

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

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

**AP-20230000020207
A20220013865
CJ 2022/52**

WĀHANGA
Under

Section 45, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Section 1 Survey Office Plan 60553 (Orakei
Korako) – Herepeka Wharekawa

NĀ
By

CHEYENNE NGAMOTU
Te Kaitono
Applicant

Nohoanga:
Hearing

18 December 2024, 2025 Chief Judge's MB 1372-1395
(Heard at Wellington via Zoom)

Whakataunga:
Judgment date

11 November 2025

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

Hei tīmatanga kōrero

Introduction

[1] This application, filed by Cheyenne Ngamotu, seeks an order pursuant to s 44 of Te Ture Whenua Māori Act 1993 (the Act) cancelling an order made at 70 Taupo MB 127-128 dated 24 March 1998 vesting Section 1 Survey Office Plan No.60553 in the trustees of Tutukau East Z Trust and declaring the land as Māori freehold land.

[2] The applicant claims that the order is incorrect due to a mistake or error made by the Court and in the presentation of the facts of the case to the Court.

[3] Tutukau East Z trustees administer the land, some of which was taken by the Crown in 1960 under the Public Works Act 1928 for the Ohakuri Dam and production of electricity. Part of that land was flooded in 1961.

[4] It is claimed that Herapeka Wharekawa (the applicant's grandmother) owned Section 1 Survey Office Plan 60553, which was revested after the public work takings in 1998. The applicant alleges a mistake was made when revesting the land, as the Māori Land Court vested the block in the Tutukau East Z trustees.

[5] The applicant claims to be adversely affected, describing the toll fighting this issue has had on her whānau, including her grandparents, her mother Rangimarie Ngamotu and herself.

Kōrero whānui

Background

[6] The Registrar's Report and Recommendation (the Report) dated 04 December 2024 setting out the background is reproduced in full below.

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

1. This application filed by Cheyenne Ngamotu (the applicant) seeks to cancel the following orders relating to Section 1 Survey Office Plan 60553:
 - (a) 70 Taupo MB 127 – 128 dated 24 March 1998 – Vesting Section 1 Survey Office Plan on No.60553 in the trustees of Tutukau East Z Trust and declaring the land as Māori Freehold Land.

- (b) 79 Taupo MB 168 dated 01 June 2004 – Amendment of the order 70 Taupo MB 127 – 128 by adding the names of the 5 trustees of the Tutukau East Z Trust.
- (c) 89 Taupo MB 232 – 235 dated 09 October 2009 – Replacement of trustees of the Tutukau East Z Trust.
- (d) 44 Waiariki MB 8 dated 22 November 2011 – Reduction of trustee for Tutukau East Z Trust.
- (e) 164 Waiariki MB 1 – 4 dated 09 June 2017 – Add a trustee to the Tutukau East Z Trust.

It would appear that the Order complained of is 70 Taupo MB 127 – 128 dated 24 March 1998 as referenced at 1a above. All other orders from 1b – 1e are subsequent orders and if the Chief Judge finds that an error was made, those orders will be consequential orders that may require amending where required.

- 2. The applicant claims the said order is incorrect due to a mistake, error, or omission in the presentation of the facts of the case to the Court because:
 - (a) This block was partially owned by Herapeka Wharekawa and taken by the Crown under the Public Works Act for the Ohakuri Dam and production of more electricity.
 - (b) It was flooded in 1961.
 - (c) Herapeka Wharekawa compensation for Land Taken - £1,050 (127 Rotorua MB 306 dated 14 July 1964).
 - (d) Proof that Herapeka owned her block of land outright and was not part of the Tutukau East B7A block as can be seen in Rotorua MB 127 – 302 – 303 – 306 (127 Rotorua MB 295 – 306 dated 14 July 1964) she was excluded from payment for B7A Block.
 - (e) Herapeka Wharekawa only surviving child of her parents, Rameka Henare (1 share) owned outright.
 - (f) Herapeka Wharekawa died on 06 June 1976 – (Still Crown Land).
 - (g) Herapeka Wharekawa's children could not succeed.
 - (h) When the block, Section 1 SO Plan 60553 became Māori Freehold Land, a mistake was made as the block was vested in Tutukau East Z Trust.
 - (i) Trustees from 1996 – 2017 (current trustees Cedric Forest, Roger Haare, Charles Pikia, Taiko Hemopo, William Tradgar Hall) even though Herapeka Wharekawa had surviving children including my mother, Rangimarie Ngamotu, who was born on 03 April 1940 and died on 25 August 2016.
 - (j) The Tutukau East Z Trustees who knew my mother Rangimarie Ngamotu well and also knew she had been looking for that block withheld that information from her and omitted to tell the court that they knew who the successors of the Section 1 SO Plan 60553 block were and that the daughter of Herapeka Wharekawa, Rangimarie Ngamotu was still alive, and a trustee of the Tutukau East 2 Māori Reservation (B7A Block) as she was told this was her mother's block, BUT it was not as this was where the Urupa was which was no part of Orakei Korako Section 1 SO Plan 60553.

- (k) In a Deed made between the Trustees of Tutukau East Z Trust and Orakei Korako Gyserland Resort and The Commissioner of Crown Lands, MTP.104977 page 3 – **“The land will be transferred to the trustees on the basis that they are acting for the FORMER OWNERS of the land and their successors in title and the Commissioner may, if he so desires, require that the MLC first confirm that the trustees are entitled to hold the land on behalf of the former owners...”**
3. The applicant claims that she has been adversely affected by the orders complained of upon the grounds that:
- (a) She watched her mother Rangimarie Ngamotu over many years sorting through minute books, applying to be trustees of various blocks to try and understand how MFL operates so she could look for her mother's block, as the rest of the blocks of the Ngati Tahu Iwi had been given back to the owners because under Section 40 of the Public Works Act the Crown no longer required it for the purpose it was taken.
 - (b) Herapeka Wharekawa's land was not flooded to the degree that the Crown had originally assumed it would be and so then was returned and vested into the Tutukau East Z Trustees and became MFL.
 - (c) My mother Rangimarie Ngamotu died on 25 August 2016 thinking her mother's block of land was still Crown land.
 - (d) On 15 October 2012 – Marae Investigates interviewed Rangimarie Ngamotu on the Orakei Korako Land Block where she was born on 3 April 1940. I will attach this media file clip interview via email as an affidavit from Rangimarie Ngamotu.
 - (e) An application for succession to my grandmother – Herapeka Wharekawa's land, through her daughter, Rangimarie Ngamotu (my mother). Ref A20220007860 dated 19 August 2022, held in Taupo – Section 1 SO plan 60553.

Note that this application was dismissed at 280 Waiariki MB 180 – 183 dated 19 August 2022 with a suggestion that the applicant look at filing an application to the Chief Judge. Refer to the Court history for more details.

4. The applicant seeks to have the Court order vesting into the trustees of the Tutukau East Z Trust, cancelled and vested the rightful owners.

Concise history of Order sought to be cancelled

5. The matter was heard by the Court at 70 Taupo MB 127 – 128 dated 24 March 1998 and the minute is reproduced as follows:

93D ORAKEI KORAKO - s 134/93
43723

Present

Mr Innes

Mr Barnaby, LINZ

Mr Hunt

Court: It is proposed that pursuant to section 133 this land will become Māori freehold land and will be vested in the trustees of Tutukau Z with the beneficial interest vested in the owners of Tutukau Z.

Mr Barnaby: Sir, Mr Kinder acting for the trustees.

Mr Hunt: Sir, I spoke to Mr Kinder a few moments ago and he did not see the necessity to attend today, but he wanted to convey to the Court that the trustees are in full agreement with the proposal and that they are prepared to act as the trustees for the Orakei Korako block.

Mr Barnaby: Sir. I had a copy of the submission that I have just handed you Sir, for Mr Kinder and for the chairman of the trustees Mr Wikiriwhi not sure whether Mr Wikiriwhi is here in Court.

Court: don't think he's here. This submission is already on the Court file. I have read it and if there are no other people here who are concerned, you can take it as read. (Yes Sir) We'll just see if Mr Wikiriwhi is here.

Mr Innes: No Sir, it appears that the Crown is the only party here today.

Court: Well you may take it that I have read your submission. I can simply now make the order vesting in the trustees and the beneficial ownership in the beneficial owners of Tutukau Z and make the order that this land is now Māori freehold land.

6. The Court made orders relating to Section 1 on Survey Office Plan No.60553 containing 2.6100 hectares:

70 Taupo MB 127-128

VESTING ORDER

Te Ture Whenua Maori Act 1993, Section 134

In the Maori Land Court
of New Zealand
Waiariki District

IN THE MATTER

of Section 1 on Survey
Office Plan No.60553
containing 2.6100 Hectares
more or less situate Block
X, Ngongotaha Survey
District, South Auckland
Land Registry

AT a sitting of the Court at Taupo on the 24th day of March 1998 before Patrick John Savage, Esquire, Judge.

WHEREAS application has been made by the Minister of Lands, Mr Murray John Luxton for an order vesting Section 1 on Survey Office Plan No.60553 in the trustees of the Tutukau East Z Trust.

NOW THEREFORE UPON HEARING all evidence adduced in support thereof and the Court being satisfied upon all matters upon which it is required to be satisfied THE COURT DOETH HEREBY ORDER pursuant to Section 134 of Te Ture Whenua Maori Act 1993 that the land containing 2.6100 Hectares more or less being Section 1 on Survey Office Plan No.60553 be and the same is hereby vested in, and with their consent, the Trustees of the Tutukau East Z Trust.

AND THE COURT DOETH FURTHER ORDER AND DECLARE that the said Trustees shall hold the said land for the benefit of the beneficial owners of Tutukau East Z block and that the land be declared Maori freehold land.

AS witness the hand of the Judge and the seal of the Court.



7. 79 Taupo MB 168 dated 01 June 2004. The Court amended 70 Taupo MB 127 – 128 dated 24 March 1998 referenced at paragraphs 5 and 6 on advice from Land Information NZ upon registration of the orders with them.

The Court order was amended by adding the names of the following as trustees of the Tutukau East Z Trust:

Anaru Te Whetu
Danny Teriringapuna Henry
Eruera Wikiriwhi
Phillip Sullivan
William Tredegar Hall

Also confirming that the block was determined to be Māori Freehold Land.

Court Research in respect to Tutukau East B No. 7A Block

8. Partition order dated 27 February 1911 for Tutukau East B No 7A. An area of 478 acres 1 rood and 35 perches. 118 owners named with 632.5 shares.

Reference is made to the schedule of owners:

#53 – Ngawaoriki Watene
#71 – Rameka te Mohi
#86 – Rameka Henare or Rameka Hera Peka

9. 30 Taupo MB 363 dated 18 January 1927. Ngawaoriki Watene or Tiohuka Watene, succession. Application for Grant of Probate and awarded to Rameka Henare.

10. 31 Taupo MB 109 - 111 dated 5 February 1930. Ngawaoriki Watene or Tiohuka Watene, succession. Further evidence presented to the Court in respect to the succession and determination of entitlement.

11. 31 Taupo MB 132 dated 11 June 1930. Ngawaoriki Watene in Tutukau East B No7A. Those determined entitled are:

Te Wheta Haehae	m.	1/2
Herapeka Haehae	f.	1/4
Hori Watene	m.	3/16
Inuhaere Ngawaoriki	m.	1/64
Rihi Tiohuka	f.	1/64
Maikena Tiohuka	f.	1/64
Parikarauna Tiohuka	m.	1/64

12. 87 Rotorua MB 309 and 313-314 dated 22 July 1937. Roadway Order setting apart a roadway known as the Paeroa South No A3 block roadline.

13. 34 Taupo MB 63 dated 17 September 1952 – Rameka te Mohi or Henare or Herapeka, succession. Those determined entitled to succeed in the interests held in Tutukau East B No.7A:

Herapeka Rameka	f.a
Kahu Pairama	f.a
Pohe Pairama	m.a

14. 105 Rotorua MB 301 – 302 dated 30 May 1957. Tutukau East B No.7A including 17 other blocks were cancelled and creating the new title, Tutukau East Z Block.

Herapeka Haehae or Tiohuka and Herapeka Rameka (same person) were determined 2 of 675 owners with 21.46123 and 17.77579 shares, respectively.

15. NZ Gazette 1960, No.60 Page 1460 dated 13 September 1960. Confirming that areas of Parts Tutukau East B No 7A, Part Tutukau East Z and Part Paeroa South A No. 3 taken by Proclamation pursuant to the Public Works Act 1928 for the development of water power (Lake Taupo and the Waikato River Power Station).

16. 127 Rotorua MB 295 – 306 dated 14 July 1964. Assessing compensation for land taken (see. 15 above). Extracts from this minute follow in particular the reference to Tutukau East Z at folio's 301 – 303:

Folio 301

(b) TUTUKAU EAST Z: -

2 – 1 – 30
 0 – 2 – 30
 25 – 2 – 15
13 – 3 – 16.2
 42 – 2 – 16.2

The Crown report and valuation is as follows :

Previously undulating to steep slopes situated on West bank . of Waikato River with

a cover of manuka, blackberry and rough feed, now mostly submerged.

This area contained considerable thermal activity of a fairly attractive nature, among which limited development as a tourist attraction had been carried out.

An old cottage and shed in fair to poor condition stood on the area.

Valuation:	Cottage	£300
	Shed	25
	Tracks & layout	<u>100</u>
	Total Improvements	£425
	Unimproved value	<u>£2500</u>
	Capital value	<u>£2925</u>

Remaining thermal activity, a bath and bath house on the title block have little significance as a result of the removal by flooding of the bulk of the thermal activity from the block.

Detriment on this account has been assessed at £300

The total value reached by the Crown Valuer was therefore

Land	£2925
Detriment	<u>300</u>
	<u>£3225</u>

This amounts to about £70 per acre.

Mr Svensen gives a great deal of attention to this area and arrives at a final figure of £2283. But in this valuation he made no allowance for detriment, or, if he did, he has not mentioned it, or did he put a value on the Wharekawa buildings. He found he could not do so as he had not seen them but made the comment that in his opinion the value put upon them by the Crown valuer was far too low as the Wharekawas had lost a home which would hardly be replaced for the £425 allowed in the Crown valuation. He also said that although his figure of £2283 was less than that offered by the Crown he advised that the Crown figure be accepted. Mr Horsley agrees with this also in which case the Court will also adopt that figure.

Folio 302:

But this still leaves for consideration the Wharekawa claim and the special claim for the Papakowhatu papakainga area.

Dealing with the latter case first I have reached the conclusion that no award can be made for it. The evidence shows that although this area was the traditional marae of the N' Tahu tribe in the early days it was ultimately abandoned by them following the Tarawera eruption in 1886. They settled at Ohaki and Mihi and by 1906 or thereabouts nobody but the father of Mrs Wharekawa and his family remained as the only inhabitants. Mr & Mrs Wharekawa resided there after the death of the father until the flooding of the river commenced in January 1961 when they were forced to evacuate.

As to the Wharekawas themselves, I feel that the valuation put upon their home and improvements by the Crown is on the low side. But the real problem is how far the Court can go with Mr Horsley on his argument, which was by no means extravagant, that something in the nature of the equivalent reinstatement principle should be applied. Mr Horsley did not advocate anything in the nature of a £2000 - £3000 type of home but he did urge something in the nature of an equivalent of what they had lost and where they would be happy to live.

The Wharekawas remained in occupation until the last moment and only evacuated when the flood waters started to come down the river. It is undoubtedly the fact that but for the flooding they would have continued to reside in the cottage until the end of their days. Both are getting on in years and apparently existed on little else but their pensions supplemented by the income they received from tourists viewing the thermal sites in the locality upon which Mr Wharekawa had done some clearing, pathing and sign-posting.

The cottage was a very old one, probably 60 to 70 years or more old, but Mr Wharekawa said in evidence that it was built principally of totara which was still sound but that there was borer in the rimu timbers.

I must confess to considerable sympathy for them in the plight these old people found themselves. In justice to the Ministry of Works officials It is the case that they felt likewise and went to some pains to find alternative rental accommodation for the Wharekawas until a permanent dwelling, something in the nature of a Ministry of Works cottage for removal, could be found. What held up finality in this regard were two things (a) the fixation of the compensation and (b) title to a place of land upon which a cottage could be put.

I feel sure the Ministry of Works would accept any reasonable figure that the Court might award in this case, It does not want to be niggardly. On the other hand It does not want to have to pay an excessive amount. Herein lies the difficulty since the Court has a valuation from only the one side and an expression of opinion on the other because Mr Svensen had not seen the cottage.

The Court should bear in mind that apart from the Wharekawa Improvements, Mr Svensen's valuation of the land taken was lower than the Crown's by £200 odd apart from detriment of £300. This suggests that the Crown value might be pretty near the mark; and Mr Svensen went so far as to say that the facts were against claiming a higher figure than his. Such being the case the Crown value put upon the Wharekawa improvements raises a strong inference that that value might also be near the proper mark.

Folio 303:

But there is one factor that the Crown valuer seems not to have taken into account regarding the Wharekawas and that is the income, modest as it may have been, that they were deriving from their small tourist business. If the Court is right in this then the chances are that the valuer was not aware of It. Another factor is, that Mrs Pascoe, who was endeavouring to acquire the Paeroa South A3 freehold as I have already mentioned, was also in the field to purchase 125 acres somewhere in the Tutukau B7A block, now being part of the Tutukau Z block. On this land was thermal activity but in 1959 Mrs Pascoe's offer was rejected by the Māori owners for similar reasons given in the Paeroa South A3 case. I mention this matter, which the valuer may not have been aware of either, because it shows that land in the locality at Orakei Korako had a market.

The Wharekawas, like Mrs Pascoe, were running a tourist business, small in their case though it was, but capable of further development. Mr Wharekawa said that his income from the business at the rate of 2/6 per tourist to see the sights around his homestead brought him in about £52 per year. This supplemented the pension of his wife and himself, and he was living rent free in the house. In my view these are relevant considerations for the Court to pay some regard to but it cannot take them too far. The loss of income, however, an important point in the Wharekawa case upon the footing that, though the Court cannot apparently award anything for loss of income or profits

as such, it is a relevant consideration in ascertaining the market value of the property: Barber v Manawatu Oroua River Board (1954) N.Z. L. R. 391 at 395, 396.

The matter thus standing as it does, any assessment the Court can make must again be of a rather rough and ready nature. Having regard to the circumstances I would add an additional sum of £375 to the Wharekawa area making the total value £800.

The total award to Tutukau Z is therefore as follows :

(a)	Land (Unimproved according to the Crown value)	£2500
	Detriment	300
(b)	Wharekawas	<u>800</u>
	Total	<u>£3600</u>

As the owners and the Wharekawas are entitled to an additional award by having to stand out of their money as from the 13th September 1960 to the date of this award the following sums are added thereto:

(a)	Land & detriment	£2800	
	Additional	<u>525</u>	£3325
(b)	Wharekawas	800	
	Additional	<u>150</u>	<u>£950</u>
	Total award		<u>£4275</u>

17. 127 Rotorua MB 295 – 306 dated 14 July 1964. Assessing compensation for land taken (see. 15 above). This application by the Ministry of Works to assess the compensation payable to the Māori owners of certain lands taken by the Crown at Orakei-Korako for the development of water power (Lake Taupo and the Waikato River Power Scheme).

Distributions were finalised as follows:

(a)	Paeroa South A3:	£2950
	To the owners of that block	
(b)	Tutukau Z:	
	1. To Herapeka Wharekawa:	
	For land	£950
	Proportion of detriment	<u>100</u>
		£1050
	2. The balance to the owners in the original title B7A as it was before the amalgamation excluding Herapeka Wharekawa	£3225
(c)	Tutukau East B7A:	
	To all the owners in the original title B7A as it was prior to the amalgamation	<u>£4005</u>
		<u>£11,230</u>

18. 3 REG MB 220 dated 16 December 1976 – Succession to the late Hirapeka Wharekawa or Harepeka Rameka or Herapeka Rameka Wharekawa or Herapeka Rameka or Herepeka Haehae or Herapeka Haehae or Tiohuka. The minute is reproduced below:

1613 Estate Herapika Wharekawa or Harepeka
Rameka or Herapeka Rameka Wharekawa
or Herapeka Rameka or Herapeka
Haehae, or Herapeka Haehae or Tihuka
 - Dec
 Sec 81/67

Deceased died 20th June 1976 - testate
 Public Trustee certificate of administration
 dated 8th November 1976

Public Trustee (Rotorua) executor
 Sec 81/67 orders vesting in executor

X Paeroa South B2B1
 X Tutukau East 2
 X Tauhara North No. 2
 X Tauhara Middle 4A2B3C
 X Tahorakuri A No. 1 Sec. 1 (Ohaki Papakura)
 X Tahorakuri A No. 1 Sec 7A
 X Tahorakuri No. 2.

DATA PREPARED BY
 17/11/76
 DATA CHECKED BY
 6/12/76

6/12/76
 Deputy Registrar
 16.12.76

19. The Court made orders vesting the interests of Herapeka Wharekawa and other names in the Public Trustee who were appointed administrators to this estate.
20. 4 REG 9 dated 20 June 1976. An additional interest of Herapeka Wharekawa and other names was located and vested in the Public Trustee as in paragraphs 18 and 19.
21. 4 REG 41 dated 29 March 1978. An additional interest of Herapeka Wharekawa and other names was located and vested in the Public Trustee as in paragraphs 18 and 19.
22. 6 REG 151 dated 10 October 1986. An additional interest of Herapeka Wharekawa and other names was located and vested in the Public Trustee as in paragraphs 18 and 19.
23. 208 Rotorua MB 237 dated 10 October 1986. The interests held by the Public Trustee as recorded at paragraphs 18 and 22 were vested in those determined entitled. The Orders are reproduced below:

X 651 20. 7.82

208 Rotorua M.B. 237

VESTING ORDER

The Maori Affairs Amendment Act 1967 section 81A

In the Maori Land Court
of New Zealand,
Waiariki District.

IN THE MATTER of the estate of
HERAPEKA HAEHAE or
TIOHUKA or WHAREKAWA

Deceased

WHEREAS PUBLIC TRUSTEE (R. TORUA)

~~of~~

holds the beneficial freehold interests in Maori freehold land
described in the schedule hereto in the capacity of ~~administrat~~-
executor of the estate of the above-named deceased

AND WHEREAS the said ~~administrat~~ executor has applied to
vest the said interests in the persons beneficially entitled
thereto

IT IS HEREBY ORDERED that pursuant to section 81A of the Maori
Affairs Amendment Act 1967 the said interests are hereby vested
in the persons named and described in the said schedule, each
person receiving the shares set out opposite their name(s).

DATED at Rotorua the 10th day of October 1986



Registrar/Deputy Registrar

X.651 24.2.83 Rotorua

6 Rotorua M.B. 237

Estate Herapeka Haehae

No. 1613

SCHEDULE

Land	Shares held by Administrator being vested by this Order	Name, sex and address of each beneficiary	Shares vested in each beneficiary by this order
Rangatira A124	111.00000	Percy Wharekawa,	
Rangatira E	6.33000	10 Rewa Street, New Lynn	
Tatua East 28	.34246	Kahu Te Hiko,	
Tahorakuri A1 Sec.1	18.08541	19 Thompson St, Tokoroa	
Tauhara Middle 4A2B2C	1.2500	Haehae Barlow,	
Tahorakuri 2	.40741	27 Orchard Rise, Papakura	
Tutukau East 2	46.34703	Metiria Barlow,	
Paeroa South B2B1	13.84762	24 Wesley St, Kaiapoi, Christchurch	
Tauhara North 2	.67592	Rangimarie Ngamotu,	
		11 Hinerau Grove, Taupo	
		Maureen Frankham,	
		C/o Mrs Ngamotu,	
		11 Hinerau Grove, Taupo	
		Thomas Wharekawa,	
		11 Mcquarrie St, Invercargill	
		Hirapu Aka Hepi,	
		44 Scannell St, Taupo	Equally

24. It is noted that Herapeka Wharekawa and other names was an owner in Tutukau East Z block and these as well as other interests were vested in Rangimarie Ngamotu and others, equally. Rangimarie Ngamotu being a daughter to Herapeka Wharekawa and the mother of the applicant in this Chief Judge application. Below is an extract from the ownership schedule for Tutukau East 7 block confirming the vesting from the Public Trustee (Rotorua) to the beneficiaries to the succession to Herapeka Hehae

		The Public Trustee (Rotorua)			
		As Administrator or Executor of the Estate of Herapeka Haehae			
		B.O. LIST No. 565		S. 19338	
		ORDER		DATE 10.10.1967	
1490	Percy Wharekawa			5.79338	5.79338
1491	Kahu Te Hiko			5.79338	5.79338
1492	Haehae Barlow			5.79338	5.79338
1493	Metiria Barlow			5.79338	5.79338
1494	Rangimarie Ngamotu			5.79338	5.79338
1495	Maureen Frankham			5.79338	5.79338
1496	Thomas Wharekawa			5.79338	5.79338
1497	Hirapu Aka Hepi			5.79337	5.79337
		equally			

25. 70 Taupo MB 127 – 128 dated 24 March 1998. Vesting pursuant to Section 134 of Te Ture Whenua Māori Act 1993 in the trustees of Tutukau East Z Trust, the order complained of and referenced at paragraphs 5 – 7.
26. 79 Taupo MB 168 dated 1 June 2004. For the Court to correctly register the order referenced at paragraphs 5 – 7 and 23, the Court was required to name the Trustees of Tutukau East Z Trust, rather than just the name of the trust.

Details of subsequent Orders affecting lands to which this application relates

27. 78 Taupo MB 100 – 102 dated 8 September 2003. Removing Anaru Te Whetu as a trustee and vesting the interests in the remaining trustees. New Trust Order confirmed.
28. 89 Taupo MB 232 – 235 dated 9 October 2009. Replacement of trustees for Tutukau East Z Trust.
29. 3 Waiariki MB 49 dated 3 March 2010. Amendment of orders made at 78 Taupo MB 100 – 102 dated 8 September 2003 and 89 Taupo MB 232 – 235 dated 9 October 2009.
30. 44 Waiariki MB 8 dated 22 November 2011. Reduce trustees of the Tutukau East Z Trust.
31. 164 Waiariki MB 1 – 4 dated 9 June 2017. Vesting in additional trustee of the Tutukau East Z Trust.
32. 291 Waiariki MB 200 – 203 dated 8 March 2023. Reduce trustees of the Tutukau East Z Trust.
33. 310 Waiariki MB 32 – 36 dated 7 December 2023. Replacement of trustee for the Tutukau East Z Trust.
34. 312 Waiariki MB 48 – 52 dated 6 March 2024. Variation of the Trust Order for the Tutukau East Z Trust.
35. 312 Waiariki MB 53 – 63 dated 6 March 2024. Review of the Tutukau East Z Trust.
36. Note that there may be other subsequent orders depending on the outcome of this application with respect to successions and ownership of Section 1 on Survey Office Plan No.60553.

Reference to areas of difficulty

37. The Court is tasked with determining whether or not the orders complained of as referenced at paragraphs 5 – 7 should be amended. The Court made Orders based on an application filed by the Minister of Lands seeking to vest whenua previously held by the Crown under the title Section 1 on Survey Office Plan No.60553 and vest into the Trustees of Tutukau East Z Trust for the benefit of the owners of Tutukau East Z.
38. The Court vested the block into trustees and have continued to progress applications through the Court replacing trustees and varying the Trust Order for Tutukau East Z Trust since the vesting of Section 1 on Survey Office Plan No.60553 in 1998.
39. It appears the applicant's position is that she argues that the whenua should have returned to the ownership of the former owners in which her grandmother, Herapeka Haehae or Tiohuka or Rameka, was previously an owner.

40. Research confirms that the block Section 1 on Survey Office Plan No.60553 was formerly part of Tutukau East B 7A block that was amalgamated with other blocks creating the title Tutukau East Z Block.

Section 1 on Survey Office Plan No.60553 was Crown Land that was taken under the Public Works Act 1928. Research confirms that the Wharekawa whanau were compensated for the whenua taken as referenced at paragraphs 16 & 17.

The argument is that when Section 1 on Survey Office Plan No.60553 was returned to Māori Freehold Land, the whenua should have returned to the ownership individually rather into the Tutukau East Z Trust.

41. Reference is made to Paragraph 14 - 105 Rotorua MB 301 – 302 dated 30 May 1957. Tutukau East B No.7A including 17 other blocks were cancelled and creating the new title, Tutukau East Z Block. The land taken under the Public Works Act 1928 were Parts Tutukau East B No 7A, Part Tutukau East Z and Part Paeroa South A No 3 blocks in 1968. The ownership that encompasses Section 1 on Survey Office Plan No.60553 falls under the title Tutukau East Z Block and the management of the Tutukau East Z Trust.
42. It is acknowledged that the whenua in question holds a lot of history and was addressed in somewhat at 129 Rotorua MB 293 – 306 dated 14 July 1964 as referenced at paragraph 16 however this is not the challenge for this application.
43. At paragraph 2d, the applicant refers to proof that Herapeka owned her block outright and made reference to 127 Rotorua MB 303 – 306 dated 14 July 1964. Although there is information in respect to occupation and a low scale tourist business operating it does not inform the Court that Wharekawa had sole and absolute ownership.

Reference is made to paragraph 17 where it shows that compensation was considered for Herapeka Wharekawa and the balance to the owners in the original title B7A as it was before the amalgamation. This would suggest that Herapeka Wharekawa was not the sole owner.

44. At paragraph 2f, the applicant made the following statement in respect to a Deed made between the Trustees of Tutukau East Z Trust and Orakei Korako Gyserland Resort and The Commissioner of Crown Lands:

“The land will be transferred to the trustees on the basis that they are acting for the FORMER OWNERS of the land and their successors in title and the Commissioner may, if he so desires, require that the MLC first confirm that the trustees are entitled to hold the land on behalf of the former owners...”

With the vesting into the Trustees of the Tutukau East Z Trust being the order complained of, it would appear that the Court made orders accordingly and would satisfy the terms within the Deed.

45. 158 Waiariki MB 249 – 253 dated 7 March 2017, the Court determined those entitled to succeed to Rangimarie Ngamotu. Rangimarie was a child of Herapeka Wharekawa as referenced at paragraphs 18 – 24.

The applicant, Cheyenne Ngamotu, is a part successor to her whangai mother, Rangimarie Ngamotu. Cheyenne Ngamotu and her siblings are owners in Tutukau East Z Block and therefore beneficiaries under the Tutukau East Z Trust.

Consideration of whether matter needs to go to hearing

46. It is not apparent that an error was made
47. The applicant should be afforded the opportunity to address the Court to progress the application.

Recommendation of course of action to be taken

48. 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 of this application.
49. That this application be set down for a hearing on 18 December 2024 at 10.00am.

Ko te hātepe ture o te tono nei

Procedural History

[7] On 5 December 2024, a copy of the Registrar's Report was distributed to parties with known addresses. Parties were given an opportunity to submit their comments on the Report. The applicant opposed the findings of the report, filing several documents – including correspondence to or from the Commissioner of Public Works about her grandparents, annotated minutes and orders, LINZ titles, and submissions. Essentially, she contended her grandmother's block was Tutukau Z, a separate title for which her grandmother received separate compensation – that title is now known as Section 1 Survey Office Plan 60553. Her grandmother's interests, the applicant submitted, were not in the Tutukau East Z block.

[8] The application was heard before me on 18 December 2024. The applicant changed her position at the hearing, arguing that her grandmother's block was Tutukau East Z and that the confusion relates to the order made 1957 “when all the 18 blocks were amalgamated” and the Court renamed the Tutukau East B block to Tutukau East Z. She argued Herepeka's block has always been Tutukau East Z.

[9] I reserved my decision. The file was not referred to me until 12 September 2025, despite several requests for it. Therefore, there has been an unfortunate delay in issuing this judgment.

Ngā Ture

The Law

[10] 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.

[11] In *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)*, the principles to be applied in determining such applications made pursuant to s 45 of the Act were listed as follows: ¹

- 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);
- Section 45 applications are not to be treated as a rehearing of the original application;
- 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;
- 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;
- The burden of proof is on the applicant to rebut the two presumptions above; and
- 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.

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

[12] 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.

[13] 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 of 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.

[14] 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 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

The issues

[15] 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?

² *Tau v Nga Whānau o Morven and Glenavy – Waihao 903 Section IX Block* [2010] Māori Appellate Court MB 167 (2010 APPEAL 167) at [61].

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

Kōrerorero*Discussion*

[16] Tutukau East B7A block was created by title order dated 27 February 1911.⁴ It was partitioned from Tutukau East B. Interests in that block were held by Rameka Te Mohi or Henare. Herapeka Rameka or Wharekawa (the applicant's grandmother) succeeded to those interests. On 30 May 1957, part of Tutukau East B7A was partitioned under s 182 of the Māori Affairs Act 1953 along with other blocks. In doing so the Court created the title Tutukau East Z Block.⁵

[17] The land taken in 1960 under the Public Works Act 1928 included Parts Tutukau East B7A, Part Tutukau East Z and Part Paeroa South A No 3 blocks "for the development of water power (Lake Taupo and the Waikato River Power Scheme)".⁶ Most of this land was flooded in 1961. There is no reference to a block called Tutukau Z.

[18] In 1964, the Minister of Works made an application to the Māori Land Court to assess the compensation payable to affected landowners. The Court awarded Herapeka Wharekawa £1050, a separate settlement from the other owners in Tutukau East Z and Tutukau B7A, because of the buildings her and her husband owned on the land and due to the loss of their tourism business.⁷ At no time did the Court indicate that she held a separate title to the other owners of Tutukau East Z Block or Tutukau B7A. The Court did refer to Tutukau Z, it appears either by mistake or as shorthand, but it did so under the heading "Tutukau East Z". Thus, I am not persuaded that these are different titles or blocks. The Court also awarded compensation for the taking of Tutukau East B7A parts, excluding Herapeka Wharekawa.

[19] At her death in 1976, Herapeka Wharekawa still owned her shares in Tutukau East Z Block, and these were vested in her executor, the Public Trustee.⁸ Her interests were later vested in her successors, including Rangimarie Ngamotu, the applicant's mother.⁹

[20] Section 1 on Survey Office Plan No.60553 is the remnant land taken for public works. Unless the applicant can produce a separate title for Tutukau Z or any other block

⁴ 3 Taupo MB 166 (3 TPO 166).

⁵ 105 Rotorua MB 301-302 (105 ROT 301-302).

⁶ "A Proclamation" (22 September 1960) 60 *New Zealand Gazette* 1459 at 1460.

⁷ 127 Rotorua MB 295-306 (127 ROT MB 295-306).

⁸ 3 Registrar's MB 220 (3 REG 220).

⁹ 208 Rotorua MB 237 (208 ROT 237).

owned solely by her grandmother, she is unable to prove on the balance of probabilities that a mistake has been made.

[21] As there has been no mistake of fact or law demonstrated, I am unable to amend or cancel the orders complained of.

Kupu whakatau
Decision

[22] The application is dismissed.

[23] This is a decision I do not come to lightly. I understand the harrowing experience that the Wharekawa's and their descendants have suffered. The applicant's grandparents were subjected to public works takings contrary to the guarantee of Article 2 in the Treaty of Waitangi. That issue was dealt with by the Waitangi Tribunal in *He Maunga Rongo – Report on Central North Island Claims*.¹⁰ This is a matter that the trustees of Tutukau East Z should consider, and perhaps they could negotiate an arrangement whereby the Wharekawa's relationship with the land is recognised in some significant way.

I whakapuaki i te 10.00 am i Tamaki Makaurau, tekau mā tahi o ngā rā o Noema i te tau 2025.

Pronounced at 10.00 am in Auckland on this 11th day of November 2025.

C L Fox
Kaiwhakawā Matua
CHIEF JUDGE

¹⁰ *Waitangi Tribunal He Maunga Rongo – Report on Central North Island Claims* (Wai 1200, 2008) vol 4 at 1608-1611.