortly after that.

[49] There is nothing substantive that has been provided to the Court to explain or justify why there was a delay by counsel acting for Haki to file a rehearing application.

[50] Haki would also like the Court to take into consideration the fact that as a result of the relationship breakdown between himself and Ben, the alleged verbal agreement that had been entered into is now not going to be performed by Ben.

[51] Evidence of the proposed verbal agreement could have been provided both to the Court in February 2019 and earlier than October 2019. It was clearly a matter that Haki knew about before the hearing, if it existed. It is not evidence which was discovered since the hearing.

[52] A large component of Haki's evidence was to assert that Ben agreed to provide him with a dwelling on Pataua. What was provided by Ben was a cabin on Taiharuru which did not meet Haki's requirements.

[53] The existence of a verbal agreement was clearly refuted by Ben. Ben's evidence was that he provided a cabin on Taiharuru out of love and affection for Haki. However, a koha is normally provided in return for something that has been received or a service that has been provided. That may well be the case here.

[54] The question is whether this is this a case where the judgment was obtained by an unfair or improper practise of the successful party, to the prejudice of Haki. There is doubt about the existence or not of an agreement between the parties and what that agreement

¹² Community Law Centre bundle of documents, p 98

might entail, but I don't consider that the judgment was obtained by an unfair or improper practise by Ben.

[55] The existence or not of an agreement may be a matter more appropriately dealt with by way of an application to the Chief Judge in accordance with s 45 of the Act as opposed to an application for a rehearing.

[56] I do not consider that there will be any breach of natural justice obligations if I dismiss this application. Haki has the ability to file an alternative application to the Chief Judge.

[57] I consider it inappropriate to grant a rehearing given the matters that I have outlined above.

[58] Therefore, when considering all matters put to the Court it is my determination that the application for a rehearing should be dismissed.

Whakataunga *Decision*

[59] The application seeking a rehearing is dismissed pursuant to rule 6.28 of the Māori Land Court Rules 2011 and orders are to issue accordingly.

I whakapuaki i te wha karaka i Whangarei, i te tekau ma whitu o ngā rā o Māehe i te tau 2025.

Pronounced at 4:00pm in Whangarei on this 17th day of March 2025.

TKTAR Williams
JUDGE