

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

AP-20230000019625
A20140007375
CJ 2014/17

WĀHANGA <i>Under</i>	Section 45, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Oue 2B 2C
NĀ <i>By</i>	BEAU WILSON Te Kaitono <i>Applicant</i>

Nohoanga: 26 March 2024, 2024 Chief Judge's MB 396-407
Hearing 19 June 2024, Chief Judge's MB 1369-1383
(Heard at Wellington via zoom)

Whakataunga: 28 January 2025
Judgment date

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

Hei tīmatanga kōrero

Introduction

[1] This application was filed by Beau Wilson on 13 June 2014. The application seeks to cancel a vesting order made at 18 Whangarei MB 244-247 on 5 July 1939 (the vesting order). The application also makes reference to a number of other orders made as a consequence (of the order complained of).

[2] The application sets out that the order vesting a portion of the shares of Peri Matiu Pou, Te Rapunoa Matiu Pou and Ahenata Matiu Pou in the Oue 2B 2C block in Hapeta Hau by gift, was erroneous because the minute incorrectly stated the relationship of the donors to donee. The minute records that Hapeta Hau is a first cousin of Peri Pou. Hapeta Hau was the brother of Peri Pou's mother Maata Hau. The applicant contends that this is not correct.

Kōrero whānui

Background

[3] The Registrar's Preliminary Report and Recommendation (the Report) dated 24 February 2024 sets out the background to this application. The Report is reproduced in full as follows:

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

Introduction

1. This application has been filed by Beau Wilson ("the applicant") and seeks to cancel a vesting order made at **18 Whangarei MB 244-247 dated 5 July 1939** in respect of the interests gifted to Hapeta Hau in Oue 2B2C (or Oue 2B3F or Oue 2B3A5) ("the order complained of").
2. The application also refers to other respective orders made as a consequence (of the order complained of). The other respective orders are numerous and will be addressed later in this report.
3. As far as can be ascertained, the application does not record specifically how the applicant is adversely affected by the order complained of. I note that the application has been filed in the format of a submission as opposed to being the prescribed application form. I note that the applicant has filed a letter in support that is attached to the application as appendix A4. That letter includes the following:

"Having no such legal footing on our Tupuna Whenua has affected me greatly, as I do not have the luxury of my descendants being raised on any such ancestral lands."

"I am prejudicially affected by the redirection of such ancestral lands..."

4. The applicant specifically addresses the order complained of, being the vesting order that transfers the shares of Peri Matiu Pou, Te Rapunoa Matiu Pou and Ahenata Matiu Pou in Oue 2B 2C to Hapeta Hone Hau by way of gift, at paragraphs 10 to 16 of the application. The error that the applicant notes in relation to that order is that the relationship between the donors and donee is not correct. The minute outlines that Hapeta Hau is the first cousin of Peri Pou as Hapeta Hau is the brother of Peri Pou's mother Maata Hau. The applicant alleges that this is not correct.

Concise history of Order sought to be cancelled

5. At **18 Whangarei MB 246 dated 5 July 1939**, the Court made an order pursuant to section 163(9) of the Native Land Act 1931 vesting part of the shares of Peri Matiu Pou, Te Rapunoa Matiu Pou and Ahenata Matiu Pou in Oue 2B 2C in Hapeta Hone Hau by way of gift.
6. The Court minute, which is contained in 18 Whangarei MB 244-246 sets out the following:

Peri Matiu Pou (of): I represent the successors to Matiu Pou (deceased) in these three blocks.

The family wish to make a gift of one acre to our first cousin, Hapeta Hone Hau, brother of our mother, Maata Hau.

The Board of Native Affairs has arranged a new house for Hapeta.

I ask that the gift of one acre for Hapeta Hau come out of 2B 2C in south side of road on the V-shaped corner next to 2B 3, so as to enable it to be added on to 2B 3 and so provide a house site of the ridge.

Originally it was intended to put Hapeta in 2B 2A or 2B 2B on north side of road, but this was found to be too damp a locality for a house.

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I am authorised to speak for my brother, Rapunoa, who lives at Parakao. He was present yesterday and agreed, but is not here today.

The other successor, Te Aurere, is present.

Te Aurere Matiu Pou (sworn): I agree to this gift of one acre to Hapeta – to come out of 2B 2C. I agree also to an adjustment with the 2B 3 owners to give more frontage to 2B 3 and permit of Hapeta getting a home on the slope.

Peri Matiu Pou, Te Aurere Matiu Pou: We ask that in addition to the one acre for a Hapeta to include a house site on 2B 3 ridge, we ask for a further area of 2B 3 ridge to provide house sites for ourselves as well. We really need enough area in 2B 3 to provide house sites for Pou, Te Paparoa and Te Aurere.

We agree to give up part of 2B 2C to 2B 3, in return for house sites on 2B 3.

This means that we offer extra road frontage to 2B3 out of 2B 2C in return for building sites on 2B 3 for the owners of 2B 2C and Hapeta Hone Hau.

(No objections to the gift or to Consolidation adjustments mentioned.)

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Eramiha Mokena: Nau Inia Whare should represent the owners of 2B 3. Unfortunately he is up in the bush, and apparently did not receive the notice.

Court: Court approves of gift of one acre in Oue 2B 2C to Hapeta Hone Hau and out of interest of Matiu Pou's successors, and directs that order issue accordingly.

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

7. In support of the application the applicant has provided the following:

a) Nine Letters from:

- i. Loretta Wilson, (daughter of Rosie Curry),
- ii. Helen Wilson (daughter of Shepherd Wilson),
- iii. James Wilson (child of Reo and Poukapua Puru Wirthana Mau),
- iv. Beau Wilson (child of Reo and Poukapua Puru Wirthana Mau),
- v. Bill Tama Pawa (child of Reo and Poukapua Puru Wirthana Mau),
- vi. Erina Wilson (child of Reo and Poukapua Puru Wirthana Mau),
- vii. Tahu Wilson (child of Reo and Poukapua Puru Wirthana Mau),
- viii. Tangiwai Wilson (child of Reo and Poukapua Puru Wirthana Mau), and
- ix. Joanne Wilson (child of Reo and Poukapua Puru Wirthana Mau).

b) List of relevant Court minutes:

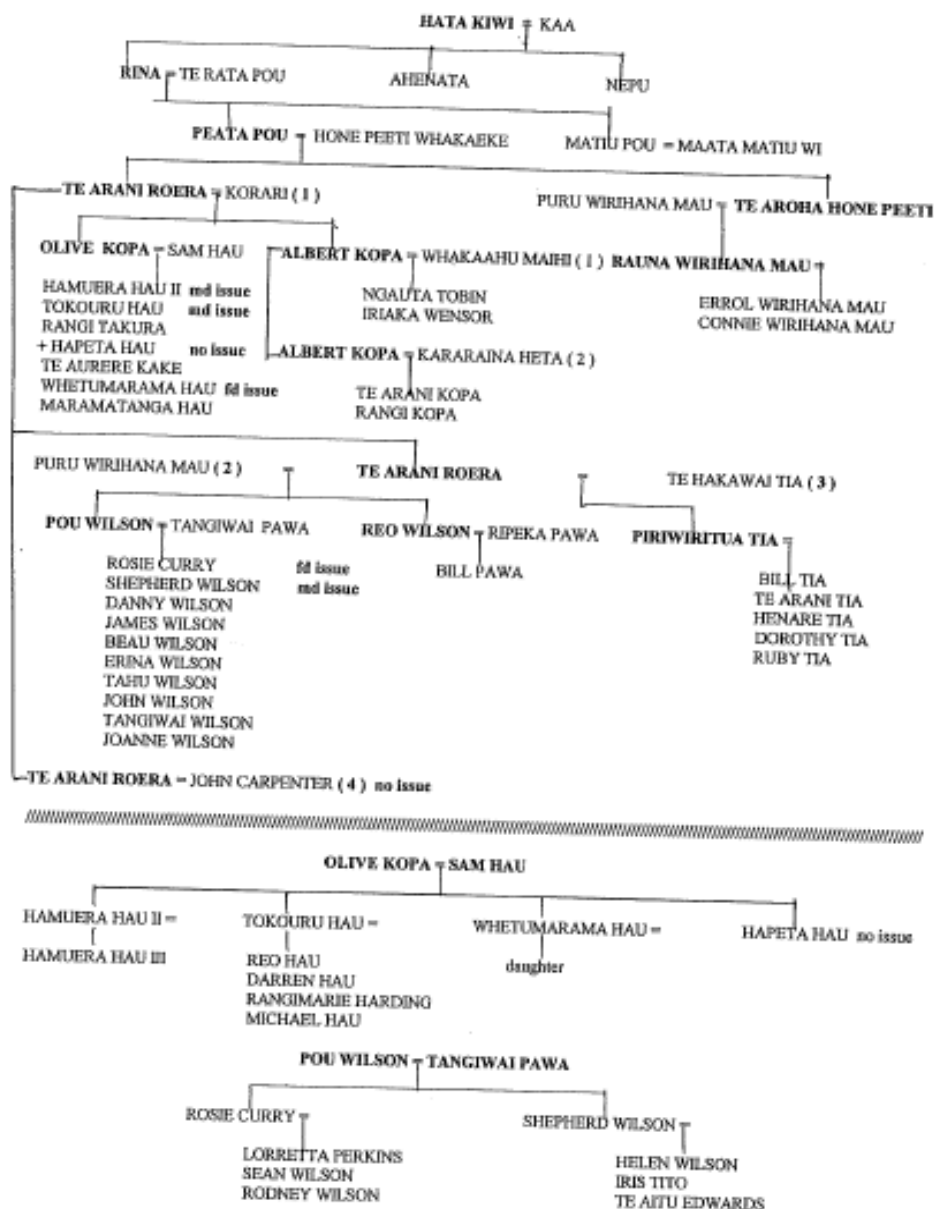
i.	18 WH 145-146	5 June 1938	Oue 2B2C
ii.	18 WH 237-243	4 July 1939	Oue 2B2C
iii.	18 WH 244-24	5 July 1939	Oue 2B2C
iv.	18 WH 352-354	22 August 1939	
v.	18 WH 359-362	22 August 1939	Oue 2B3F
vi.	12 WH 154-155	4 November 1916	Oue 2B2
vii.	13 WH 36-37	26 June 1918	Oue 2B2A, 2B2B, 2B2C
viii.	13 WH 192	29 November 1920	Oue 2B3
ix.	22 WH 236	11 October 1945	Oue 2B3F
x.	22 WH 133	11 June 1946	
xi.	24 WH 44	12 May 1948	Oue 2B2C
xii.	25 WH 49-54	31 August 1949	Oue 2B3A5
xiii.	29 WH 96	6 January 1957	
xiv.	30 WH 14	15 April 1958	Oue 2B2B2
xv.	43 WH 183	7 September 1967	Maungapohatu South 1A6C
xvi.	3 RW 161	1 May 1968	
xvii.	44 AT 157-158	6 June 1968	
xviii.	7 AT 345-346	25 March 1976	
xix.	9 KH 289-294	5 July 1976	
xx.	63 WH 190	7 February 1985	Oue 2B3A5
xxi.	63 WH 227-228	12 April 1985	Oue 2B3A5
xxii.	63 WH 313	10 May 1985	Oue 2B3A5
xxiii.	1 AT(S) 81	23 June 1986	
xxiv.	1 WH(S) 318	3 July 1989	
xxv.	2 AT (S) 324-325	30 July 1990	
xxvi.	3 AT(S) 21	14 December 1990	
xxvii.	73 WH 43-44	30 July 1992	Oue 2B3A5
xxviii.	76 WH 203	28 April 1994	
xxix.	5 AT(S)212	22 September 1997	
xxx.	28 AT 60-62	23 May 2000	Oue 2B3A4
xxxi.	45/93	8 November 2002	Oue 2B3A5
xxxii.	98A WH 107-108	21 January 2004	Oue 2B3A5
xxxiii.	99 WH 199-203	25 May 2004	Oue 2B3A5
xxxiv.	7 WH (S)104-105	4 November 2004	Oue 2B3A5
xxxv.	2004 CJ 492-493	23 November 2004	Oue 2B3A5
xxxvi.	2004 CJ 494-495	23 November 2004	Oue 2B3A5
xxxvii.	8 WH(S) 41	23 January 2006	Oue 2B2B2
xxxviii.	8 WH(S) 136	8 June 2006	Oue 2B2B2

xxxix. 47 TTK 185-189

20 August 2012

Oue 2B3A5

c) Applicant's father's whakapapa:



- d) 1989 Notification of Application to the Chief Judge
- e) Copy of death certificate for Hone Peti Arena
- f) Copy of death certificate for Peata Hone Peti
- g) Copy of death certificate for Kamariao Rorani Te Arani Carpenter
- h) Copy of death certificate for Pou Kapua Wilson
- i) Applicant's birth certificate
- j) Application for fee waiver and evidence in support

8. The applicant specifically addresses the order complained, being the vesting order that transfers shares of Peri Matiu Pou, Te Rapunoa Matiu Pou and Ahenata Matiu Pou in Oue 2B 2C to Hapeta Hone Hau by way of gift, at paragraphs 10 to 16 of the application. Paragraphs 10 to 16 are reproduced as follows:

- 10 At the Native Land Court sitting in Pakotai, Mangakahia, on 5 July 1939 at folio 244 of 18 WH 244-247, Peri Pou states **“The family wish to make a gift of one acre in Oue 2B2C to our first cousin Hapeta Hau, brother of our mother Maata Hau”**, and the Maori Land Court approves of this gift of 1 acre to Hapeta Hau, and directs that it come out of Matiu Pou’s interests in this block.
- 11 Hapeta Hau is not a first cousin to Peri, Rapunoa and Te Aurere Pou. The descendants of Rina Rata Pou and Ahenata Nahi are the first cousins of Peri, Rapunoa and Te Aurere Pou, as Nepu Kiwi, alias Nepu Rata Pou had no issues.
- 12 It is the children of Miria Hau, Hana Hau, Ranga Hau, Hemo Hau and Akinihi Hau that are first cousins of Hapeta Hau, so the statement “our first cousin Hapeta Hau” is a lie.
- 13 Hapeta Hau is not the brother of their mother. Mr Hau is the brother to 4 sisters Miria, Hana, Hemo and Akinihi Hau as set out at 9 AT (S) 91-95 on 5 June 2002, so the statement “Hapeta Hau, brother of our mother” is a lie.
- 14 At 9 AT (S) 91-95 on 5 June 2002, Hapeta Hau’s father Hone Hamiora Hau had 2 sisters Maata and Meri Hau, and 2 brothers Hare and Watihana Hau, so the statement of “Maata Hau” being the mother of Peri, Rapunoa and Te Aurere Pou is all lies, lies, lies.
- 15 On 3 February 1929 at 10 BI 218, Maata Matiu, alias Maata Matiu Wi, who died about 1926, leaving no will. She was married twice, having issues: 1st marriage to Wi Pou, having Ahe Pou, fd, no issue. Her 2nd marriage was to my great granduncle Matiu Pou, having Peri, Te Rapu and Te Aurere Pou.
- 16 On 31 July 1930 Matiu Pou’s interests in Maungapohatu South 1A4 were vested in Peri Pou, Rapunoa Pou and Te Aurere Pou. Their mother, Maata Matiu Wi’s interests in this block were also vested in Peri, Rapunoa and Te Aurere Pou.
9. The applicant also refers to and addresses in detail several other Court minutes, Court orders, and events. In my assessment most of these other Court minutes, Court orders, and events did not affect the *making* of the order complained of. It was more the case that the order complained of *had an effect on* those Court minutes, orders, and events. In my assessment, the other Court minutes and orders recorded in the application that had a potential effect of the order complained of are:
- a) 18 Whangarei MB 241-242 dated 4 July 1939 – Succession to the interests of Matiu Pou in Oue 2B2A, Oue 2B2B and Oue 2B2C. The applicant at paragraph 2.8 sets of the application out the following:
 At folios 241-242, Peri, Rapunoa and Te Aurere Matiu Pou’s application to succeed to their father Matiu Pou’s interests in Oue 2B2A, Oue 2B2B and Oue 2B2C was cancelled, due to a 1916 exchange order.
 - b) 12 Whangarei MB 154-155 dated 4 November 1916 – Exchange order where between Matiu Pou exchanged all his interests in Oue 2B2 with the interests of Hone Whakaeke and Te Arani Roera in Maungapohatu South 1A4. This is referred to at paragraph 3 of the application.
 - c) 13 Whangarei MB 36-37 dated 26 June 1918 – Partition of Oue 2B2. The applicant’s submission at paragraph 19 sets out the following:
 ...an application for a partition order of the block known as Oue 2B2, found my paternal great great great grandfather, Hata Kiwi, and my paternal great great grandmother Rina Rata Pou, receiving 30 and 18 of 48 shares in Oue 2B2A. Hata Kiwi, Hone Peeti Whakaeke, Te Arani Roera, and her mother my paternal great grand-mother Peata Pou, received 30, 4, 5 and 9 of 48 shares respectively in Oue 2B2B. Hata Kiwi, Hemi Nahi, Hana Kapea, Mochau Paranui and Eriapa Nahi were awarded 30,4.5,4.5,4.5 and 4.5 of 48 shares in Oue 2B2C blocks respectively.
 - d) 13 Whangarei MB 192 dated 29 November 1920 and 18 Whangarei MB 145-146 dated 5 August 1938 – Succession to Akuhata Kiwi also known as Hata Paora Kiwi. In summary, paragraphs 20 and 22 of the application set out:

- i. These minutes, in recording that Matiu Pou and Peka Hone Peeti (or Peata Pou as referred to in the application) are entitled in substitution for their deceased mother Nepu Paora Kiwi, are incorrect. Akuhata Kiwi's will devised his interests in Oue 2B3 to the children of Nepu Paora Kiwi 1/3, the children of Ahenata Nahi 1/3 and Rita Rata Pou 1/3. The applicant sets out that Matiu Pou and Peata Pou (the applicant's great grandmother) were children of Rina Rata Pou and not children of Nepu Paora Kiwi. Therefore Matiu Pou, Peri Matiu Pou, Rapunoa Matiu Pou and Te Aurere Matiu Pou should not have succeeded to Akuhata Kiwi as (1) Matiu Pou was not a child of Nepu Paora Kiwi and (2) Rina Rata Pou was alive when succession to Akuhata Kiwi occurred.
- ii. The death certificate of Peata Pou (provided by the applicant) records her mother as Rina Rata Pou and her father as Te Rata Pou.
- iii. That Akuhata Kiwi also known as Hata Kiwi was the father of Rina Rata Pou and not her brother as indicated.
- iv. The whakapapa presented to the Court in relation to Akuhata Kiwi is incorrect, particularly in relation to the evidence given by Mihi Rata at 18 Whangarei MB 145. Mihi Rata's evidence indicates that Rira Rata Pou, Ahenata Nahi and Nepu te Rata Pou were siblings of Akuhata Kiwi and that Nepu te Rata Pou was the mother of Matiu Pou and Peka Hone Peti.
- v. The whakapapa the applicant has provided regarding his great grandmother Peata Pou being a child of Rina Rata Pou who was a child of Hata Kiwi was provided to him by his father.

Court Research

10. Research of the Court record has found that:¹

(i) The original owners in the Oue 2B2 block were:

1.	Akuhata Kiwi	m	1 1/4 share
2.	Matiu Pou	m	1/8 share <i>this is the interest that was exchanged</i>
3.	Maro Hone Peti	f	1/8 share
4.	Rira Rata Pou	f	1/4 share
5.	Hemi Nahi	m	1/16 share
6.	Hana Kapea	f	1/16 share
7.	Moehau Haranui	f	1/16 share
8.	Ereapa Nahi		1/16 share

(ii) Upon partition² Oue 2B2 block was divided as follows:

Oue No 2B No 2A

1.	Akuhata Kiwi	30 shares
2.	Rira Rata Pou	18 shares

Oue No. 2B No. 2B

1.	Akuhata Kiwi	30 shares
2.	Maro Hone Peti	9 shares
3.	Hone Whakaeke	5 shares) shares <i>that were exchanged</i>
4.	Te Arani Roera	4 shares) with <i>Matiu Pou at 12 WH 154-155</i>

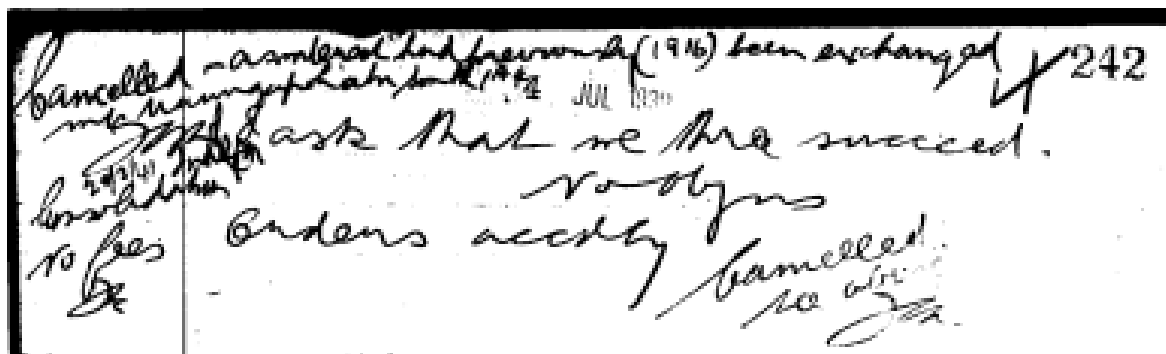
¹ Taken from Registrar report and recommendation dated 7 June 2019 in respect of A20150002427

² 13 Whangarei MB 36-37 dated 26 June 1918

Oue No. 2B No. 2C

1.	Akuhata Kiwi	30 shares
2.	Hemi Nahi	4.5 shares
3.	Hana Kapea	4.5 shares
4.	Moehau Haranui	4.5 shares
5.	Ereapa Nahi	4.5 shares

11. The Court minute at 18 Whangarei MB 241-242 records succession to the interests of Matiu Pou in Oue 2B2A, Oue 2B2B and Oue 2B2C. As noted at folio 242 the orders were cancelled "as interests had previously (1916) been exchanged with Maungapohatu South 1A4". The portion of the minute noting the cancellation is below.



12. A review of the ownership schedules and the consolidation schedules for Oue 2B2C confirm that no entry was made on these schedules transferring interests from Matiu Pou to his successors based on the erroneous succession order at 18 Whangarei MB 241-242.
13. Furthermore an extract of the Bay of Islands consolidation schedule for Oue No 2B 2C illustrates that the shares Peri Matiu Pou, Te Rapunoa Matiu Pou and Ahenata Matiu Pou (also known as Te Aurere Matiu Pou) gifted Hapeta Hone Hau in Oue 2B 2C were those that they received upon succession to Akuhata Kiwi and not the interests received upon succession to Matiu Pou.

<u>No.</u>	<u>Name</u>	<u>Sex</u>	<u>Share</u>	<u>Successors</u>
1	Akuhata Kiwi	M	30.	6/22
	WH 18/145			
6	~~Rira Rata Pou~~	F	10	33/45
...				
19	Peta Hone Peti	F	3	
20	Peri Matiu Pou	M	2.2/5	65/68
21	Te Rapunoa Matiu Pou	M	2.2/5	65/68
22	Ahenata Matiu Pou	F	2.2/5	65/68
	20. 21. 22 WH 18/246 (Gift)			
65	Hapeta Hone Hau	M	2/3	72
66	Peri Matiu Pou	M	1 4/9	
67	Te Rapunoa Matiu Pou	M	1 4/9	
68	Ahenata Matiu Pou	F	1 4/9	

14. Based on evidence provided by Mihi Rata, who is recorded as a daughter of Rira Rata Pou, the Court minute of 18 Whangarei MB 145-146 records that Peri Matiu Pou, Te Rapunoa

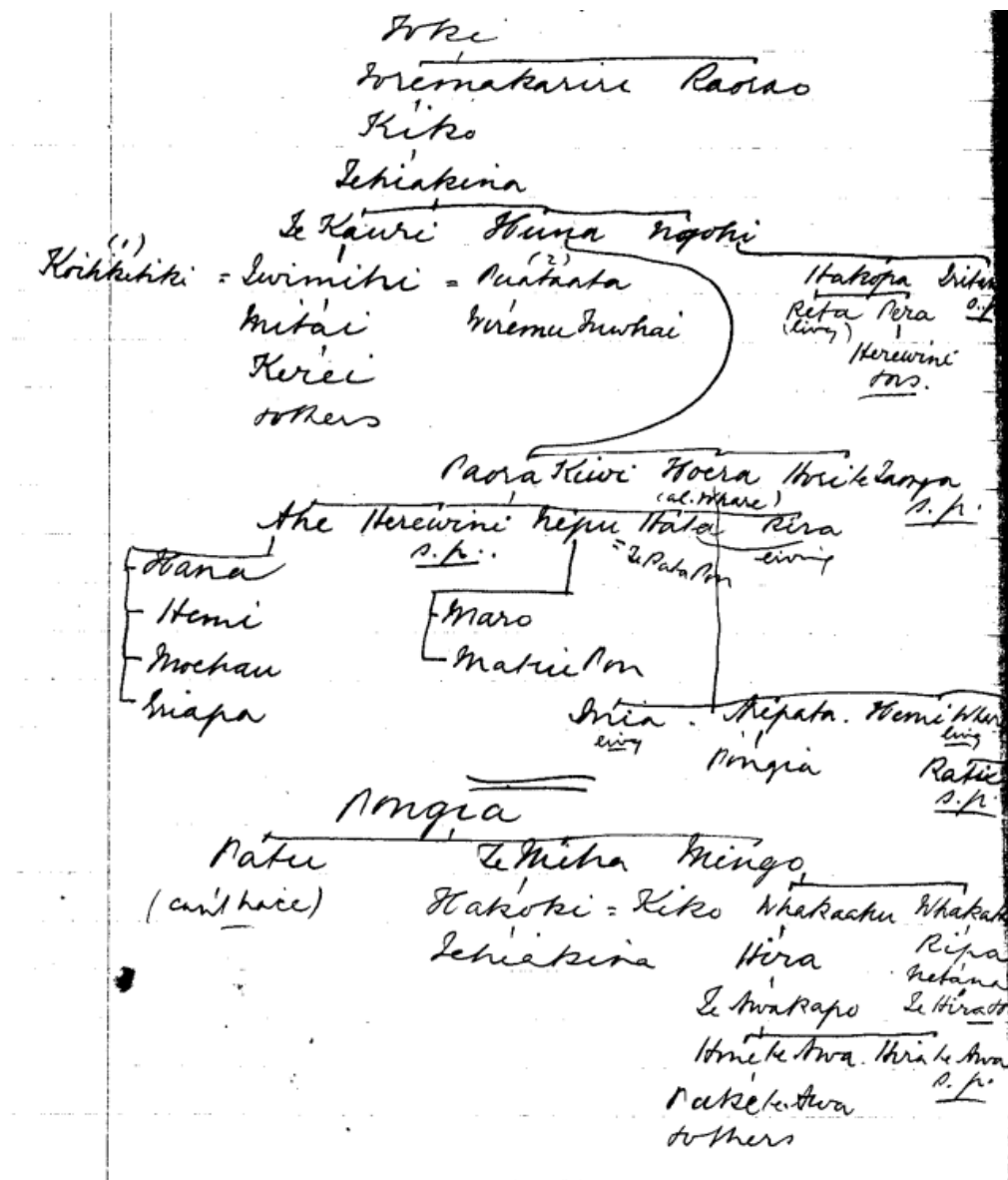
Matiu Pou and Ahenata Matiu Pou received interests upon succession to Akuhata Kiwi in substitution for their deceased father Matiu Pou. The Court minute records that Matiu Pou and Peka Hone Peti were entitled in substitution for their deceased mother Nepu te Rata Pou. Akuhata Kiwi also known as Hata Paora Kiwi is recorded as leaving no issue and being the sibling of Rina Rata Pou, Ahenata Nahi and Nepu te Rata Pou.

15. Two further Court minutes have been located that align with the information recorded at 18 Whangarei MB 145-146 dated 5 August 1938. The Court minutes are as follows:

- a) Court minute - 7 Whangarei MB 328 dated 7 October 1903 – Succession to the interests of Paora Kiwi in Oue 2B. The minute sets out the following:

Ihimaria Poutai sworn. I knew deceased. He died about 1895. Left no will. Children. Te Hata Kiwi otherwise 1. Akuhata Kiwi ma 2. Nepu Rata Pou fa dead (who left issue Matiu Pou ma, Maro Hone Peti fa) 3. Rira Rata Pou fa 4. Ahe Nahi (dead leaving issue Hemi Nahi ma, Hana Kapea fa, Mochau Haranui fa, Ereapa Nahi ma)

- b) Court minute – 10 Whangarei MB 93 dated 28 August 1911. This minute relates to an investigation of title for the Mimihi block. Matiu Pou gave the following whakapapa evidence:



16. Court minute 9 Auckland (Succession) MB 91-95 dated 5 June 2002 – being succession to Tamihana Nga Paura illustrates that (8) Hapeta Hau is a son of (3) Hone Hamiora Hau who is a brother to (5) Maata Hau. Maata Hau is recorded as being the mother of (17) Peri Kuku Te Ringa, (18) Te Rapunoa Pou, (19) Te Aurere Pou. The whakapapa information, based on evidence given by (12) Ranga Hau records the following:

No	Name	Sex
1	Taunui Paura	md
2	Keita Paura	Fd

Issue of Keita Paura – no. 2

3	Hone Hamiora Hau	Md
4	Hare Hamiora Hau	Md
5	Maata Hau	Fd
6	Meri Hau	Fd
7	Watihana Hau	md

Issue of Hone – no. 3

8	Hapeta Hau	Md
9	Miria Hau	Fd
10	Hana Hau	Fd
11	Ranga Hau	Md
12	Hemo Hau	Fd
13	Akinihi Hau	Fd

Issue of Hare – no. 4

14	Matiu Hare Hau	Md
15	Hihiria Hare Hau	Fd
16	Wairemana Hare Hau	Fd

Issue of Maata – no. 5

17	Peri Kuku Te Ringa	Md
18	Te Rapunoa Pou	Md
19	Te Aurere Pou	Fd

17. It is noted that the order complained of was made to facilitate the provision of a house site for Hapeta Hone Hau on the land that was known at that time as Oue 2B3. Prior to the gift of shares in Oue 2B2C in 1939, Hapeta Hone Hau did not own shares in Oue 2B3 or Oue 2B2C.
18. At 18 Whangarei MB 237 it is noted that the Board of Native Affairs approved a house for Hapeta Hone Hau that was intended to be on Oue 2B2A and a house for Hone Peeti Whakaeke on Oue 2B2B. This point was then proceeded by a lengthy discussion wherein it was indicated that Oue 2B2A and Oue 2B2B were not suitable areas to build a house upon, that Oue 2B3 was a more suitable block, which led to Hapeta Hone Hau being gifted interests in Oue 2B2C.
19. At 18 Whangarei MB 359-362 on 22 August 1939, the Court made provisional orders amalgamating Oue 2B2C and Oue 2B3 and partitioning them to create 12 blocks. Hone Peeti Whakaeke and Hapeta Hone Hau were each to receive a one acre block adjacent to each other to be known as Oue 2B3E and Oue 2B3F respectively. The Court minute also refers to five blocks that were to each compromise one acre with the ownership to be fixed at the next sitting.

20. As noted at 25 Whangarei MB 49-54 dated 31 August 1939 the amalgamation and partition orders of 22 August 1939 at 18 Whangarei MB 359-362 were not finalised. At 25 Whangarei MB 53 dated 31 August 1949, the Court made orders partitioning Oue 2B2C to Oue 2B2C1 and Oue 2B2C2, and Oue 2B3 to Oue 2B3A and Oue 2B3B. Further partition orders were made over the combined areas of Oue 2B3A and 2B2C1. Six sites ranging in area from 1 acre to 2 and ½ acres were created. Oue 2B3A4 was allocated to Hone Peti Whakaeke and Peka Hone Peti. Oue 2B3A5, which was adjacent to Oue 2B3A4, was allocated to Hapeta Hone Hau.
21. The order complained of was made pursuant to section 163(9) of the Native Land Act 1931, which sets out:

For the purpose of carrying into effect any consolidation scheme or any matter arising thereout the Court shall have the following powers :-

...

(9) In any case where either because the holding in any area of the Native affected is comparatively small, or for any other reason which to the Court seems sufficient, the Court is satisfied that it is not against the interest of such Native that he should cease to retain such holding, the Court, with the consent of the Native concerned, may order that the interest of such Native in any area affected by a consolidation scheme shall vest in some other person or persons, and the said interest shall thereupon vest accordingly, subject to any prior lease, license, mortgage, or charge. By the same or any other order the Court shall, except in the case of a gift, assess what is a fair value to be paid for such interest, and may secure the payment thereof by granting a charging-order.

22. The Oue blocks formed part of the Bay of Islands Consolidation Scheme.³
23. A summary of the conclusions drawn from the Court research is as follows:
 - a) Court evidence at 7 Whangarei MB 328 dated 7 October 1903 and 10 Whangarei MB 93 dated 28 August 1911 is consistent with the evidence given at 18 Whangarei MB 145-146 upon succession to Akuhata Kiwi. I note in particular that Matiu Pou was one of the further sources of the evidence.
 - b) The interests in Oue 2B2C that Peri Matiu Pou, Te Rapunoa Matiu Pou and Ahenata Matiu Pou gifted to Hapeta Hone Hau under the order complained of where part of the interests in Oue 2B2C that they received upon succession to Akuhata Kiwi at 18 Whangarei MB 145-146.
 - c) That as set out at 9 Auckland (Succession) MB 91-95, Hapeta Hau is a first cousin to Peri Matiu Pou, Te Aurere Matiu Pou and Te Rapunoa Matiu Pou as their parents are siblings. The Court minute at folio 244 is incorrect insofar as the reference to Hapeta Hau being the brother of Peri's mother Maata Hau.
 - d) As the Oue blocks formed part of the Bay of Islands Consolidation Scheme, and in the absence any other provision that contradicts section 163(9) of the Native Land Act 1931 being located, section 163(9) of the Native Land Act 1931 was able to be utilised which enabled the Court to vest interests in any other person subject to the consent of the person that held such interest.

³ Bay of Islands Development Scheme District, see 'Native land to be settled and developed,' New Zealand Gazette 48, 26 June 1930, p.2054

Details of subsequent Orders affecting lands to which this application relates

24. 22 Whangarei MB 236 dated 11 October 1945 – Succession to the interests of Hapeta Hone Hau in Oue 2B3F
25. 24 Whangarei MB 44 dated 12 May 1948 – Succession to the interests of Hapeta Hone Hau in Oue 2B2C
26. 25 Whangarei MB 49-54 dated 31 August 1949 – Partition and exchange orders for Oue 2B2C and Oue 2B3
27. 25 Whangarei MB 70-71 dated 8 September 1949 – Cancellation of succession order for Hapeta Hone Hau
28. 63 Whangarei MB 190 dated 7 February 1985, 63 Whangarei MB 227-228 dated 12 April 1985 and 63 Whangarei MB 313 dated 10 May 1985 – Succession to Hapeta Hone Hau in Oue 2B3A5
29. 73 Whangarei MB 43-44 dated 30 July 1992 – Order constituting the Hapeta Hau Whanau Trust over the Oue 2B3A5
30. 7 Whangarei 104-105 dated 4 November 2004 – Succession to Hamuera Hapeta Hau
31. 2004 Chief Judge's MB 492-493 dated 23 November 2004 – Chief Judge application in respect of succession to Hapeta Hone Hau in Oue 2B3A5
32. 47 Taitokerau MB 185-189 dated 20 August 2012 – Setting the Oue 2B3A5 block aside as a Māori Reservation

Details of payments made as a result of the Order

33. Not applicable.

Reference to areas of difficulty

34. The applicant has not provided contact details for affected parties other than his immediate whānau.

Consideration of whether matter needs to go to full hearing

35. The Court's approach with an application of this nature is:
 - (a) To weigh the evidence provided by the applicant against the evidence provided at the original hearing;
 - (b) A challenge to original evidence must be balanced against the presumption that everything has been done lawfully unless there is evidence to the contrary; and
 - (c) That the evidence given at the time the order was made, by persons more closely related to the subject matter in both time and knowledge, is deemed to have been correct.
36. The applicant is required to prove the existence of the alleged mistake or omission either by the Court or in the presentation of the facts.
37. Regarding the order complained of, when weighed against the evidence given at the time and against the relevant legislation, the applicant has not as yet provided sufficient evidence to prove that an error was made in the presentation of facts at the time the order was made.
38. The matter is set down for hearing at **1.30PM on Tuesday 26 March 2024 via Zoom.**

Recommendation of course of action to be taken

39. A copy of this report be sent to all affected parties, for whom we have contact details for, to give them an opportunity to comment in writing or respond at the hearing.
40. That the Court receive submissions and/or hear evidence from the applicant, interested parties and affected parties in response to this report and recommendation.
41. If the Chief Judge is of a mind to exercise her 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 this application be dismissed as an error has not been sufficiently established.

Ko te hātepe ture o te tono nei

Procedural History

[4] The Registrar's Report was distributed to the applicant and interested parties with known contact details on 24 February 2024. Responses to the Report were to be filed by 23 March 2024.

[5] On 26 March 2024, the applicant filed a submission dated 24 March 2024. The submission was referred to me on 26 March 2024. In that submission he opposed the Registrar's findings. He reiterated that Hapeta Hau was not a brother of Maata Hau. He was a nephew as Hapeta's father (Hamiora) was Maata Hau's brother. He also claimed that Hapeta Hau was not a first cousin to Peri, Te Rapunoa and Te Aurere Pou (also known as Ahenata Pou). He was adamant that it is only the children of Rina Pou and Ahenata Nahi who are the first cousins of Peri, Te Rapunoa and Te Aurere Pou. Maata Hau was not the mother of Peri, Te Rapunoa and Te Aurere Pou. Maata Matiu Wi was their mother. Therefore, the evidence given in Court was incorrect.

[6] The application was heard before me in Wellington (via Zoom) on 26 March 2024. No parties attended the hearing. The applicant did not attend. Correspondence received subsequently indicated that the matter should be set down again for hearing in June 2024. The applicant and Paulina Wirihana-Mau attended the hearing before me in June. The file was referred to me following that hearing.

Te Ture

The Law

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

44 Chief Judge may correct mistakes and omissions

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

[8] In *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)*, the principles to be applied in determining such applications made pursuant to s 45 of the Act were listed as follows: ⁴

- (a) When considering section 45 applications, the Chief Judge needs to review the evidence given at the original hearing and weigh it against the evidence provided by the Applicant (and any evidence in opposition);
- (b) Section 45 applications are not to be treated as a rehearing of the original application;
- (c) The principle of *Omnia Praesumuntur Rite Esse Acta* (everything is presumed to have been done lawfully unless there is evidence to the contrary) applies to section 45 applications. Therefore in the absence of a patent defect in the order, there is a presumption that the order made was correct;
- (d) Evidence given at the time the order was made, by persons more closely related to the subject matter in both time and knowledge, is deemed to have been correct;
- (e) The burden of proof is on the applicant to rebut the two presumptions above; and
- (f) As a matter of public interest, it is necessary for the Chief Judge to uphold the principles of certainty and finality of decisions. These principles are reflected in section 77 of the Act, which states that the Court orders cannot be declared invalid, quashed or annulled more than 10 years after the date of the order. Parties affected by orders made under the Act must be able to rely on them. For this reason, the Chief Judge's special powers are used only in exceptional circumstances.

[9] Section 44 explicitly refers to situations where the Court has made an incorrect decision due to a flaw in the evidence presented, or in the interpretation of the law, and it is necessary in the interests of justice to correct its record. For this reason, s 45 applications must be accompanied by proof of the flaw identified, either through the production of

⁴ *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)* [2009] Chief Judge's MB 209 (2009 CJ 209) at [15].

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

[10] As stated in *Tau v Nga Whānau o Morven and Glenavy – Waihao 903 Section IX Block*, the Chief Judge must exercise their jurisdiction by applying the civil standard of proof 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.⁵ This means that the applicant must establish on the balance of probabilities that there was a mistake or omission.

[11] The Court of Appeal has confirmed that the power under s 44(1) of the Act falls into two parts:⁶

The first is an evaluative decision as to whether the order made was “erroneous in fact or in law because of any mistake or omission on the part of the court or the Registrar or in the presentation of the facts of the case to the court or the Registrar.” The second is a power, which is likely in most cases to involve discretion, to “cancel or amend the order ... or make such other order as, in the opinion of the Chief Judge, is necessary in the interests of justice to remedy the mistake or omission.” We note that in making that decision, and exercising that power, the preamble to the Act and ss 2 and 17 are of particular significance.

Ngā Take

Issues

[12] The issues for determination are:

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

Was an error made?

[13] Clearly there have been issues raised by the applicant as to the veracity of the evidence presented and recorded at 18 Whangarei MB 244-247 on 5 July 1939 (the vesting

⁵ *Tau v Nga Whānau o Morven and Glenavy – Waihao 903 Section IX Block* [2010] Māori Appellate Court MB 167 (2010 APPEAL 167) at [61].

⁶ *Inia v Julian* [2020] NZCA 423 at [10].

order). However, while he may be correct, the difficulty is that there is no independent evidence to prove it on the balance of probabilities. The evidence given by whānau members does not add any further information to what the applicant alleges.

Is it necessary in the interests of justice to correct the errors?

[14] I do not consider an error was made. Furthermore, s 163(9) of the Native Land Act 1931 merely required that the Court be satisfied that it was not against the interest of the owners and that they consented, before making an order vesting their interests, affected by a consolidation scheme, in some other person. The applicant has not done enough to prove on the balance of probabilities that Peri, Te Rapunoa and Te Aurere Pou did not agree to the vesting order.

[15] I further agree with the Registrar's Report at paragraph 9 that the other orders complained of are consequential orders that flow from the 1939 vesting order, or they are subject to the second application filed by the applicant, which has been dealt with in a separate judgment to be issued soon.

Kupu Whakatau
Decision

[16] The application is dismissed.

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

I whakapuaki i te 2.30 pm i Te Whanganui-a-Tara, rua tekau ma wha o Hānuere i te tau 2025.
Pronounced at 2.30 pm in Wellington on this 28th day of January 2025.

C L Fox
CHIEF JUDGE