

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

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

**AP-20230000027478
A20200013963
CJ 2020/57**

WĀHANGA <i>Under</i>	Section 45, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Succession to Kahukuranui Piwari in relation to the interests of Albert Nuku also known as Albert Nuki or Nukie Piwari
I WAENGA I A <i>Between</i>	KATHLEEN TUHAKA Te Kaitono <i>Applicant</i>
ME <i>And</i>	AROHA SAMUELS AND ANDREA PIWARI Ngā Kaiurupare <i>Respondents</i>

Nohoanga: <i>Hearing</i>	18 December 2024, 2025 Chief Judge’s MB 455-479 (Heard at Wellington via zoom)
Kanohi kitea: <i>Appearances</i>	L Watson for the Applicant A Samuels and A Piwari in person
Whakataunga: <i>Judgment date</i>	3 April 2025

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

Hei timatanga kōrero

Introduction

[1] This application, filed in 2020 by Kathleen Tukaha, seeks an order pursuant to s 44 of Te Ture Whenua Māori Act 1993 amending succession orders made at 174 Napier MB 265-269 dated 5 December 2023 in respect of Kahukuranui Piwari in relation to the interests of Albert Nuku also known as Albert Nuki or Nukie Piwari and an order vesting the interests into a whānau trust established at 50 Te Waipounamu MB 60-65 dated 17 April 2018.

Kōrero whānui

Background

[2] The Registrar's Preliminary Report and Recommendation ("the Registrar's Report") dated 29 October 2024 sets out the background to the application. The Registrar's 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 filed by Kathleen Tuhaka (the applicant) seeks to amend a succession order made in respect of Kahukuranui Piwari in relation to the interests of Albert Nuku also known as Albert Nuki or Nukie Piwari at **174 Napier MB 265-269** dated **5 December 2003** and an order vesting interests into a whānau trust at **50 Te Waipounamu MB 60-65** dated **17 April 2018**.
2. The mistake, error or omission set out in the application is as follows:

A succession to shares held by Albert Piwari's second wife Kahukuranui Piwari occurred on 5 December 2003 at 174 Napier MB 265-269. Certain of the deceased's shares were derived from Albert Piwari, and that share tranche was to be vested by way of Family Arrangement to his natural children and grandchildren. However, the Court vested those shares into only two of Albert Piwari three natural children, excluding Charles Piwari.

Refer to attached Memorandum for detail.

The applicant, Kathleen Tuhaka, claims to be adversely affected by the Succession Orders because her father Charles Piwari was son of Albert Piwari, but he was wrongly omitted from the succession to Albert's land, and therefore the applicant and her whānau are denied an entitlement to that land, and the interests that derive from the land.

3. The applicant claims the said order is incorrect due to a mistake, error, or omission on the part of the Court.

4. The applicant sets out that they are adversely affected by the order complained of because:

The succession orders omit to vest shares into Charles Albert Piwari who is beneficially entitled to receive shares in the lands held by his deceased father Albert Nuki or Nuku Piwari.

5. The applicant seeks to have the orders amended as follows:
- (a) The applicant seeks to have the Court Order made on 5th December 2003 at 174 Napier MB 265-269 cancelled, and the distribution of shares and those beneficially entitled corrected to include the three natural children of Albert Piwari, equally, with substitution of issue.
 - (b) The applicant seeks to have the Court Order made on 17 April 2018 at 50 Te Waipounamu MB 60-65 cancelled, and the distribution of shares vested into the trustees of the Sambo Piwari Whānau Trust corrected to reflect the correct share entitlement of Gerald Rangi Piwari, namely reduction from a one-half share to a one-third share.
6. In relation to interests held by Albert Piwari absolutely or in his capacity as administrator of Pua Piwari, the application seeks directions that the interests be the subject of an application for further succession to be referred to the Māori Land Court for determination.

Concise history of Order sought to be corrected

7. The matter, being succession to Kahukuranui Piwari, was heard by the Court at Hastings.
8. The persons present at the hearing were Joyce Kelly, Robert Tunua and Lillian Tunua.
9. The salient portions of the Court minute are:

APPLICANTS (sworn in)	ADDRESS
Joyce Kelly	2872 Royshill Road, Hastings

The deceased was my mother. She died on 27 August 2001 at Hamilton as evidenced by the Death Certificate filed. She left Will dated 30 January 1992 and Probate was granted. The deceased was married twice to Ture Tangata Paul Tunua and to Albert Nuku Piwari Nuku Piwari and had the following issue:

No	Name	Sex	Address
1	Joyce Kelly	F	PO Box 2306, Stortford Lodge, Hastings
2	Robert Tunua	M	C/- St Lawrence Station, RD 2, Otane
3	Lillian Tunua	F	68 Wilson Road, Flaxmere, Hastings
4	Poala Tunua	F	Kakahi Postal Agency, Taumarunui
5	Eleanor Tunua	F	7 Fraserburgh Street, Herbert, North Otago
6	Nelson Tunua	M	57 Wilson Street, Seddon, Blenheim
7	Dean Tunua	M	C/- 68 Wilson Road, Flaxmere, Hastings

BLOCK	CURRENT OWNERS	SHARE
INTERESTS RECEIVED FROM ALBERT NUKU PIWARI AOTEA DISTRICT		
1 Opawa Rangitoto 4 & 5 & Hautu D (Aggregated)	Kahukuranui Piwari	4.59
2 Te Makomako	Kahukuranui Piwari	17.0
3 Puketapu 3B10B	Kohukuranui Piwari	0.0089
4 Tauhara South B1	Kohukuranui Piwari	0.1593
5 Tauranga Taupo 1A2	Kohukuranui Piwari	4.59
6 Owhaoko C2	Kohukuranui Piwari	0.0357
7 Owhaoko A East	Kohukuranui Piwari	0.0714
8 Tokaanu Township 22 Blk I	Kohukuranui Piwari	0.0039
9 Tokaanu Township 2 nd Res	Kohukuranui Piwari	0.2083
10 Waipapa 1A (Taupo)	Kohukuranui Piwari	0.0893
11 Waipapa 1D2B3B	Kohukuranui Piwari	0.5007
12 Ohuanga North 5A Part	Kohukuranui Piwari	0.022688
13 Aorangi (Awarua)	Kohukuranui Piwari	0.2143
14 Rotokakahi	Kohukuranui Piwari	0.00377
15 Ruamata	Kohukuranui Piwari	0.053571
16 Lake Rotoaira	Kohukuranui Piwari	0.05175

Consents are on the file from all the children of the deceased stating that they wish the interests their mother received from her second husband Albert Nuku Piwari to be vested back to his children.

Albert Nuku Piwari or Nuku Piwari had the following issue:

No	Name	Sex	Address
1	Sam Gerald Piwari	Md	Left issue
2	Duke Elwin Piwari	M	Blenheim
3	Charles Piwari	Md	Left issue
4	Pania Piwari	F	Address unknown

There are funds held by Maori Trustee on Beneficiary Rent Card Number 1512726 of \$75.03 and on Beneficiary Rent Card Number 1659463 of \$13.57.

In accordance with Section 113/93, Numbers 1-7 above to be determined entitled to succeed equally.

An Order under Section 118/93 is sought for vesting the above land in Numbers 1-7 equally, except for the land held by the deceased that she received from Albert Nuku Piwari.

An Order under Section 118/93 vesting the land held by the deceased, which she received from Albert Nuku Piwari into Sam Gerald Piwari and Duke Elwin Piwari equally.

An Order under Section 242/93 for the payment of money held by the Maori Trustee Numbers 1-7 equally.

COURT

Section 113/93, Numbers 1-7 above to be determined entitled to succeed.

Section 118/93 Order vesting the above land in Numbers 1-7 equally, except for the land held by the deceased that she received from Albert Nuku Piwari.

Section 118/93 Order vesting the land held by the deceased, which she received from Albert Nuku Piwari into Sam Gerald Piwari and Duke Elwin Piwari equally.

Section 242/93 Order for the payment of money held by the Maori Trustee Numbers 1-7 equally.

Copy of the minutes and final orders to be forwarded to the Lake Taupo Forest Trust for release of any dividends held by the Trust for this estate.

Copy of the minutes also to be forwarded to the applicant, Robert Tunua and Lillian Tunua.

Adjourned Sine Die.

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

10. Memorandum of counsel in support of the section 45 application dated 20 November 2020 sets out the following:

1. Introduction

- 1.1. This memorandum is filed by counsel for the applicant, Ms Waipu Kathleen Tuhaka ("Kathleen Tuhaka"), and accompanies an application pursuant to section 45 of Te Ture Whenua Māori Act 1993 ("the Act").
- 1.2. The Court orders that are the subject of this application are as follows (referred to herein as the "Succession Orders"):
 - 1.2.1. An order made at 174 Napier MB 265-269 on 5 December 2003 vesting shares held by Kahukuranui Piwari, which she had derived from her husband Albert Piwari, into Sam Gerald Piwari and Duke Elwin Piwari equally;
 - 1.2.2. An order made at 50 Te Waipounamu MB 60-65 on 17 April 2018 vesting shares held in the name of Albert Piwari's son, Gerald Rangi Puawahia or Sambo Piwari into the Sambo Piwari Whānau Trust.
- 1.3. The applicant claims to be adversely affected by the Succession Orders because her father Charles Piwari was a son of Albert Piwari, but he was wrongly omitted from the succession to Albert's land, and therefore the applicant and her whānau are denied an entitlement to that land, and the interests that derive from the land.

- 1.4. For ease of reference, a summary whakapapa chart is appended and marked "A"

2. Background

- 2.1. The applicant, Kathleen Tuhaka, is the daughter of Charles Albert Piwari ("Charles Piwari"). An application filed by Kathleen Tuhaka for succession to shares believed to be held by her late father, Charles Piwari, was dismissed on 30 January 2019 at 74 Takitimu MB 18 on the basis that the deceased was not an owner in Māori land. This prompted Kathleen Tuhaka to investigate why her late father had not been vested shares from his father, Albert Nuki or Nuku or Nukie Piwari ("Albert Piwari").
- 2.2. Charles Piwari was a natural child of Albert Piwari. A succession to shares held by Albert Piwari's second wife, Kahukuranui or Kahukura Piwari or Peni ("Kahukuranui Piwari"), occurred on 5 December 2003 at 174 Napier MB 265-269. Certain of the deceased's shares were derived from Albert Piwari, and that share tranche was vested by way of Family Arrangement to his natural children and grandchildren. However, the Court vested those shares into only two of Albert Piwari's three natural children, excluding Charles Piwari. The Court Minute did not disclose why the shares were vested in this way.
- 2.3. There remain a number of shares held in the name of Albert Piwari both absolutely, and as administrator of the estate of his first wife, Airini Te Puanani or Pua Piwari (nee Hanara) ("Pua Piwari"). Succession to those further interest shares was adjourned sine die by the Court at on 9 March 2012 at 11 Te Waipounamu MB 230-239, to allow the whānau to discuss options as to how the descendants of Charles Piwari could be included in the share entitlement.
- 2.4. Counsel was engaged by the applicant to advance this matter in August 2019. Following intensive research and attempts to locate the Will of Albeit Piwari, counsel convened a whānau hui to discuss options, including a deed of family arrangement, and/or a whanau trust. The dispute was not resolved between the descendants of Albert Piwari and counsel was instructed to file this application.

3. Whakapapa of Albert Piwari

- 3.1. Albert Piwari had two wives.
- 3.2. Albert Piwari and his first wife, Pua Piwari, had four children together (one child, Waipu, died in infancy), and one whāngai child, as listed below:
 - 3.2.1. Waipu (f.d infant);
 - 3.2.2. Charles Albert (m.d);
 - 3.2.3. Gerald Rangi (Sambo) (m.d);
 - 3.2.4. Duke Elwin (m.d); and
 - 3.2.5. Pania (f.a whāngai).
- 3.3. Albert Piwari's second wife was Kahukuranui Piwari, and they did not have any children together. Kahukaranui Piwari had seven children from other unions (as listed at 18 NE 158-159).
- 3.4. Charles Piwari had two marriages. Charles Piwari and his first wife, Betty Elizabeth Goodnight, had 5 children together, and adopted two children, as listed below:

- 3.4.1. Waipu Kathleen Tuhaka (f.a. applicant)
- 3.4.2. Herrick Goodnight (f.a);
- 3.4.3. Albert Piwari (m.a);
- 3.4.4. Airini Piwari (f.a);
- 3.4.5. Bishop Penaha (m.a. adopted);
- 3.4.6. Sam Piwari (m.d.ni); and
- 3.4.7. Demelza Cross (f.a. adopted).
- 3.5. Charles Piwari and his second wife, Marama Pereka, had two children together, as listed below:
 - 3.5.1. Kaliwyn (m.a); and
 - 3.5.2. Rhys (m.a).
- 3.6. Albert Piwari's second child, Gerald Rangi Piwari, also known as Sambo Piwari, had two children, as listed below:
 - 3.6.1. Elwyn (m.a) and
 - 3.6.2. Andrea (f.a).
- 3.7. Albert Nuku Piwari's third child, Duke Elwin Piwari, had 5 children, as listed below:
 - 3.7.1. Boss (m);
 - 3.7.2. Donna (f);
 - 3.7.3. Jay (m);
 - 3.7.4. Sam (m); and
 - 3.7.5. Aroha (f.a).
- 3.8. The whereabouts of Albert Piwari's whāngai daughter, Pania, is currently unknown. Counsel has made enquires and has been informed that Pania is alive and of no fixed abode, her work with a shearing contractor entailing extensive travel around New Zealand.

4. Derivation Chronology of Shares held by Albert Piwari

- 4.1. The following section sets out the various share tranches which Albert Piwari has succeeded to, and which remain in his name. The entries are listed in chronological order, by the dates they were vested into Albert Piwari.

Shares derived at 40 WAI 36-37 (14/5/1964)

- 4.2. Albert Piwari succeeded to Māori land shares in the Purakau B Māori freehold land block from his brother, Peter William Piwari on 14 May 1964 at 40 Wairarapa MB 36-37. These are the only shares that he succeeded to from another family member (other than his first wife, as discussed below) which counsel has been able to identify. These shares remain in Albert Piwari's name, as absolute owner.

Shares Derived at 2 ADWG 86 (14/4/1972)

- 4.3. Albert Piwari's first wife, Pua Piwari, died intestate on or about 14 April 1972. Letters of Administration were granted on 26 March 1973, a copy of which are appended and marked "B".

- 4.4. The Letters of Administration named Albert Piwari as the sole administrator of the estate. The Māori Land Court vested shares in four Māori land blocks into Albert Piwari as administrator, on 14 April 1972 at 2 Whanganui Administrators MB 86. Shares from two of those blocks remain in Albert Piwari's name, as administrator. It is not apparent what became of the shares in the remaining two blocks.

Shares Derived at 167 ROT 380 (29/11/1974).

- 4.5. Albert Piwari succeeded to Māori land shares in nine Māori freehold land blocks from his first wife, Pua Piwari, absolutely, on 29 November 1974 at 167 Rotorua MB 380. Orders were subsequently issued on 24th November 1987 at 18 Nelson MB 158-159 to vest these shares, along with a second share tranche derived elsewhere, into Albert Piwari's second wife, Kahukaranui, absolutely. However, it appears that only one share tranche was vested, and these shares remain in Albert Piwari's name, absolutely.

Shares Derived at 23 AOT 111-124 (2/6/1992).

- 4.6. Pua Piwari was an eligible beneficiary to certain of the shares of her tipuna Ngaikiha Te Raukura, who died intestate and with issue in 1902. Since Pua was deceased at the time of the succession hearing, those shares in two Māori land blocks to which she was entitled were vested into Albert Piwari, as administrator, on 2 June 1992 at 23 Aotea MB 111-124. These shares remain in Albert Piwari's name, as administrator.

Shares Derived at 20 TWP 141-143 (18/10/2013).

- 4.7. Albert Piwari succeeded to further interest Māori land shares in several Māori freehold land block in the Aotea, Takitimu and Waiariki districts, absolutely, from his first wife, Pua Piwari on 18th October 2013 at 20 Te Waipounamu MB 141-143. These shares remain in Albert Piwari's name, as absolute owner.

5. Derivation Chronology of Shares of Albert Piwari (m.d) which have been succeeded to

- 5.1. The following section sets out shares which Albert Piwari had succeeded to and traces their subsequent succession history to the present.

Shares Derived at 7 ALTK 72 (17/11/1974) and 167 Rotorua MB 380 (29/11/1974).

- 5.2. Shares which had been vested into Albert Piwari as administrator in the estate of Pua Piwari were vested into Albert Piwari, absolutely, on 27 November 1974 at 7 Tokaanu Alienation MB 72.
- 5.3. Further interest shares were vested into Albert Piwari as administrator in the estate of Pua Piwari at 2 Registrar's MB 174-175 (14/3/1974). These shares were subsequently vested into Albert Piwari, absolutely, on 29 November 1974 at 167 Rotorua MB 380.
- 5.4. Following the death of Pua in 1972, Albert Piwari remarried Kahukuranui Piwari. Albert Piwari predeceased Kahukuranui. Albert died testate on 23 July 1986. Albert Piwari was succeeded to on 24 January 1987 at 18 Nelson MB 158-159. The Court Minute records that the Will and Codicil of Albert Piwari was presented as evidence; however, searches by the Court, by whanaunga of Albert Piwari, and by counsel, have been unable to locate a copy of the Will, as outlined further below.
- 5.5. Orders were declared at 18 Nelson MB 158-159 to vest Albert Piwari's shares, derived at 7 Tokaanu Alienation MB 72 and 167 ROT 380, (these

being the two share tranches which appear in the Minute's schedule) into Kahukuranui absolutely, according to the terms of the Will. However, notably, it appears that only the shares which Albert had derived at 7 Tokaanu Alienation MB 72 were subsequently vested into Kahukuranui, since the shares derived at 167 ROT 380 remain in Albert Piwari's name, absolutely.

Succession Order #1 - Succession to shares of Kahukuranui Piwari, derived from Albert Piwari.

- 5.6. Succession to the estate of Kahukuranui Piwari occurred on 5 December 2003 at 174 Napier MB 265-269. A copy of the Minute and Order is appended and marked "C". The Minute records:

Consents are on the file from all the children of the deceased stating that they wish the interests their mother received from her second husband Albert Nuku Piwari to be vested back into his children.

- 5.7. The Minute records the issue of Albert Piwari as:

NAME	SEX	ADDRESS
1. Sam Gerald Piwari	Md	Left issue
2. Duke Elwin Piwari	M	Blenheim
3. Charles Piwari	Md	Left issue
4. Pania Piwari	F	Address unknown

- 5.8. The consents of Kahukuranui's children are appended and marked "D". The following are points of relevance in relation to those consents:

5.8.1. The consents specify the children and grandchildren of Albert Piwari;.

5.8.2. The shares held by Kahukuranui which were derived from sources other than her late husband were vested into her own children, absolutely.

- 5.9. However, despite the consents referring to the "children" of Albert Piwari, the Succession Order vested the shares into only two of his children equally, excluding his eldest son Charles Piwari and his whāngai daughter Pania. This vesting occurred despite all four children named in the Schedule to the Minute as being entitled. Neither the Minute nor any documentation on the application file provides explanation as why the vesting occurred in this way.

Succession Order #2 — Succession to Sam Piwari

- 5.10. Sam Piwari's shares have subsequently been succeeded to on 18 April 2018 at 50 Te Waipounamu MB 60-65. The Court Minute records that Sam Piwari died intestate, and with issue, on or about 11 August 1995. The shares were vested into the Sambo Piwari Whānau Trust and remain in the Trust.

- 5.11. In terms of the other equal share amount vested into Albert Piwari's son, Duke Elwin Piwari, Duke died on or about 7 May 2020 and the shares remain in his name. On 29 September 2020, Counsel requested by memorandum that the Court flag these shares as being the subject of a section 45 application, in the event that a succession application is filed by Duke's children.

6. Summary of attempts by Counsel to Contact Affected Parties and Seek Resolution

- 6.1. An application by the applicant, Kathleen Tuhaka, for succession to further interest shares believed to be held by her late father, Charles Piwari, was heard by the Court on 30 January 2019 at 74 Takitimu MB 18.¹ The Court dismissed that application on grounds that Charles Piwari was not in fact an owner in any Māori land.²
- 6.2. The Deputy Registrar wrote a memorandum to the Court dated 28 January 2019, appended, and marked "E". The Memorandum states that:

This application is for succession; however, the deceased is not an owner in any Māori land. There are currently shares remaining in the deceased's father's name, Albert Nuku/Nuki/Nukie Piwari though. Unfortunately, the deceased Charles Albert Piwari has not been determined by the Court as a beneficiary of his father Albert Piwari. It is unclear as to why this is.
- 6.3. The Deputy Registrar approached legal counsel to act for Kathleen Tuhaka.
- 6.4. Counsel met with Kathleen Tuhaka and her immediate whānau on 15 August 2019 to take instruction. Those present expressed their wish to meet with the wider whānau to discuss options that might include (i) the establishment of a Whānau Trust, (ii) a Deed of Family Arrangement, along with (iii) a possible application pursuant to section 45 of the Act.
- 6.5. The first two options offer alternative means to enable the descendants of Charles Piwari to be included as beneficiaries to the Māori land shares of Albert Piwari. This outcome is consistent with the principles and objectives of the Act. The outcome is also aligned with the wishes of both Duke Piwari and his daughter, Aroha Samuels, as expressed in the Court Minute 11 Te Waipounamu 230-239. A copy of the Minute 11 Te Waipounamu 230-239 is appended and marked "F"

¹ Application pursuant to section 113, 118 and 214, Te Ture Whenua Māori Act 1993. Applicants are Kathleen Tuhaka, Herrick Goodnight, and Albert Piwari.

² Application dismissed pursuant to Rule 6.28 of the Māori Land Court Rules 2011.

Folio 233:

Mr Piwari: My interests, because I'm not very well is to succeed to my dad's and my mum's land, so that a trust can be formed where each individual brother and all those included; their children are not left out.

Folio 235

Ms Samuels: The way that we do want it is that the three brothers can succeed to it, so then it stays in the family so that all Charles' children be included; everyone's included equally.

Folio 236

Mr Piwari: That's what we wanted to do is succeed to those interests from my dad's..... And recognise every son, everyone in that family and grandchildren.

Ms Samuels: I think the first alternative, because that's the main purpose of having the whole thing in it.

Folio 237

Court: Because what you need to do is to have a whānau meeting. Tell them about what the Court has said and discuss with the whānau setting up a whānau trust, so that all of the interests of Sam and Duke go into the whānau trust; which will be for all of the descendants of Pua and Albert.

Ms Samuels: I understand that and I have briefly spoken about a whānau trust with Sam's children.

Folio 239

Court directs (1) The case manager is directed to write to the applicant setting out the alternatives for progressing the inclusion of Charles Piwari and issue...

- 6.6. On 18 December 2019, counsel filed an application pursuant to section 67 of the Act for Court directions, to communicate with affected parties and convene a hui. Directions were issued accordingly on 3 March 2020 at 82 Tākitimu Minute Book 69-71.
- 6.7. On 9 July 2020 a letter was sent to the eight descendants for whom counsel held contact details.

LIST Those Descendants of Albert Piwari Contacted by Counsel			
	Albert Piwari's Children	Contact Established	Tot.
1.	Charles Albert Piwari (m.d)	9 children, to 2 marriages. Kathleen Tuhaka (applicant) and 4 siblings contacted.	5
2.	Gerald Rangi (Sambo) Piwari (m.d.)	2 children. Both children, Elwyn and Andrea, contacted.	2
3.	Duke Elwyn Piwari (m.d)	5 children. Aroha Samuels contacted, who would not disclose contact details of her 4 siblings, but advised that she would be the conduit for information to them.	1
4.	Pania Piwari (whāngai) (f.a)	No contact established, despite various attempts to do so. Counsel is informed that Pania's work is of a transient nature and she does not have a fixed place of abode.	--
Total			8

- 6.8. The letter of 9 July 2020 (i) outlined the background to this case and suggesting options for resolution, (ii) advised that a whānau hui would be arranged, and (iii) appended a Briefing Paper. A copy of the letter and Briefing Paper is appended and marked "G".
- 6.9. On 10 August 2020 a follow-up letter was sent to the 8 descendants for whom counsel held contact details, inviting them to attend a whānau hui on Saturday 12th September. A copy of that letter is appended and marked "H".
- 6.10. On 12th September 2020 the hui occurred, with attendees presenting both in person at counsel's Taradale office, and remotely via Zoom. Five descendants attended, representing each of the three whānau lines of Albert Piwari's natural children.
- 6.11. During the hui of 12th September 2020 robust discussion occurred; however, it became disjointed and heated, and there was no agreement reached as to a fair and equitable resolution.
- 6.12. On 28th September 2020 counsel sent a letter to the affected parties attaching the draft notes from the hui of 12th September and advising that an application would be filed pursuant to section 45 of the Act. A copy of the letter is appended and marked "I".
- 7. Attempts to locate the Will and Codicil of Albert Piwari**
- 7.1. For completeness, counsel sets out in this section of the memorandum the unsuccessful efforts made to locate the Will of Albert Piwari. It is submitted that the Will is not strictly relevant, given that it must have provided for succession to Albert's wife Kahukuranui (i.e. that this is what was ordered at the time). It is the vesting from Kahukuranui's children (as supported by their written consents) to the two children of Albert Piwari which is the focus of these proceedings, not what was in Albert's own Will. Nevertheless, various efforts by different parties have been made to locate the Will.
- 7.2. The Minute at 11 Te Waipounamu 230-239 (9 March 2012) records directions which had been issued to the applicant, Aroha Samuels (daughter of Duke Piwari):

The Court... directed the applicant supply the Court with a copy of Albert Nuku Piwari's will and death certificate... The applicant has supplied Albert Nuku Piwari's death certificate but has been unable to locate his will (folio 230).

- 7.3. The same Minute further records the evidence of Albert Piwari's son, Duke Piwari:

I tried to speak to the lawyer who read the will out and who had the will and tried to locate copy of it. That's an ongoing process. I think my daughters tried various places and I actually went to where it was done and because the lawyer is so busy, I couldn't get him (folio 233).

- 7.4. A search of the Court record occurred following the dismissal of Kathleen Tuhaka's 2019 application. The Deputy Registrar (Hastings Registry) undertook this research, and records in a Memorandum to Court dated 28 January 2019 that the result was inconclusive. A copy of the Memorandum has been appended and marked "E".

The minute refers to a will for Albert Piwari, however there is not one in file that I have been able to locate.

- 7.5. Counsel has also searched for the Will, to no avail. Approaches to the various parties outlined below have all proved inconclusive:

- 7.5.1. Mike Hardy-Jones (Barrister & Solicitor, Hardy-Jones Clarke, Blenheim) was involved in administering the estate of Albert Piwari while practicing with law firm, Lundon, Radich Dew (Blenheim). A copy of correspondence sent to Mr Hardy-Jones on 26 August 2019 is appended and marked "J". On 9 September 2019 Mr Hardy Jones responded by email:

We can advise that we do not hold a will in our system for Albert Piwari. We do hold a copy of the death certificate, but we understand you have that. We have no other documents.

- 7.5.2. A search of the Archives New Zealand database, Archway, was undertaken, in the event that the Will had received probate and was held in their records. This search proved inconclusive.

- 7.5.3. On 3 October 2019 the Nelson District Court was contacted, in the event that the Will had received Probate and was held in their records. Albert Piwari died on 23 July 1986 and an application for succession was heard in the Court on 24 January 1987, where the Will and Codicil were presented. A response by email was received from the Court on 3 October 2020:

I have searched our archive records from the beginning of 1986 through to 1988, which are currently held at Archives NZ, and there is no record of Probate for Albert Nuku Piwari.

8. Relief Sought under section 44/93

- 8.1. The applicant seeks to have the Court Order made on 5th December 2003 at 174 Napier MB 265-269 cancelled, and the distribution of shares and those beneficially entitled corrected to include the three natural children of Albert Piwari, equally, with substitution of issue.
- 8.2. The applicant seeks to have the Court Order made on 17 April 2018 at 50 Te Waipounamu MB 60-65 cancelled, and the distribution of shares vested into the trustees of the Sambo Piwari Whānau Trust corrected to

reflect the correct share entitlement of Gerald Rangi Piwari, namely reduction from a one-half share to a one-third share.

- 8.3. If the above relief is granted, it will affect the succession to the further interests still held by Albert Piwari. The Court had adjourned sine die the application for determination of shares held by Albert Piwari as administrator in the estate of Pua Piwari (9 March 2012 at 11 Te Waipounamu MB 230-239).
- 8.4. Additional further interest shares held by Albert Piwari, both in his capacity as administrator of the estate of Pua Piwari, and absolutely, have been discovered, which also require determination. Those shares are set out below.
 - 8.4.1. There are shares showing in the Court record as being held in the name of "Nuku Piwari", absolutely, derived at 40 WAI 36-37 on 14 May 1964;
 - 8.4.2. There are shares showing in the Court record as being held in the name of "Albert Nuku Piwari", as administrator in the estate of Pua Piwari, derived at 2 Whanganui Administrator's MB 86 on 14 April 1972;
 - 8.4.3. There are shares showing in the Court record as being held in the name of "Albert Nuku Piwari", absolutely, derived at 167 Rotorua MB 380 on 29 November 1974;
 - 8.4.4. There are shares showing in the Court record as being held in the name of "Albert Nuku Piwari", as administrator in the estate of Pua Piwari, derived at 23 Aotea MB 111-124 on 2 June 1992;
 - 8.4.5. There are shares showing in the Court record as being held in the name of "Albert Nuku Piwari", absolutely, derived at 20 Te Waipounamu MB 141-143 on 18 October 2013.
- 8.5. As such, directions are also respectfully sought that the above share parcels be the subject of an application for further succession to be referred to the Māori Land Court for determination.

Court Research

Application file for A20030006104

11. The application file does not provide any additional information or documentation directly relevant to the issues the subject of this application.
12. The following is an excerpt of the consents filed:

✓ 3. I agree that the interests my mother acquired through succession to Albert Nuki Piwari be given back to his own children and grandchildren. Yes / ~~No~~

Pania Piwari

13. No evidence was presented as part of the original application to demonstrate that Pania Piwari was able to acquire these interests in accordance with section 117(3)(b) of Te Ture Whenua Māori Act 1993 (the Act). This is a pertinent factor if the Court determines that there was an error.

14. The transcript at 11 Te Waipounamu MB 230-239 (9 March 2012) contains a discussion between the Court and Duke Piwari regarding Pania Piwari. It is indicated that Arini Te Puanani Piwari raised a number of whāngai children. It was further indicated that there was not a known whakapapa connection between Pania Piwari and Arini Te Puanani Piwari nor Albert Nuku Piwari.
15. The Court minute of 18 Nelson MB 158-159 (24 November 1987) records the children of Albert Nuku Piwari as Sam Gerald Piwari, Duke Elwin Piwari and Charles Piwari – Pania Piwari is not recorded.
16. The death certificate of Albert Nuku Piwari (located on the personal file for Albert Nuku Piwari (PF 94)) records that at the time of his death he had two sons.

Communications with the children of Kahukuranui Piwari

17. Contact details were obtained for five of the children of Kahukuranui Piwari. Emails were sent to them asking the following two questions:
 1. Was it your belief and intention that the interests that came from Albert would go to all four of his children?
 2. If you ultimately decided that the interests would not go to all four of Albert's children, are you able to advise when the plan changed and how? i.e. was it the Court hearing in 2003?
18. At the time that this report was finalised, responses from two of Kahukuranui's children had been received. Both responses indicated that the intent had been that the interests go to all four of Albert's children.
19. If further responses are received, these will be relayed to the parties.

Legislation

20. Legislation at the time orders were made under:

113 Māori Land Court to determine beneficial entitlements to Māori land

- (1) On an application by the administrator or by any person interested or by the Registrar, the Court shall determine the persons (in this section referred to as the beneficiaries) who are legally entitled to succeed to any beneficial freehold interest in Māori freehold land belonging to any estate to which this Part of this Act applies and shall define the proportions of the several beneficiaries.
- (2) Every determination made for the purposes of this section shall be recorded in the minutes of the Court, but it shall not be necessary for the Court to draw up in writing any order with respect to its determination.
- (3) Where any freehold interest in land has been devised by will to a trustee other than a bare trustee, the trustee shall be deemed for the purposes of this section to be the beneficiary.
- (4) In considering any application under this section, the Court may require such evidence as it thinks fit, but may, without further inquiry, accept the

certificate of the administrator that the person named in the certificate is entitled to succeed to the interest to which the application relates.

- (5) Until the Court has made a determination under this section in respect of any beneficial freehold interest in Māori freehold land belonging to any estate, no vesting order may be made in respect of that interest under section 117 or section 118 of this Act.
- (6) The making of a determination under this section shall not absolve the executor or administrator from any liability incurred by the executor or administrator in respect of his or her duties.

118 Vesting in persons beneficially entitled where no grant of administration

- (1) Subject to section 119 of this Act, where—
 - (a) Administration of any estate to which this Part of this Act applies has not been granted; or
 - (b) The administrator of any estate to which this Part of this Act applies has died after a grant of administration has been made,—
the Court may make an order vesting any beneficial interest in Maori freehold land belonging to the estate in the persons entitled to the interest.
- (2) An application for an order under this section shall be made by or on behalf of the person or one of the persons claiming to be entitled to the interest under the will or on the intestacy of the deceased person.
- (3) No order shall be made under this section unless the Court is satisfied—
 - (a) That the person or persons entitled to obtain a grant of administration of the estate of the deceased person does not or do not intend to seek any such grant; and
 - (b) That there is no apparent reason why the estate of the deceased person should be formally administered.
- (4) In making an order under this section, the Court shall proceed as if all the persons living at the death of the deceased person who, if they had then attained full age, would have taken an absolutely vested interest in any part of the estate, had then attained full age.
- (5) The provisions of subsections (2) to (9) of section 117 of this Act, with any necessary modifications, shall apply to the exercise of the Court's powers under this section.
- (6) Where the known estate of a deceased person has previously been administered and additional interests of the deceased in Māori freehold land are discovered, the Court, notwithstanding any other provisions of this section, may deal with those interests under this section if it is satisfied that any other course would be unduly expensive or difficult having regard to the value of the interests.

21. Other relevant legislation:

117 Vesting in persons beneficially entitled following grant of administration

- (1) Subject to section 119 of this Act, where administration of any estate to which this Part of this Act applies has been granted, the Court may, on the application of the administrator or of any person interested, make an order vesting any beneficial interest in Maori freehold land belonging to the estate in the persons (in this section referred to as the beneficiaries) who are legally entitled to succeed to the interest.
- (2) An administrator may make an application under this section notwithstanding that the interest to which it relates has not been vested in the administrator under section 112 of this Act.
- (3) In disposing of any interest of a deceased owner under this section, the Court may exercise all or any of the following powers:
 - (a) The Court may exercise with respect to the whole or any part of the interest any jurisdiction that it would have had authority to exercise under any of the provisions of this Act, if application had been duly made in accordance with this Act and with the rules of Court:
 - (b) The Court may, with the consent of a beneficiary, vest the whole or any part of the interest of that beneficiary in any other person who is entitled to acquire or succeed to that interest:
 - (c) The Court may give effect to any arrangement or agreement whereby the interest of any beneficiary is to be vested in any other beneficiary or in any other person who is entitled to acquire or succeed to that interest, but no person shall be excluded from any interest to which that person is entitled without that person's consent.
- (4) For the purposes of subsection (3)(c) of this section, any agreement or arrangement may, in the case of a person under disability, be entered into or made on behalf of that person by a trustee appointed under Part 12 of this Act, or, if no such trustee is appointed, by any other responsible person.
- (5) Where any beneficial freehold interest in land has been devised by the will of the deceased owner to a trustee other than a bare trustee, the trustee shall, for the purposes of this section, be deemed to be the beneficiary.
- (6) In any case to which subsection (5) of this section applies, the existence of the trust shall be stated on the face of the relevant vesting order.
- (7) Nothing in this section shall limit or affect any right or remedy to which any person may be entitled in respect of any act done by any other person as administrator of any estate.
- (8) Any money held by the Maori Trustee or any other agent for any person at the date of that person's death, being the proceeds of the alienation of any Maori freehold land, shall be deemed for the purposes of subsection (3)(c) of this section to be interests in Maori freehold land; and the Court may dispose of that money accordingly by making an order for payment of it under section 242 of this Act.

- (9) Nothing in subsection (8) of this section shall impose any liability on the Maori Trustee or other agent in respect of any payment out of the proceeds of sale after the death of the deceased if the payment was made by the Maori Trustee or other agent without knowledge of the owner's death.

4 Interpretation

In this Act, unless the context otherwise requires,—

preferred classes of alienees, in relation to any alienation (other than an alienation of shares in a Maori incorporation), comprise the following:

- (a) children and remoter issue of the alienating owner:
- (b) whanaunga of the alienating owner who are associated in accordance with tikanga Maori with the land:
- (c) other beneficial owners of the land who are members of the hapu associated with the land:
- (d) trustees of persons referred to in any of paragraphs (a) to (c):
- (e) descendants of any former owner who is or was a member of the hapu associated with the land

Details of subsequent Orders affecting lands to which this application relates

22. Nil.

Details of payments made as a result of the Order

23. Not yet ascertained.

Reference to areas of difficulty

24. There is no transcript in the minute from the hearing held on 5 December 2003. Attempts to source the audio recording from that hearing were unsuccessful.
25. If the Court finds that there was an error because the intent of the children of Kahukuranui Piwari was that all four of the children of Albert Piwari recorded at 174 Napier MB 265-269 be included, no evidence was presented as part of the original application nor has evidence been obtained that demonstrates that Pania Piwari was able to acquire these interests in accordance with section 117(3)(b) of Te Ture Whenua Māori Act 1993 (the Act). Moreover, to date, attempts to obtain contact details for Pania Piwari have been unsuccessful.

Summary of findings

26. Dean Tunua, Nelson Tunua and Poala Tunua consented in writing to the interests that their mother Kahukuranui Piwari received through Albert Piwari being given to his children and grandchildren. They were not present at the hearing.
27. Joyce Kelly, Robert Tunua and Lillian Tunua consented in writing to the interests that their mother Kahukuranui Piwari received through Albert Piwari being given back to his children and grandchildren. They were present at the hearing.

28. The consents filed with the application and the content of the draft submission indicate it was the intent of Kahukuranui Piwari's children that the interests that their mother received from Albert vest in Albert's children and grandchildren. Albert's four children specifically named in the minute were Sam Gerald Piwari, Duke Elwin Piwari, Charles Piwari and Pania Piwari. However, conversely the orders sought and pronounced in the minute vested the interests that derived from Albert Piwari in Sam Piwari and Duke Piwari only – with the exclusion of Charles Piwari and Pania Piwari.
29. No evidence has been filed or obtained to date that provides an explanation as to why only two of Albert's four children received interests. In contrast, the responses from two of Kahukuranui Piwari's children indicate that the intent did not change and that the interests were to go to all four of Albert's children.

Conclusions

30. On the basis that Dean Tunua, Nelson Tunua and Poala Tunua consented in writing to the interests that their mother Kahukuranui Piwari received through succession to Albert Nuku Piwari being given to Albert's own children and grandchildren and the fact that these three persons were not noted as present at the hearing nor is there any evidence to indicate that their position had changed, an error could be found to be made in respect to at least 3/7^{ths} of the interests that derived from Albert Nuku Piwari.
31. Based on the responses from Kahukuranui Piwari's children to the questions recorded at paragraph 17 and due to the absence of evidence indicating a change in position, it appears that the intent remained that the interests would go to all of the children of Albert Nuku Piwari equally. Accordingly, it appears an error was made in the interests being vested in only two of the children of Albert.
32. Whether Pania Piwari is entitled to acquire an interest in accordance with section 117(3) of the Act cannot be ascertained based on current evidence. This will need to be determined before the Court can conclusively determine this application.

Consideration of whether matter needs to go to hearing

33. The application has been set down for hearing on Wednesday 18 December 2024 at 11.30am to hear from the parties.

Recommendation of course of action to be taken

34. 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 all affected parties for whom contact details are held to provide them with the opportunity to comment or respond in writing, by 10am, Friday 29 November 2024.
 - (b) That the Court receive submissions and/or hear evidence from the applicant and affected parties in response to this report and recommendation.

- (c) If the Chief Judge is of a mind to exercise their jurisdiction, then it would be my recommendation, that unless further complying evidence is presented that counters the information and conclusions presented in this report, that the Court make an order pursuant to section 44(1) of Te Ture Whenua Māori Act 1993 amending the minute and order pursuant to section 118 of Act for the interests that Kahukuranui Piwari received from Albert Piwari made at 174 Napier MB 265-269 dated 5 December 2003. Subject to the Chief Judge being satisfied that Pania Piwari is entitled to acquire an interest pursuant to section 117(3) of the Act, the said minute and order are to be amended to:

(i) Court minute:

Section 118/93 Order vesting the land held by the deceased, which was received from Albert Nuku Piwari into Sam Gerald Piwari, Duke Elwin Piwari, Charles Piwari and Pania Piwari equally.

(ii) Court order:

Amending the Successors recorded in the schedule to:

Sam Gerald Piwari	¼
Duke Elwin Piwari	¼
Charles Piwari	¼
Pania Piwari	¼

- (d) And a further order be made pursuant to section 47(4) of Te Ture Whenua Māori Act 1993 making all other consequential amendments, including but limited to:

(i) 50 Te Waipounamu MB 60-65 dated 17 April 2018.

Ko te hātepe ture o te tono nei

Procedural history

[3] The Registrar's Report was distributed to parties on 29 October 2024. A response was received from counsel for the applicant indicating support of the Registrar's findings. However, counsel for the applicant did make a suggestion that Pania Piwari only receive a life interest in the shares allocated to her because she was a whāngai daughter.

[4] Aroha Samuels (granddaughter of the deceased and daughter of Duke Piwari) did not oppose Charles receiving shares but was concerned that Pania Piwari as a whāngai could inherit, given she already holds shares from her biological mother. She produced a letter from Merle Mapuna Samuels (de facto partner of Gerald Piwari) dated 28 November 2024, verifying that Pania had indicated that she had no interest in the shares of the deceased.

[5] Andrea Piwari (granddaughter of the deceased and daughter of Gerald Piwari (Sambo)) opposed the application and did not want Charles included until her uncle Duke's

children pass away, at which point she supported the shares being divided as follows: Sambo 30 per cent, Duke 30 per cent, Charles 30 per cent and Pania 10 per cent.

Te Nohonga a Te Kooti

The hearing

[6] On 18 December 2024, a hearing was held. At the hearing Aroha Samuels advised the Court that she had spoken to Pania Piwari, who told her that because she held shares from her biological mother, she would not pursue this matter. It was Aroha's understanding that Charles was omitted due to a debt owed.

[7] The application was adjourned to chambers to await submissions, with a filing period for the applicant of two months, followed by submissions from the respondents a week later.

Ngā Tapaetanga a te Kaitono

Applicant's Submissions

[8] In submissions dated 24 February 2025, Mr Watson for the applicant reiterated that the s 45 application relates to a very simple mistake, namely the omission of Charles Piwari. His name was simply left off the Court order. There was unanimous consent that all the children of the deceased receive the land blocks. Charles was listed in the minute as one of the deceased's children and his omission in the order cannot be explained other than as a simple omission.

[9] Counsel for the applicant argued that Andrea Piwari's stipulation of waiting until Duke's children pass away before Charles is included in the succession is based upon unfounded allegations of "financial impropriety and/or financial imbalance". However, Andrea did not provide any evidence to support these allegations. Counsel for the applicant stated that, even if these allegations were proven, there is no jurisdiction for the Chief to make an order to remedy any error other than the one presented to the Chief Judge. Andrea would have to file her own s 45 application should she wish for her allegations to be addressed. Counsel also states that there are no tikanga issues that would weigh against correcting the order immediately. To contemplate such a time restraint would be contrary to the principles and objectives of Te Ture Whenua Māori Act 1993. He repeated his submission in favour of a life interest for Pania Piwari.

[10] In a statement dated 18 February 2025, the applicant noted that there are 50 descendants from her father who have been impacted by his omission to the succession order, and she reiterated that her father should be included as a descendent and shareholder of his parents, entitled to a one-quarter share.

Ngā Tāpaetanga a ngā Kaiurupare

Respondents' Submissions

[11] An email dated 25 December 2024 was received from Aroha Samuels. She opposed Pania Piwari receiving any shares on the grounds that Pania holds interests derived from her biological mother. Aroha Samuels also provided a search report of shares held in the name of Pania Piwari.

[12] Submissions in response to the applicant were received from Andrea Piwari on 29 November 2024 and 3 March 2025, along with brief statements in support from Merle Samuels (mother of Andrea Piwari) and Elwyn Piwari (brother of Andrea Piwari).

[13] In those submissions, Andrea agreed with counsel for the applicant that it looks like a simple and obvious mistake occurred resulting in the omission of Charles' name from the list of successors to Albert. However, she contended, the omission may have been because of alleged financial misconduct on Charles' part against his whānau. When Kahukuranui's children made the gift passing the Māori land shares back to Albert's children, none of Albert's children were present. The implication was that is why none of the allegations Andrea made were in the Court minute.

[14] Andrea submitted that the succession order should not be amended until Duke's children have all passed. Andrea argued that her proposal will ensure that all the descendants' interests are looked after, while acknowledging the imbalance that was created by Charles' alleged financial misconduct creating liability for debt for Duke and his whānau.

[15] Andrea argued that the applicant does not state whether her application is supported by all 50 descendants of Charles, yet she claims they would be deprived if Andrea's timeline were imposed. Andrea also emphasised that support of the application from other members of her family did not negate her and her brother's opposition.

[16] Andrea also explained that attempts to engage in a tikanga manner with the applicant have been challenging. She argued that the applicant did not engage in the process of utu – attempts to restore balance, through accepting whānau narratives of trauma caused during her grandfather's time.

[17] Andrea also submitted that Pania should only receive a 10 per cent share of Albert's interests to reflect the fact that she has already received Māori land shares from her biological mother.

[18] A further submission from Aroha Samuels was received via email dated 4 March 2025. She supported the whānau narratives raised by Andrea.

Te Ture *The Law*

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

44 Chief Judge may correct mistakes and omissions

(1) On any application made under section 45 of this Act, the Chief Judge may, if satisfied that an order made by the Court or a Registrar (including an order made by a Registrar before the commencement of this Act), or a certificate of confirmation issued by a Registrar under section 160 of this Act, was erroneous in fact or in law because of any mistake or omission on the part of the Court or the Registrar or in the presentation of the facts of the case to the Court or the Registrar, cancel or amend the order or certificate of confirmation or make such other order or issue such certificate of confirmation as, in the opinion of the Chief Judge, is necessary in the interests of justice to remedy the mistake or omission.

[20] In *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)*, the principles to be applied in determining applications made pursuant to s 45 were listed as follows:³

(a) When considering s 45 applications, the Chief Judge needs to review the evidence given at the original hearing and weigh it against the evidence provided by the applicants (and any evidence in opposition);

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

- (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 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.

[21] Section 44 explicitly refers to situations where the Court has made an incorrect decision due to a flaw in the evidence presented, or in the interpretation of the law, and it is necessary in the interests of justice to correct its record. For this reason, s 45 applications must be accompanied by proof of the flaw identified, either through the production of evidence not available or not known of at the time the order was made or through submissions on the law.

[22] 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.⁴ This means that the applicant must establish on the balance of probabilities that there was a mistake or omission.

[23] The Court of Appeal has confirmed that the power under s 44(1) falls into two parts:⁵

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.

Kōrerorero

Discussion

[24] The issues for determination are:

- (a) Was an error made in fact or in law or in the presentation of the evidence to the Court which led to an error in the order complained of?
- (b) If so, is it necessary in the interests of justice to remedy the error by amending or cancelling the order?

Was an error made?

[25] All parties acknowledge that Charles's whānau should have been included in the gift granted by the children of Kahukuranui, although Andrea's acknowledgment also includes a request that vesting be deferred until all of Duke's children have passed. There is also a Court minute recording Duke's support for Charles' whānau to succeed recorded at 11 Te Waipounamu 230-239.

[26] Having reviewed the file, I also agree with counsel for the applicant that this was a simple error or omission in the relevant order made at 174 Napier MB 265-269 dated 5 December 2023.

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

⁵ *Inia v Julian* [2020] NZCA 423 at [10].

Is it necessary in the interests of justice to remedy the error?

[27] Taking into account the Preamble, ss 2 and 17, I accept that due to the error or omission on the part of the Court, the applicant and all the descendants of Charles have been denied their entitlement. I am in no doubt that it is in the interests of justice to correct the error or omission.

[28] The respondents have raised allegations that cannot be verified, so there is no basis to impose a deferral of the type contemplated by the respondents. Nor is there any tikanga basis that can be relied upon to justify deferral, given the lack of proof for the respondent's allegations.

[29] Therefore, the order pursuant to s 44 should be made.

Kupu whakataunga me ngā ōta

Decision & Orders

[30] The Court makes an order pursuant to s 44(1) of Te Ture Whenua Māori Act 1993 amending the minute and order made at 174 Napier MB 265-269 dated 5 December 2003 to an order under s 118/93 vesting the land held by the deceased, which was received from Albert Nuku Piwari into Sam Gerald Piwari, Duke Elwin Piwari, Charles Piwari and Pania Piwari equally.

[31] The order amends the successors recorded in the schedule to the following or their successors:

- Sam Gerald Piwari ¼
- Duke Elwin Piwari ¼
- Charles Piwari ¼
- Pania Piwari ¼

[32] The amended order in favour of Pania Piwari is made conditional on her demonstrating within three months a relationship to the deceased and the land. If she does

not do so, her entitlement is to be allocated one third each to Sam, Duke, Charles, or their successors.

[33] A further order is made pursuant to s 47(4) of Te Ture Whenua Māori Act 1993 making all other consequential amendments, including at 50 Te Waipounamu MB 60-65 dated 17 April 2018.

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

I whakapuaki i te 2pm i Te Whanganui-a-Tara, i te 3 o ngā rā o Paengawhāwhā i te tau 2025.
Pronounced at 2pm in Wellington on this 3rd day of April 2025.

C L Fox
CHIEF JUDGE