

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

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

**AP-20250000000431
CJ 2025/7**

WEHENG <i>Under</i>	Section 45, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Succession to Moetapapa Walmsley also known as Moe Tapapa Walmsley or Moe Tapapa
I WAENGA I A <i>Between</i>	MATHEW FRANCIS WALMSLEY, IAN JAMES WALMSLEY, KEITH ANTHONY WALMSLEY, HENARE (HENRY) EDWARD WALMSLEY, KIM ROBERT WALMSLEY, PAEKIRI ANETA VERCOE, DEREK PAUL WALMSLEY, AND LYNETTE MOANA WALMSLEY Ngā Kaitono <i>Applicants</i>
ME <i>And</i>	MAREE AROHA WALMSLEY Te Kaiurupare <i>Respondents</i>

Kōtitanga:
Hearing 10 September 2025, 2025 Chief Judge’s MB 1639-1654
 18 March 2026, 2026 Chief Judge’s MB 574-583
 (Heard at Wellington via zoom)

Whakataunga:
Judgment date 13 May 2026

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

Hei tīmatanga kōrero

Introduction

[1] This application, filed by Mathew Francis Walmsley, Ian James Walmsley, Keith Anthony Walmsley, Henare (Henry) Edward Walmsley, Kim Robert Walmsley, Paekiri Aneta Vercoe, Derek Paul Walmsley, and Lynette Moana Walmsley seeks an order pursuant to s 44 of Te Ture Whenua Māori Act 1993 (the Act) cancelling a succession order made at 239 Rotorua MB 24 on 12 November 1996 relating to the Māori land shares of Moetapapa Walmsley or Moe Tapapa Walmsley or Moe Tapapa (the deceased).

[2] The Preliminary Report and Recommendations (the Registrar's Report) dated 31 July 2025 sets out the background and is reproduced in full below.

Kōrero whānui

Background

Te rīpoata me tana tūtohunga mā tētahi tono i raro i te wehenga 45 o Te Ture Whenua Māori Act 1993 ki te Kaiwhakawā Matua

Preliminary report and recommendation on an application under section 45 of Te Ture Whenua Māori Act 1993 to the Chief Judge

He kupu arataki

Introduction

[1] This application filed by Mathew Francis Walmsley, Ian James Walmsley, Keith Anthony Walmsley, Henare (Henry) Edward Walmsley, Kim Robert Walmsley, Paekiri Aneta Vercoe, Derek Paul Walmsley and Lynette Moana Walmsley ("the applicants") seeks to amend a succession order at 239 Rotorua MB 24 on 12 November 1996 relating to the interests of Moetapapa Walmsley also known as Moe Tapapa Walmsley (Mrs) or Moe Tapapa (Mrs). The applicants are children of Moetapapa Walmsley.

[2] In summary, the applicants claim the 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 information relied upon by the Registrar or Judge to make a decision was factually incorrect.
- (b) The information that was factually incorrect is that 'Maree Aroha Walmsley' (Honor Maree Luke) was listed in the will of Moetāpapa Walmsley and the presumption was made that she was a natural child of Moetāpapa.

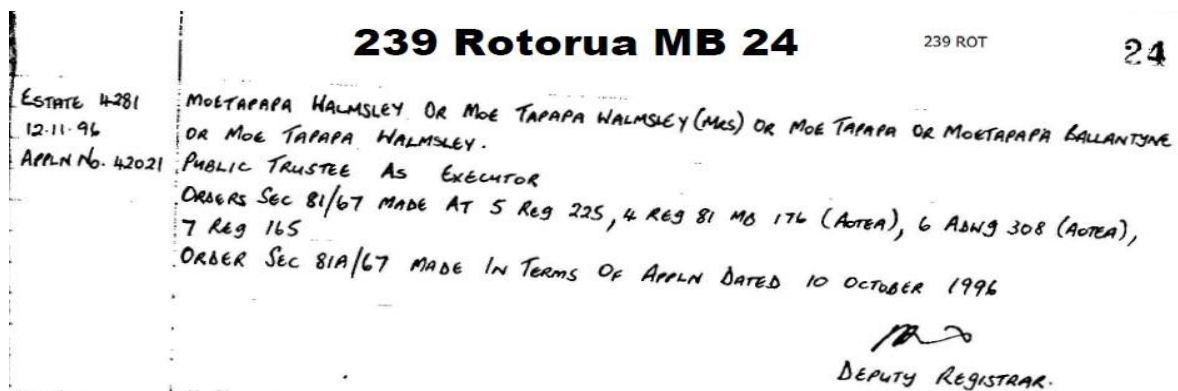
[3] The applicants claim that they have been adversely affected by the order. The application sets out that the "... *error has affected our whānau and will continue to affect future generations and it is in the interests of justice to correct that error, omission or mistake.*"

[4] The application does not state the specific amendment that is sought.

He kōrero tuku iho

Background

[5] The matter was heard by the Court at 239 Rotorua MB 24 on 12 November 1996 and the minute is partially reproduced as follows:



[6] The Court made orders relating to Moetapapa Walmsley also known as Moe Tapapa Walmsley (Mrs) or Moe Tapapa (Mrs) as follows:

Te whakatakotoranga o ngā poraka whenua:

Table of land blocks

Te rohe o Waiariki:

Te poraka Block name	Te kaihiwhi onāiane Current owner	Ngā hea The shares
Ngapuna A 66	Moe Tapapa Walmsley	1.00000
Whakarewarewa No.3 Sec. 1B Reserves	Estate of Moetapapa Walmsley or Moe Tapapa Walmsley or Moe Tapapa	0.72619
Haparangi A No. 2		0.33333
Haparangi A No. 4		0.46939
Haparangi A No. 7		2.75675
Rangatira 8A16		37.55000
Rangatira B617 & B618 Combined		0.35714
Rangatira E		0.67000
Paekarangi A No. 17		0.02381
Tahorakauri A1 Sec. 1		2.63906
Tauhara Middle No.4A No.1L No. 1C		4.73809

Tauhara Middle 4A2B1A & Tauhara Middle 4A2B1B	153.45000
Tauhara Middle 4A2B2C	20.00000
Rotokakahi	0.05318
Rotomahana Parekarangi Y	0.01488
Rotomahana Parekarangi Z	15.71428
Rotomahana Parekarangi 8	1595.46000
Pukeroa Oruawhata	0.09821
Te Papa-A-Ruamoa	0.14286
Okoheriki 2C 4C 3	0.42857
Rotomahana Parekarangi No. 2C7	0.09266
Ngapuna A73	3.21428
Ngapuna A 2 nd Residue	7.00000
Rotomahana Parekarangi 2C6	0.09266
Rotomahana Parekarangi No.6N Sec.2B	0.17860
Tumunui	46.71040
Waipaihihi Reserves	0.25000
Rangatira No.8A No. 17A	9.18000
Tauhara Residue No. 4A. No. 1A1	11.30952

Te rohe o Aotea:

Te poraka Block name	Te kaihiwhiwhi onāiane Current owner	Ngā hea The shares
Tauhara South 1	Moetapapa Walmsley or Ballantyne or Moe	0.05190
Opawa Rangitoto 2B	Tapapa Walmsley	34.78340
Te Makomako		12.33070
Tauranga Taupo 2B2M3B2C1		0.71430
Tauranga Taupo 2B2M3A		0.71400
Kaimanawa 3B2A		0.01780
Wharetoto No.3		0.00890

Te Whakao 3	0.07140
Te Whakao 3	0.00140
Kaimanawa 2B	0.01780
Tauranga Taupo Y	0.86790
Tauranga Taupo D2	0.03571
Tauranga Taupo F2	0.71430
Tauranga Taupo 1B2F	0.03570
Tauhara South B2	0.00070
Kaimanawa 1F	0.13090
Tauranga Taupo 2B2M5	1.19050
Whataroa (Taupo)	0.35720
Te Kopiha	0.17860
Turutururoa	0.59530
Tauranga Taupo 2BM1	0.47620
Opawa Rangitoto 2G (Part)	1.21428

Te whakatakotoranga o ērā e āhei ana ki te whiwhi:

Table of successors beneficially entitled

	Te ingoa Name	Te ira Male/Female/ Gender Diverse	Te ōwehenga Proportion
1	Derek Paul Walmsley	M	1/9
2	Henry Walmsley	M	1/9
3	Ian James Walmsley	M	1/9
4	Keith Anthony Walmsley	M	1/9
5	Kim Robert Walmsley	M	1/9
6	Lynette Moana Walmsley	F	1/9
7	Maree Aroha Walmsley	F	1/9
8	Matthew Francis Walmsley	M	1/9
9	Packiri Aneta Walmsley	F	1/9

Ngā kōrero taunaki

Supporting or other information

[7] The applicants have provided the following documents in support of their application:

- (a) A copy of the probated will of Moetapapa Walmsley dated 24 November 1980.
- (b) Letters in support from the following persons:
 - i. Julie Anaha Nathan (first cousin) dated 17 January 2025;
 - ii. Bella Moke (first cousin) dated 20 January 2025; and
 - iii. Linda Northcroft (second cousin) dated 22 January 2025.

Te rangahau a te kooti

Court research

The record shows:

[8] The succession order complained of, made pursuant to section 81A of the 1967 Act, vested the deceased's interests in terms of the Will dated 24 November 1980 in all nine of her children equally.

[9] Clause 4 of Moetapapa Walmsley's Will states as follows:

4. I GIVE DEVISE AND BEQUEATH the whole of my estate both real and personal of whatsoever nature and wheresoever situate unto my trustee UPON TRUST to pay thereout my just debts funeral and testamentary expenses and all death duty payable in respect of my estate and to stand possessed of the residue for such of them my children KIM ROBERT WALMSLEY LYNETTE MOANA WALMSLEY DEREK PAUL WALMSLEY IAN JAMES WALMSLEY PAEKIRI ANETA WALMSLEY MATTHEW FRANCIS WALMSLEY MAREE AROHA WALMSLEY and the said Henry Walmsley and Keith Anthony Walmsley as are living at my death and if more than one in equal shares.

[10] Probate of the deceased's Will was granted by the High Court at Rotorua on 23 July 1982 (Probate No: P550/82).

[11] The succession application filed by the Public Trustee as executor of the estate, dated 10 October 1996, states that:

"Pursuant to the Will of the deceased her children KIM ROBERT WALMSLEY, LYNETTE MOANA WALMSLEY, DEREK PAUL WALMSLEY, IAN JAMES WALMSLEY, PAEKIRI ANETA WALMSLEY, MATTHEW FRANCIS WALMSLEY, MAREE AROHA WALMSLEY, HENRY WALMSLEY and KEITH ANTHONY WALMSLEY are equally entitled to her Māori Freehold Land Interests."

[12] Section 100 of Te Ture Whenua Māori Act 1993 (the Act) states as follows:

100 Application of this Part

- (1) Subject to subsection (2), this Part applies to all estates of deceased persons (whether or not Maori) comprising in whole or in part any beneficial interest in Maori freehold land.
- (2) This Part does not apply—
 - (a) where administration of the estate of the deceased owner has been granted before the commencement of this Act; or
 - (b) in respect of any beneficial interest in Maori freehold land, owned by the deceased person at his or her death, that has been vested in the person or persons entitled to the interest before the commencement of this Act; or
 - (c) to the estate of a person who dies before 1 July 1994 leaving a will executed before the commencement of this Act;—

and in any such case the law applying immediately before the commencement of this Act shall continue to apply as if—

 - (d) this Act had not been passed; and
 - (e) the Maori Land Court may make an order vesting in the persons entitled thereto the undivided beneficial freehold interests in common in Maori freehold land regardless of the value of the interests in land affected by the application.

[13] In terms of section 100(2)(c) of the Act, as this deceased died on 28 March 1982 and her Will is dated 24 November 1980, the previous succession laws apply.

[14] Such provisions are section 81A of the 1967 Act which states:

81A. TRANSFER OF INTEREST IN MAORI LAND FROM ADMINISTRATOR TO PERSONS BENEFICIALLY ENTITLED—

- (1) Where any beneficial freehold interest in Maori freehold land is held by any person as the administrator of any estate by virtue of an order made under section 81 of this Act that person may apply to the Registrar for, and the Registrar may make, an order vesting the interest in the person or persons beneficially entitled thereto.
- (2) The provisions of subsections (3) and (4) of section 81 of this Act, so far as they are applicable and with the necessary modifications, shall apply with respect to applications and orders made under subsection (1) of this section.
- (3) 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.

s 81A inserted by s 20(1) of the Maori Purposes Act 1976.

[15] Section 81 of the 1967 Act states:

81. TRANSMISSION TO ADMINISTRATOR OF INTEREST IN MAORI LAND—

- (1) This section shall apply to the beneficial freehold interests in Maori freehold land comprised in the estate of any person who dies after the commencement of this Act.
- (2) On application by the administrator of an estate comprising interests to which this section applies, the Registrar may make an order vesting those interests in the administrator.
- (3) An application to the Registrar under subsection (2) of this section shall be dealt with by the Registrar without notification or appearance of any party, and, subject to the provisions of this section, the Registrar shall make the order sought as a matter of course.
- (4) Any order made by the Registrar under subsection (2) of this section shall take effect and may be registered under the Land Transfer Act 1952 as if it were an order of the Court.

Te utunga nā te putanga o te ōta

Payments made because of the order

[16] Details of payments made because of the order are yet to be sourced.

Ngā āhuatanga i rararu ai

Areas of difficulty

[17] There are no areas of difficulty to note.

Āe rānei, he take o tana haere ki tētahi kootitanga

Consideration of whether matter needs to go to hearing

[18] It appears an error was not made.

[19] In accordance with the Court's direction on 26 February 2025, the application has been set down for hearing via Zoom on Wednesday 10 September 2025 at 11.00am.

Te tūtohunga hei whai

Recommendation of course of action to be taken

[20] I recommend that:

- (a) parties be given 28 days in which to comment or respond in writing to the draft submission and this report and recommendation that is contained within;
- (b) the application be heard via Zoom on Wednesday 10 September 2025 at 11.00am; and
- (c) the application be dismissed as there was no error in the application of the applicable law.

Natalie Scott

Kairēhita

Te Whakamaene

31 July 2025

[3] A copy of the above Registrar's Report was distributed to parties on the same date.

Te Nohoanga a Te Kooti

The hearing

[4] On 9 June 2025 at 2025 Chief Judge's MB 866-867 the application was adjourned to allow counsel more time to gather information. It was then heard on 10 September 2025 when it was noted that the applicants had sought mediation with the respondent, Maree Walmsley, but Maree refused. Counsel for the applicants, Rohario Murray, also filed an

affidavit for Lynette Walmsley and accompanying submissions, which were presented at the hearing. The applicants, the respondent and Florence Kiwara were present at the hearing.¹

[5] The application was adjourned to 10 December 2025 to enable the respondent time to obtain legal advice. Her counsel subsequently sought a further adjournment. On 17 March 2026 counsel for the respondent, Ms Barker, filed an affidavit for the respondent.

[6] The matter was last heard at 2026 Chief Judge's MB 274-283 on 18 March 2026 where it was adjourned for my written judgment to be issued.

Ngā kōrero a te Kaitono

Submissions and evidence for the applicant

[7] Lynette Moana Walmsley recounted the origins of the Walmsley whānau noting the deceased was born on 27 December 1936. She affiliated to multiple iwi/hapū of Te Arawa waka, including Tūhourangi/Ngāti Wāhiao. In 1979, while working at a Department of Social Welfare children's home, the deceased brought the respondent into the whānau as a foster child. Maree was approximately three and a half years old. At the time the deceased was terminally ill. Maree was raised with the whānau until she was older. Later she travelled to Australia through the Department of Social Welfare where she reunited with her natural mother, and later still she met her natural father and siblings.

[8] On 24 November 1980 the deceased signed a will. Clause 4 left the residue of her estate to "my children" and listed nine names including the respondent. Only eight were natural children. Maree was a foster child of the deceased, born in Australia, integrated into their whānau as a ward of the state but not as a whāngai. The deceased had one other natural child, John West, who was adopted out of the whānau.

[9] The deceased passed away on 28 March 1982 and a grant of probate was made on 23 July 1982. On 10 October 1996 the Public Trustee, as executor of the estate, applied for succession orders so that the eight natural children and Maree Walmsley could succeed. On 12 November 1996 succession orders were made under s 81A of the Māori Affairs Amendment Act 1967 recorded at 239 Rotorua MB 24. There was no evidence that the

¹ 2025 Chief Judge's MB 1639-1654 (2025 CJ 1639).

Court was told that the respondent was a foster child, that she used a different legal name, or that she had no relevant whakapapa to the deceased. Effectively, there was no inquiry into her status because the Public Trustee did not disclose this information.

[10] The applicants submit that the succession orders were made with incomplete information and without notice to the remaining natural children of the deceased. They submitted that the 1980 will of the deceased referred to the “children” of the deceased. Foster children or whāngai could not succeed as a member of this class. At law the term “children” recognised only natural or adopted children. The respondent, even though named in the will, had no legal status as a child of the deceased. She was never adopted and had no shared whakapapa with the deceased. Therefore, her inclusion in the succession order was an error in fact and in law. This position is supported by the tribal tikanga of Tūhourangi/Ngāti Wāhiao that was declared at a hui held on 3 August 2025, which affirmed that succession should remain with uri and those who whakapapa to the land. The respondent was defined in tikanga terms as a tamaiti taurima, a child raised with care but outside the whakapapa group.

[11] Counsel for the applicants, concluded that it was necessary in the interests of justice to cancel the order made at 239 Rotorua MB 24 because it allowed the respondent to succeed to the deceased. This is manifestly unjust and not to cancel the succession orders would allow a person who is not a child of the deceased to succeed contrary to tikanga and the law. Secondly, cancellation is necessary in the interests of justice because the succession order complained of, and two subsequent orders for succession to additional interests, have excluded the applicants’ rights as lawful successors to the interests the respondent has acquired in over 65 blocks since 1996.² This has caused tension and hurt within the whānau over their whenua tuku iho and is contrary to their tikanga. All of these factors have contributed to the ongoing hurt and mamae felt by the whānau.

[12] In reply to submissions from counsel for the respondent, Ms Murray reiterated that the applicants do not dispute the history of the respondent’s place in the whānau, rather the issue is whether the 1996 order correctly applied the legal meaning of “my children” in

² 82 Taupo MB 110 (82 TPO 110); 289 Waiariki MB 95 (289 WAR 95).

relation to succession to Māori land. It was the case for the applicants that the order was incorrectly made, because it depended on a legal and factual error.

[13] Furthermore, the attempt to adopt the respondent was never completed. Ms Murray submitted that only legal adoptions can validate succession.

[14] Letters of support for the applicants were received from Bella Moke, Julie Anaha Nathan, and Linda Northcroft.

Ngā kōrero a ngā Kaiurupare

Submissions of the Respondents

[15] The respondent contends that she was a whāngai and that the deceased and her husband did try to adopt her. Her birth mother, however, refused to allow the adoption, and the respondent produced official documents verifying this. Maree also produced evidence demonstrating that she was well cared for and loved by the deceased and her husband.

[16] In her brief of evidence dated 17 March 2026, she went further and stated that she was raised by the deceased as her daughter. She then discussed her background from the time she was born in Australia on 31 July 1976. She noted how she came to be part of the Walmsley whānau, and how she legally changed her name to Walmsley. She also produced the official documents associated with her movement into the Walmsley household and described how the relationship with the deceased was a close and loving one.

[17] Maree submits that she had a good relationship with her siblings but that she does not agree with the application to the Chief Judge. She claims to be at a loss to understand why her siblings are challenging her role in the whānau. Maree also submitted a statement from Mackenzie Moke regarding the tikanga relevant to her place in the whānau.

[18] She also produced statements of support from Karen Mason, Jessica Moke, and a character reference from her whāngai brother Matt Walmsley. She concluded that love is not necessarily defined by blood but by actions.

[19] The letter from Mackenzie Moke stated that, to her, whāngai were a “permanent sacred commitment” that was tapu. She noted that Maree’s birthdays, christening, etc are recorded in her grandfather’s diaries. The deceased was a sister to Ms Moke’s grandfather.

[20] Counsel Ms Barker submitted that the case for Maree was that the deceased and her husband cared for Maree from the time she was three years old. They attempted to legally adopt her but were unable to. For close to 28 years, the order for succession made in 1996 has not been challenged.

[21] Maree concluded that the deceased intended to leave a portion of her estate to her, and this shows there was an intention to widen the term “my children” to clearly include Maree. As such there was no error in the 1996 succession order arising from the application of the law. It follows that it is not necessary in the interests of justice to upset the succession order given the order was made in accordance with the law at the time.

Ngā Ture The Law

[22] The Chief Judge’s jurisdiction to amend or cancel an order of the Māori Land Court is set out in s 44(1) 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.

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

- 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 applicants (and any evidence in opposition);

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

- Section 45 applications are not to be treated as a rehearing of the original applications;
- The principle of *Omnia Praesumuntur Rite Esse Acta* (everything is presumed to have been done lawfully unless there is evidence to the contrary) applies to section 45 applications. Therefore, in the absence of a patent defect in the order, there is a presumption that the order made was correct;
- Evidence given at the time the order was made, by persons more closely related to the subject matter in both time and knowledge, is deemed to have been correct;
- The burden of proof is on the applicant to rebut the two presumptions above; and
- As a matter of public interest, it is necessary for the Chief Judge to uphold the principles of certainty and finality of decisions. These principles are reflected in 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.

[24] 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.

[25] As stated in *Tau v Nga Whānau o Morven and Glenavy – Waihao 903 Section IX Block*, the Chief Judge must exercise their jurisdiction by applying the civil standard of proof of the balance of probabilities, having regard to that standard's inherent flexibility that takes into account the nature and gravity of the matter at issue.⁴ This means that the applicant must establish on the balance of probabilities that there was a mistake or omission.

[26] 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 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.”

⁴ *Tau v Nga Whānau o Morven and Glenavy – Waihao 903 Section IX Block* [2010] Māori Appellate Court MB 167 (2010 APPEAL 167) at [61].

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

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

[27] 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?

[28] The applicants essentially submitted that an error occurred due to an omission in the presentation of facts. The Public Trustee did not disclose the applicant was a foster child and had not been legally adopted.

[29] As a result, a legal error was made by the Registrar. He did not apply the Māori Affairs Act 1953 (the 1953 Act) or the Adoption Act 1955 to this case. Ms Murray noted that in *Whittaker v Māori Land Court* the Court of Appeal confirmed that under this legislation whāngai children had no right to succeed to Māori Land unless formally adopted.⁶ This case concerned the effects of the Native Land legislation of 1909 and 1931. The effect of the Māori Affairs Act 1953 on whāngai was later considered in *Napia v Toia*.⁷ I note these cases concerned succession on intestacy (successions where there was no will).

[30] Ms Murray contended this position applies in this case and she argued the law concerning recognition of whāngai children who were not legally adopted remained unchanged until the enactment of Te Ture Whenua Māori Act 1993. Ms Murray also noted s 16(2)(d) of the Adoption Act 1955, which provides that an adoption made after the

⁶ *Whittaker v Māori Land Court of New Zealand* [1997] NZFLR 707 (CA).

⁷ *Napia v Toia - Estate of Te Wiremu Napia* [2016] Chief Judge's MB 420 (2016 CJ 420)

testator's death does not affect succession rights under a will, unless the will expressly provides otherwise. It was further submitted that the deceased's will did not contain such provision. Ms Murray contended that while Maree was named in the will as one of the deceased's children, the use of the term 'my children' in the relevant clause of the will created "a class gift, meaning the benefit is intended for all individuals who fall within the class of "my children" as legally defined at the date of death". Ms Murray submitted that "[t]he use of the possessive "my" reinforces that the class is limited to the testator's legally recognised children."

[31] In response, Ms Barker for the respondent rightly pointed out that applications filed under ss 81 and 81A of the Maori Affairs Amendment Act 1967 (the 1967 Act) were processed and ordered by the Registrar, not the Court. These provisions provide for the transfer of interests to an administrator following a grant of probate by the High Court, and then from the administrator to those entitled.

[32] Ms Barker also submitted that the Public Trustee knew that Maree was raised by the deceased but was not a natural child. That office knew that the Walmsley's tried to adopt her. The Public Trustee also acknowledged Maree as a beneficiary of the deceased's estate.

[33] Ms Barker further submitted that the term "my children" in the will, required that I establish the testator's intention. She noted that the deceased had taken steps to legally adopt Maree at the time that her will was written, and submitted that:⁸

there was no reason at the time the [will] was prepared to anticipate that Moe Tapapa would pass away before the adoption was finalised. The absence of express wording [addressing] succession rights in the event the adoption was incomplete, does not undermine the clear intention evident from the surrounding circumstances, namely that Moe Tapapa regarded and intended Maree to be treated as her child.... On this basis, it is clear that Moe Tapapa intended to leave a portion of her estate to Maree, and this shows that there is a widening of the term "my children" to clearly include Maree.

Discussion

[34] The starting point of my analysis must be s 110 of the 1953 Act, as amended by s 75 of the 1967 Act. That provision provided that:

⁸ 2026 Chief Judge's MB 574-583 (2026 CJ 574-583) at 581.

Subject to the provisions of this Act, all the provisions of the law relating to the execution, attestation, construction, validity, and effect of the will of a European shall apply to the execution, attestation, construction, validity, and effect of the will of a Maori.

[35] In this case, the evidence demonstrates that Maree was considered by the deceased to be one of her children. I also agree that the deceased contemplated that Maree would be included in the distribution of her estate pursuant to her will, and accordingly named her in her will as one of her successors, under the group specified as “my children”.

[36] Despite that being the clear desire and intention of the deceased, that does not render it lawful for the respondent to succeed to the deceased's Māori land shares. Rather that depends on how the law relating to wills defined the term “children” for the purposes of succession.

[37] In *Keelan v Peach* the Court of Appeal found the definition of “children” in the context of a claim under s 3 of the Family Protection Act 1955 did not extend to whāngai or foster children, notwithstanding tikanga-based relationships. As a part of this judgment, the Court considered the meaning of the word ‘child’ under successive pieces of legislation dealing with family protection.⁹ The Court found that the history of the legislation suggests the meaning of “children of the deceased” refers to biological children so long as, in the language of the day, they were legitimate or had been legitimated by subsequent marriage. It includes adopted children; but customary relationships, as with Māori customary marriage and de facto relationships generally, required express statutory inclusion. Importantly to the matter at hand the Court of Appeal noted, albeit in obiter, that:¹⁰

[42]...The issue here is whether Māori customary adoption makes a whāngai a child of the customary parent *for the particular purpose of being eligible to apply under s 3 of the 1955 Act*. A negative answer to that issue does not deny the relevance of the Maori customary adoption for other purposes under the 1955 Act. It may well be significant in the assessment of moral claims, particularly if the deceased names a whāngai as a beneficiary in the will. The material before us does not begin to support a customary base for wider recognition which would influence the interpretation of the expression “children of the deceased” under the 1955 Act. In any event, the legislative position so far as status in respect of Maori customary adoptions are concerned has been clear beyond any doubt since 1909. It is also clear that the wording and history of the list of eligible claimants does not allow whāngai to come within the scope of “children”.

⁹ *Keelan v Peach* [2003] 1 NZFLR 589; [2003] 1 NZLR 589.

¹⁰ At [42].

[38] Effectively the Court of Appeal upheld the lower court's decision, in which the High Court noted that when jurisdiction to deal with family protection claims rested with the Native Land Court, by amendment to the Native Land Act 1909, "children" were defined as "natural children" (in other words, biological children). The Māori Affairs Act 1953 did not include such a definition. The definition of 'children' within the 1909 and 1953 Act were found to be, at best, equivocal and, if anything, contrary to any implied inclusion of whāngai. Further, while the High Court accepted that a testator may owe a strong moral duty to whāngai adopted in accordance with tikanga Māori, it drew a clear distinction between moral obligation and legal status under the acts in force at that time. As such the High Court stated that any extension of the definition of "children" in the context of a family protection claim to include whāngai is a matter for legislative intervention, not judicial interpretation.¹¹ The *Keelan* decisions, while looking at the definition of 'children' in the context of a family protection claim rather than interpretation of a will, nonetheless provide valuable insights into how the term 'children' was defined in law.

[39] With respect to the term 'children' in a will, the High Court in *Re Walker* considered a testamentary gift to "such of my children as may survive me", with a substitutionary provision in favour of the issue of any child who predeceased her. One child died before the testator, leaving a daughter who was then adopted by her mother and stepfather. The Court held that the effect of that adoption severed the child's legal relationship with the testator, with the consequence that she was no longer a part of the issue class for the purposes of the will and was therefore excluded from entitlement under the substitutionary gift.¹² The Court also made the obiter observation that:

By similar process if any child of the testatrix had adopted a child, that child would be seen as issue of a child of the testatrix if its adoptive parent, being a child of the testatrix, predeceased her.

[40] This is consistent with the previous approach in this Court that whāngai children could not succeed on intestacy to their whāngai parents. As seen in *Whittaker* under the 1953 Act, whāngai children could not be recognised as children of their whāngai parents for the purposes of intestate succession unless they were legally adopted under the Adoption Act 1955.¹³ That decision focussed on the 1909 to 1931 Native Land Acts. Subsequently in

¹¹ *Keelan v Peach* [2002] NZFLR 11; (2002) 22 FRNZ 11, at [17] and [19].

¹² *Re Walker (deceased)* [1973] 1 NZLR 449 (SC) at 7.

¹³ *Whittaker v Māori Land Court of New Zealand* [1997] NZFLR 707 (CA).

Napia v Toia it was found that this position persisted through the 1953 and 1967 Māori Affairs legislation.¹⁴ *Sandys* then confirmed that it was not until 1993 that the Māori Land Court had jurisdiction to award beneficial freehold interests to a whāngai on intestacy.¹⁵

[41] In this case, despite being named as a child of the deceased, the respondent was still a whāngai when the deceased passed. The respondent was not an adopted or natural child of the deceased. The case law discussed above does not support the respondent's position that the order complained of should be upheld. Nor did the Maori Affairs Act 1953 and the Adoption Act 1955. Section 80 of the Maori Affairs Act 1953 and s 19 of the Adoption Act 1955 made it clear that customary Māori adoptions were of no legal effect for succession purposes. Therefore, she should not have been included in the succession orders made by the Court.

[42] In my view the Public Trustee had an obligation to advise the Registrar that the respondent was not a natural child of the deceased and that she was not formally adopted. This was an omission in the presentation of facts leading to an error of law. In fact, given the Public Trustee knew all this information, his representative should have advised the Registrar.

[43] To be clear, I find there was an error made due to the omission in the presentation of facts to the Registrar.

Natural Justice Argument

[44] Ms Murray for the applicants submitted that in addition to her main arguments, there was a fundamental breach of natural justice, as the natural children did not receive notice, thus the applicants were denied the right to be heard.

[45] I note s 81 of the Maori Affairs Amendment Act 1967 (the 1967 Act), relates to the transmission to the administrator of the deceased's estate. In this case the administrator was the Public Trustee. Section 81(3) of the 1967 Act provided that the Registrar was to make the order as a matter of course "without notification or appearance of any party..." Similarly,

¹⁴ *Napia v Toia – Estate of Te Wiremu Napia* [2016] Chief Judge's MB 420 at [30].

¹⁵ *Sandys — Estate of Hinehou Te Reweti* [2004] Chief Judge's Minute Book 8 (2004 CJ 8).

s 81A of the 1967 Act authorised the administrator of the deceased's estate, the Public Trustee, to apply for an order vesting the land interests in the persons beneficially entitled under the will. Section 81A(2) makes it clear that s 81(3) applied "as far as applicable and with any necessary modifications". So again, notice was not required. Therefore, the natural justice argument cannot prevail in this case due to the effects of s 81(3) and s 81A(2).

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

[46] Taking into account the Preamble, s 2 of the Act, and the unique circumstances of this case, I consider it is necessary in the interests of justice to remedy the error.

[47] First, because the deceased's land shares are taonga tuku iho as described in the Preamble of the 1993 Act. Those interests should remain in the hands of the owners, their whānau and their hapū and in the hands of those who whakapapa to that land.

[48] Second, because it is consistent with the retention principle outlined in the Preamble.

[49] Third, because it is my duty to facilitate and promote this outcome as far as is possible as required by s 2.

[50] The respondent in this case is not of the preferred class. She acquired her shares without all the facts being advised to the Registrar. This occurred under outdated legislation, which gave limited recognition to the importance of retaining these land interests in the hands of the owners, their whānau and hapū. While the respondent has been raised as a member of the Walmsley whānau, she only spent a limited number of years with the deceased before the deceased passed away. I do not see how justice is served by finding in her favour. Rather, I find it is necessary in the interests of justice to find for the applicants.

Kupu whakataunga *Decision*

[51] I find there was an error made by the Registrar and that it is necessary in the interests of justice to remedy the error.

Nga Ōta
Orders

[52] I make an order under s 44 of Te Ture Whenua Māori Act 1993 cancelling the succession orders made and recorded at 239 Rotorua MB 24 on 12 November 1996.

[53] A further order is made pursuant to s 47(4) authorising consequential amendments to the record by cancelling all subsequent orders for succession to the additional interests of the deceased.

[54] This means that the applicants will need to reapply for succession to the deceased. In doing so they should file the High Court's grant of probate and a copy of this judgment. The respondent may apply to be recognised as a whāngai of the deceased, although she should be aware the applicants have the right to contest such an application. Both matters should be dealt with at the same time by the Court.

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

I whakapuaki i te 5.00 pm i Te Whanganui-a-Tara, i tekau mā toru o ngā rā o Haratua i te tau 2026.

Pronounced at 5.00 pm in Wellington on this 13th day of May 2026.

C L Fox
CHIEF JUDGE