

**I TE KOOTI WHENUA MĀORI O AOTEAROA**  
**I TE ROHE O TE TAITOKERAU**  
*In the Māori Land Court of New Zealand*  
*Taitokerau District*

**A20190008757**  
**CJ 2019/33**

WĀHANGA  
*Under*

Section 45, Te Ture Whenua Māori Act 1993

MŌ TE TAKE  
*In the matter of*

Succession to Tamati Hapimana

DENISE CHRISTINE SCHIMANSKI  
Te Kaitono  
*Applicant*

Nohoanga: 29 March 2022, 2022 Chief Judge's MB 106-128  
*Hearings* 20 June 2022, 2022 Chief Judge's MB 254-265  
(Heard at Gisborne)

Whakataunga: 6 September 2022  
*Judgment date*

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**TE WHAKATAUNGA Ā KAIWHAKAWĀ MATUA ISAAC**  
*Judgment of Chief Judge W W Isaac*

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## **Hei tīmatanga kōrero**

### *Introduction*

[1] On 4 October 2019 Denise Christine Schimanski (the applicant) filed this application pursuant to s 45 of Te Ture Whenua Māori Act 1993 (the Act) seeking to amend a succession order made at 26 Bay of Islands MB 340-341 on 7 October 1952 (the order).

[2] The order relates to the estate of Tamati Hapimana (the deceased), who passed away intestate on 3 May 1950. The order vested the deceased's interests in Umuhapuku 2D2 Block in his sister Maraea Wiremu Hapimana; the children of his late sister Ani or Ngamako Wiremu Hapimana (namely Wiremu Hirini Anihana and Hirini Hirini Anihana); and the son of his late sister Turiti or Puti Wiremu Hapimana (namely Hohepa Hema Rihari).

[3] The applicant claims that her late mother, Annie Ngamako Chapman (Hapimana) born on 23 November 1928, is the biological daughter of the deceased and that this fact was not made known to the Court at the time of the order. The applicant therefore submits that she is adversely affected by the order as her mother should have received these interests rather than the siblings of the deceased.

## **Kōrero whānui**

### *Background*

[4] The Registrar's Preliminary Report and Recommendation (the Report) dated 26 January 2022 sets out the background to this application. The Report is reproduced in full as follows:

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

### **Introduction**

1. This application has been filed by Denise Christine Schimanski (the applicant) and seeks to amend a succession order made at 26 Bay of Islands MB 340-341 on 7 October 1952, relating to Tamati Hapimana.
2. The applicant claims that 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) The minutes of succession say that Tamati Hapimana had no issue; and
  - b) Her mother, Annie Ngamako Chapman/Hapimana born 23<sup>rd</sup> November 1928, is the daughter of Tamati and Sally Chapman (Hapimana).

3. The applicant states that she is adversely affected by the order because, if the evidence was correct, her mother would have received these interests rather than the siblings of the deceased, her grandfather Tamati Hapimana.

**Concise history of Order sought to be amended**

4. Application for succession to Tamati Hapimana was heard by the Court in Kaikohe at 26 Bay of Islands MB 340-341 on 7 October 1952 and the evidence transpired as follows:

288 **Tamati Hapimana decd**

Maraea Hapimana o/o

Decd was my brother. **Died 6<sup>th</sup> May 1952.** No will. **No issue.**

Wiremu @ Toti Hapimana — Ani Anihana  
*C.BI 7/170*

1	<b>Tamati</b>	<b>Wiremu</b>	<b>Hapimana</b>	<b>m</b>	<b>decd no issue</b>
2	Maraea	“	“	f	
3	Ani @ Ngamako	“	“	f	decd issue
4	Mange	“	“	f	decd no issue

Ani left Wiremu Hirini Anihana m  
 Hirini “ “ m

Wiremu Hapimana left other issue but land came through mother.

No Waihou only came through mother.

The position regarding my father is that he had a first marriage C.BI 7/170 – issue.

Turiti Wiremu Hapimana who died leaving Hohepa Hema Rihari who died leaving 6 children.

Court Maraea desires succn in Umuhapuku 2D balance interest to:

Maraea	1/3
Anis 2 children	1/3
Hohepa Hema Riharis issue	1/3

Succn accdly in Umuhapuku 2D.

Court will not partition until road goes through. Data sheet requires correction.

5. The effect of the order, made under rule 51 of the Māori Land Act 1931 (the 1931 Act), was vesting interests held in the name of Tamati Hapimana, as follows:

Taitokerau District

Block

Umuhapuku 2D2

Successors

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
1	Maraea Wiremu Hapimana	f.a.	1/3
2	Wiremu Hirini Anihana	m.a.	1/6
3	Hirini Hirini Anihana	m.a.	1/6
4	Hohepa Hema Rihari	m.d.	1/3

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

6. The applicant has provided a covering letter in support of her application. Extracts are set out below:

I Denise Christine Schimanski is lodging the attached application due to an omission of my mother Annie Ngamako Schimanski (*née* Chapman / Hapimana) regarding her ownership rights to Umuhapuku 2D2 and 2D1.

Annie Ngamako Schimanski was the only birth child of Tamati Hapimana born and raised on the Umuhapuku Block VI Omapere until she married in 1948.

My mother did not speak a lot of her life in Okaihau, my grandmother Susan Anderson told me stories as I was growing. My mother was ostracised by both sides of her family (Hapimana and Eruera). Something happened between her parents and unfortunately my mother bore the brunt.

[...]

Due to relationship problems with her parents she was raised by Wiremu Hapimana until his death in 1933 on the Umuhapuku block.

Wiremu and my mother were living with his grandson Wiremu (Teo) Anderson (Anihana) and his wife Susan Anderson on the said block.

Upon Wiremu Hapimana's death my mother remained with Wiremu and Susan Anderson until her marriage.

When I came across 26 BI 340-341 with Maraea claiming there were no issues, fully knowing about my mother.

I feel very hurt that my mother was once again excluded from her father's land.

My mother refused to speak of certain parts of her life in Okaihau due to being ostracised.

It was not until after my mother's death, I started my research into our Whakapapa.

Wiremu Hapimana did not leave a Will.

[...]

Tamati Hapimana's block 2D on the 1<sup>st</sup> March 1950 an application was made to the court whereupon 2D1 was cut off from 2D2 in favour of Mahanga (Maude) Grey. Mahanga was the daughter of Harata who was living with Tamati along with her brother and sister.

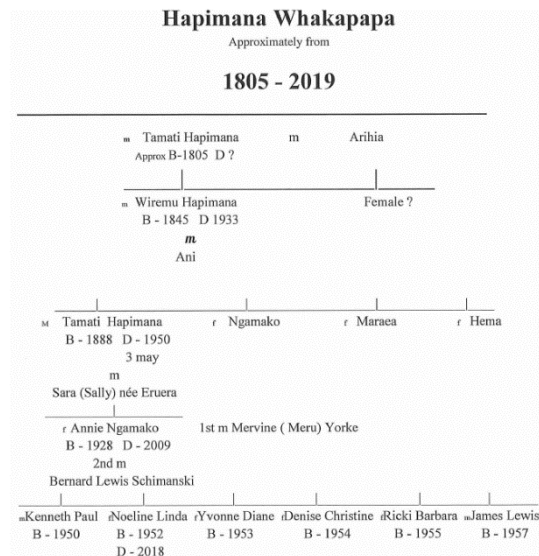
Tamati Hapimana passed away 8 weeks later on the 3<sup>rd</sup> of May Tamati as per his death certificate.

Tamati did not leave a Will.

[...]



- d) Copy of New Zealand Death Certificate (Registration No.1933005294) for Wiremu Hapimana.
- e) Certified copy of New Zealand Death Certificate (Registration No.1972025072) for Wiremu Anderson.
- f) Certified copy of Entry in the Register Book of Births for Denise Christine Schimanski (the applicant).
- g) Copy of the last Will and Testament of Anne Ngamako Schimanski dated 8 October 1992.
- h) Copies of documents obtained from the Māori Land Court record:
  - i) Digital Title Plan ML 390315 depicting the location of Umuhapuku 2D1 and Umuhapuku 2D2 Blocks.
  - ii) Description of boundaries in relation to Umuhapuku 2A, 2B, 2C, 2D, 2E and 2F blocks dated 14 October 1948.
  - iii) Court Minutes - 23 Bay of Islands MB 269-270 dated 14 October 1948.
  - iv) Court Minutes - 24 Bay of Islands MB 391-392 dated 1 March 1950.
  - v) Extract from Certificate of Title 197/204 recording the registration of a Partition Order vesting Umuhapuku 2D1 Block in Mahanga Grey.
  - vi) Historical Succession Order Schedule - Umuhapuku 2D2.
  - vii) Historical Schedule of Ownership Orders - Umuhapuku 2D2.
  - viii) Court Minutes - 25 Bay of Islands MB 243 dated 9 February 1951.
- i) Hapimana Whakapapa which is reproduced below:



### Court Research – Succession Applications

8. Court research shows that a further application to determine persons legally entitled to succeed to the interests of Tamati Hapimana also known as Ngere Hapimana was filed by Maraea Hapimana on or about 18 April 1955. This application was heard by the Court in Kaikohe at 30 Bay of Islands MB 282-283 on 3 July 1956 and the evidence transpired as follows:

109 Appln under Sec 135 re  
 135 Tamati Hapimana @ Tamati Wiremu Hapimana decd  
alias Te Ngere Hapimana decd

Hone Kingi sworn.

I knew decd when alive. Was my uncle. **Died 5 May 1949.** No Will. **No children or adopted children.** Had full brothers & sisters:

Maraea Wiremu Hapimana	f.a	decd – left issue
Ani Wiremu Hapimana	f.a	decd – no issue
Ngamako Wiremu Hapimana	f.a	decd – left issue
Mange Wiremu Hapimana	f.a	decd – no issue

Maraea Wiremu Hapimana left issue as follows:

See names on page 281.

Ngamako Wiremu Hapimana left issue as follows:

Wiremu Hiri <del>hana</del> Anihana	m.a
Hiri Anihana II	m.a

Order under Sec 135 appointing the following persons legally entitled to succeed:

<del>Wiremu</del> Winnie Hokimate Kingi	f.a	1/10
Hemi Kingi (Junior)	m.a	1/10
Hone Kingi	m.a	1/10
Herbert Kingi	m.a	1/10
Huhana Kingi	f.a	1/10
Wiremu Hiri Anihana	m.a	1/4
Hiri Anihana II	m.a	1/4

No objections.

#### Vestings

Order under Sec 139(2) & 136 vesting the interests of decd in

Utakura 2B1D8A  
 Waihou A2A2B

in above persons in ~~equal~~ shares indicated.

Value of each interest under £1000-

Order under Sec 137 vesting the interests of decd in the M.T. in following blocks:

Herepoho A4	£7-16-3
Wiroa A3	£1-5-0
Puketotara	£3-14-10

9. The effect of the orders, made under sections 136 and 139(2) of the Māori Affairs Act 1953 (the 1953 Act), was vesting interests held in the name of Tamati Hapimana also known as Tamati Wiremu Hapimana or Te Ngere Hapimana, as follows:

Taitokerau District

<u>Block</u>
Utakura 2B1D8A
Waihou A2A2B

Successors

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
1	Winnie Hokimate Kingi	f.a.	1/10
2	Hemi Kingi (Junior)	m.a.	1/10
3	Hone Kingi	m.a.	1/10
4	Herbert Kingi	m.a.	1/10
5	Huhana Kingi	f.a.	1/10
6	Wiremu Hiri Anihana	m.a.	1/4
7	Hiri Anihana	m.a.	1/4

10. The effect of the orders, made under section 137(2) of the 1953 Act, was vesting uneconomic interests held in the names of the persons legally entitled to succeed to the interests of Tamati Hapimana also known as Tamati Wiremu Hapimana or Te Ngere Hapimana, as follows:

Taitokerau District

<u>Block</u>
Herepoho A4
Puketotara
Wiroa A3

Uneconomic Interests Vested in:

	<u>Name</u>	<u>Proportion</u>
1	Māori Trustee	Solely

11. Application A20190011089, pursuant to Sections 113 and 118 of Te Ture Whenua Māori Act 1993 (the 1993 Act), was filed by Denise Schimanski on 9 December 2019. This application was subsequently dealt with in Whangārei Chambers at 209 Taitokerau MB 88-93 on 24 February 2020 and part of the evidence transpired as follows:

**Subject:** Tamati Wiremu Hapimana – Succession  
**Legislation:** Section 118(6), Te Ture Whenua Māori Act 1993

Details of the applicant are as follows:

<u>Applicant</u>	<u>Address</u>
Denise Schimanski	[...]

**K Edmonds, for Deputy Registrar:** The Court is referred to previous evidence at 26 Bay of Islands MB 340-341 dated 7 October 1952, where the Court made orders, pursuant to the Māori Land Act 1931, vesting the interests of the deceased in the following persons:

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
1a	Maraea Wiremu Hapimana	F	1/3
2a	Wiremu Hirini Anihana	M	1/6
3a	Hirini Hirini Anihana	M	1/6
4a	Hohepa Hema Rihari	M	1/3

It has come to the Court's attention that the deceased has additional interests as follows:

Taitokerau District:

<u>Block</u>	<u>RT Ref</u>	<u>Current Owner</u>	<u>Shares</u>
Umuhapuku 2B	326211	Tamati Wiremu Hapimana	0.25

The deceased derived shares in the above block through his father, Wiremu Hapimana at 7 Consolidation Bay of Islands MB 170 dated 13 November 1938.

For the benefit of the Court, we have reviewed the Court record and prepared the following whakapapa based on the Court record.

#### **Whakapapa**

The deceased, Tamati Wiremu Hapimana **left no children** as recorded at 26 Bay of Islands MB 340-341 dated 7 October 1952. He left the following siblings:

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
1	Maraea Wiremu Hapimana	Fdi	DOD: 18 July 1955, left children as recorded at 3 Kaikohe MB 200-201 dated 27 May 1965
2	Ani Wiremu Hapimana also known as Ngamako Wiremu Hapimana	Fdi	DOD: Unknown, left children as recorded at 26 Bay of Islands MB 340-341 dated 7 October 1952
3	Mange Wiremu Hapimana	Fdni	DOD: Unknown, left no children as recorded at 26 Bay of Islands MB 340-341 dated 7 October 1952
4	Turiti Wiremu Hapimana also known as Puti Wiremu Hapimana	Fdi	DOD: Unknown, left children as recorded at 26 Bay of Islands MB 340-341 dated 7 October 1952

[...]

The minute sets out whakapapa based on historical succession evidence and the following orders were made by the Court:

The Court makes orders pursuant to Te Ture Whenua Māori Act 1993:

- (a) section 118(6) vesting the deceased's additional Māori land interests in numbers 1a to 4a as set out above, being the persons determined entitled at 26 Bay of Islands MB 340-341 dated 7 October 1952, with substitution of issue as shown above; and
- (b) sections 37(3) and 244 varying the Hemi Poipoi Kingi Whānau Trust to include additional interests being received by numbers 10, 11 and 13 to 17; and
- (c) sections 37(3) and 220 vesting the said land interests in:

<u>Name</u>	<u>Name</u>
Tahi James Kingi	Maraea Gaylene Harris
Ricky Mapi Kingi	

as responsible trustees of the Hemi Poipoi Kingi Whānau Trust, jointly, no survivorship.

The foregoing orders to issue forthwith pursuant to rule 7.5(2)(b) of the Māori Land Court Rules 2011.

[...]

12. The effect of the order, made under section 118(6) of the 1993 Act, was vesting interests held in the name of Tamati Wiremu Hapimana, as follows:

Taitokerau District

<u>Block</u>	<u>RT Ref</u>	<u>Current Owner</u>	<u>Shares</u>
Umuhapuku 2B	326211	Tamati Wiremu Hapimana	0.25

Beneficiaries/Successors

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
1	Winnie Hokimate Kingi	F	1/15
2	Hone Kingi	M	1/15
3	Herbert Kingi	M	1/15
4	Huhana Cooper	F	1/15
5	Maraea Gaylene Harris	F	1/105
6	Panihi Joan Kingi	F	1/105
7	Tahi James Kingi	M	1/105
8	Ricky Mapi Kingi	M	1/105
9	Penni Merrill MacDonald	F	1/105
10	Martin Winiata Kingi	M	1/105
11	Jovan Kingi	M	1/105
12	Anne Ngamako Chapman	F	1/12
13	Thomas William Anderson	M	1/12
14	Mokinui Arangi Anihana	M	1/54
15	Susie Te Arapo Nicholas	F	1/54

Beneficiaries/Successors

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
16	Anne Ngamako Basham	F	1/54
17	Sally Tipene	F	1/54
18	Marama Cooper	F	1/54
19	Sydney Joseph Anihana	M	1/54
20	Susan Grey Anihana	F	1/54
21	Pearl Rihari Anihana	F	1/54
22	Donald Anihana	M	1/54
23	Pare Hema Rihari (Mrs Tonohi)	F	1/24
24	Hare Hema Rihari	M	1/24
25	Peter Hema Rihari	M	1/24
26	Akinihi Hema Rihari	F	1/24
27	Pinia Hema Rihari	F	1/24
28	Huhana Hema Rihari	F	1/24
29	Isobel Tuporo	F	1/264
30	Hapeta Tuporo	M	1/264
31	Jack Tuporo	M	1/264
32	Maui Winiata Tuporo	M	1/264
33	James Tuporo	M	1/264
34	Robert Tuporo	M	1/264
35	Rachell Cox	F	1/264
36	Temepara Tuporo	F	1/264
37	Ray Tuporo	M	1/264
38	Ada Tuporo	F	1/264
39	William Tuporo	M	1/1056
40	Mary Anne Tuporo	F	1/1056
41	Raymond Tuporo	M	1/1056
42	Jacob Tuporo	M	1/1056
43	Agnes Hedge	F	1/240
44	Sarah Anne Phillips	F	1/240
45	Gail Erueti	F	1/240
46	Nelly Phillips	F	1/240
47	Tanita Phillips	F	1/240
48	Kamo Phillips (Jnr)	M	1/240
49	Murray Phillips	M	1/240
50	Kevin Phillips	M	1/240
51	Buddy Phillips	M	1/240
52	Gwen Heta	F	1/240

13. The effect of further orders, made under sections 37(3), 220 and 244 of the 1993 Act, was to vary the terms of the Hemi Poipoi Kingi Whānau Trust to include additional interests; and to vest the interests received by Maraea Gaylene Harris, Panihi John Kingi, Tahī James Kingi, Ricky Mapi Kingi, Penni Merrill MacDonald, Martin Winiata Kingi and Jovan Kingi in trustees.

**Court Research – History of Umuhapuku 2D Block**

14. Umuhapuku 2D Block was solely owned by Tamati Wiremu Hapimana. On 1 March 1950 the Court dealt with an application relating to a house vesting and the following is extracted from 24 Bay of Islands MB 391-392:

113C **Umuhapuku 2 D** **House Vesting**

Court Inspected the blk in company with Tamati Wiremu Hapimana and Mr Jones Resident Engineer. The Ministry of Works will not be able to say for some time exactly where the new road will go - the general scheme is however above the old railway reserve. The Court agreed to cut out house site being of opinion that if the road does not go where planned a suitable right of way can be laid out:

Orders made:- (under 7/41 (1) & P.O's (2))

An order under Sec 7/1941 vesting a 1/12 interest in Umuhapuku 2D owned by **Tamati Wiremu Hapimana** sole in his daughter **Mahanga Graey f.**

Partition orders:-

Umuhapuku 2D1 to contain 1 r 20 per at easternmost corner of blk cut off by a line at right angles to NE Boundary to be awarded to Mahanga Grey f.

Umuhapuku 2D2 balance of blk to Tamati Wiremu Hapimana m.

Court will later lay off right of way if found that p road is not deviated as planned.

**Umuhapuku 2D2** **Marae Site**

Tamati Wiremu Hapimana asked that Court cut out a marae site he wished to gift.

Court unwilling until new road line fixed.

It then appeared that committee would not erect bds without some assurance from Court & Court agreed with Tamati & with committee that bds w could be erected on a site approved by Tamati & Court would later grant a partition of part of block and would in any case protect committee for bds. Committee to apply within 2 years for partition & reservation by which time the road devn should be settled. This does not imply approval by the Court of any one particular part of blk.

15. On 9 February 1951 the Court dealt with an application relating to a reservation over Umuhapuku 2D2 Block and the following is extracted from 25 Bay of Islands MB 243:

56 **Umuhapuku 2D** **Reservation**

Maraea Hapimana (Mrs Kingi)

I am a sister of the applicant **Tamati Hapimana now decd** and I am chairman of the womens committee. **Tamati left no issue.**

We refer to the minutes BI 24/392. We know that the road has still

not gone through but we have certain building projects and we ask to be protected on the title.

Court: Knows of previous undertakings to these people and to Tamati Hapimana's desire. The new road has still not gone through and is not known when it will or whether it will. The Court considers that these people are entitled to protection.

An order is made under Sec 163(9) vesting 1/5 share in Umuhapuku 2D owned by Tamati Hapimana sole in

Te Hokimate Kingi	f
Hoone Rado	m
Wiremu Anihana	m
Meha Tuoro	f
Tamati Hohaia	m

No jointly  
Objns – no succn

This will give interim protection but Court points out that area must be located as soon as can be.

#### 16. Umuhapuku 2D1 Block

As set out at paragraph [14], Tamati Wiremu Hapimana gifted shares to Mahanga Grey and she subsequently became the sole owner of Umuhapuku 2D1 Block.

By way of Declaration of Change of Status of Land (Part I of the Māori Affairs Amendment Act 1967) dated 3 August 1970, Umuhapuku 2D1 Block ceased to be Māori land and became European land.

The current title for this General land is 'Umuhapuku 2D1 Block' (LINZ Identifier NA20B/177) which is solely owned by Rowena Cook-Causar.

For the record, this application has no effect on the current status or ownership of Umuhapuku 2D1 Block.

#### **Court Research / Land Information New Zealand Research – Whenua**

17. Research has identified the history and current status of the blocks set out at paragraph [9] of this Report as follows:

##### a) Utakura 2B1D8A Block

On 30 September 1966 (4 Kaikohe MB 216-223) the Court made an amalgamation order, pursuant to Section 435 of the 1953 Act, cancelling several titles (including Utakura 2B1D8A Block) and substituting a new title known as Utakura 5 Block.

Shareholdings were recalculated based on valuations and the following ownerships are relevant to this application:

<u>Shareholder Name</u>	<u>Total Shares Held</u> (Utakura 2B1D8A)	<u>Shares in Own Right</u>		<u>Shares Received on Succession to Tamati Hapimana</u>	
		<u>Shares</u> (Utakura 2B1D8A)	<u>Converted Shares</u> (Utakura 5)	<u>Shares</u> (Utakura 2B1D8A)	<u>Converted Shares</u> (Utakura 5)
Hemi Kingi (Jnr)	0.538	0.359	1.081	0.179	0.540
Herbert Kingi	0.537	0.358	1.081	0.179	0.540

Hiri Anihana	1.094	0.646	1.953	0.448	1.355
Hone Kingi	0.537	0.358	1.081	0.179	0.540
Huhana Kingi	0.537	0.358	1.081	0.179	0.540
Winnie Hokimate Kingi	0.538	0.359	1.081	0.179	0.539
Wiremu Hiri Anihana	1.094	0.646	1.953	0.448	1.355
				1.791	5.409

On 29 March 1972 (47 Whangārei MB 302-306) the Court made an amalgamation order, pursuant to Section 435 of the 1953 Act, cancelling several titles (including Utakura 5 Block) and substituting a new title known as Utakura No 7 Block.

Shareholdings were recalculated based on valuations and the following ownerships are relevant to this application:

Shareholder Name	Total Shares Held (Utakura 5)	Shares in Own Right		Shares Affected on Succession to Tamati Hapimana	
		Shares (Utakura 5)	Converted Shares (Utakura 7)	Shares (Utakura 5)	Converted Shares (Utakura 7)
Hemi Kingi (Jnr)	1.621	1.081	2.263	0.540	1.130
Herbert Kingi	1.621	1.081	2.263	0.540	1.130
Hiri Anihana	3.308	1.953	4.081	1.355	2.832
Hone Kingi	1.621	1.081	2.263	0.540	1.130
Huhana Kingi	1.621	1.081	2.263	0.540	1.130
Winnie Hokimate Kingi	1.620	1.081	2.264	0.539	1.130
Wiremu Hiri Anihana	3.308	1.953	4.082	1.355	2.833
				5.409	11.315

The Court made a further Order of Incorporation, pursuant to sections 29, 30, 31 & 32 of the Māori Affairs Amendment Act 1967, incorporating the owners of Utakura No 7 Block as a body corporate by the name of “The Proprietors of Utakura” (Utakura 7 Incorporation).

The following ownerships are relevant to this application:

Shareholder Name	Total Shares Held (Utakura 7)	Shares in Own Right	Shares Affected on Succession to Tamati Hapimana
		(Utakura 7 Block) (Utakura 7 Incorporation)	(Utakura 7 Block) (Utakura 7 Incorporation)
Hemi Kingi (Jnr)	3.393	2.263	1.130
Herbert Kingi	3.393	2.263	1.130
Hiri Anihana	6.913	4.081	2.832
Hone Kingi	3.393	2.263	1.130
Huhana Kingi	3.393	2.263	1.130
Winnie Hokimate Kingi	3.394	2.264	1.130
Wiremu Hiri Anihana	6.915	4.082	2.833
			11.315

b) Waihou A2A2B Block

Waihou A2A2B Block was sold to Karena Kahi Stephens, evidenced by 'Alienation Notice' and confirmed by the Māori Land Court on 3 May 1961 (MLC Reference: R3/344 & TK 6753B).

The current title for this Māori freehold land is 'Waihou A No 2A No 2B Block' (LINZ Identifier NA7C/418) which is solely owned by Stephen Robert Edward Lennox.

18. Research has identified the history and current status of the blocks set out at paragraph [10] of this Report as follows:

a) Herepoho A4 Block

Interests held by the Māori Trustee were sold to Wiremu Henare Marino, evidenced at 1 Conversion MB 4 dated 9 May 1957.

The block was subsequently partitioned at 3 Kawakawa MB 184-185 on 25 October 1967 and the current titles are as follows:

- i) 'Herepoho A No 4 Block' (LINZ Identifier NA378/45 – Part-Cancelled) which is General Land owned by Douglas Alexander Robinson (3 shares) and Hapi Hapimana (1 share) as tenants in common.
- ii) 'Herepoho A4 B Block' (LINZ Identifier 504633) which is multiply owned Māori Freehold Land.

b) Puketotara

Puketotara Block was sold to John Richard McCrae (European), evidenced by 'Alienation Notice' and confirmed by the Māori Land Court on 10 August 1965 (MLC Reference: R1/166 & TK 8500).

The current title for this General land is 'Puketotara Block' (LINZ Identifier NA8A/115) which is solely owned by Margaret Ursula Emily Jordan.

c) Wiroa A3 Block

Wiroa A3 Block was sold to Arthur William Cottle, evidenced by 'Notice of Change of Ownership or Occupancy' dated 18 April 1973 (MLC Reference: R8/929 & TK 8254).

The current title(s) for this General land is/are unknown.

19. In summary, ownership of property rights in the following blocks (or their successor blocks) have been alienated:

<u>Block Name</u>	<u>Form of Transfer</u>
Waihou A2A2B	Sale
Herepoho A4	Sale
Puketotara	Sale
Wiroa A3	Sale

**Details of subsequent Orders affecting lands to which this application relates**

20. Subsequent orders, relating to the interests affected by this application, have been made as follows:
- a) Succession order made at 35 Bay of Islands MB 323-324 on 9 September 1960, relating to Hohepa Hema Rihari and shares held in Umuhapuku 2D2 Block (pursuant to the 1953 Act);
  - b) Vesting order made at 37 Bay of Islands MB 75 on 30 January 1962, relating to a transfer of shares in Umuhapuku 2D2 Block from Hirini Hirini Anihana to Maudie Mahanga Grey, by way of gift (pursuant to section 213 of the 1953 Act);
  - c) Vesting order made at 37 Bay of Islands MB 75-76 on 30 January 1962, relating to a transfer of shares in Umuhapuku 2D2 Block from Wiremu Anihana to Maudie Mahanga Grey, by way of gift (pursuant to section 213 of the 1953 Act);
  - d) Succession order made at 3 Kaikohe MB 200-201 on 27 May 1965, relating to Maraea Wiremu Hapimana and shares held in Umuhapuku 2D2 Block (pursuant to the 1953 Act);
  - e) Consolidated order made at 4 Kaikohe MB 156 on 3 August 1966, relating to Umuhapuku 2D2 Block and shares held by Akinihī Hemi Rihari, Huhana Cooper, Mange Hema Rihari (Mrs Phillips), Maudie Mahanga Grey and Pane Hema Rihari or Mrs Tonihi (pursuant to section 445 of the 1953 Act);
  - f) Order cancelling several titles and substituting one title made at 4 Kaikohe MB 216-223 on 30 September 1966, relating to Utakura 5 Block (pursuant to section 435 of the 1953 Act);
  - g) Order cancelling several titles and substituting one title made at 47 Whangārei MB 302-306 on 29 March 1972, relating to Utakura No 7 Block (pursuant to section 435 of the 1953 Act);
  - h) Succession order made at 2 Kaikohe (Succession) MB 116 on 6 May 1994, relating to Mange (Rihari) Phillips and shares held in Umuhapuku 2D2 Block (pursuant to sections 113 and 118 of the 1993 Act);
  - i) Vesting order made at 209 Taitokerau MB 88-93 on 24 February 2020, relating to the Hemi Poipoi Kingi Whānau Trust and shares held in Umuhapuku 2B Block (pursuant to section 220 of the 1993 Act);
  - j) Succession order made at 227 Taitokerau MB 69-77 on 27 January 2021, relating to Huhana Kingi also known as Huhana Cooper or Suzzanna Cooper and shares held in Umuhapuku 2B Block and Umuhapuku 2D2 Block (pursuant to section 117 of the 1993 Act); and
  - k) Succession order made at 227 Taitokerau MB 69-77 on 27 February 2021, relating to Winnie Hokimate Kingi and shares held in Umuhapuku 2B Block (pursuant to sections 115 and 117 of the 1993 Act).

**Details of payments made as a result of the Orders**

21. Umuhapuku 2B Block and Umuhapuku 2D 2 Block are not administered by ahu whenua trusts and it appears they are not revenue producing.
22. Utakura 7 Incorporation has advised they do not pay shareholder dividends.

**Reference to areas of difficulty**

23. The original application for succession filed circa 1952 could not be located in the records of the Māori Land Court (Taitokerau District).
24. Court minutes contain conflicting information in relation to Tamati Hapimana's date of death and whether or not he had any children.

- a) Historical evidence states:
  - i) *"Died 6<sup>th</sup> May 1952"* and *"Died 5 May 1949"*; and
  - ii) *"No Issue"*, *"No children or adopted children"* and *"Tamati left no issue"*.
- b) The minute made at 24 Bay of Islands MB 391-392 on 1 March 1950 states:

*"... vesting a 1/12 interest in Umuhapuku 2D owned by Tamati Wiremu Hapimana sole in his daughter Mahanga Graey f."*

25. Research has failed to establish the exact relationship between Tamati Wiremu Hapimana and Mahanga Grey (also known as Maude Mahanga Grey):

- a) The applicant claims that:
 

*"Mahanga was the daughter of Harata who was living with Tamati along with her brother and sister."*
- b) Succession to the Māori land interests of Harata Hapimana also known as Harata Anihana or Harata Aperahama Anihana was ordered at 5 Registrar (Taitokerau) MB 176 on 30 July 1986 in favour of Maudie Mahanga Grey, solely. The Will held on the original application file confirms that Maudie Mahanga Grey is the daughter of Harata Hapimana (otherwise known as Harata Anihana).
- c) The following extract from an historical search of Births, Deaths & Marriages Online confirms the marriage of Tamati Hapimana and Harata Anihana was registered in 1941:

<b>Registration Number</b>	<b>Bride's Given Name(s)</b>	<b>Bride's Family Name</b>	<b>Groom's Given Name(s)</b>	<b>Groom's Family Name</b>
1941/12249	Harata	Anihana	Tamati	Hapimana

26. The death certificate now filed records that Tamati Hapimana:
  - a) died at Okaihau on 3 May 1950 (aged 62 years);

- b) married Harata Hapimana; and
  - c) had no children.
27. The birth certificate of Annie Ngamako Chapman (born at Okaihau on 23 November 1928) records her father's name as Tamati Chapman. The equivalent Māori name for the surname "Chapman" is "Hapimana".
28. Finally, sections 48(1) and (2) of the 1993 Act states:

**48 Matters already finalised or pending**

- (1) No order made by the Chief Judge under section 44, or made by the Appellate Court on appeal from any such order, shall take away or affect any right or interest acquired for value and in good faith under any instrument of alienation registered before the making of any such order.
  - (2) No payment made in good faith pursuant to or for the purposes of the original order shall be deemed to have been made without lawful authority merely because that order has been cancelled or amended by an order made under section 44.
29. In accordance with sections 48(1) and (2) of the 1993 Act, any order of the Chief Judge shall not affect current ownership of the blocks (or their successor blocks) set out at paragraph [19] of this Report.
30. The lands affected by this application are Umuhapuku 2B Block, Umuhapuku 2D 2 Block and Utakura 7 Incorporation.
31. Utakura 7 Incorporation

By way of email dated 27 September 2021, the Secretary/Administrator for Utakura 7 Incorporation advised:

- a) The following are registered as current shareholders:

<u>Shareholder Name</u>	<u>Total Shares Held</u> (Utakura 7 Incorporation)
Herbert Kingi	3.393
Hiri Anihana	6.913
Hone Kingi	3.393
Huhana Kingi	3.393
Winnie Hokimate Kingi	3.394

- b) Hemi Kingi (Jnr) and Wiremu Hiri Anihana do not appear in the share register.

The Incorporation has not responded to further requests for information relating to the shareholdings of Hemi Kingi (Jnr) and Wiremu Hiri Anihana.

**Consideration of whether matter needs to go to full hearing**

32. The Court's approach with an application of this nature is:
- a) To weigh the evidence provided by the applicant against the evidence provided at the original hearing;
  - b) A challenge to original evidence must be balanced against the presumption that everything has been done lawfully unless there is evidence to the contrary; and
  - c) That the 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.
33. The birth certificate filed is prima facie evidence that Tamati Chapman (documented in the Māori Land Court record as Tamati Hapimana) is the father of Annie Ngamako Chapman, born at Okaihau on 23 November 1928.
34. Based on the information provided, it is possible that an error was made in the presentation of the facts to the Court. Affected parties should however be given an opportunity to respond to the applicant's claim, particularly the whānau of Maude Mahanga Grey.
35. The applicant has filed a list of names and contact information for the various whānau affected by this matter.
36. A Court hearing is therefore necessary to afford all parties an opportunity to present their case to the Court.

**Recommendation of course of action to be taken**

37. If the Chief Judge is of a mind to exercise his 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, within 28 days of the date this Report is sent to them.**
  - b) This matter be set down for hearing by the Māori Land Court at Whangārei; the date and time to be advised in due course.
  - c) Notice of the Court hearing to be issued to all parties affected, for whom the Court holds contact details.
  - d) If no objections are received, then an order be made, pursuant to section 44(1) of Te Ture Whenua Māori Act 1993, amending the succession order made at 26 Bay of Islands MB 340-341 on 7 October 1952, relating to Tamati Hapimana and 80.00 shares held in Umuhapuku 2D2 Block, by substituting the following successors and their proportions:

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
1	Maraea Wiremu Hapimana	f.a.	1/3
2	Wiremu Hirini Anihana	m.a.	1/6
3	Hirini Hirini Anihana	m.a.	1/6
4	Hohepa Hema Rihari	m.d.	1/3

with the following beneficiary/successor:

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
1	Annie Ngamako Chapman	F	Solely

e) A further order be made, pursuant to section 47(4) of the Act, making any consequential amendments necessary to give full effect to the above order, including amending the following:

i) Succession order made at 30 Bay of Islands MB 282-283 on 3 July 1956, relating to Tamati Hapimana also known as Tamati Wiremu Hapimana or Te Ngere Hapimana and 1.791 shares held in Utakura 2B1D8A Block, by substituting the following successors and their proportions:

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
1	Winnie Hokimate Kingi	f.a.	1/10
2	Hemi Kingi (Junior)	m.a.	1/10
3	Hone Kingi	m.a.	1/10
4	Herbert Kingi	m.a.	1/10
5	Huhana Kingi	f.a.	1/10
6	Wiremu Hiri Anihana	m.a.	1/4
7	Hiri Anihana	m.a.	1/4

with the following beneficiary/successor:

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
1	Annie Ngamako Chapman	F	Solely

ii) Succession order made at 209 Taitokerau MB 88-93 on 24 February 2020, relating to Tamati Wiremu Hapimana and 0.25 shares held in Umuhapuku 2B Block, by substituting the successors/beneficiaries and their proportions, as set out at paragraph [12] of this Report, with the following beneficiary/successor:

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
1	Annie Ngamako Chapman	F	Solely

- iii) All other subsequent orders affecting lands to which this application relates, as set out at paragraph [20] of this Report, including cancellation of the vesting orders made at 37 Bay of Islands MB 75-76 on 30 January 1962.

### **Ko te hātepe ture o te tono nei**

#### *Procedural History*

[5] On 26 January 2022 the Registrar's Report and Recommendation was distributed to all affected parties for whom addresses were known. Parties were also provided with a copy of the application and supporting documents filed, including a certified copy of the birth certificate of Annie Ngamako Chapman (Registration Number 1971153947).

[6] On 23 February 2022 the Court received a written objection and supporting documentation from William Cook (for and on behalf of the Hapimana/Grey whānau). Mr Cook is a mokopuna of the late Maudie Mahanga Grey who was raised by the deceased and her biological mother, Harata Anihana.

[7] The Hapimana/Grey whānau claim they have no historical knowledge of the deceased having any biological children and therefore question the validity of the birth certificate which identifies the deceased as the father of Annie Ngamako Chapman.

[8] Filed in support of the objection is a copy of birth certificate information obtained from the Department of Internal Affairs. This is an uncertified hand-written copy of Form R.G.-177 Register of Births No.4702 in relation to Annie Ngamako. The form records the date of registration as 30 June 1971 and the nature of evidence on which registration was effected: "*Statutory declaration by person herself. Certified extract from school admission register RG 1/4/41B2, CR 7462H, CR 697H.*"

[9] The application was first heard before me in Gisborne (via Zoom) on 29 March 2022.<sup>1</sup> During the course of proceedings, it was determined that a DNA test would assist in the resolution of this matter and the case manager was directed to assist the parties to arrange DNA testing with costs to be met from the Māori Land Court Special Aid Fund. I adjourned the matter on that basis.

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<sup>1</sup> 2022 Chief Judge's MB 106-128 (2022 CJ 106-128).

[10] On 13 April 2022 DNA Diagnostics (Auckland) advised the relationship the Court is wanting to clarify is too distant to be reliably determined by testing. I therefore directed the matter should be recalled for me to hear any further evidence and make a determination.

[11] A number of documents were subsequently filed with the Court, including certified extracts from Public School Registers received from Anne Basham on 16 May 2022. Mrs Basham is a mokopuna of Ani Wiremu Hapimana (sister of the deceased).

[12] The extracts from Public School Registers record admission details for Annie Chapman at various schools, including the signature of her parent/guardian, namely Mrs S Anderson, Mr T Anderson and Mr T Chapman.

[13] Notice of hearing, together with copies of documentation submitted in response to matters raised at the first hearing, were issued to all parties on 20 May 2022.

[14] On 13 June 2022 the Court received a written objection from Kim Muriwai (for and on behalf of Gemma and Oliver Stewart (beneficiaries of Rosemary Teina Lee Stewart) and the Maraea Kingi nee Hapimana whānau). Ms Muriwai is a mokopuna of the late Mange Kingi who was the whāngai daughter of Hēmi and Maraea Kingi (nee Hapimana).

[15] Ms Muriwai maintains that testimony given by their tupuna Maraea and Uncle John (Hone) Kingi in historical proceedings was given in good faith and the deceased could not and did not father any biological children. She also questions the validity of the birth certificate and the use of school records as proof of parentage.

[16] On 13-15 June 2022 the applicant, Ricki Schimanski and Anne Ngamako Basham (Anihana) submitted written responses to the objection filed by Ms Muriwai.

[17] The application was heard before me in Gisborne (via Zoom) on 20 June 2022.<sup>2</sup> At the hearing William Cook and Kim Muriwai presented their concerns. An oral submission in support of the application was made by Anne Ngamako Basham.

[18] I reserved my decision.

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<sup>2</sup> 2022 Chief Judge's MB 254-265 (2022 CJ 254-265).

**Te kōrero a te kaitono**

*The applicant's submissions*

[19] The applicant submits that the order is incorrect due to a mistake, error or omission in the presentation of the facts to the court in the original hearing. The original decision was made with the understanding that Tamati Hapimana had no children. Therefore, his estate was divided between his siblings, with no provisions made for any children.

[20] The applicant claims that her mother, Annie Ngamako Chapman (Hapimana), was the biological daughter of Tamati Hapimana, and that therefore, the succession order was made based on incorrect information. She seeks to have the original succession order made on 7 October 1952 amended to reflect that her mother was Tamati Hapimana's daughter.

[21] The applicant states that she was adversely affected by the order because, if the evidence is correct, her mother would have received Tamati's land interests, rather than these interests passing to his siblings.

[22] The principal evidence filed in support of the applicant's claim is her mother's birth certificate, which lists Tamati Hapimana as her father. The applicant acknowledges that the birth certificate was created in 1971 upon application by her mother, after Tamati's death. The evidence presented in support of listing Tamati as her father on the birth certificate was school records in which Tamati enrolled Annie under the category of parent/guardian. The applicant explained that Māori documentation of births were not well-recorded in this time period, and many Māori therefore had to use school records as evidence for birth certificates. She says that this should not invalidate the birth certificate. Ricki Schimanski, sister of the applicant, writes:

School Admission registrations are looked upon as official records and should therefore be recognised as such. No birth certificates were issued or even the births registered at that time, so school records have been determined to provide information on order around birth times when registered for school. My mother used these records to get her birth certificate to apply for a passport in 1971 which was dated and signed by a court official, therefore recognising the validity of the documents.

[23] The applicant disputes the claim by the Hapimana/Grey whānau that Tamati may have signed the school records simply as a nominated adult of the whānau that year. She submits that Tamati would have only signed for a blood relation.

[24] The Hapimana/Grey family have claimed that Tamati was infertile. However, no medical records have been provided to support this claim. The applicant and those supporting her application argued that simply because Tamati did not father any other children, does not mean that he was unable to at all.

[25] Furthermore, the applicant submits that Annie being given the middle name Ngamako, which was a significant name for the Hapimana whānau, would have been unusual if she did not whakapapa back to them. This suggests a general acceptance of Annie Ngamako Chapman's ties to the whānau.

[26] She further submits that Tamati's father, Wiremu Tamati Hapimana, would not have taken on the responsibility of raising a child that was of no bloodline relationship to him. She points to this as evidence that Wiremu must have believed that her mother was his grandchild.

[27] Tamati was already in a relationship with his long-term partner at the time of Annie's birth. The applicant suggests this as one possible reason why Tamati would have not claimed Sally's child as his own, so as not to lose his relationship with his partner Harata. They point out that Tamati died before Harata, so even if he wished to claim Annie without fear of risking his relationship, he did not have that opportunity.

**Te kōrero a te Hapimana/Grey whānau**

*Submissions of the Hapimana/Grey whānau*

[28] The Hapimana/Grey whānau submit that Annie Ngamako Chapman was not Tamati Hapimana's biological daughter, and therefore the original court orders were correct and should not be amended.

[29] They submit that the Hapimana/Grey whānau historical knowledge does not support the case that Tamati had any biological children, or that he had a relationship with Sally Chapman.

[30] The whānau call into question the validity of the information on Anne's birth certificate. They acknowledge that the birth certificate is prima facie evidence of parentage, but submit that there is enough evidence to rebut that presumption in this case. In particular, they point to the fact that Tamati's name on the birth certificate had been added by Annie as an adult. This was able to be done by providing school enrolment records as supporting evidence; specifically, evidence of Tamati enrolling Annie in school in 1939. However, they point to the fact that three different adults enrolled Anne over the years that she was in school, and it was likely that Tamati was simply the nominated adult for the whānau that year. William Cook gave oral testimony at the hearing that Tamati also registered his Uncle Tom Hohaia at the school, who was not his son.

[31] The whānau point out that on the official Archive New Zealand certificate of evidence regarding the school records, it states that "This certificate may be presented in support of an application to verify age of person named". There is no mention of supporting parentage. However, I note that these documents are not the ones which provide Tamati's signature.

[32] The whānau state that, taking this context into account, the birth certificate is insufficient evidence for the ramifications that a finding of paternity would have. They submit that, due to the way the Tamati's name came to be on the birth certificate, it should not be used as determinative evidence for an amendment to the succession orders. They state that the way Tamati's name came to be on the birth certificate –

casts at least some doubt to the high weight of evidence that the MLC may place on the document particularly when taking account the lack of information of Sally as wife/partner of Tamati and no information within the wider whanau of his bio daughter Annie.

...

The Maraea whanau cannot accept however that a single entry in a school admissions register has sufficient weight to prove a biological connection and can change historic succession orders and share allocation. The ramifications of a successful application on the wider Hapimana whanau will be significant.

[33] The Hapimana/Grey whānau also point to the fact that Tamati is not listed as a parent on Anne's death certificate.

[34] Furthermore, it is submitted by the Hapimana/Grey whānau that Tamati was not able to father any children. Kim Muriwai, the representative of the Maraea Kingi line of the Hapimana whānau, states that "Hone Kingi ... remains emphatic in his belief that his uncle Tamati Hapimana could not and did not father children." Tamati was 40 at the time Sally alleged that he was the father of her unborn child, and, in the words of Kim Muriwai, "despite ample opportunity from a young age [Tamati] had not fathered any children in the years leading up to Sally's pregnancy nor did he go on to father any other children in the following years."

[35] Recollections from the family are that Sally (Annie's mother) claimed that Tamati was the father of her child, but that he denied it. The whānau met and Tamati's father decided he was going to take responsibility for the child to make sure she would be provided for, but Tamati never went back on his claim that Annie was not his child.

[36] On the basis of the evidence available, the whānau believe that the order should stand as it was originally made.

## **Te Ture** *The Law*

[37] 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 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.

[38] In *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)*, I set out the principles to be applied in determining such applications made pursuant to s 45 as follows:<sup>3</sup>

- (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 applicant (and any evidence in opposition);
- (b) Section 45 applications are not to be treated as a rehearing of the original application;
- (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 s 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
- (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 s 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.

[39] 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

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<sup>3</sup> *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)* [2009] Chief Judge's MB 209 (2009 CJ 209).

evidence not available or not known of at the time the order was made or through submissions on the law.

[40] As stated in *Tau v Nga Whānau o Morven and Glenavy – Waihao 903 Section IX Block*, the Chief Judge must exercise his 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.<sup>4</sup> This means that the applicant must establish on the balance of probabilities that there was a mistake or omission.

[41] The Court of Appeal has recently confirmed that the power under s 44(1) falls into two parts:<sup>5</sup>

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

#### *Birth certificates as evidence of paternity*

[42] Birth certificates are taken as prima facie evidence of paternity.<sup>6</sup> Therefore, where a birth certificate has been produced by the applicant, the burden of proof is on the respondents to rebut this presumption.

[43] The Māori Land Court has considered the issue of paternity and birth certificates in several cases. In *Re Coutts*, the Court considered whether Jade Potorata was the biological offspring of James Pou<sup>7</sup>. James was listed as the father on Jade's birth certificate, however his paternity had been called into question. The Court had to determine if James was indeed Jade's father, for matters of succession.

[44] The Court in *Coutts* discussed the issue of paternity and birth certificates at length:

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<sup>4</sup> *Tau v Nga Whanau O Morven & Glenavy – Waihao 903 Section IX Block* [2010] Māori Appellate Court MB 167 (2010 APPEAL 167).

<sup>5</sup> *Inia v Julian* [2020] NZCA 423 at [10].

<sup>6</sup> Status of Children Act 1961, s 8(1).

<sup>7</sup> *Coutts – Estate of James Pou* (2008) 127 Whangarei MB 145 (127 WH 145).

[23] Paternity is by its nature a fraught issue. It is shrouded in the random biological act of conception and the intimacy (and often secrecy) of the relationship of the parents of the child. It is otherwise subjected to the speculative and ultimately hearsay views of the whanau and associates of the mother and the putative father. Paternity may be proved (in descending order of authority) by DNA blood testing, the testimony of the mother and the putative father and finally the hearsay evidence of the whanau and associates.

[24] Due to the fraught nature of paternity the law has developed certain presumptions. The presumption of paternity is now provided for in the Status of Children Act 1969. Section 7(1) of the Act provides:

**“7 Recognition of paternity**

(1) The relationship of father and child, and any other relationship traced in any degree through that relationship shall, for any purpose related to succession to property or to the construction of any will or other testamentary disposition or of any instrument creating a trust, or for the purpose of any claim under the Family Protection Act 1955 be recognised only if —

(a) The father and the mother of the child were married to each other at the time of its conception or at some subsequent time; or

[(b) Subject to paragraph (c) of this subsection, paternity has been admitted (expressly or by implication) by or established against the father in his lifetime (whether before or after the birth of the child and whether by one or more of the types of evidence specified by section 8 of this Act or otherwise) and, if that purpose is for the benefit of the father, paternity has been so admitted or established either before the birth of the child or in its lifetime; of]

[(c) Paternity has been established by means of a declaration of paternity made under section 10 of this Act —

(i) After the death of the father; or

(ii) If that purpose is for the benefit of the father, after the death of the child.]”

[25] Section 8(1) provides:

**“8 Evidence and proof of paternity**

(1) If, pursuant to —

[[a) Any provision of the Births, Death, and Marriages Registration Act 1995 or the corresponding provision of any former Act (within the meaning of that Act); or]]

(b) Any provision of any law of any country to which section 44A of the Evidence Act 1908 applies, -

The name of the father of the child to whom any entry relates has been entered (whether before or after the commencement of this Act) in the Register of Births, or, in the case of any country to which section 44A of the Evidence Act 1908 applies, in a register of that country relating to births, a

certified copy of the entry made or given and purporting to be signed or sealed in accordance with that Act or that law shall be prima facie evidence that the person named as the father is the father of the child.]”

[26] Accordingly, the birth certificate is prima facie evidence that James Pou is Jade's father. However, that presumption may be rebutted if the Court is satisfied on the balance of probabilities that James Pou is not Jade's father: see *B v T and P* [1990] NZFLR 373. The question in this proceeding is whether the evidence persuades me on the balance of probabilities that James Pou is not Jade's father. The burden of proof rests with those who contend that he is not.

[45] In that case, the Court found that the presumption was rebutted for the following reasons:

[36] First, there is James' statement to the Māori Land Court in 2001 that he had no children. By that stage Jade was two and a half. Either James lied when applying for the birth certificate in 1998 or he lied when he appeared in Court in 2001. Rita Te Rata suggested that James lied about being Jade's father in order to keep Athleen as his partner (she was much younger than James). While it would not be the first time that someone had lied to the Court about whakapapa and issue, I find it more likely that James was not lying when he told the Court that he had no children as he made the statement in a public forum, in the presence of whanau and in circumstances where the Court ordered that his siblings be notified of the outcome of the hearing.

[37] Second, there is the evidence of James' infertility. While there are no medical records to back up Rita Te Rata's evidence, I found her to be open and honest in the manner she gave her evidence. She had attempted to obtain the records without success. Although the evidence is strictly hearsay, it was not challenged.

[38] Third, there is Sharee Monk's evidence that Athleen Barlow stated that Jade was not James' son. That is also strictly hearsay but Athleen has chosen not to participate in the proceedings and challenge that evidence.

[39] Fourth, there is the will itself. When gifting his interests to Walter Pou, James expressly identified him as “my uncle”. However, when gifting the residue to Trez and Jade, he did not identify either of them as “my son” but referred to them by name only. If Jade was James' son I would have expected him to identify him as such in the will. It is standard practice for solicitors drafting wills to identify a devisee or legatee by relationship to the will maker, particularly children. Also, given that Walter Pou was to receive all of James' land interests, I would have expected the solicitor to prepare some form of memorandum recording that James had addressed his moral duties owed to his son under the Family Protection Act. All this points to James having not identified Jade as his son to his solicitor, which in turn suggests that James did not regard Jade to be his biological son.

[46] Other cases have also dealt with the question of whether the prima facie evidence of the birth certificate was rebutted. In *Rewha v Clarke*,<sup>8</sup> Tamehana Rewha died intestate, and it was left to the Court to determine who was entitled to succeed to his Māori land interests.

<sup>8</sup> *Rewha v Clarke – Estate of Tamehana Rewha* (2017) 163 Taitokerau MB 164 (163 TTK 164).

Two children had Tamehana listed as their father on their birth certificates. In determining if they were in fact his children, the Court relied on the testimony of their mother. For one of the children, this was persuasive evidence of paternity, and respondents did not produce any cogent evidence other than her reliance on the mother's uncertainty about the paternity. For the other child, the testimony of the mother that Tamehana was not the father was also used, this time to rebut the presumption of paternity.

[47] In the case of *Karetai v Sollart*, it was stated that “The evidence of the applicant's birth certificate can be rebutted by other evidence relating to surrounding circumstances.”<sup>9</sup> In that case, the applicant's mother testified that the applicant was not the biological child of the deceased, which was supported by hearsay evidence of other family members. The Court also took into account the applicant's refusal of a DNA test, which the court factored into its deliberation.

### **Kōrerorero**

#### *Discussion*

[48] 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 the order?

*Was an error made?*

[49] A key aspect of this case is whether the applicant has demonstrated a mistake, error or omission in the presentation of the facts of the case to the Court. The Hapimana/Grey whānau maintain the 1952 order was correctly made. To demonstrate a mistake, error or omission in the presentation of the facts of the case, the applicant essentially relies on the birth certificate listing Tamati Hapimana as Annie Ngamako Chapman's father, which is

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<sup>9</sup> *Karetai v Sollart – Estate of George Grey Huriwai te Ruatukihiki Karetai* (2018) Chief Judge's MB 219 (2018 CJ 219) at [46].

based on the evidence of Annie's school admissions register which was signed by Tamati Hapimana in 1938.

[50] In terms of the law, in particular s 8(1) of the Status of Children Act 1961, the birth certificate is prima facie evidence that Tamati Hapimana is Annie's father.<sup>10</sup> This prima facie evidence may, however, be rebutted by additional evidence that contradicts it or calls it into question.

[51] The Hapimana/Grey whānau say it has been rebutted because –

- (a) One record in school enrolment is insufficient to prove paternity, especially for the purpose of succession.
- (b) Tamati was one of three adults who signed the school admissions register for Annie.
- (c) Tamati also signed the register for another child in the whānau, who was not his child.
- (d) It was widely believed in the whānau that Tamati was infertile.

[52] The applicant responded as follows –

- (a) The birth certificate is official documentation and should continue to be treated as such.
- (b) It was common when obtaining documentary proof for birth certificates to use school records. Especially since at the time of Annie's birth, Māori children did not often have a birth certificate issued, so different evidence was needed to create them retrospectively.
- (c) Sally always claimed that Tamati was Annie's father.

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<sup>10</sup> See Status of Children Act, s 8(1) and *Coutts*, above n 7.

- (d) The significance of Annie having the middle name Ngamako suggested ties to the Hapimana family (for whom this was an important name).

[53] In my view, the strength of the birth certificate as prima facie evidence is lessened because the father's details were filled out by Annie herself. This was not at the time of birth but 44 years later in 1971. In fact, years after Tamati Hapimana had died.

[54] Also, there is no consistency with regards to the completion of the school admissions register, which was the sole evidence relied on in support of the registration of Tamati on Annie's birth certificate. Tamati was not the only person who filled in this admissions register.

[55] There is also the hearsay evidence of the Hapimana/Grey whānau. They claim that it was known that Tamati was unable to father children. This is unable to be considered as anything more than a family belief or understanding, and I have weighed it as such in my consideration, along with the evidence that Sally (Annie's mother) told the family that Tamati was the father of her daughter, but that Tamati denied this.

[56] Section 77 should also be noted, which sets out a 10-year window for applications to challenge Court orders before they become final. As Chief Judge, I have powers under s 44 that allow me to amend Court orders after this 10-year window, but this can only be done in exceptional circumstances, as discussed above.

[57] This claim took over 70 years to be filed with the Court. As Annie took steps in 1971 to complete a birth certificate, one would have thought she may have taken steps at this time to challenge the 1952 order, and not left it so many years later and for her daughter to do when many of the main players had died. It should also be noted here that this has impacted on the ability to have conclusive DNA testing completed.

[58] Having regard to the findings above, on the balance of probabilities, I find that the presumption of paternity created by Annie's birth certificate has been rebutted. There is not sufficiently clear evidence to show that, on the balance of probabilities, Tamati Hapimana was the father of Annie, and accordingly I am not persuaded that the applicant has met the standard to prove an error in the original court order.

*Is it necessary in the interests of justice to remedy the error by amending the order?*

[59] As I have not found there to be an error in the original order, this second question does not need to be considered.

**Kupu Whakatau**

*Decision*

[60] Having regard to the findings above, I dismiss the applicant's submission, and find that the 1952 succession order stands.

[61] The Case Manager is directed to distribute a copy of this judgment to all parties.

I whakapuaki i te 4.55pm i Turanganui-a-Kiwa, ono o ngā rā o Mahuru i te tau 2022.  
*Pronounced at 4.55pm in Gisborne on this 6<sup>th</sup> day of September 2022.*

W W Isaac  
**CHIEF JUDGE**