

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

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

AP-20230000019758

A20200008985

CJ 2020/40

WĀHANGA
Under

Section 45, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Succession to Tupito Maruera

$$\begin{array}{c} \text{N}\bar{\text{A}} \\ \text{By} \end{array}$$

LUANA PAAMU, IVY MARIE-ROSE HENARE
AND FIONA RIO
Ngā kaitono
Applicants

Nohoanga:
Hearing

19 June 2024, 2024 Chief Judge's MB 862-872
(Heard at Rotorua via Zoom)

Whakataunga:
Judgment date

4 September 2025

TE WHAKATAUNGA Ā KAIWHAKAWĀ MATUA TUARUA C T COXHEAD
Judgment of Deputy Chief Judge C T Coxhead

Hei tīmatanga kōrero

Introduction

[1] This application, filed by Luana Paamu, Ivy Marie-Rose Henare, and Fiona Rio seeks to amend vesting orders at 78 Taranaki MB 257 dated 23 January 1952, 58 Taranaki 275-276 dated 21 April 1952, 76 Taranaki MB 288-289 dated 10 June 1968, and 79 Taranaki MB 4 dated 17 September 1971 concerning succession to Tupito Maruera.

[2] The claim is that Tupito Maruera was the father of Nohotia. However, the Court record has consistently shown that Tupito had no issue. The applicants' claim that the order is incorrect due to mistake or error made by the Court and in the presentation of the facts of the case to Court.

Kōrero whānui

Background

[3] The Registrar's Report and Recommendation dated 10 June 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

Introduction

1. This application filed by Luana Paamu, Ivy Marie-Rose Henare, and Fiona Rio (the applicants) is seeking to amend vesting orders at 78 Taranaki MB 257 dated 23 January 1952, 58 Taranaki 275-276 dated 21 April 1952, 76 Taranaki MB 288-289 dated 10 June 1968, and 79 Taranaki MB 4 dated 17 September 1971 relating to Tupito Maruera, succession.
2. The applicants claim the said orders are incorrect due to a mistake, error, or omission in the presentation of the facts of the case to the Court because:
 - (a) Tupito Maruera was the father of Nohotia. He had an affair with Heretaniwha.
 - (b) The whānau of Nohotia have succeeded and received land interests of Tupito, and that's their entitlement, solely. Maruamoa and Rongoaua should not have received land interests from Tupito Maruera.

3. The applicants claim that they have been adversely affected by the orders complained of upon the grounds that Maruamoa and Rongoaua and their descendants have incorrectly succeeded to interests of Tupito Maruera.

Tupito Maruera had 1 child, Nohotia. Maruamoa and Rongoaua are children of Maihi Maruera, a brother to Tupito.

4. The applicants seek to have the orders amended by deleting all reference to Maruamoa Maihi Te Puaha Maruera and Rongoaua Maihi Te Puaha Maruera and their children. That Nohotia Maruera and his children determined the sole beneficiaries to the estate of Tupito Maruera.

Concise history of Order sought to be amended/cancelled

5. The Court at 58 Taranaki MB 257 dated 23 January 1952 heard an application for succession to Tupito Maruera. The minute is partially reproduced as follows:

Simon Maruera (sworn) Dec'd was my grandfather. Died 15th August 1942 at Pariroa Pa.

Buried there. No will. Left issue, three children.

Maruamoa Maihi Te Puaha Maruera f.a
Rongoaua Maihi Te Puaha Maruera f.a
Nohotia Maruera m.a decd issue

Nohotia had Simon Maruera m.a
 Keith Maruera m10
 Christine Maruera f12
 Barbara Maruera f5

NB: A note has been added to this minute. To be amended see page 276 by the addition of the three names omitted.

6. At 58 Taranaki MB 275-276 dated 21 April 1952 an application was heard to succeed to further interests of Tupito Maruera. Simon Maruera gave additional evidence restating the information provided at paragraph 5 but also adding the following names as children of Nohotia Maruera:

Te Hape o te Rangi Maruera
Tauhera Maruera
Nika Maruera

7. The Court made orders relating to Tupito Maruera, succession:

Aotea District

<u>Blocks</u>	<u>Shares</u>
Hapotiki Lease	5.0844
Otoia Grant 3776 1892 Act Leases Section IV and X	372.3313
Kawhiti Blk IX Sec 2	0.2777

Pukekohatu 23B 1 st Residue	3.3333
Ngatitupaea 1892 Act Leases Grant 3780 2 nd Residue	2.2502
Pariroa A and B	1.000

Successors/Beneficiaries

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
1	Maruamoa Maihi Te Puaha Maruera	Fa	1/3
2	Rongoaua Maihi Te Puaha Maruera	Fa	1/3
3	Simon Maruera	Ma	1/21
4	Te Nape o te Rangi Maruera	M16	1/21
5	Christine Maruera or Ngaware Maruera	F12	1/21
6	Tawhera Maruera	F10	1/21
7	Nika Maruera	M8	1/21
8	Barbara Maruera or Ngaroimata Maruera	F5	1/21
9	Keith Maruera or Tawhairoa Maruera	M14	1/21

8. 76 Taranaki MB 288-289 dated 10 June 1968, Tupito Maruera – Succession. The minute is partially reproduced as follows:

Rongoaua Maihi Te Puaha Maruera or Mrs N Rio, 158 Egmont Street, Patea.

Dec'd was my uncle. Evidence by Simon in Tar MB 58/257 and 275 that he our father is incorrect. He is Simon's granduncle not grandfather. Tupito was my father's brother – the only brother. He also had a sister but she died no issue – Oriwia.

Tupito also no issue.

Those entitled at Tar MB 58/276 are correct except that Maruamoa is decd and had 4 children:

1. Te Aroha Tamara m
2. Wharerau Kiriona m
3. Whero Kiriona m
4. Rongoaua Carol Kiriona f16

Keith also decd no issue, not married.

9. The Court made orders relating to Tupito Maruera, succession:

Aotea District

<u>Block</u>	<u>Shares</u>
Paraninihi-ki-Waitotara Reserve	316.017

Successors/Beneficiaries

<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
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1	Rongoaua Maihi Te Puaha Maruera(Mrs N Rio)	Fa	1/3
2	Simon Maruera	Ma	1/18
3	Te Nape o te Rangi Maruera	Ma	1/18
4	Christine Maruera or Ngaware Maruera	Fa	1/18
5	Tawhera Maruera	Fa	1/18
6	Nika Maruera	Ma	1/18
7	Barbara Maruera or Ngaroimata Maruera	Fa	1/18
8	Te Aroha Tamaka	M	1/12
9	Wharerau Kiriona	M	1/12
10	Whero Kiriona	M	1/12
11	Rongoaua Carol Kiriona	F1973	1/12

10. 79 Taranaki MB 4 dated 17 September 1971. Succession to further interests of Tupito Maruera.

The Court made further orders determining those at paragraph 9 as the beneficiaries to the estate of Tupito Maruera.

11. The Court made orders relating to Tupito Maruera, succession:

Aotea District

<u>Block</u>	<u>Shares</u>
Parihaka X	1.8839

Successors/Beneficiaries

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
1	Simon Maruera	M	½
2	Te Aroha Tamaka	M	½

<u>Block</u>	<u>Shares</u>
Parihaka Papakainga	1.000

Successors/Beneficiaries

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
1	Te Nape-o-te-Rangi Maruera	M	½
2	Rongoaua Carol Kiriona	F	½

<u>Block</u>	<u>Shares</u>
Whitikau Native Reserve	1.75

Successors/Beneficiaries

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
1	Christine Maruera or Ngaware Maruera	F	½

2 Wharerau Kiriona	M	½
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<u>Block</u>	<u>Shares</u>
Mokoia Pa	0.500

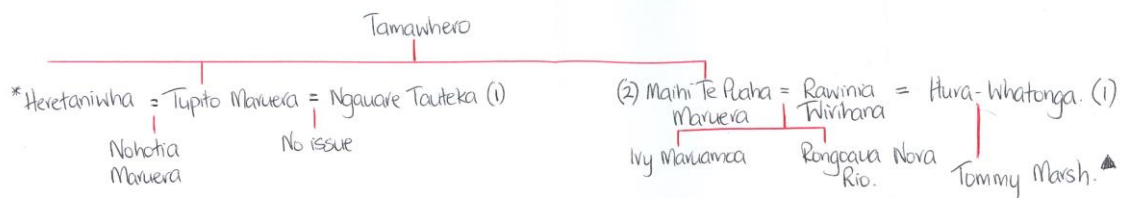
Successors/Beneficiaries

<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
1 Rongoaua Maihi te Puaha Maruera	F	Solely

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

12. The applicants have provided the following whakapapa in support of their application:

WHAKAPAPA - RIO AND MARUERA WHĀNAU



* Not married. They were never married, but conceived a child together named Nohotia.

▲ In the death certificate of Maihi Te Puaha, it stipulates that he had 2 daughters and 1 son. As far as the Rio whānau are concerned, that son was Tommy Marsh, not Nohotia.

13. The applicants have referred to additional information filed on application A20140010125 – CJ2014/29 – Heretaniwha or Here Taniwha, and an order made at 47 Aotea MB 60-61 dated 27/2/1995 – Application to the Chief Judge.

14. A certified copy of the Death Certificate for Maihi Tepuaha Maruera on 12 November 1940;
15. A certified copy of the Marriage Certificate of Rongoaua Te Puaha and Hohepa Rio on 28 February 1934;
16. An extract from The Patea Mail dated September 9, 1981, in reference to Tupito Maruera as the grandfather of Simon Maruera.
17. Admissions to Kakaramea School. Particular reference to the entry of Nohotia Tupito in 1914.

Court Research

18. The Court research shows that there was conflicting whakapapa presented to the Court through historical successions. Simon Maruera stated at 58 Taranaki MB 25 dated 23 January 1952 that Tupito Maruera was his grandfather. Refer to Paragraph 5.

Rongoaua Maihi Te Puaha Maruera or Mrs N Rio at 76 Taranaki MB 288-289 dated 10 June 1968, paragraph 8, gave a signal that Simons evidence given at Paragraph 5 was incorrect and that Tupito Maruera was Simon's granduncle and not his grandfather.

Rongoaua also made the statement that Tupito passed with no issue.

The remaining evidence given from Simon Maruera was correct, other than Maruamoa having now passed and therefore her children recorded as successors.

19. The whakapapa presented by the applicants inform the Court that Tupito Maruera had a child with Heretaniwha named Nohotia. His brother Maihi Te Puaha Maruera had 3 children, Ivy Maruamoa, Rongoaua Nora Rio, and Tommy Marsh.
20. The applicants state that the death certificate of Maihi Tepuaha Maruera refers to him leaving 3 children – Male 1 and Female 2. The applicants state that the male referred to on the death certificate is Tommy Marsh, the son of Maihi Maruera and Hura Whatonga and not Nohotia.
21. The Court record shows the following as the children of Maihi Te Puaha Maruera as provided by Simon Maruera and corrected by Rongoaua Te Puaha Maruera or Mrs N Rio. Refer to paragraphs 6 and 8:
 - (a) Maruamoa Maihi Te Puaha Maruera
 - (b) Rongoaua Maihi Te Puaha Maruera
 - (c) Nohotia Maruera
22. Rongoaua Maihi Te Puaha Maruera, a daughter of Maihi Te Puaha Maruera is not disputed. Rongoaua was the witness to the succession to Tupito Maruera at 76 Taranaki MB 288-289 dated 10 June 1968 and confirmed the evidence given from Simon Maruera at 58 Taranaki MB 25 dated 23 January 1952.
23. The applicants are mokopuna of Rongoaua Te Puaha.

24. At 53 Taranaki MB 331 dated 28 July 1942 succession was completed to Maihi Te Puaha Maruera. The Court minute is partially reproduced:

Succession to the interest of Maihi te Puaha Maruera

Also known as Maihi Tupua, Maihi Te Puaha Maruera, Te Puaha Maruera, Maihi Te Puaha.

Maruamoa Marua sworn.

Knew deceased when alive was my father. Died 12 Nov. 1940 at Poriru. No will. Had three children their names are Maruamoa te Puaha f.a, Nohotia te Puaha m.a, Rongoaua te Puaha f.a.

I ask for orders in favour of the children. My father was known by all the names enumerated above.

Orders accordingly.

Details of subsequent Orders affecting lands to which this application relates

25. At 6 Whanganui Registrars MB 224 dated 30/11/1992 – Rongoaua Te Puaha, succession.
26. At 15 Whanganui Registrars MB 249-250 dated 11/07/2001 – Rongoaua Rio (Te Puaha) or Rongoaua Te Puaha or Rongoaua Maruera or Norma Rongoaua Rio, deceased.
27. At 118 Aotea MB 62-66 dated 18/07/2002 – Constitution of the Sharmu Whānau Trust.
28. At 144 Aotea MB 298-300 dated 16/09/2004 – Partial termination of the Sharmu Whānau Trust with respect to the shares of Paula Dee Rio and Te Pania Josephine Rio.
29. At 331 Aotea MB 163-166 dated 18/12/2014 – Constitution of the Kotaha and Raymond Rio Whānau Trust.
30. At 169 Taitōkerau MB 195-198 dated 30/01/2018 – Succession to Hawepane Vivienne Henare.
31. At 126 Aotea MB 155-157 dated 09/04/2003 – Succession to Adrienne Tereria Rio and constitution of the Paul Maihi Te Puaha Anaru Rio Kaitiaki Trust.
32. At 367 Aotea MB 57-59 dated 01/03/2017 – Termination of the Paul Maihi Te Puaha Anaru Rio Kaitiaki Trust.
33. At 126 Aotea MB 137-139 dated 09/04/2003 – Brian Te Rangimarie Rio, succession.
34. At 11 Aotea MB 107 dated 07/11/1989 – Simon Maruera or Haimona Nohotia Te Puaha or Haimona Nohotia Te Puaha, succession.

35. At 65 Aotea MB 86 dated 05/11/1996 – Constitution of the Ngahere Matawha Whānau Trust.

Reference to areas of difficulty

36. The Court record leads to confirm that Tupito Maruera passed leaving no children.

The applicants state that Tupito Maruera did leave a son, named Nohotia Te Puaha.

That Nohotia Te Puaha was not a son of Maihi Te Puaha Maruera, rather the son of his brother, Tupito.

Recommendation of course of action to be taken

37. 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 a Court hearing scheduled for the June Court circuit.
 - b) That the applicants and interested parties are given the opportunity to address the Court to verify their evidence that Tupito Maruera passed leaving 1 child named Nohotia Maruera. And that Nohotia Maruera was not the son of Maihi Te Puaha Maruera.
 - c) That should orders be made to recognise Nohotia Maruera as a child of Tupito Maruera that a further order be made pursuant to section 47(4) of Te Ture Whenua Māori Act 1993 making all other consequential amendments.

Ko te hātepe ture o te tono nei

Procedural History

[4] On 11 June 2024, a copy of the Registrar's Report was distributed to parties with known addresses. Parties were given an opportunity to submit their comments to the Report.

[5] Luana Paamu filed documents through email on 13 June 2024 in response to the Report and Recommendation. These were addressed at the hearing.

[6] The application was heard before me on 19 June 2024. I reserved my decision.

Ngā Ture

The Law

[7] The Chief Judge's jurisdiction to amend or cancel an order of the Māori Land Court is set out in s 44(1) of Te Ture Whenua Māori Act 1993 (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 of this Act, 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.

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

- (a) When considering s 45 applications, the Chief Judge needs to review the evidence given at the original hearing and weigh it against the evidence provided by the Applicants (and any evidence in opposition);
- (b) Section 45 applications are not to be treated as a rehearing of the original applications;
- (c) The principle of *Omnia Praesumuntur Rite Esse Acta* (everything is presumed to have been done lawfully unless there is evidence to the contrary) applies to section 45 applications. Therefore, in the absence of a patent defect in the order, there is a presumption that the order made was correct;
- (d) Evidence given at the time the order was made, by persons more closely related to the subject matter in both time and knowledge, is deemed to have been correct;
- (e) The burden of proof is on the applicant to rebut the two presumptions above; and

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

- (f) As a matter of public interest, it is necessary for the Chief Judge to uphold the principles of certainty and finality of decisions. These principles are reflected in section 77 of the Act, which states that the Court orders cannot be declared invalid, quashed, or annulled more than 10 years after the date of the order. Parties affected by orders made under the Act must be able to rely on them. For this reason, the Chief Judge's special powers are used only in exceptional circumstances.

[9] 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.

[10] As stated in *Tau v Nga Whānau o Morven and Glenavy – Waihao 903 Section IX Block*, the Chief Judge must exercise their jurisdiction by applying the civil standard of proof on the balance of probabilities, having regard to that standard's inherent flexibility that takes into account the nature and gravity of the matter at issue.² This means that the applicant must establish on the balance of probabilities that there was a mistake or omission.

[11] The Court of Appeal has confirmed that the power under s 44(1) falls into two parts:³

The first is an evaluative decision as to whether the order made was “erroneous in fact and 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.

² *Tau v Nga Whanau O Morven & 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

[12] 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?

Was an error made?

[13] The applicants have submitted that it has always been their understanding that they descend from Maihi and their nanny never told them about her brother, Nohotia. They didn't know that he even existed.

[14] Luana and Fiona at hearing noted the fact that Nohotia Te Puaha was not a son of Maihi Te Puaha Maruera, but rather he was the son of his brother, Tupito.

[15] The whānau understanding is very clear in that Tupito did have a child - that being Nohotia. As Jolene Rio explained, this is a matter which has been with this family for some time and they had previously asked an uncle, Maihi and their father (need to find out who their father is) to rectify the situation. Sadly, they have passed away. Things are made more complex in that as Jolene stated:

... our grandmother [would] say that Nohotia was not her brother". Nohotia was her sister's brother because Maruamoa was brought up by Tupito. Tupito was Nohotia's son. Tupito was Nohotia's son. And in saying that, Nohotia had a son called Simon. Tupito brought Simon up because that was his grandson, ...

[16] The Court record leads us to confirm that Tupito Maruera passed leaving no children. The Court record is very clear and does not provide any evidence that Tupito left children.

[17] As the Registrar's report shows there have been a number of related applications and hearings before the Court concerning Tupito Maruera's land interest. In any of these applications and/or hearing someone could have presented evidence to the Court that Tupito

had a son. But this did not occur. Instead, the record has been that Tupito Maruera passed leaving no children.

[18] What is also clear is that when the record mistakenly showed that Tupito had children the Court record was corrected. This may have caused confusion. On 23 January 1952 when the Court heard an application for succession to Tupito Maruera (at 58 Taranaki MB 257), Simon Maruera gave evidence that Tupito was his grandfather. However, this was later corrected at 58 Taranaki MB 275-276 dated 21 April 1952 when an application was heard to succeed to further interests of Tupito Maruera. There it was confirmed that Tupito was Simon's granduncle and the evidence that Tupito was his grandfather was incorrect. It was also confirmed that Tupito had no issue.

[19] On the evidence before the Court, I am of the view that no error has occurred.

Kupu Whakataunga

Decision

[20] The application is therefore dismissed.

I whakapuaki i te 10.30am i Rotorua, i te tuawhā o ngā rā o Hepetema i te tau 2025.
Pronounced at 10.30am in Rotorua on the 4th day of September 2025.

C T Coxhead
DEPUTY CHIEF JUDGE