

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

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

AP-20230000019631

A20150005463

CJ 2015/36

WĀHANGA
Under

Section 45, Te Ture Whenua Māori Act 1993

MŌ TE TAKE
In the matter of

Succession to Taiparoro Hirini

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

BELLA TEHEI, NATI LEWIS AND MOANA THOMPSON
Ngā kaitono
Applicants

AP-20240000000852

CJ 2024/5

MŌ TE TAKE
In the matter of

Succession to Ihipera Puha

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

DEPUTY REGISTRAR
Te kaitono
Applicant

Nohoanga:
Hearing

3 May 2024, 2025 Chief Judge's MB 77-91
(Heard at Gisborne via Zoom)

Whakataunga:
Judgment date

10 September 2025

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

Hei tīmatanga kōrero

Introduction

[1] Two applications were filed pursuant to s 45 of Te Ture Whenua Māori Act 1993 (the Act).

[2] The first application was filed by Bella Tehei, Nati Lewis and Moana Thompson in 2015 relating to succession Orders made at 86 Opōtiki MB 254-257 dated 6 December 2004 concerning the Māori land interests of Taiparoro Hirini.

[3] The applicants claim that the Order is incorrect due to a mistake, error or omission in the presentation of the facts of the case to the Court as Ihipera Puha, a child of the deceased, left seven children and not one. Further, that Tui Warmenhoven is not a child of Ihipera Puha but a child of Rangimai Te Hei.

[4] The second application was filed by a Deputy Registrar in 2024 relating to succession Orders made at 65 Tairāwhiti MB 205-208 dated 28 February 2017 concerning the Māori land interests of Ihipera Puha.

[5] The Deputy Registrar claims that a mistake, error or omission occurs at the previous evidence given at 62 Tairāwhiti MB 78-80 dated 3 October 2016 on which the Court relied to determine who the persons entitled were.

[6] Marino Te Hei, who is a child of Ihipera Puha, died on 18 November 1984. Marino was alive at the time Ihipera died and therefore entitled to an equal proportion of her interests alongside his siblings.

[7] At 40 Ruatōria MB 82 dated 3 October 1994 and 40 Ruatōria MB 154-156 dated 17 October 1994, the Court made an Order under s 115 of the Act determining Priscilla Te Hei to be whāngai of Marino and entitled to an equal beneficial interest alongside Marino's natural children.

[8] Priscilla's entitlement was not carried through to the Orders made at 62 Tairāwhiti MB 78-80 or 65 Tairāwhiti MB 205-208.

Kōrero whānui
Background

[9] The Registrar’s Report and Recommendation (the Report) dated 18 April 2024 sets out the background to the Taiparoro Hirini application. The Report is reproduced in full below:

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

Introduction

1. This application filed by Bella Tehei, Nati Lewis and Moana Thompson (the applicants) seeks to amend a succession Order at 86 Opotiki MB 254-257 dated 6 December 2004 relating to Taiparoro Hirini (the deceased) in respect of Matangareka 3B Block.
2. The applicants claim the said Order is incorrect due to a mistake, error or omission in the presentation of the facts of the case to the Court as Ihipera Puha, a child of the deceased, left seven children and not one. Further, that Tui Warmenhoven is not a child of Ihipera Puha but a child of Rangimai Te Hei.
3. The applicants claim that their *“father, Marino Te Hei and his siblings [listed at 1-7 above], have been omitted from succession to their mother Ihipera Puha in Matangareka 3B; therefore, I and my siblings, have been disinherited from this block.”*

**brackets added*

Concise history of Order sought to be amended

4. The matter was heard by the Court at 86 Opotiki MB 254-258 on 6 December 2004 and the minute is reproduced as follows:

Mr James Leonard Richardson gives evidence:

...At 2004 Chief Judges MB 193-201 the Court named the following persons entitled to succeed to Tai Ranapia:

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
1	Kahu or Kahupoai Puha	dsp	no issue, No Will (41 Opotiki MB 184-185)
2	Maggie Puha	fd	no Will, no issue
3	Amohaere Richardson	fd	issue known
4	Ema Puha	fd	issue
5	Ihipera Puha	fd	issue, one known
6	Taumata Puha	md	no will, issue
7	Reupene Puha	md	no will, issue

8	Ramari Waiokaha, nee Puha	fd	no will, issue
9	Te Haa Puha, or Roihana	fd	issue
<u>Issue of No. 2 – Maggie Puha</u>			41 Opotiki MB 184
10	Paul Puha		
11	Maumau Puha		
<u>Issue of No. 4 – Ema Puha</u>			1984 Chief Judge MB 36
12	Hiria (Sheila) Te Patu		
13	Alexander Murray		
14	James Murray		
15	Raymond Murray		
16	Joe Murray		
17	Rangi Murray		
18	Basil Murray		
19	Olive Murray		
<u>Issue of No. 5 – Ihipera Puha</u>			(one known)
20	Tui Warmenhoven		
<u>Issue of No. 6 – Taumata Puha</u>			41 Opotiki MB 184
21	Annie Puha		
<u>Issue of No. 8 – Ramari Waiokaha, or Puha</u>			41 Opotiki MB 184
22	Girly Kerr Hauera Te Maro	fd	No Will, no issue
23	Mata Te Maro		
24	Hurei Te Maro		
25	Billy Te Maro		
26	Hakaraia Te Maro		
<u>Issue of No. 9 – Te Haa Puha, or Roihana</u>			27 Whakatāne MB 299
27	Hemi Roihana		
28	Hone Roihana		
29	Timi Roihana		
30	Dan Roihana		
31	Hine Roihana		

It has come to the Courts attention that the deceased has additional interests as follows:

	<u>Block</u>	<u>Current Owner</u>	<u>Share</u>
1	Matangareka 3B	Taiparoro Hirini	10

- The Court reserved its decision and made final orders at 87 Opotiki MB 75 on 17 February 2005.

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

6. The applicants have provided the following documents in support of their application:
 - a) a copy of the minute and order complained of;
 - b) Death Certificate of Ihipera Beattie; and
 - c) Death Certificate of Jerry Herewini Tehei, which records that he is a child of Ihipera Puha and Te-Maera Tehei.

Court Research

7. The Order complained of relied upon the evidence given at 2004 Chief Judge's MB 193-201 dated 23 March 2004. This evidence:
 - a) records the nine children of Tai Ranapia also known as Taiparoro Ranapia or Taiparoro Puha, one of whom is Ihipera Puha¹;
 - b) does not list the children of Ihipera Puha.
8. Ihipera Puha also known as Ihipera Te Hei or Ihipera Beattie died on 23 November 1981 and succession orders were made at 65 Tairāwhiti MB 205 -208 on 28 February 2017.
9. Court research shows Ihipera had the following issue:

Union with Haki Tangira:

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
A	Marino Te Hei	MDI	Succession at 39 Ruatōria MB 292-294 (30 August 1994), 40 Ruatōria MB 82 (3 October 1994), 40 Ruatōria MB 154-156 (17 October 1994) and 56 Ruatōria MB 213 (23 February 2000).
A1	Marino Te Hei	M	1/81
A2	Rangimai Te Hei	F	1/81
A3	Wes Te Hei also known as William Te Hei	M	1/81
A4	Ihipera Te Hei also known as Bella Te Hei or Parker	F	1/81
A5	Nati Lewis also known as Nati Te Hei	F	1/81

¹ See 2004 Chief Judge's MB 199-200 at (3.3 and 3.4) and 200 and 32 Opotiki MB 332.

A6	Reremoana Te Hei Thompson also known as Moana Te Hei or Thompson	F	1/81
A7	Ronald Te Hei also known as Ronald Cosgrove Te Hei	M	1/81
A8	James Te Hei also known as Jim TeHei or Jimmy Renata Te Hei	MDI	1/81
A9	Tiki Te Hei also known as Tikinuira Te Hei	FDNI	0
A10	Areil Te Hei also known as Ariel Te Hei	MDNI	0
A11	Priscilla Ruth Te Hei also known as Pirihira Te Hei or Priscilla Edmonds (<i>whāngai</i>)	F	1/81

First marriage to Herewini Te Hei:

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
B	Te Maera Paul	FD	1/9
C	Pato Te Hei	MD	1/9
D	Timi Te Hei	MD	1/9
E	Herewini Te Hei (Jnr)	MD	1/9
F	Charlie Te Hei also known as Charles Rawiri Te Hei	MDI	Succession at 136 Gisborne MB 208-210 (6 July 1994) and 256 Waiariki MB 166- 167 (8 June 2021)
F1	Madilene Marie Te Hei also known as Madilene Maria Te Hei	FDNI	Succession at 58 Ruatōria MB 274-275 (5 September 2000)
F2	Charlene Petra Te Hei	F	1/54
F3	Carol Edith Harris	F	1/54
F4	Charles Cannon Te Hei	MDI	Succession at 101 Tairāwhiti MB 212-215 (26 January 2021) and The Motorhead Whānau Trust constituted over interests. Trustees are: Georgina Te Hei, Lemmy Motorhead Te Hei and Chazz Julia Te Hei.
F4a	Herewini George Te Hei	M	1/270
F4b	Chazz Julia Te Hei	F	1/270
F4c	Lemmy Motorhead Te Hei	M	1/270
F4d	Slayer Sacrifice Te Hei	F	1/270
F4e	Saxon M.J. Te Hei	M	1/270
F5	Cheyenne William Te Hei	M	1/54

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
F6	Mahurangi Shanondoah Te Hei	F	1/54
F7	Keni Lavinia Te Hei (<i>whāngai</i>)	F	1/54
G	Raiha Pura	FD	1/9
H	Roha Te Hei	FD	1/9
I	Ngarangi Te Hei	FDNI	0

Second marriage to Mangu Beattie:

	<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
J	Jimmy Beattie	MDI	1/9

Details of subsequent Orders affecting lands to which this application relates

10. On 17 February 2005 at 87 Opotiki MB 75 the court confirmed orders to be made.

Details of payments made as a result of the Order

11. On 18 November 2015, the Māori Trustee confirmed that a payment hold has been placed on all funds held for Tui Warmenhoven in respect of shares acquired by Tui Warmenhoven in the Matangareka No. 3B Block.

Reference to areas of difficulty

12. There are no areas of difficulty to deal with in this matter.

Consideration of whether matter needs to go to hearing

13. As this is an aged application, this matter has been set down for hearing on Friday, 3 May 2024.

Recommendation of course of action to be taken

14. 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 by 2pm, Tuesday 30 April 2024;**
- b) if no objections are received, then orders be made under Te Ture Whenua Māori Act 1993 as follows:
 - i. section 44(1) amending the order complained of at 86 Opotiki MB 254-257 dated 6 December 2004 by deleting number 20, Tui Warmenhoven and vesting those interests in number 5, Ihipera Puha;
 - ii. section 47(4) making all other consequential amendments;

iii. section 37(3) invoking sections 118(6) and 220 and 244 and using the schedule at number 9 above:

A. section 118(6), vesting the interests of Ihipera Puha in the persons listed in the schedule for the proportions set out beside their names;

B. sections 220 and 244, varying The Motorhead Whānau Trust and vesting the interests of the persons listed F4a to F4e in the schedule above in Georgina Te Hei, Chazz Julia Te Hei and Lemmy Motorhead Te Hei as trustees jointly without survivorship.

[10] The Registrar's Report and Recommendation (the Report) dated 18 April 2024 sets out the background to the Ihipera Puha application. The Report is reproduced in full below:

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

Introduction

1. This application filed by a Deputy Registrar (the applicant) seeks to amend a succession Order at 65 Tairāwhiti MB 205-208 (28 February 2017) relating to Ihipera Puha also known as Ihipera Te Hei or Ihipera Beattie (the deceased).
2. The mistake, error or omission occurs at previous evidence given at 62 Tairāwhiti MB 78-80 (3 October 2016) on which the Court relied to determine who the persons entitled were.
3. Marino Te Hei is shown as a child of Ihipera Puha and Herewini Te Hei. His issue are listed as Marino Te Hei, Rangimai Te Hei, Wes Te Hei also known as William Te Hei, Ihipera Te Hei also known as Bella Te Hei or Parker, Nati Lewis, Reremoana Te Hei Thompson also known as Moana Te Hei or Thompson, Ronald Te Hei also known as Ronald Crosgrove Te Hei, Jim Te Hei also known as James Te Hei or Jimmy Renata Te Hei, Tiki Te Hei also known as Tikinui Te Hei and Areil Te Hei also known as Ariel Te Hei.
4. Marino died on 18 November 1984 and his succession Orders are at 39 Ruatōria MB 292-294 (30 August 1994), 40 Ruatōria MB 82 (3 October 1994), 40 Ruatōria MB 154-156 (17 October 1994) and 56 Ruatōria MB 213 (23 February 2000).
5. At 40 Ruatōria MB 82 and 40 Ruatōria MB 154-156 the Court made Orders under sections 115 and 113 of Te Ture Whenua Māori Act 1993 determining Priscilla Te Hei as whāngai of Marino and as a person entitled along with Marino's natural children.
6. 62 Tairāwhiti MB 78-80 does not include Priscilla as a person entitled to a portion of Marino's shares and therefore she has been left out of the Order made at 65 Tairāwhiti MB 205-208.
7. The applicant seeks to have the Order amended to include Priscilla as a person entitled.

Concise history of Order sought to be amended/cancelled

8. The relevant minutes referred to above follow.

- a) **Ihipera Puha**—Succession minutes are partially reproduced below. It confirms that the Court relied on the previous evidence at 62 Tairāwhiti MB 78-80 to determine the persons entitled. It also shows Priscilla was not included as a person entitled to receive a portion of Marino's entitlement (number 1)

65 Tairāwhiti MB 205-208 (28 February 2017)

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

- (a) section 113 determining that the persons entitled to succeed to the deceased's interests set out at 62 Tairāwhiti 79 of 3 October 2016 are numbers 1 to ~~9~~ with substitution of issue for number 1 at the same reference; ¹⁰
- (c) section 118 vesting the Māori land interests of the deceased in the persons entitled upon the intestacy of the deceased;
- (d) section 242 for payment of the said funds held for the deceased to:
- (i) \$60.00 to the co-applicant Reremoana Te Hei Thompson being payment of the application fee; and
- (ii) balance of funds held to those entitled.

The foregoing orders to be completed without delay pursuant to rule 7.5(2)(b) of the Māori Land Court Rules 2011.

62 Tairāwhiti MB 78-80 (3 October 2016)

Tania Nepe, for Deputy Registrar: According to minutes at 15 Ruatōria MB 175-176 dated 5 May 1978 where the deceased gave evidence on succession to her husband Herewini Te Hei, they had the following issue:

62 Tairāwhiti MB 79

	Name	Sex	Address
1	Marino Te Hei	MD	18/11/1984. Issue as follows:
1a	Marino Te Hei	M	56 Norana Avenue, Favona, Auckland 2024
1b	Rangimai Te Hei	F	8 College Road South, Ruatoria 4032
1c	Wes Te Hei	M	4G/10 Church Street, Otahuhu, Auckland 1062
1d	Ihipera Te Hei	F	Co-applicant
1e	Nati Lewis	F	PO Box 119, Ruatoria 4043
1f	Reremoana Te Hei Thompson	F	Co-applicant
1g	Ronald Te Hei	M	502 Waipiro Bay Road, RD 1, Tokomaru Bay
1h	Jim Te Hei	MDI	06/06/2015
1i	Tiki Te Hei	FDNI	1972. DOB: 05/03/1956
1j	Areil Te Hei	MDNI	1969. DOB: 07/08/1957
2	Te Maera Paul	FD	1977
3	Pato Te Hei	M	Unknown
4	Timi Te Hei	M	Unknown
5	Herewini Te Hei (Jnr)	M	Unknown
6	Charlie Te Hei	M	Unknown
7	Raiha Pura	F	Unknown
8	Roha Te Hei	F	Unknown
9	Ngarangi Te Hei	F	Unknown

- b) **Herewini Te Hei**—A husband of the deceased. His succession minutes confirm who their children are. At this time, Marino Te Hei (number 1) is still alive and a person entitled to receive a portion of Herewini's shares. The minute is reproduced as follows:

15 Ruatōria MB 175-176 (5 May 1978)

175	15 RUATORIA MB 175 DATED	- 5 MAY 1978
No	s. 78 A/67 Newwini To Hei From (Alii, 186-7 and Ihi Ihipera To Hei and all: of 41 Mangsi, Eiden. Under of did. He had no other children etc:	
X	1. Marine To Hei n.a. 4 Hansford Kati Gibson 2. To Maera Paul. C. d. 1977 3. Pato To Hei n.a. (Edgewood) 4. Timi To Hei n.a. 5. Horevini To Hei (Sw) n.a. 8 Totara 20 Manamotu 6. Charla To Hei n.a. Gibson 7. Raika Pura f.a. 8. Roha To Hei f.a. Ducker 9. Ngavany To Hei f.a.	
X	Then we are children. No legal adoption, or not. Care: Order s. 78 A/67 made x Hantanon (\$40.21) x Tikapa 31 (\$147.17) x Maranginon A35 (\$1.45) x Ahi Kaka A2 (\$479.39) x Tokora A1 (\$26.21) x Tokomara B96 (\$1.61) x (41 Mangsi Gibson) Ihipera To Hei (to life - until marriage remitted. No 1-9 of index in above supply Order s. 22/59 to pay of money on card 21312 \$54.4. ab (in return of app/for fee) - 5 MAY 1978.	

15 RUATORIA MB 176 DATED	- 5 MAY 1978	176
Balena (under custody \$440 \$50) + Ihipera To Hei f.a. 41 Mangsi Gibson		

- c) **Marino Te Hei**—Ihipera's son who was alive at the time both Ihipera and Herewini died. Full extracts from relevant succession minutes follow, confirming the Court determined Priscilla as whāngai and a person entitled.

40 Ruatōria MB 82 (3 October 1994)

40 Ruatōria

93148 S.118/93 - MARINO TE HEI 82

Panui No. 1

Court

This is an application for succession for Marino Te Hei. At the last Court sitting the Court adjourned the application to enable comment from the family members over whether or not Priscilla Te Hei should be included in the succession as there was no evidence that she was legally adopted although the applicant, Ronald Te Hei thought that she was legally adopted. The Court adjourned the application for someone to provide evidence to say that she was legally adopted or to agree that the Court should determine that she was a whāngai of the deceased. Mr Te Hei in his evidence stated that she was brought up as a child and should be included. Since that time the Court has received three letters from other members of the family. Each of the letters has said that she should be included and that she was a whāngai of the deceased. There are no letters objecting to Priscilla being included and in light of that, the Court is prepared to make an Order, firstly under Section 115 determining that Priscilla Te Hei is a whāngai of Marino Te Hei, and secondly under Section 113 that she is one of the persons entitled and under Section 118 that she be included in the succession as a beneficiary of the late Marino Te Hei.

Minutes to the applicant and also to all family members for whom we have addresses on file.

[Signature]
JUDGE 03 OCT 1994

40 Ruatōria MB 154-156 (17 October 1994)

Date: 19 October 1994
Present: W W Isaac, Judge
F McClutchie, Clerk of the Court
Place: Gisborne

Appln 93148 SECTION 113, 115, 118 & 242/1993 - MARINO TE HEI

Court

In order to clarify the minutes at 40 Ruatōria Minute Book folio 82 of 3 October 1994, the Court intended to make the following Orders:-

Section 115/93 determining Priscilla Te Hei as a whāngai of the deceased.

Section 113/93 determining persons entitled are No's. 1-8 and 11 equally as set out at 39 Ruatōria Minute Book folio 292-294.

Section 118/93 vesting the Maori land interests as set out at 39 Ruatōria Minute Book folio 292-294 in No's. 1-8 and 11 equally as set out at the same minute book.

Section 242/93 for rent moneys held on the deceased's Beneficiary Rent Account No. 88/39078 that \$61.00 be refunded to the applicant as refund of filing fee and the balance to be paid to No's. 1-8 and 11 equally as set out at 39 Ruatōria Minute Book folios 292-294.

Orders accordingly.

[Signature]
JUDGE 19 OCT 1994

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Details of subsequent Orders affecting lands to which this application relates

9. At 62 Tairāwhiti MB 78-80 (3 October 2016) relating to succession to Ihipera Puha also known as Ihipera Te Hei or Ihipera Beattie.

Reference to areas of difficulty

10. There are no areas of difficulty to deal with in this matter.

Consideration of whether matter needs to go to hearing

11. This matter is directly tied to an aged application relating to Taiparoro Hirini, the deceased's mother. Both matters are set down for hearing on 3 May 2024 via Zoom.

Recommendation of course of action to be taken

12. 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, by 2pm, Tuesday 30 April 2024;**
 - b) an Order be made pursuant to section 44(1) of Te Ture Whenua Māori Act 1993 amending the order complained of at 65 Tairāwhiti MB 205-208 (28 February 2017) by including Priscilla Te Hei as a person entitled to an equal proportion of shares along with Marino's natural children numbered 1a) to 1j) at 62 Tairāwhiti MB 78-80 (3 October 2016); and
 - c) 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

[11] On 23 February 2024 Chief Judge Fox recused herself from hearing these matters and pursuant to section 46(1) of the Act, referred these applications to His Honour Judge Isaac for inquiry.

[12] On 3 May 2024 Judge Isaac heard these applications by Zoom.

Ngā Ture

The Law

[13] 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, 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.

[14] 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:²

- (a) 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);
- (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
- (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.

[15] 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

² *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)* [2009] Chief Judge's MB 209 (2009 CJ 209) at [15].

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

[16] 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.³ This means that the applicant must establish on the balance of probabilities that there was a mistake or omission.

[17] The Court of Appeal has confirmed that the power under s 44(1) of the Act falls into two parts:⁴

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

Issues

[18] The issues for determination are:

- (a) Was an error (due to mistake or omission) 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?

[19] Firstly, I note that after hearing these matters and considering the Deputy Registrar's report Judge Isaac stated:

³ *Tau v Nga Whānau o Morven and Glenavy – Waihao 903 Section IX Block* [2010] Māori Appellate Court MB 167 (2010 APPEAL 167).

⁴ *Inia v Julian* [2020] NZCA 423 at [10].

The Court: Āe, well what – all right so what I am going to do is accept the recommendations made by the Deputy Registrar in relation to both these applications and I just note that you both have confirmed that you also accept these recommendations and I am going to make a recommendation to the Chief Judge to grant the section 45 applications and to make the amendments as suggested.

Firstly, in relation to the first application to include Priscilla as one of the beneficiaries and in relation to the second application to remove Tui as a beneficiary, as a child because she is not a child, she is a grandchild and to replace her with all the children of Ihipera. (2025 Chief Judge's MB 91)

[20] I agree with Judge Isaac.

[21] From the Court record it is clear that a mistake, error or omission in the presentation of the facts of the case has occurred. It is clear that Ihipera Puha was left out as a beneficiary.

[22] In 1994 at 40 Ruatōria MB 82 dated 3 October 1994 and 40 Ruatōria MB 154-156 dated 17 October 1994, the Court made an Order including Priscilla Te Hei to be whāngai of Marino and entitled to an equal beneficial interest alongside Marino's natural children. But then Priscilla's entitlement was not carried through to the Orders of 2016 and 2017 being 62 Tairāwhiti MB 78-80 and 65 Tairāwhiti MB 205-208 where she was excluded.

[23] There is a further mistake in that Tui Warmenhoven is not a child of Ihipera Puha but a child of Rangimai Te Hei.

[24] There being clear errors it is in the interest of justice that these errors be corrected.

Kupu whakatau me te Ōta
Decision and Order

[25] Having concluded that errors were made and it is necessary in the interests of justice to remedy the errors, Orders are made pursuant to Te Ture Whenua Māori Act 1993:

Ihipera Puha

- (a) section 44(1) amending the order complained of at 65 Tairāwhiti MB 205-208 (28 February 2017) by including Priscilla Te Hei as a person entitled to an equal proportion of shares along with Marino's natural children numbered

1a) to 1j) at 62 Tairāwhiti MB 78-80 (3 October 2016); and a further order be made pursuant to section 47(4) making all other consequential amendments.

Taiparoro Hirini

- (b) section 44(1) amending the order complained of at 86 Opōtiki MB 254-257 (6 December 2004) by deleting number 20, Tui Warmenhoven and vesting those interests in number 5, Ihipera Puha; and a further order be made pursuant to section 47(4) making all other consequential amendments.
- (c) section 37(3) invoking sections 118(6), 220 and 244 and using the schedule at paragraph [9] number 9 above:
 - (i) section 118(6), vesting the interests of Ihipera Puha in the persons listed in the schedule for the proportions set out beside their names; and
 - (ii) sections 220 and 244, varying The Motorhead Whānau Trust and vesting the interests of the persons listed F4a to F4e in the schedule above in Georgina Te Hei, Chazz Julia Te Hei and Lemmy Motorhead Te Hei as trustees jointly without survivorship.

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

I whakapuaki i te Rotorua i te 10.00am te tekau o ngā rā o Hepetema i te tau 2025.
Pronounced at Rotorua at 10.00am this 10th day of September 2025.

C T Coxhead
DEPUTY CHIEF JUDGE