

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

AP-20230000028251
A20150002427
CJ 2015/27

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

Nohoanga: <i>Hearing</i>	14 June 2019, 2019 Chief Judge's MB 849-870 (Heard at Whangarei) 26 March 2024, 2024 Chief Judge's MB 370-395 19 June 2024, 2024 Chief Judge's MB 1439-1443 (Heard at Wellington via zoom)
Whakataunga: <i>Judgment date</i>	28 January 2025

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 (the applicant) on 31 March 2015. The application seeks to amend or cancel the following orders or transactions:

- (a) 13 Whangarei MB 192, dated 29 November 1920, regarding succession to Akuhata Kiwi;
- (b) 18 Whangarei MB 145-146, dated 3 August 1938, regarding succession to Akuhata Kiwi;
- (c) 18 Whangarei MB 244-247, dated 5 July 1939, regarding a transfer of shares in Oue 2B2C;
- (d) 25 Whangarei MB 49-54, dated 31 August 1949, a partition and exchange order for Oue 2B2C and Oue 2B3;
- (e) 25 Whangarei MB 70-71, dated 8 September 1949, exchange orders;
- (f) 30 Whangarei MB 14, dated 15 April 1958, regarding succession to Maro Hone Peti;
- (g) TKT 434A-R5/311, dated 10 August 1964, a confirmation of sale of Maungapohatu South 1A6C block;
- (h) 1 Whangarei (Succession) MB 318 dated 3 July 1989, regarding succession to Kawarahi Hapeta Hau; and
- (i) 28 Auckland MB 60-62 dated 23 May 2000, a gift of shares from Te Rauna Wirihana Mau to Iriaka Wensor and Ngauta Tobin.

Kōrero whānui

Background

[2] The Registrar's Preliminary Report and Recommendation (the Report) dated 7 June 2019 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

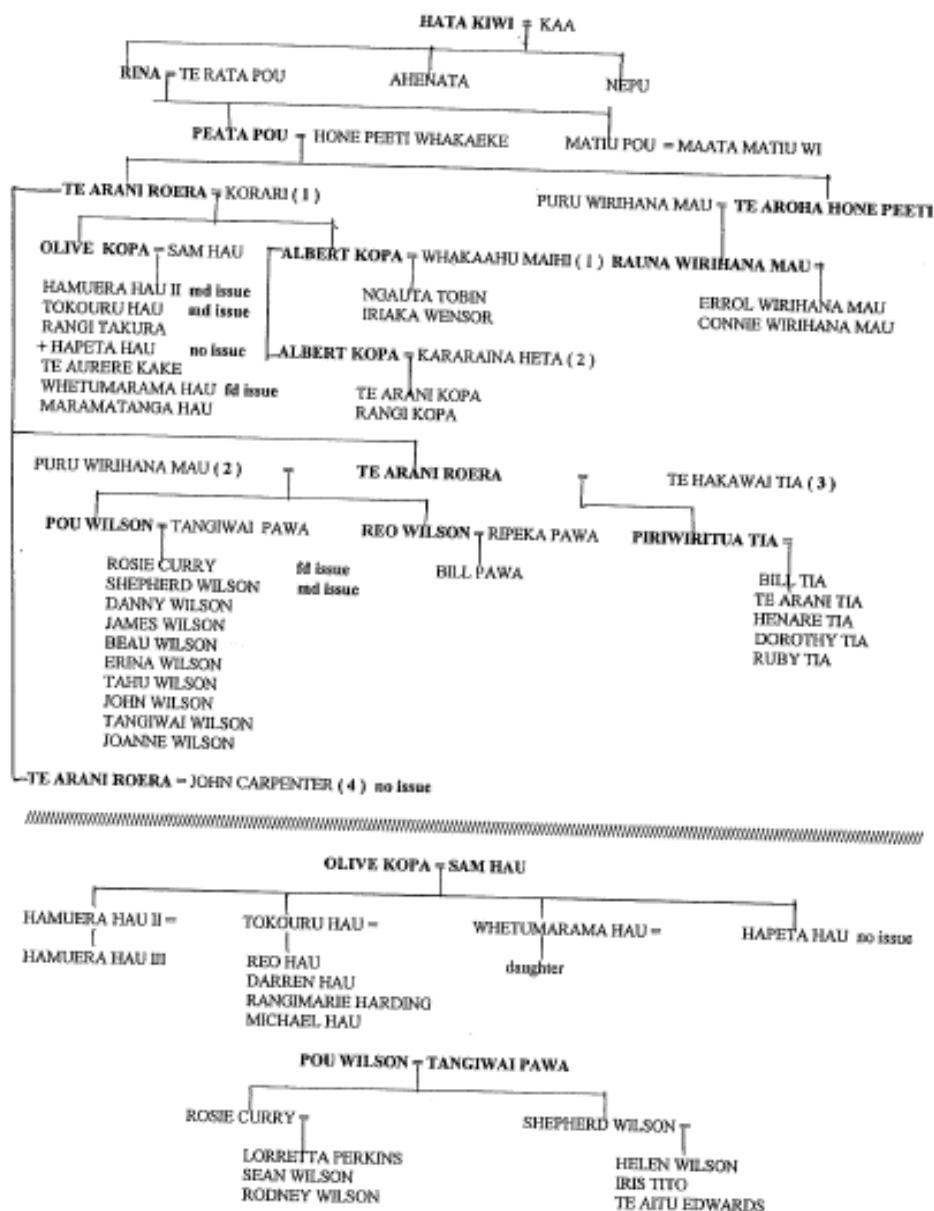
1. This application has been filed by Beau Wilson (the applicant) and seeks to cancel and/or amend a number of Māori Land Court orders as follows:
 - (a) **18 Whangarei MB 244-247 dated 5 July 1939** - The applicant claims that shares in Oue 2B2C were gifted to Hapeta Hau by donors who did not hold shares in the block.
 - (b) **13 Whangarei MB 192 dated 20 November 1920 and 18 Whangarei MB 145-146 dated 3 August 1938** - succession to Akuhata Kiwi. The applicant claims that the wrong people succeeded to the interests of Rina Rata Pou and rightful successors of these interests should be determined;

- (c) **25 Whangarei MB 49-54 dated 31 August 1949** - partition and exchange orders issued over the combined areas of Oue 2B2C and Oue 2B3. The applicant opposes the orders and his reasons are set out in paragraph 22. He seeks to cancel these orders and asks that the interests of Hapeta Hau in **Oue 2B3A5** be determined.
- (d) **25 Whangarei MB 69 and 25 Whangarei MB 70-71 dated 8 September 1949** - cancelling of succession orders and issuing of exchange orders between Peka Hone Peti and Hone Peti Whakaeke. The applicant seeks the cancellation of the orders and a determination be made for the rightful successors. *The complaint is not precise, and it has been difficult to glean the essence of the mistake or omission sought to be corrected.*
- (e) **30 Whangarei MB 14 dated 15 April 1958** - succession to Maro Hone Peti. The applicant claims that his aunt, Olive Kopa, stated that her brothers¹ gave their consent for her to have their share in Oue 2B2B2, but this is incorrect. He also claims that she sold her shares in Kaikou C5C3B2 without the knowledge or consent of her brothers. He seeks the cancellation of the order and that the rightful successors be determined.
- (f) **TKT 434A - R5/311 dated 10 August 1964** - confirmation of sale of Maungapohatu 1A6C block. The applicant seeks that a determination be made regarding the lease and eventual sale of Maungapohatu South 1A6C block by Sam Hau and his family and that the rightful successors be determined
- (g) **1 Whangarei (Succession) MB 318 dated 3 July 1989** - succession to Kawarahi Hapeta Hau also known as Kanarahi Reo Wirihana. The applicant seeks an amendment to the whakapapa references made in the minute and that the rightful successors be determined. He claims that his uncle, Reo Wirihana did not marry Kanarahi Hau as stated by Tunisia Silk.
- (h) **28 Auckland MB 60-62 dated 23 May 2000** - transfer of shares in Oue 2B3A4 from Te Raunatanga Wirihana Mau to Iriaka Wensor and Ngauta Tobin. The applicant seeks an amendment to the whakapapa references made in the minute.

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

- 2. In support of his application the applicant has provided the following:
 - (a) Copy of death certificate for Peata Hone Peti
 - (b) Whakapapa

¹ Refer paragraph 28-33 of application.



Concise history of Orders sought to be amended/cancelled

18 Whangarei MB 244-247 dated 5 July 1939

- At **18 Whangarei MB 244-247** the Court made orders vesting, by way of gift, part shares of Peri Matiu Pou, Te Rapunoa Matiu Pou and Ahenata Matiu Pou in Oue 2B2C block to Hapeta Hone Hau.
- The applicant refers to an exchange order which was made prior to the partition of Oue 2B2.² He has stated that as Matiu Pou had exchanged shares with Te Roera Arani and Hone Whakaeke in the Oue 2B2 block, his children (who were the donors in the order complained of) could not be owners in the Oue 2B2C block.

² 12 Whangarei MB 154-155 dated 4 November 1916 – Exchange order between Te Arani Roera and Hone Whakaeke in Maungapohatu South 1A4 and Matiu Pou in Oue 2B2.

5. The applicant also claims that the shares of Hata Kiwi in Oue 2B2C block were incorrectly vested in the donors.
6. Research of the Court record has found that:
- (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 partition³ 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> |
- 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 |
- (iii) Succession to Akuhata Kiwi in Oue 2B2A, 2B2B and 2B2C was made at 18 Whangarei MB 145-146 dated 3 August 1938. The children of Matiu Pou were included in this succession in substitution for him as he was deceased
7. **Research confirms that the shares gifted by Peri Matiu Pou, Te Rapunoa Matiu Pou and Ahenata Matiu Pou to Hapeta Hone Hau in Oue 2B2C block were theirs to gift. They received these shares from upon succession to their uncle, Akuhata Kiwi. The applicant's claims regarding this order should be dismissed.**

13 Whangarei MB 192 dated 20 November 1920 and 18 Whangarei MB 145-146 dated 3 August 1938

8. At **13 Whangarei MB 192** and **18 Whangarei MB 145-146** succession orders were made vesting the interests of Akuhata Kiwi in those persons entitled.
9. The applicant claims that the whakapapa presented to the Court is incorrect upon the grounds that:

³ 13 Whangarei MB 36-37 dated 26 June 1918.

- (i) It was stated that the mother of the applicant's paternal great grandmother Peata Pou and great grand-uncle Matiu Pou is his great grand-aunt Nepu Kiwi alias Nepu Te Rata Pou (as she is known at the Māori Land Court).
- (ii) Peata Hone Peti died on 28 August 1942. Her Death Certificate records that her mother is Rina Rata Pou and her father is Te Rota Pou. A copy of the death certificate has been filed with the application and has been reproduced below.

Appendix "E" EDM 151
No 2



Death Certificate
(extracted from the Maori register)

Office: Whangarei		District No. 19	Registry No. 1942033764
Date of Death (Te ra i mate ai)		28 August 1942	
Place of Death (Te kōinga i mate ai)		Parakao	
		DESCRIPTION OF DECEASED	
Name in Full (Te kaitoa o tona ingoa)		Peata Hone Peti	
Residence (Kāinga)		Parakao	
Tribe (Iwi) sub-tribe		Ngāpuhi	
Sex (He tane he wahine ranei) and age (nga tau)		Female 75	
		IF DECEASED WAS MARRIED	
Name of husband or wife (Te ingoa a tana tane o tana wahine ranei)		Hone Peti	
Number and sex of children, if any, living (Te tokomaha o nga tamariki e ora ana, mehekea he pua, me whakatau he tane, he wahine ranei)		M. - F. 2	
		CAUSE OF DEATH	
Cause of death (Taki i mate ai) and duration of last illness (te roa oia e pangia ana e tona mate whakamutunga)		Pneumonia	
Name of Medical Practitioner giving certificate, if any (Te ingoa o te takuta nana i whakaputa te tiwhakete, mehekea he pua)		-	
Date when medical practitioner last saw deceased, if alive (Te ra mutunga i kite ai i te tupapaku ana i te wa e ora ana ai)		-	
		BURIAL	
When buried (Te ra i tiamina ai ia)		28 August 1942	
Where buried (Te wahi i tiamina ai ia)		Parakao	
		PARENTS OF DECEASED	
FATHER (PAPA)			
Name (Ingoa)		Te Rota Pou	
Residence (Kāinga)		Not Recorded	
Tribe (Iwi) or sub-tribe		Ngāpuhi	
Description (Ahuatanga)		Maori of Full Blood	
MOTHER (WHAEA)			
Name (Ingoa)		Rina Rata Pou	
Residence (Kāinga)		Not Recorded	
Tribe (Iwi) or sub-tribe		Ngāpuhi	
Description (Ahuatanga)		Maori of Full Blood	

Certified True Copy

[Signature]

Deputy Registrar

6/12/2013

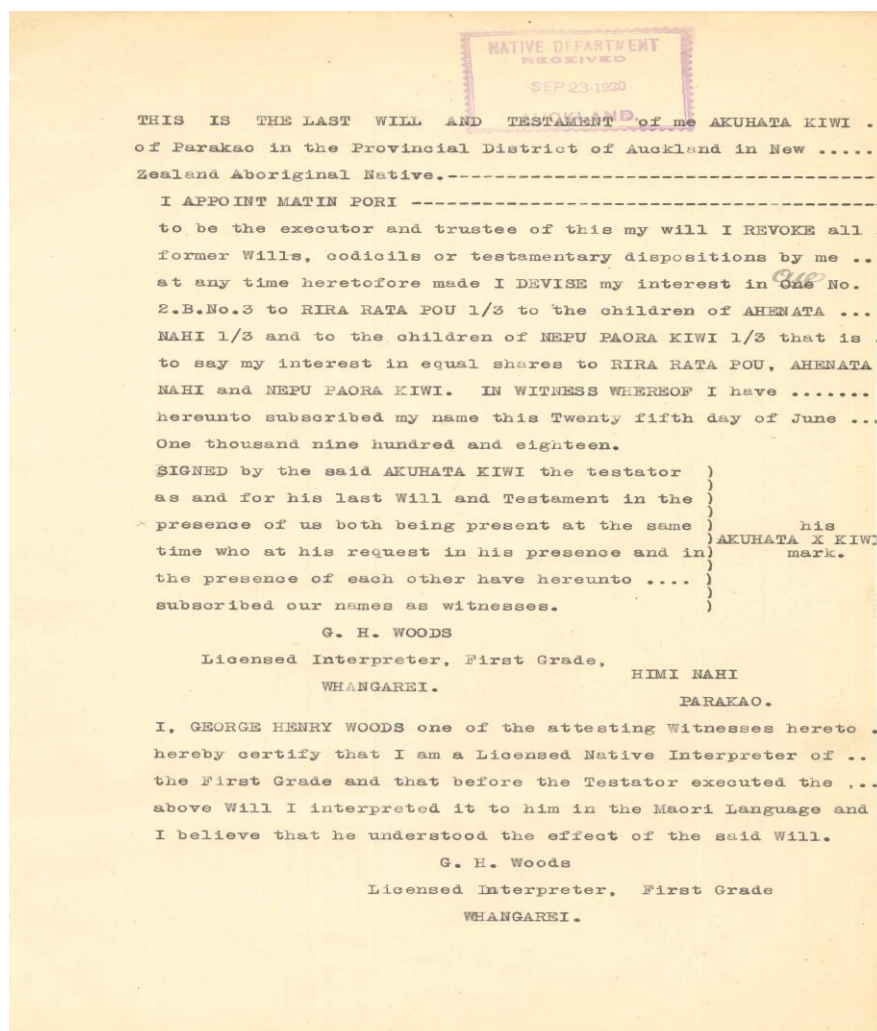
L. M. Fromont
Deputy Registrar
High / District Court
Whangarei

Certified to be a true copy of the above particulars in an entry recorded in this office.
Issued under the seal of a Registrar on 13 August 2013

CAUTION - Any person who (1) falsifies any of the particulars on this certificate, or (2) uses it as true, knowing it to be false, is liable to prosecution under the Crimes Act 1961.



10. A copy of the Will of Akuhata Kiwi is on file and states that his interests in Oue 2B3 be devised to "...Rira Rata Pou, the children of Ahenata Nahi and to the children of Nepu Paora Kiwi".
11. At 13 Whangarei MB 192 the Court made orders vesting Oue 2B3 in Rira Rata Pou (1/3), Ahenata Nahi (1/3), Matiu Pou (1/6) and Peta Hone Peti (1/6) as per the Will of the deceased, which has been reproduced below:



12. Akuhata Kiwi deceased with no issue and at **18 Whangarei MB 145-146** further Māori land interests in Oue 2B2A, 2B2B and 2B2C were vested in his siblings with substitution for issue.
13. A copy of the minute is reproduced below:

Succn to Akuhata Kiwi alias Hata Paora Kiwi

Mihi Rata ...I knew dec'd when alive, uncle of mine. Died 13 August 1919. Same person under both names.

... I refer to file ... showing Will of deceased dated 25/6/1918. The Will affected only one block Oue 2B3. See succn min Wh12/192

Mihi Rata Deceased left no issue. Parents decd. Brothers and sisters.

Rira Rata Pou	fa (mother of witness)
Ahenata Nahi	fd issue
Nepu Te Rata Pou	d issue
Ahenata left issue four	
Hana Kapea	fa
Moehau Haere	fa
Eriapa Nahi	d issue
Hemi Nahi	d issue

Nepu Te Rata Pou left issue two

Peta Hone Peti	fa
Matiu Pou	d issue

Eriapa Nahi left issue two

Nahi Eriapa	fa
Te Moni Eriapa	ma

Hemi Nahi left issue as shown folio 94...**Matiu Pou left issue three**

Teri Matiu Pou	ma
Te Rapunoa Matiu Pou	ma
Ahenata Matiu Pou	fa

I ask that all ... succeed in their proper proportions.

14. It should be noted that:

- (i) The witness for this succession was Mihi Rata who is recorded as being the daughter of Rira Rata Pou, the sister of Akuhata Kiwi
- (ii) The Will of Akuhata Kiwi states that 1/3 of his interests in Oue 2B3 are to be vested in the children of his sister Nepu Paora Kiwi. Matiu Pou and Peta Hone Peti each received a 1/6 interest at **13 WH 192**.
- (iii) The death certificate provided by the applicant states that Peata Hone Peti is the child of Rina Rata Pou. Succession to Rira Rata Pou was made at **18 Whangarei MB 240-241 on 4 July 1939**. Neither Peata Hone Peti nor Matiu Pou were included in the succession

15. At 18 WH 240-241 the successors to Rira Rata Pou⁴ are recorded as follows:

Hohi Mokena	(d) issue
Wire te Rata Pou	ma
Pou te Rata Pou	ma (present)
Hemara te Rata Pou	m
Wi Tapeta te Rata Pou	ma (present)
Tangi te Rata Pou	f(d)
Mihi Te Rata Pou	fa (present)

Hohi Mokena left:

Hone Mokena	ma
Mere Kawi Poa	fa
Herehere Rudolf	fa
Waranatia Mokena	ma
Hereora Mokena	fa
Wini Mokena	fa

Tangi left:

Raiha Whare Mangu
Harata Whare Mangu

16. Rira (Rina) Rata Pou married Te Rata Pou (as confirmed in the whakapapa provided by the applicant). Succession to Te Rata Pou was made at **68 Hauraki MB 324 on 1 July 1924**. The successors were named as Maro Te Rata Pou also known as Peka Hone Peti and Matiu Pou together with the children of Rira Rata Pou noted above.

⁴ 18 Whangarei MB 240-241 (18 WH 240-241).

17. The applicant claims that the whakapapa evidence presented to the Court at 13 WH 192 and 18 WH 145-146 is incorrect because Peata Hone Peti and Matiu Pou are the children of Rira Rata Pou and not Nepu Rata Pou
18. The evidence was given by Mihi Rata who is recorded in the minute at 18 WH 145-146 as being the daughter Rira Rata Pou, and who succeeded to her mother at 148 WH 240-241. Peata Hone Peti and Matiu Pou were not included in the succession to Rira Rata Pou.
19. **There is insufficient evidence to prove that an error was made by the Court or that the information supplied to the Court at the time the applications were heard was incorrect. It is recommended that the applicant provide contact details for the descendants of Rira Rata Pou (as recorded above) so that they can be notified of the application and the whakapapa amendments that are being sought.**

25 Whangarei MB 49-54 dated 31 August 1949

20. At 25 Whangarei MB 49-54 partition and exchange orders made in relation to Oue 2B2C and 2B3 blocks
21. The applicant states that:

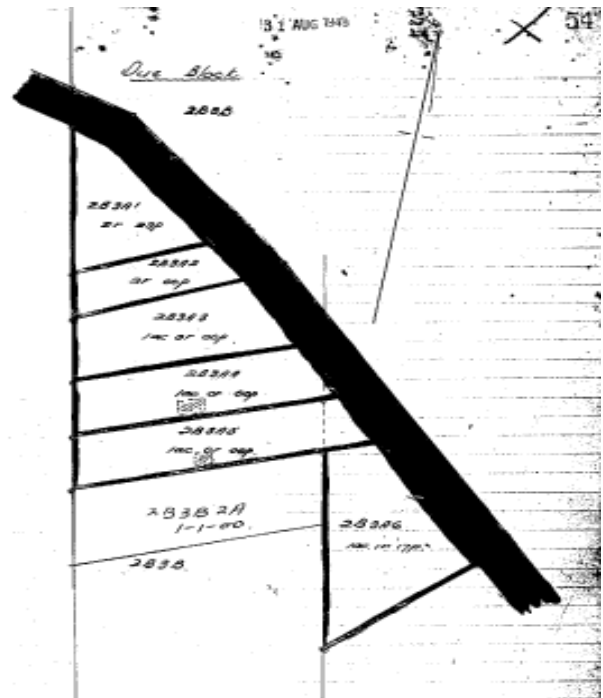
I oppose the abovementioned exchange order, as it was made through the partitioning of the gifted interests of Hapeta Hau in Oue 2B2C and interests owned by Peata Pou in Oue 2B2C, where Mr Waetford created the 1 ½ acre partition known as Oue 2B2C1.⁵

In 1939, Hone Peeti Whakaeke was gifted 1 acre in Oue 2B3 wholly by Wire Wati Arepata, and through Mr Waetford's manipulation of the interests of Nau Inia Whare in Mr Waetford's most recently formed Oue 2B3A block, and Peata Pou's interests in Oue 2B2C that became the most recently formed Oue 2B2C1, culminated in Hapeta Hau acquiring one acre in Oue 2B3A5 at 25 WH 49-54, that was Oue 2B3F at 18 WH 359-362, that was originally Oue 2B2C at 18 WH244.

Mr Hau's Oue 2B2C gift became superimposed over the top of my grandmother's home in Oue 2B3, that became Oue 2B3F seven weeks later at 18 WH 359-362, through the provisional amalgamated partition order made at 18 WH 359-362, that remained in this provisional state for the next 10 years until 25 WH 49-54 on 31 August 1949.
22. Court research shows that at 25 WH 49-54 orders issued partitioning Oue 2B2C to Oue 2B2C1 and 2B2C2, and Oue 2B3 to Oue 2B3A and 2B3B. Exchange orders also issued as follows:
 - (i) Order of exchange - half of the interest of Peka Hone Peti in Oue 2B2C1 (1/6) to vest in Nau Inia Whare; and
 - (ii) Order of exchange - part of the interest of Nau Inia Whare in Oue 2B3A (1/168) to vest in Peka Hone Peti.
23. The exchange orders had the following effect:
 - (i) Oue 2B2C1 to Peka Hone Peti (1/6) Hapeta Hone Hau (2/3) Nau Inia Whare (1/6)
 - (ii) Oue 2B3A to Nau Inia Whare (5/168), Wire Wati Arapata (1/42), Tikawe Wati Arapata (1/84), Pahe Kuha Taniora (1/84), Hone Peti Whakaeke (1/84), Peka Hone Peti (1/168)
24. Partition orders were then made over the combined areas of Oue 2B3A and 2B2C1 blocks and were allocated as follows (in accordance with the sketch plan set out at folio 54 of the Court minute);

⁵ Refer paragraph 18.1 – 19.1 of the application.

- (i) Oue 2B3A1 (2r 23p) – Pahe Kuha Taniora, solely
 - (ii) Oue 2B3A2 (2r 00p) – Tikawe Wati Arapata, solely
 - (iii) Oue 2B3A3 (1a 0r 00p) – Wire Wati Arapata, solely
 - (iv) Oue 2B3A4 (1a 0r 00p) to Hone Peti Whakaeke (1/2) and Peka Hone Peti (1/2) to include house of Hone Peti Whakaeke
 - (v) Oue 2B3A5 (1a 0r 00p) to Hapeta Hone Hau, solely to include house of Hapeta Hone Hau
 - (vi) Oue 2B3A6 (1a 1r 17p) – Nau Inia Whare, solely
25. All owners in Oue 2B2C1 and Oue 2B34 (as set out at paragraph 23(i) and (ii) above) were accommodated in the making of the partition orders. The final allocation of lands (set out in the sketch plan above) took into consideration the two houses situated on the lands - that of Hone Peti Whakaeke and Hapeta Hone Hau. Any provisional orders that were made prior to the final partition orders issuing were just that – provisional. The applicant's claims regarding this order should be dismissed.
26. Ownership of the interest of Hapeta Hau in Oue 2B3A5 was determined at 99 Whangarei MB 199-203⁶ dated 25 May 2004 and 2004 Chief Judge's MB 492-493⁷ dated 23 November 2004. The Chief Judge made orders pursuant to section 44 of Te Ture Whenua Maori Act 1993 that Oue 2B3A5 be vested into "Hamuera Hapeta Hona Hau deceased and then to his successors at 7 WH(S) 104". The block is currently vested in Te Whānau Hou Whānau Trust



25 Whangarei MB 69 and 25 Whangarei MB 70 -71 dated 8 September 1949

27. At 25 Whangarei MB 69 the Court made orders cancelling succession orders to Hone Peti Whakaeke at 24 Whangarei MB 80 dated 19 May 1948 and 23 Whangarei MB 267 dated 27 August 1947 with regard to Oue 2B2B and 2B3, until the issue of house payments was settled.
28. At 25 Whangarei MB 70-71 the Court cancelled succession orders to Hapeta Hone Hau at 24 Whangarei MB 44 dated 12 May 1948 with regard to Oue 2B2C. The Court also made orders of exchange between Peka Hone Peti and Hone Peti Whakaeke with regards to Oue 2B2B and Oue 2B3A4
29. The effect of the exchange enabled Hone Peti Whakaeke to become the sole owner of Oue 2B3A4 where the house was situated. Peka Hone Peti also known as Maro Hone Peti acquired further shares in Oue 2B2B block in which she was already an owner.

⁶ Refer A20020006674 minute of Chief Judge hearing.

⁷ Refer A20020006674.

30. **The applicant once again refers to a housing loan and the validity of it. Given that this does not fall within the jurisdiction of the Court, these issues should not be brought into consideration.**
31. **As noted above the complaint is not precise, and it has been difficult to glean the essence of the alleged error made by the Court. In regard to these orders it is recommended that the applicant clearly set out the nature of the mistake or omission sought to be corrected.**

30 Whangarei MB 13-14 dated 15 April 1958

32. At 30 Whangarei MB 13-14 succession was made to Maro Hone Peti Arena also known as Maro Hoani Peti or Te Maro Rata Pou or Peka Hone Peti.
33. The lands were vested as follows:
 - (i) Oue 2B2B2 – Rewa Ringa Kopa (1/2), Te Omeka Wirihana Mau (1/4), Te Rauna Wirihana Mau (1/4)
 - (ii) Waima North A21B – Te Omeka Wirihana Mau (1/2), Te Rauna Wirihana Mau (1/2)
 - (iii) Maungapohatu South 1A6C – Arepata Ringa Kopa (1/4), Reo Wirihana Mau (1/4), Pou Wirihana Mau (1/4), Piriwiri Tua Te Hakiwai Tia (1/4)
 - (iv) Kaikou C5C3B2 – Rewa Ringa Kopa, Te Omeka Wirihana Mau, Te Rauna Wirihana Mau, Arepata Ringa Kopa, Reo Wirihana Mau, Pou Wirihana Mau, Piriwiri Tua Te Hakiwai Tia, equally.
34. The applicant states that the interests of his great grandmother, Peata Pou in the lands mentioned below, have been fraudulently mismanaged by Olive and Sam Hau without the express knowledge or consent of Arepata Ringa Kopa, Reo Wirihana Mau, Pou Wiremu Mau and Piriwiri Tua Te Hakiwai Tia as follows:
 - (i) Oue 2B2B2 block should have been vested in Arepata Ringa Kopa, Rewa Ringa Kopa, Reo Wirihana Mau, Pou Wirehana Mau and Piriwiri Tua Te Hakawai Tia, equally as to a half share. When the applicant asked his father, Pou Wirihana Mau about the consent, his father was adamant that neither he nor his brothers gave their consent either verbal or written.
 - (ii) Kaikou C5C3B2 block was sold to William Peihopa by Olive Kopa without the knowledge or consent of her brothers; and
 - (iii) After Arepata Kopa, Poukapua Wirihana Mau, Reo Wirihana Mau and Piriwiri Tua Te Hakawai Tia received shares in the Maungapohatu 1A6C2 block, the land their brother-in-law Sam Hau, in liaison with the Māori Trustee, leases the block to the husband of Mr Hau's cousin, William Francis Kearney.
35. At 30 Whangarei MB 14 the minute states "...the shares of Reo Wirehana Mau, Pou Wirehana Mau, Piriwiri Tua Te Hakawai Tia and Arepata Ringi Kopa in Oue 2B2B2 are vested by consent in Rewa Ringa Kopa".
36. On the application file is a signed agreement which has been reproduced below:

Wh 30/14

Agreement.

We the undersigned, do hereby most solemnly declare and promise to forego all our rights interests, or privileges in the property known as "Que 2B2B2." owned by our grand mother "Mano Hone Peti Arena" (deceased)

We also most solemnly declare and agree that our only and half sister "Rewa Ringa Kopa" be appointed the sole beneficiary of the above named estate.

We do solemnly agree to the above by affixing our signatures in the spaces provided below number one (1) to four (4) and in the presence of witnesses.

(1) Signature. P.W.J. Tia. 1/10
 Witness. ~~Postmaster~~ Onehunga

(2) Signature. Y.P. Kiriwani 1/10
 Witness. ~~Postmaster~~ Onehunga

(3) Signature. S. A. T. S. 1/10
 Witness. ~~Postmaster~~ Onehunga

(4) Signature. Arepata Ringa Kopa 1/10
 Witness. A.C. Manaway. Postmistress Parakao.

Reo

37. Que 2B2B2: is shown as being a current block within the Māori Land Court records. The interests that were vested in Rewa Ringa Kopa have since been succeeded to at 44 Whangarei MB 39 on 25 March 1968.
38. Kaikou C5C3B2 block:
- (i) Sold by the Māori owners to William Peihopa under Part XXIII of the Māori Affairs Act 1953. A schedule of ownership orders records the sale from the owners numbered 1-52 to William Peihopa as shown below:

Page No. 1

SCHEDULE OF OWNERSHIP ORDERS

BLOCK *Kaikou C.S.C.3B2* AREA *218.2.36* SHARES *26.9886*

12,000/1237-87917, VA.

List No.	OWNERS	Sex and Age	Ratio	SHARES IN BLOCK			TOTAL	TC
				ALREADY OWNED From / Number	New Acquired Number			
	DECEASED OR TRANSFEROR <i>Doenga Kapa Kapa</i>							
	1/52 SH. 2.2661 M.D. REF. WH 20/10.							
	ORDER <i>S.V.O.</i> DATE <i>14/4/1958.</i>							
48	<i>Kamukahi Remona Ratahi</i>	<i>m</i>	<i>Eq.</i>		<i>.4532</i>	<i>.4532</i>		
49	<i>Hesia Remona Ratahi</i>	<i>f</i>			<i>.4532</i>	<i>.4532</i>		
50	<i>Kamete Remona Ratahi</i>	<i>m</i>			<i>.4532</i>	<i>.4532</i>		
51	<i>Lisipi Remona Ratahi</i>	<i>m</i>			<i>.4532</i>	<i>.4532</i>		
52	<i>Kohipere Remona Ratahi</i>	<i>1960</i>	<i>f</i>		<i>.4532</i>	<i>.4532</i>		
					<i>2.2661</i>			
TRANSFEROR <i>all owners.</i>								
	<i>1/52 SH. 26.9886</i>			<i>TK 6888.</i>				
	<i>Conf. Sale</i>			<i>14/3/58. (2nd 14/9/58).</i>				
53	<i>William Rihapa</i>	<i>m</i>	<i>Sale.</i>		<i>26.9886</i>	<i>26.9886</i>		

- (ii) The successors recorded at 30 Whangarei MB 13-14 are not shown on the owners' schedules held in MLIS however, there is a written notation on page 2 of the Court order "Note – Interest of deceased sold. Interest of trustees would be for monetary interest only".

39. Maungapohatu 1A6C block:

- (i) Sold to Hamuera Hau⁸ by the Māori Trustee acting as agent of owners. An order confirming resolution of assembled owners was made at 36 Whangarei MB 281-282 dated 25 March 1964;
 - (ii) R6/413 dated 7 December 1967 confirms a lease of Maungapohatu South 1A6C to William Frances Kearney from 1 January 1967 for a term of 10 years;
 - (iii) On 28 November 1968 Maungapohatu South 1A6C ceased to be Māori land pursuant to Part I of the Māori Affairs Amendment Act 1967 with the sole owner being Hamuera Hau.
 - (iv) The Record of Title NA5A/279 (formerly referred to as certificate of title) records the current registered owner as being Lee Craig Miscall.
40. It should also be noted that while Rewa Ringa Kopa received shares in the Oue 2B2B2 block solely, she was not included in the Maungapohatu 1A6C block – this land went to her four brothers equally.
41. As per section 48(1) of Te Ture Whenua Māori Act 1993 the Court does not have jurisdiction to deal with lands that have been acquired for value and in good faith. Section 48 states:
- 48 Matters already finalised or pending

⁸ Previous Court hearings before confirmation made - 36 Whangarei MB 227 and 261-268.

- (1) No order made by the Chief Judge under [section 44](#), or made by the Appellate Court on appeal from any such order, shall take away or affect any right or interest acquired for value and in good faith under any instrument of alienation registered before the making of any such order.

42. **Given that Arepata Ringa Kopa, Reo Wirihana Mau, Pou Wirihana Mau and Piriwiri Tua Te Hakawai Tia formally consented to their sister, Rewa Ringa Kopa receiving this land solely as evidenced by the signed, written agreement reproduced above. The applicant's claims regarding this order should be dismissed.**

TKT 434A – R5/311 dated 10 August 1964

43. Relates to the sale and lease of Maungapohatu South 1A6C block. **Research with regards to this matter is recorded at paragraph 39 and 41 above. The applicant's claims regarding this order should be dismissed.**

1 Whangarei (Succession) MB 318 dated 3 July 1989

44. This order relates to succession to Kawarahi Hapeta Hau also known as Kanarahi Reo Wirihana.
45. The applicant has requested that the Court make corrections to genealogical references presented at 1 Whangarei (Succession) MB 318 in particular the reference to the marriage between the deceased and Reo Wirihana.
46. The applicant claims;

My paternal uncle Reo Wirihana slept with my maternal aunty Ripeka Rawa, having a son Bill Tama Pawa in March 1957. Reo Wirihana did not marry Kanarahi Hau, as stated by Tunisia Silk. Sam Hau married Reo Wirihana's sister Olive Kopa, and if Reo Wirihana had married Sam Hau's sister Kanarahi, my father and his family would have surely known of this, and attended the wedding, as Dad's generation were quite attentive of unveilings, weddings, birthdays, tangi, etc, however, none of Dad's family knew of this marriage.

47. At 1 Whangarei (Succession) MB 318 the daughter of the deceased, Tunisia Silk, gave the following evidence:

The deceased left no will and legally married once only to Reo Wirihana for 3-4months, no issue, who is believed to be still alive

Note: Reo Wirihana has been separated from for over 40 years. The deceased to Thames and raised a family.

48. **There is insufficient evidence to prove that an error was made by the Court or that the information supplied to the Court at the time the application was heard was incorrect. The applicant's claims regarding this order should be dismissed.**

28 Auckland MB 60-62 dated 23 May 2000

49. **28 Auckland MB 60-62** relates to an application lodged by Te Raunatanga Wirihana Mau to gift shares in Oue 2B3A4 to Iriaka Wensor and Ngauta Tobin pursuant to section 164 of Te Ture Whenua Māori Act 1993.
50. The applicant claims that the evidence given by Te Otinga that he and Te Raunatanga are cousins is incorrect. He states:

My father and Rauna Wirihana Mau are brothers. Sam Hau and Makareta Ngahuia Pera are brother and sister. Therefore, Rauna Wirihana Mau and Te Otinga Smith are not cousins at all, as they are one generation removed from one another.

51. On this basis he seeks an amendment to the minute.
52. According to the minute the application was lodged by Te Raunatanga, who was living in Melbourne and unable to attend the hearing. At **28 AT 61** the application was adjourned to enable the applicant to gain confirmation that his children, Errol and Connie Mau, support the gifting. Having received confirmation from the children the Court made orders at 91 Whangarei 250 dated 30 January 2001 transferring 50 shares in Oue 2B3A4 from Te Raunatanga to Iriaka and Ngauta.
53. Further orders were made at 9 Whangarei Succession MB 226-230 dated 14 January 2008 transferring Te Raunatanga Wirihihana Mau's shares in Oue 2B3A4 and 2B2B2 to his children.
54. **There is insufficient evidence to prove that an error was made by the Court or that the information supplied to the Court at the time the application was heard was incorrect. The applicant's claims regarding this order should be dismissed.**

Details of subsequent Orders affecting lands to which this application relates

55. Should the Court grant the amendments/cancellations as sought by the applicant further research will be required to identify orders affected.

Details of payments made as a result of the Order

56. Not applicable.

Reference to areas of difficulty

57. The applicant has not provided contacts for affected parties other than his immediate whānau.
58. The applicant submits that under the provision of rule 8.2(2)(c) of the Māori Land Court Rules 2011 the Court is requested to make corrections to the whakapapa presented as the errors have culminated in the wrong people succeeding to various interests. Rule 8.2 relates to matters to be set out in the application and rule 8.2(2)(c) sets out that where the whakapapa is alleged to be incorrect the applicants' version of the correct whakapapa should be included in the application.

Consideration of whether matter needs to go to full hearing

59. 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.
60. 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.
61. In regard to the following orders complained of, the applicant has not provided sufficient evidence to prove that an error was made in the presentation of facts at the time the applications were heard.
 - (a) At **18 Whangarei MB 244-247** research of the Court record shows that the shares gifted by Peri Matiu Pou, Te Rapunoa Matiu Pou and Ahenata Matiu Pou to Hapeta Hone Hau in Oue 2B2C block were theirs to gift.

- (b) At **13 Whangarei MB 192** the interests of Akuhata Kiwi were vested in the successors in terms of the Will. Further Māori land interests of the deceased were vested in the persons entitled (being his siblings with substitution of issue) at **18 Whangarei MB 145-146**.
 - (c) At **25 Whangarei MB 49-54 dated 31 August 1949** exchange and partition orders were made over the interests of the owners of Oue 2B2C1 block and Oue 2B3A block. All owners were apportioned areas in the newly partitioned blocks. The interests of Hapeta Hau in Que 2B3A5 as per orders at 2004 Chief Judge's MB 492-493.
 - (d) At **30 Whangarei MB 14 dated 15 April 1958** succession was made to Maro Hone Peti Arena also known as Maro Hoani Peti or Te Maro Rata Pou or Peka Hone by way of family arrangement. Whilst Rewa Ringa Kopa received shares in the Oue 2B2B2 block, she did not receive shares in Maungapohatu 1A6C block which was vested in her four brothers equally. A signed written agreement confirms that consent was given for Rewa Ringa Kopa to succeed to the interests in Oue 2B2B2 solely. Section 48(1) of Te Ture Whenua Māori Act 1993 is relevant in regard to Kaikou C5C3B2 and Maungapohatu 1A6C blocks, which were acquired for value and in good faith.
 - (e) **TKT 434A – R5/311 dated 10 August 1964** refers to the sale and lease of Maungapohatu South 1A6C block. Section 48(1) of Te Ture Whenua Māori Act 1993 is relevant as the block was acquired for value and in good faith.
 - (f) At **1 Whangarei (Succession) MB 318 dated 3 July 1989** succession to Kawarahi Hapeta Hau also known as Kawarahi Reo Wirihana was made. The applicant has not provided sufficient evidence to prove that an error was made in the presentation of facts at the time the application for succession was heard.
 - (g) At **28 Auckland MB 60-62 dated 23 May 2000** an application was lodged by Te Raunatanga Wirihana Mau to gift shares in Oue 2B3A4 to Iriaka Wensor and Ngauta Tobin. The applicant has not provided sufficient evidence to prove that an error was made in the presentation of facts at the time the application for succession was heard.
62. In regard to the following orders complained of further information is required.
- (a) At **13 Whangarei MB 192 dated 20 November 1920 and 18 Whangarei MB 145-146 dated 3 August 1938** - succession to Akuhata Kiwi. It is recommended that the applicant provide contact details for the descendants of Rira Rata Pou (as recorded at 18) so that they can be notified of the application and make comment on the whakapapa amendments that are being sought.
 - (b) At **25 Whangarei MB 69 and 25 Whangarei MB 70-71 dated 8 September 1949** exchange orders were made to enable Hone Peti Whakaeke to become the sole owner of Oue 2B3A4 block where their house was situated. Peka Hone Peti received additional shares in land she was already an owner in. The complaint is not precise, and it has been difficult to glean the essence of the alleged error made by the Court. It is recommended that the applicant clearly set out the nature of the error and who made it.
63. The matter is set down for hearing on **Friday 14 June 2019 at the Whangarei Maori Land Court**

Recommendation of course of action to be taken

64. If the Deputy Chief Judge is of a mind to exercise her jurisdiction, then it would be my recommendation that:
- (a) A copy of this report be sent to all affected parties, for whom we have contact details for, to give them an opportunity to comment in writing or respond at the hearing.
 - (b) That the applicant be directed to provide contact details for the descendants of Rira Rata Pou so that they can be notified of the application and make comment on the whakapapa amendments that are being sought.
 - (c) That the applicant be clearly set out the nature of the mistake or omission sought to be corrected at 25 Whangarei MB 69 and 25 Whangarei MB 70-71 dated 8 September 1949
 - (d) That the application be dismissed in part in relation to orders complained of at:
 - (i) 18 Whangarei MB 244-247 dated 5 July 1939;
 - (ii) 13 Whangarei MB 192 dated 20 November 1920 and 18 Whangarei MB 145-146 dated 3 August 1938;
 - (iii) 25 Whangarei MB 49-54 dated 31 August 1949;
 - (iv) 30 Whangarei MB 14 dated 15 April 1958;
 - (v) TKT 434A - R5/311 dated 10 August 1964;
 - (vi) 1 Whangarei (Succession) MB 318 dated 3 July 1989; and
 - (vii) 28 Auckland MB 60-62 dated 23 May 2000.
65. If objections are received, then the matter should be referred to the Deputy Chief Judge for directions.

[3] A supplementary Report and Recommendation (Supplementary Report) dated 11 March 2024 was produced to compare the information in the applicant's submission of 28 August 2019 with the information held on file. The Supplementary Report is reproduced in full as follows:

**APPLICATION UNDER SECTION 45 OF THE TURE WHENUA MĀORI ACT 1993
SUPPLEMENTARY REPORT AND RECOMMENDATION**

Introduction

1. On 4 September 2019, the Court directed "*Call for s40 report comparing new information with our file. New supplementary report from Registrar.*"
2. The purpose of this supplementary report is to fulfil the above Court directions.

The application

3. This application filed by Beau Wilson seeks to cancel or amend the following orders:

- (i) 13 Whangarei MB 192,
- (ii) 18 Whangarei MB 145-146,
- (iii) 18 Whangarei MB 244-247,
- (iv) 25 Whangarei MB 49-54,
- (v) 25 Whangarei MB 69-71,
- (vi) 30 Whangarei 14,
- (vii) TKT 434A-R5/311,
- (viii) 1 Whangarei (Succession) MB 318, and
- (ix) 28 Auckland MB 60-62

with regards to the Oue 2B2C and other blocks.

Procedural history

- 4. On 7 June 2019 a copy of the Registrar's Report and Recommendation dated 7 June 2019 was distributed to parties with known addresses, by way of email and letter. No objections were received.
- 5. On 14 June 2019 (2019 Chief Judges MB 849-870) the application was heard in Whangarei and full details of the Registrars 'Preliminary Report and Recommendation' are set out in that minute. After hearing from parties the application was adjourned to enable the applicant an opportunity to file a written response to the contents of the Registrar's report.
- 6. On 28 August 2019, the applicant filed a written response with the Case Manager. That same day a copy was referred to the presiding Judge for their information and perusal.
- 7. The application file indicates that the application was set down for hearing in Whangarei on 4 September 2019. The attendance register for the hearing of this application on 4 September 2019 indicates the applicant as being present. A copy of the transcript and finalised minute of this hearing is not located on file and attempts to locate it have been unsuccessful. The draft submission records a direction from Her Honour Deputy Chief Judge Fox: "*Call for s40 report comparing new information with our file. New supplementary report from Registrar.*"

Applicant's submission in response dated 28 August 2019

13 Whangarei MB 192 dated 20 July 1920 and 18 Whangarei MB 145-146 dated 3 August 1938 – Succession to Akuhata Kiwi

8. A summary the points raised in the applicant's submission in relation to this matter are:

- (i) Peri, Rapunoa and Te Aurere Poa should not have succeeded by a 1/18th to the interests of Akuhata Kiwi in Oue 2B3, Oue 2B2A, Oue 2B2B and Oue 2B2C. The Court record indicates that Peri, Rapunoa and Ahenata Pou (also known as Te Aurere Pou) received these interests in substitution for their deceased father Matiu Pou. The Court record also indicates Matiu Pou and Peka Hone Peeti (also known as Maro Hone Peti) were entitled in substitution for their deceased mother, Nepu Paora Kiwi. 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 who is referred to in the Court record as Peka Hone Peeti or

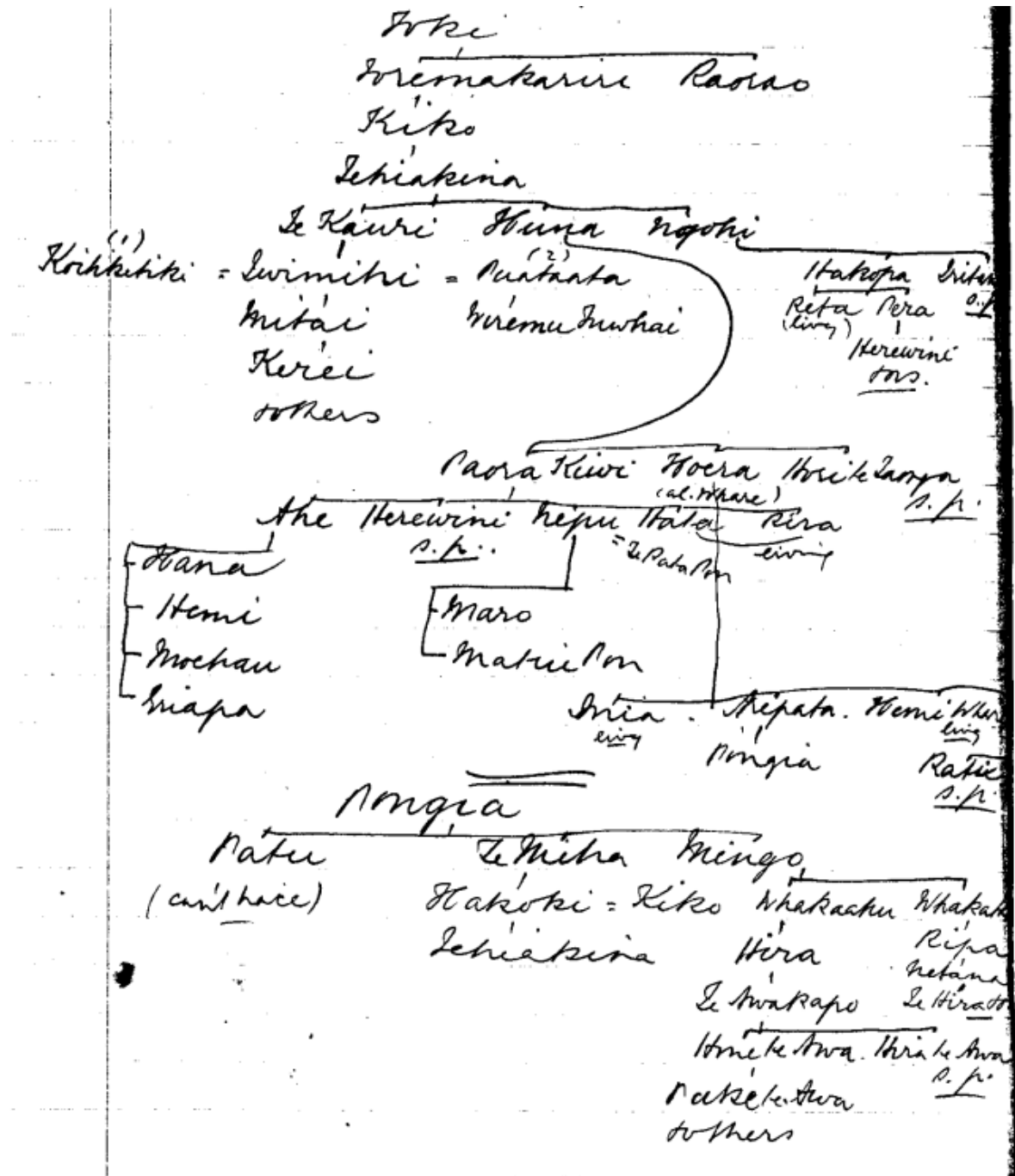
Maro Hone Peti) were children of Rira Rata Pou and not children of Nepu Paora Kiwi. Therefore Peri, Rapunoa and Te Aurere Pou should not have succeeded to Akuhata Kiwi as (1) Matiu Pou was not a child of Nepu Paora Kiwi and (2) Rira Rata Pou was alive when succession to Akuhata Kiwi occurred.

- (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. The applicant also refers to having the death certificate for Matiu Pou and that his parents are recorded as Rita Rata Pou and Te Rata Pou.⁹
- (iii) That Nepu Kiwi also known as Nepu Te Rata Pou died as a girl before Peata and Matiu were born in 1867 and 1871 respectively, therefore Nepu could not have been Matiu Pou and Peata Pou's mother.
- (iv) That Akuhata Kiwi also known as Hata Kiwi was the father of Rina Rata Pou, Ahenata Nahi and Nepu Kiwi. He was not their brother as indicated at 18 Whangarei MB 145.
- (v) 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 Paora Kiwi were siblings of Akuhata Kiwi and that Nepu Paora Kiwi was the mother of Matiu Pou and Peka Hone Peeti.
- (vi) The whakapapa he has provided regarding his great grandmother Peata Pou being a child of Rina Kiwi who was a child of Hata Kiwi was provided to him by his father Poukapua Wirihana who was provided this information by his grandmother Peata Pou. This whakapapa is generally accepted amongst members of his wider whānau.

9. Further research of the Court record provides the following:

- (i) The probate file for Akuhata Kiwi (982 Pers.) contains the will of Akuhata Kiwi, the application for probate and the declaration on application for probate. Matiu Pou as the executor appointed under the will of Akuhata Kiwi makes the initial application for grant of probate. It would then follow that the evidence that led to the succession order made at 13 Whangarei MB 192 on 29 September 1920 in respect of Akuhata Kiwi's interests in Oue 2B3 would have been provided by Matiu Pou.
- (ii) Two further Court minutes have been located that provide similar whakapapa to that provided by Mihi Rata on 3 August 1938. The minutes are as follows:
 - (a) 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:

⁹ Applicant's submission, para [9](iii). copy of the death certificate for Matiu Pou has not been supplied.



- (b) 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 Rota Pou fa dead (who left issue Matiu Pou ma, Maro Hone Peti fa) 3. Rira Rata Pou fa Ahe Naihi (dead leaving issue Hemi Nahi ma, Hana Kapea fa, Moehau Haranui fa, Ereapa Nahi ma)

10. Given the evidence provided by Mihi Rata at 18 Whangarei MB 145-146 aligns with evidence provided by two other sources – noting in particular one source was Matiu Pou who identified Nepu Rata Pou as his mother, Maro (also known as Peka Hone Peeti) as his sister, Rira and Ahe as his aunts and Hata as his uncle – **I recommend that the Court did not make an error in relation to the succession orders for Akuhata Kiwi at 18 Whangarei MB 145-146 dated 3 August 1938. Accordingly, the applicant's claim regarding this order should be dismissed.**

11. I would recommend that the Court make an order cancelling the order made at 13 Whangarei MB 192 dated 20 July 1920 being succession to the interests of Akuhata Kiwi in Oue 2B3 as Akuhata Kiwi never owned interests in Oue 2B3.

18 Whangarei MB 246 dated 5 July 1939 – Transfer of shares in Oue 2B 2C from Peri Matiu Pou, Te Rapunoa Matiu Pou and Ahenata Matiu Pou to Hapeta Hone Hau

12. A summary the points raised in the applicant's submission in relation to this matter are:

- (i) As Matiu Pou exchanged his shares in Oue 2B2 for shares owned by Te Arani Pou and Hone Peeti Whakaeke in Maungapohatu South 1A4¹⁰, when Oue 2B2 was partitioned on 26 June 1918 to create Oue 2B2A, Oue 2B2B and Oue 2B2C, the children of Matiu Pou had no shares in Oue 2B2C at this time.
- (ii) The succession to Matiu Pou on 4 July 1939 at 18 Whangarei MB 241-242, which incorrectly records he had shares in Oue 2B2A, 2B2B and 2B2C and which was cancelled by a notation in the Court minute, has not been updated in the record of the Court to affect the cancellation. Without these shares, Peri, Rapunoa and Ahenata would not have had shares in Oue 2B2C to transfer to Hapeta Hau.
- (iii) The applicant refutes the evidence provided by Peri Pou at 18 Whangarei MB 244 wherein he states, "*The family wish to make a gift of one acre to our first cousin Hapeta Hau, brother of our mother Maata Hau.*" The applicant states, and refers to the Court record in support, that "*Maata Matiu-Pou's immediate hapu whanau... are not related by blood Hapeta Hau at all.*" I note, however, that the applicant also states, "*...but rather he [Hapeta Hau] is a nephew of his paternal aunty Maata Hau.*"¹¹ The applicant refers to 9 Auckland (Succession) MB 91-95. This minute 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.
- (iv) On 3 August 1938 at 18 Whangarei MB 145-146, a portion of the shares of Hata Kiwi also known as Akuhata Kiwi in Oue 2B2A, Oue 2B2B and Oue 2B2C were incorrectly vested in Matiu Pou's children for the following reasons:
 - (a) The fact that Peri Pou, Rapunoa Pou and Te Aurere Pou were not named as owners in Oue 2B2A, Oue 2B2B and Oue 2B2C upon the creation of those blocks has a bearing on whether they are able to succeed.
 - (b) The applicant also refers to the fact that three of Matiu Pou's children received a 1/18th interest each upon succession to Akuhata Kiwi. They received these interests in substitution for their deceased father Matiu Pou, who received 1/2th of the entitlement of his deceased mother, Nepu Paora Kiwi. Akuhata Kiwi is his 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, great grandmother) were children of Rita Rata Pou and not children of Nepu Paora Kiwi. Therefore Matiu's children, Peri, Rapunoa and Ahenata Pou, should not have succeeded to Akuhata Kiwi.

¹⁰ 13 Whangarei MB 36-37.

¹¹ Applicant submission para [3](i) & (ii).

13. Further research of the Court record provides the following:

- (i) 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 gifted Hapeta Hone Hau on 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	40	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	

- (ii) A review of the ownership schedules and the consolidation schedules for Oue 2B2A, Oue 2B2B and Oue 2B2C confirms 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.

- (iii) The order was made pursuant to section 163(9) of the Native Land Act 1931, which provides:

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.

- (iv) The Oue blocks formed part of the Bay of Islands Consolidation Scheme.¹²

14. On the basis that the Court agrees with the recommendation that the succession order in respect of Akuhata Kiwi at 18 Whangarei MB 145-146 does not require amendment, and in line with the recommendation made in the Report and Recommendation dated 7 June 2019, **the research**

¹² Bay of Islands Development Scheme District, see 'Native land to be settled and developed,' New Zealand Gazette 48, 26 June 1930, p.2054.

confirms that the shares gifted by Peri Matiu Pou, Te Rapunoa Matiu Pou and Ahenata Matiu Pou were theirs to gift. Furthermore as the Oue blocks formed part of the Bay of Islands Consolidation Scheme, and in the absence of being able to locate any other provision that contradicts section 163 of the Native Land Act 1931, section 163 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. Therefore regardless of the relationship between the donor and donee, the Court was able to vest these interests. Furthermore, Hapeta Hau was a first cousin to Peri and Te Rapunoa Matiu Pou as their parents were siblings. **I recommend that the Court did not make an error in relation to the orders at 18 Whangarei MB 244-247 dated 5 July 1939 transferring shares in Oue 2B 2C from Peri Matiu Pou, Te Rapunoa Matiu Pou and Ahenata Matiu Pou to Hapeta Hone Hau.** Accordingly, the applicant's claim regarding this order should be dismissed.

25 Whangarei MB 49-54 dated 31 August 1949 – Partition and exchange orders for Oue 2B2C and Oue 2B3

25 Whangarei MB 69-71 dated 8 September 1949 – Exchange orders

15. In summary the points raised by the applicant in his submission in relation to this matter are:

- (i) He opposes the exchange orders especially in relation to the use of the interests of Peka Hone Peti in Oue 2B2C1 (which came from Oue 2B2C on partition).
- (ii) These orders were made when many of the owners a party to the orders were deceased (namely Peata Pou and Hapeta Hau), numerous whānau of the owners were deceased and descendants of the owners were not consulted. Peata Pou died on 29 June 1945. Hapeta Hau died on 28 August 1942.
- (iii) That Hone Peeti Whakaeke *did* have sufficient shares in the Oue 2B3 block in order for him to be granted a one-acre block solely. On 4 July 1939, Wire Wati Arepata made a gift of a 1/84th share in Oue 2B3, being 1 acre, to Hone Peeti Whakaeke.¹³ As Hone Peeti Whakaeke had a sufficient interest in Oue 2B3, shares of Peka Hone Peeti were not required to be utilised in conjunction with the shares of Hone Peeti Whakaeke in order for there to be sufficient interests in Oue 2B3 to create a one-acre block for Hone Peeti Whakaeke where his house was located. Therefore, the exchange of shares involving Peka Hone Peti was not necessary.
- (iv) Queries where the shares of Peata Pou and Matiu Pou in Oue 2B3 are. Upon succession to Akuhata Kiwi at 13 Whangarei MB 192, Peata Pou and Matiu Pou received a 1/6th share in Oue 2B3.
- (v) That Te Arani Pou had a house on Oue 2B3A, which was gifted to her by her mother Peata Pou on 5 July 1939. That Te Arani Pou was approved a house from the Board of Native Affairs on 4 July 1939. That Te Arani's house was built on 21 July 1939 on Oue 2B3A. On 22 August 1939, Oue 2B3A became Oue 2B3F following exchange and partition orders. Oue 2B3F was awarded to Hapeta Hau.
- (vi) The 1/84th share that Tikawe Arepata, Pahe Taniora and Hone Peeti Whakaeke received in Oue 2B3A was not consistent with the areas of the land that they had.
- (vii) The housing loan provided to Hapeta Hau was invalid as the loan was approved for a house on Oue 2B2A. Hapeta Hau never held shares in Oue 2B2A.

¹³ 18 Whangarei MB 243.

- (viii) As Hapeta Hau died on 28 August 1942, he was not able to pay the compromise survey charge the Court required him to pay.¹⁴

16. Further research provides the following:

- (i) In making the orders on 31 August 1949, the Court assessed the sufficiency of shares based on value.¹⁵ The 1/84th share of Hone Peeti Whakaeke in Oue 2B3 was valued at £2.7.7. The minute of 31 August 1949 sets out, *"This is approx. @ £6 per acre for land in this position."* Thus why the minute sets out that *"Hone Peeti Whakaeke has an insufficient share"*. This is contrast to the approach that the Court took on 22 August 1939 wherein Hone Peeti Whakaeke was allocated a one-acre block based on his 1/84th share in Oue 2B3. It is noted that Oue 2B3 when partitioned had an area of 77 acres, 1 rood, 34 perches. It is further noted that the Court did not finalise the partition orders made on 22 August 1939 at 18 Whangarei MB 359-362.
- (ii) At 13 Whangarei MB 192 on 29 November 1920, Peka Hone Peti and Matiu Pou each received a 1/6th entitlement to the interests of Akuhata Kiwi in Oue 2B3 in accordance with his will. However, Akuhata Kiwi did not own shares in Oue 2B3. Upon partition on 6 October 1903 at 7 Whangarei MB 322-324, Inia Ware was named as the sole owner of Oue 2B3. The ownership schedule for Oue 2B No 3 notes against the entry for the succession to Akuhata Kiwi *"Should be for No 2B"*.
- (iii) The minute of 8 September 1949 records that Hone Peeti Whakaeke *"...did not have sufficient interest to fill and as a search of all his other lands was not available the Court filled the block with Peka Hone Peti f ½ - value £2.12.0. Details of Hone's lands are now available..."*¹⁶
- (iv) On 4 and 5 July 1939 and 22 August 1939, the Court heard applications for exchange of shares, partition, and other applications in relation to the Oue 2B3 and Oue 2B2C. I can find no reference in the Court minutes of 4 and 5 July 1939 and 22 August 1939 to a gift of shares in Oue 2B3 from Peata Pou (known as Peka Hone Peti in relevant Court minutes) to Te Arani Roera. The minute on 22 August 1939 refers to a site inspection as follows:

Folio 352

Oue 2B 3
Oue 2B 2C

Application for Partition and adjustments of boundaries and roadline.

(Resumed from folios 237-246)

COURT Court explains position and previous proceedings.

Nau Inia Whare now present.

(Adjourned for inspection)

Mr T T Ropiha

Accompanied by Nau Inia Whare and Mihi te Rata Pou and Wiri te Rata Pou, I inspected the land and went into matters dealt with at the last sitting.

¹⁴ Hapeta Hau was allocated a 2/3rd share in Oue 2B2C1 on the basis that he was required to pay larger proportion of the compromise survey charges *"...as he did not have sufficient value to fill"*.¹⁴

¹⁵ 25 Whangarei MB 49-54.

¹⁶ 25 Whangarei MB 49-54.

...

Folio 359

Ex parte

Oue 2B 3

Oue 2B 2C

Application for Partition and adjustments of boundaries and roadline.
(Resumed from folios 352-354)

Mr T. T. Ropiha (Surveyor)

As instructed by Court, I went on to this land with Nau Inia and other interested parties, including parties, including Mihi te Rata Pou and Wire te Rata. All parties have now agreed as follows:-

- (1) To provide a house-site of one acre for Hone Peti Whakaeke wholly on Oue 2B 3, next to and south of the shack of his adopted son, Wire Wati Arepata...
 - (2) To provide a house-site of one acre for Hapeta Hone Hau, partly out of Oue 2B 3 (as to 0 acres 3 roods 36 perches) and balance out of Oue 2B 2C (as to 0 acres 0 roods 04 perches) located next to and south east of Hone Peti Whakaeke's section above...
- (v) The Court minutes of 25 Whangarei MB 49-54 on 31 August 1949, where the Court finalised orders in respect of the amalgamation and partition of Oue 2B3 and Oue 2B2C, also did not refer to a gift to Te Arani Roera or a house site for Te Arani Roera or Peata Pou. Also as outlined above Peata Pou did not own shares in Oue 2B3 to gift.
 - (vi) The applicant at paragraph [23](ii)(b) of his submission names the 18 persons who were the successors to Inia Whare in Oue 2B3. Of the persons the applicant names, only 3 of those persons Wire Wati Arepata, Tikawe Wati Arepata and Pahe Kuha Taniora were named as successors to Inia Whare in Oue 2B3.¹⁷ All other persons, with the exception of Hone Peti Whakaeke, were not recorded as owners in the ownership schedules or consolidation schedules for Oue 2B3.
 - (vii) The minute of 18 Whangarei MB 237 records, "*Two houses were approved by Board of Native Affairs. (1) Hapeta Hone Hau, who was to get a site on 2B 2A.*" This statement was then succeeded by a lengthy discussion wherein it was indicated that Oue 2B2A was not a suitable block 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 as the Oue 2B2C block was to be amalgamated with the Oue 2B3 block for the purposes of partitioning. This dialogue does not definitely confirm that the Hapeta Hone Hau's house approval is associated to Oue 2B2A or not.
 - (viii) As noted above, the Oue blocks formed part of the Bay of Islands Consolidation Scheme.¹⁸ Pursuant to 162(1) of the Native Land Act 1931, when dealing with lands subject to a consolidation scheme the Court was not subject to the restrictions of section 158 of the Native Land Act 1931, which sets out:
 - (a) That the exchange is for the benefit of the Native owners affected thereby;
 - (b) That no Native will, by reason of the exchange, become land less within the meaning of the Act;
 - (c) That the interests to be exchanged are approximately equal in value, and for this purpose they shall be deemed to be approximately equal if the difference between them does not

¹⁷ 10 Bay of Islands MB 214.

¹⁸ Bay of Islands Development Scheme District, see 'Native land to be settled and developed,' New Zealand Gazette 48, 26 June 1930, p.2054.

exceed one hundred pounds or if it does not exceed one-fourth of the aggregate value of both interests:

- (d) That where the interests so exchanged are unequal in value, a sufficient sum of money by way of equality of exchange has been actually paid or sufficient security for the payment thereof has been given or obtained, whether by way of a charge under the provisions hereinafter contained or otherwise;
- (e) That all Natives and other persons in whom any interest so to be exchanged is vested consent to the exchange.

(ix) A reading of Part VI (Partition) and Part VII (Exchange and Consolidation) of the Native Land Act 1931 indicates that the Court had wide powers when dealing with matters involving partitions, exchange and consolidation schemes. I refer to the following specific sections that are of relevance to matters under this application:

- (a) Section 146 – If owners together own all or part of a block and those owners own all or part of another block, for the purposes of partition, the Court can treat those areas of land as a single area owned by them and make orders for partition. *“The Court may limit and define the whole or any part of the interest of any owner or owners within such part of the combined areas as the Court thinks expedient.”*
- (b) Section 148 – The Court is enabled to make an award of additional land to any owner on partition to recompense them for moneys paid for a survey or rates charge.
- (c) Section 149 – Due to the smallness of undivided shares, or for any other reason, and the Court is of the opinion that it is expedient or impractical to partition areas in exact accordance with the respective shares of owners, the Court may allot a greater or smaller area to any owner. The value can be no less than 2/3rds of the full value of their shares. The deficit in value shall be determined by the Court and be a charge against the block.
- (d) Section 155(3) – *“None of the provisions contained in any other Part of this Act with respect to alienation of Native freehold land shall apply to any exchange under this Part of this Act.”*
- (e) Section 162(1) – *“As soon as practicable after the confirmation of any such scheme, or any portion thereof, the Court shall proceed to carry the same into execution by making all necessary orders of exchange or other orders within the jurisdiction of the Court in that behalf, and no such order of exchange shall be subject to any of the limitations or restrictions imposed by section one hundred and fifty-eight of this Act.”*
- (f) Section 162(3) – *“The Court may for the purpose of partition, treat several blocks or parcels of land as a single area owned by the owners of the several areas in common and make an order or orders of partition thereof. The Court shall have jurisdiction to allocate the whole or part of the interests of any owner or owners in any of the several areas and cancel the whole or any part of his or their interest in any other area, and make partition orders accordingly.”*
- (g) Section 162(10) – *“For the purposes of consolidation the Court may grant to any Native or other person an interest in any and, notwithstanding that such person may not theretofore have had any interest in that land...”*
- (h) Section 162(15) – *“All orders made by the Court under this or the next succeeding section may be made on its own motion and in such manner and in accordance with such procedure as the Court thinks fit, notwithstanding anything to the contrary in this Act or in Rules of Court, and it shall not be necessary for the Court in making any such order to proceed judicially or in open Court, or to hold any further inquiry in the matter of the order than the inquiry theretofore made by it in respect of the scheme of consolidation”*
- (i) Section 162(16) – *“No appeal shall lie to the Appellate Court from any order made under this or the next succeeding section.”*

17. In line with the recommendation made at paragraph 30 in the Report and Recommendation dated 7 June 2019, with reference to a housing loan and the validity of it, as this matter is not an order made by a Judge or a Registrar or a certificate of confirmation issued by a Registrar under section 160 of Te Ture Whenua Māori Act 1993, this matter cannot be dealt with by the Chief Judge under section 44 of Te Ture Whenua Māori Act 1993.

18. No evidence has been located in the Court record regarding a house site or a gift of land in Oue 2B3/Oue 2B3A in favour of Te Arani Roera and the evidence presented to date has been anecdotal. This point coupled with the fact that (1) Hone Peeti Whakaeke's shares in Oue 2B3 being valued at £2.7.7 were not of sufficient value to provide a one-acre site, (2) Akuhata Kiwi, Peata Pou and Matiu Pou never owned shares in Oue 2B3 and (3) given the wide powers of the Court when making exchange and partition orders especially when the subject blocks were part of a consolidation scheme, **I recommend that the Court did not make an error in relation to the exchange and partition orders made at 25 Whangarei MB 49-54 dated 31 August 1949 and 25 Whangarei MB 69-71 dated 8 September 1949. Accordingly, the applicant's claim regarding these orders should be dismissed.**

30 Whangarei MB 14 dated 15 April 1958 – Succession to Maro Hone Peti

19. In summary the points raised by the applicant in his submission in relation to this matter are:

- (i) As set out in the application, the entitlement of Reo Wirihana Mau, Piriwiritua Tia, Pou Wirihina Mau and Arepata Kopa in Oue 2B2B were incorrectly vested in accordance with a family arrangement in their sister Oriwa Kopa (also known as Oriwa Hau or Rewa Ringa Kopa) solely.
- (ii) Restates that that Reo Wirihana Mau, Piriwiritua Tia, Pou Wirihina Mau and Arepata Kopa were not made aware of the hearing.
- (iii) Restates that Pou Wirihina Mau did not give consent to this arrangement. The applicant states that the signature on the signed agreement at paragraph 36 of the report and recommendation is not that of his father. Outlines that his father, Pou Wirihana Mau, would not have been able to sign the document at the location where it is said that it was signed at that time.
- (iv) Sets out that a number of important whānau documents were stolen.
- (v) Maro Hone Peti's seven surviving grandchildren (Reo Wirihana Mau, Pou Wirihina Mau, Arepata Kopa, Rewa Ringa Kopa, Te Omeka Wirihana Mau and Piriwiri Tua Te Hakiwai Tia) succeeded equally to her interests in Kaikou 2C5C3B2. Reo Wirihana Mau, Pou Wirihina Mau, Arepata Kopa and Piriwiri Tua Te Hakiwai Tia succeeded equally to her interests in Maungapohatu South 1A6C. The applicant restates that Oriwa and Taurangi Hau fraudulently mismanaged or sold interests in Kaikou 2C5C3B2 and Maungapohatu South 1A6C that the grandchildren of Maro Hone Peti succeeded to at 30 Whangarei MB 14 dated 15 April 1958. The actions that the applicant alleges that Oriwa and/or Taurangi Hau undertook are:
 - (a) The sale of Kaikou 2C5C3B2 by Oriwa to William Peihopa without the knowledge or consent of her siblings.
 - (b) In concert with the Māori Trustee, the Mangapohatu South 1A6C block was sold without their knowledge to their brother in law, Hamuera Hau.

20. Further research and analysis of the evidence from the Court record provides the following:

- (i) Documentation from the Court record sets out that the sale of Kaikou 2C5C3B2 was under Part XXIII of the Māori Affairs Act 1953 and was approved by the Court on 16 August 1956. The ownership schedule records that the sale was provisionally approved on 16 August 1956 and finally approved on 14 August 1958. As the process to effect the sale took place prior to the succession to Maro Hone Peeti Arano, the applicant's father and his siblings would not have received notice of the meeting as a matter of course.

- (ii) On 25 March 1964, pursuant to sections 34(10) and 319 of the Māori Affairs Act 1953, the Court confirmed the sale of Mangapohatu South 1A6C to Hamuera Hau.¹⁹ The Court minutes of 36 Whangarei MB 281-282 and 36 Whangarei MB 227, 261-268 set out that the owners present at the meeting of assembled owners held on 21 February 1964 unanimously passed resolutions to sell the land to Hamuera Hau and to reject a proposal to sell to Murray Hunter. These minutes did not record any further details as to the meeting held on 21 February 1964 as the focus of the discussion was the sufficiency of the consideration to be paid. The application file for the sale cannot be located.
21. **In terms of the applicant's claims that his father did not sign the family arrangement, the evidence submitted to date has only been only anecdotal, documentation corroborating the applicant's claim would assist the Court to determine this matter.**
22. **In terms of the sale of Kaikou 2C5C3B2, the process to effect the sale and the preliminary approval by the Court of the sale occurred prior to the succession to Maro Hone Peti. Therefore, the applicant's claims regarding this matter should be dismissed.**
23. On the face of it, based on the Court minutes, the sale was effected in accordance with the salient provisions of the Māori Affairs Act 1953. Access to the application file would equivocal determine what notice was sent to whom in relation to the meeting of assembled owners held on 21 February 1964.

TKT 434A – R5/311 dated 10 August 1964

24. No new information provided regarding this point. In line with the recommendation made in the Report and Recommendation dated 7 June 2019, **the applicant's claim regarding this order should be dismissed.**

1 Whangarei (Succession) MB 318 dated 3 July 1939 – Succession to Kawarahi Hapeta Hau

25. The applicant restates his point regarding errors in the evidence presented to the Court regarding the marriage between the deceased and Reo Wirihina. No new evidence has been presented.
26. In line with the recommendation made in the Report and Recommendation dated 7 June 2019, **the applicant's claim regarding this order should be dismissed.**

28 Auckland MB 60-62 dated 23 May 2000 – Gift of shares from Rauna Wirihana Mau to Iriaka Wensor and Ngauta Tobin

27. The applicant restates his point regarding errors in the evidence presented to the Court regarding the whakapapa provided by Te Otinga Smith with regard to her whakapapa connection to the donor.
28. The applicant's claim does not relate to the order that the Court made but the evidence provided at the hearing. The evidence provided by Te Otinga Smith regarding her relationship to the donor were not matters that the Court needed to consider when making the order. The applicant's whakapapa set out at page 2 of the Report and Recommendation confirms that the donor Rauna Wirihana Mau is related to the donees Iriaka Wensor and Ngauta Tobin. Albert Kopa (who is the father of the donees) is a first cousin to the donor. Albert's and Rauna's mothers were sisters.

¹⁹ 36 Whangarei MB 281-282.

29. In line with the recommendation made in the Report and Recommendation dated 7 June 2019, **the applicant's claim regarding this order should be dismissed as there is no error with the order made at 28 Auckland MB 60-62 dated 23 May 2000.**

Consideration of whether matter needs to go to full hearing

30. 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.
31. 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.
32. Regarding the orders 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 errors were made in the presentation of facts at the time the order was made.
33. The matter is set down for hearing at **1.45PM on Tuesday 26 March 2024 via Zoom.**

Recommendation of course of action to be taken

34. 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.
35. That the Court receive submissions and/or hear evidence from the applicant, interested parties and affected parties in response to this report and recommendation.
36. 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 errors have not been sufficiently established.

Ko te hātepe ture o te tono nei

Procedural History

[4] The Registrar's Report was distributed to parties with known contact details on 7 June 2019. No objections were received.

[5] On 14 June 2019 the application was heard in Whangārei.²⁰ After hearing from the parties, I adjourned the application to enable the applicant to file a written response to the contents of the Report.

²⁰ 2019 Chief Judge's MB 849-870 (2019 CJ 849-870).

[6] On 28 August 2019, the applicant filed a written response. The written response was sent to me on the same day.

[7] The application was set down for a further hearing on 4 September 2019. No minute was produced recording that hearing. On that day, I directed the Registrar to prepare a supplementary report comparing the new information contained in the applicant's response with the information held on file. The Supplementary Report is dated 11 March 2024 and was distributed to the applicant on the same day.

[8] The application was heard before me in Wellington (via Zoom) on 26 March 2024. The applicant received notice of the hearing on 11 March 2024. The applicant sent in a submission dated 24 March 2024, but no parties attended the hearing. I reserved judgment and indicated I would issue a preliminary judgment, but after receiving correspondence from the applicant, the matter was set down for further hearing on 19 June 2024 instead.²¹

[9] At the hearing, the applicant missed the allocated time for attendance, so the matter along with an associated application was dismissed. He subsequently joined the meeting late so a rehearing was granted. He then relied upon his written submission which basically refuted the additional research of the Registrar outlined in the Supplementary Report.

[10] I reserved judgment, and the file was referred to me immediately following the hearing.

Te Ture *The Law*

[11] 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

²¹ 2024 Chief Judge's MB 1439-1443 (2024 CJ 1439-1443).

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.

[12] 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:²²

- (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.

[13] 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

²² *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.

[14] 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.²³ This means that the applicant must establish on the balance of probabilities that there was a mistake or omission.

[15] The Court of Appeal has confirmed that the power under s 44(1) of the Act falls into two parts:²⁴

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

[16] The issues for determination are:

- (a) Were there mistakes made in fact or in law or in the presentation of the evidence to the Court which led to errors in the orders complained of?
- (b) If so, is it necessary in the interests of justice to remedy those errors by amending or cancelling the orders?

²³ *Tau v Nga Whānau o Morven and Glenavy – Waihao 903 Section IX Block* [2010] Māori Appellate Court MB 167 (2010 APPEAL 167) at [61].

²⁴ *Inia v Julian* [2020] NZCA 423 at [10].

Was an error made?

[17] I note that the Registrar's Report dated 7 June 2019 concluded that the applicant had failed to reach the necessary burden of proof with respect to the errors alleged. The applicant responded to that report and the supplementary report was completed.

[18] I now list all the orders complained of and discuss the Registrar's findings in the Supplementary Report, the applicant's response dated 24 March 2024, and my determination as to whether there was an error made.

Order 1

[19] With respect to the order made on 29 November 1920 at 13 Whangarei MB 192 in relation to succession to Akuhata Kiwi, the Registrar's finding was that it should be cancelled as Akuhata Kiwi was not an owner in the Oue 2B3 block. I note Akuhata Kiwi's will stated his "interest in Oue No.2.B.No.3" was to be distributed to Rira Rata Pou 1/3, to the children of Ahenata Nahi 1/3 and to the children of Nepu Te Rata Pou 1/3 (also known as, and referred to in the will as, Nepu Paora Kiwi). The will dealt with no other land interests.

[20] I consider that the Registrar is correct and that an error was made as Akuhata Kiwi was not an owner in Oue 2B3 block.

Order 2

[21] In terms of the order recorded at 18 Whangarei MB 145-146 dated 3 August 1938 regarding succession to Akuhata Kiwi, the Registrar found there was insufficient independent evidence to demonstrate that an error was made. Mihi Rata (daughter of Rira Rata Pou) gave evidence that Nepu Rata Pou had two children, Peta Hone Peti (also known as Maro, Peata or Peka) and Matiu Pou. There are two Court minutes which record similar whakapapa to that provided by Mihi Rata. The first is recorded at 10 Whangarei MB 93 dated 28 August 1911 where Matiu Pou gave whakapapa evidence. The second is 7 Whangarei MB 328 dated 7 October 1903, listing Nepu, Ahe (also known as Ahenata) and Rira as Akuhata's siblings, with Nepu's children recorded as Maro (Peta/Peata/Peka) and Matiu.

[22] In response, the applicant points to a death certificate for Peata Hone Peti showing she was a child of Rina Rata Pou (also known as Rira) and Te Rata Pou. No death certificate was provided for Matiu Pou. The applicant claims that Rina Rata Pou was their mother, not Nepu. However, I note that neither Peta (Maro/Peata/Peka) nor Matiu were included as successors to Rira Rata Pou recorded at 18 Whangarei MB 240-241 on 4 July 1939. They did succeed to Te Rata Pou recorded at 68 Hauraki MB 324. I note there is nothing to verify that Matiu was a child of Rira. The applicant also claimed that Rira was not a sister to Akuhata; she was a daughter to him. According to him, Rira's siblings were Ahenata and Nepu and they were all children of Akuhata. The evidence he relies upon is whakapapa given to him by his father.

[23] I agree with the Registrar that the applicant has not been able to demonstrate to the required standard of proof that an error occurred with respect to the succession orders made at 18 Whangarei MB 145-146. While there is a death certificate for Peata listing Rira and Te Rata Pou as her parents, and a death certificate is prima facie evidence of the facts it declares, that presumption can be displaced.²⁵ I note in this case, the death certificate was updated just prior to this application being filed, although I am not sure by whom. Furthermore, there is evidence in the Court records from people who had direct knowledge of the relationships between all these whānau members. Matiu must have known who his mother was, for example, and he names Nepu as his mother in 1911.

[24] I consider the applicant has not been able to establish on the balance of probabilities that an error was made.

Order 3

[25] In terms of the order recorded at 18 Whangarei MB 244-247 dated 5 July 1939 regarding a transfer of shares in Oue 2B2C, the Registrar found that the donors were indeed the owners of the shares gifted to Hapeta Hau. Therefore, there was no error in terms of the law at the time.

²⁵ Births, Deaths, Marriages, and Relationships Registration Act 2021, s 79.

[26] I note there is another application by the applicant regarding this same order.²⁶ He claimed the order was erroneous because the minute incorrectly stated the relationship of the donors to the donee. I have dismissed that application in a separate judgment.

[27] In the present application, the applicant noted that he thought there were mistakes in the whakapapa recorded. He referred to letters in support written by whānau members. I note those letters indicate the authors relied upon research completed before the s 45 application was filed and they rely mostly on hearsay.

[28] The applicant also noted that an order for succession to Matiu Pou on 4 July 1939 at 18 Whangarei MB 241-242 incorrectly recorded that Matiu had shares in Oue 2B2A, 2B2B and 2B2C. Because it was incorrect, this part of the succession was cancelled. The applicant argued that Matiu therefore had no interests in those blocks that could be succeeded to by Peri Matiu Pou, Te Rapunoa Matiu Pou and Ahenata Matiu Pou. They, therefore, had no shares in Oue 2B2C that they could transfer to Hapeta Hau.

[29] I consider the applicant has not been able to establish on the balance of probabilities that an error was made. Although the Registrar's research confirms that the incorrect orders for succession to Matiu Pou were cancelled, Peri Matiu Pou, Te Rapunoa Matiu Pou and Ahenata Matiu Pou gifted the shares they received on succession from Akuhata Kiwi, not from Matiu Pou. That succession is recorded at 18 Whangarei MB 145-146. They received those shares directly, as Matiu Pou was deceased. They were therefore owners of Oue 2B2C when the gifting took place. The Court simply needed their consent, as I note in the judgment I issued with respect to the applicant's other application. Whether Matiu was their father or whether they were rightful successors to Akuhata Kiwi is an issue that the applicant has not brought any independent evidence on sufficient to demonstrate a mistake was made.

Orders 4 & 5

[30] I turn now to the partition and exchange order for Oue 2B2C and Oue 2B3 recorded at 25 Whangarei MB 49-54 dated 31 August 1949 and the exchange orders recorded at 25 Whangarei MB 69-71 dated 8 September 1949. According to the Registrar's research, at 25 Whangarei MB 49-54 orders were made partitioning Oue 2B2C into Oue 2B2C1 and 2B2C2

²⁶ AP-20230000019625 / A20140007375.

and Oue 2B3 into Oue 2B3A and 2B3B. Exchange orders were also issued resulting in half of the interests of Peka Hone Peti (also known as Maro Hone Peti) in Oue 2B2C1 (1/6th) vesting in Nau Inia Whare and part of the interests of Nau Inia Whare in Oue 2B3A (1/168th) vesting in Peka Hone Peti. The effects of these orders are listed at paragraph 23 of the Registrar's Report dated 7 June 2019. Partition orders were then made as set out in paragraph 24 of that report. Those orders accommodated all the owners affected at that time.

[31] At 25 Whangarei MB 69-71, the Court made orders of exchange between Peka Hone Peti and Hone Peti Whakaeke with regards to Oue 2B2B and Oue 2B3A4, enabling Hone Peti Whakaeke to become the sole owner of Oue 2B3A4 where his house was situated. In the Registrar's Supplementary Report, it was noted at paragraph 16 that the Court assessed the sufficiency of shares based upon value, resulting in Hone Peti Whakaeke having insufficient shares to fill a block. However, the owners agreed to him being provided with a one-acre house-site. The land was then partitioned accordingly.

[32] All these orders were authorised pursuant to Part VI (Partitions) and Part VII (Exchange and Consolidation) of the Native Land Act 1931. No evidence was found of a gift of land in Oue 2B3 or 2B3A to the applicant's kuia, Te Arani Roera, as claimed by the applicant. The Registrar concluded there was no error of fact or law.

[33] The applicant claims that the partition and exchange orders were made through the partitioning of the gifted interests held by Hapeta Hau in Oue 2B2C and the interests owned by Peata (Peta/Maro/Peka) in Oue 2B2C. He claims the partitioned land became Oue 2B2C1 and Hapeta Hau's interests were then superimposed on top of his kuia's home on Oue 2B3.

[34] Having reviewed the Court record, there is not sufficient evidence to demonstrate on the balance of probabilities that an error was made and I agree with the assessment made by the Registrar.

Order 6

[35] I now consider the orders made at 30 Whangarei MB 14 dated 15 April 1958 regarding succession to Maro Hone Peti. The applicant alleged that the interests in Oue 2B2B that Reo Wirihana Mau, Piriwiritua Tia, Pou Wirihina Mau and Arepata Kopa were

entitled to were incorrectly vested in accordance with a family arrangement in their sister Oriwa Kopa (also known as Oriwa Hau or Rewa Ringa Kopa). The applicant claimed that no notice was sent to these four siblings who lost what they were entitled to, and that they did not consent to the arrangement. The Registrar found that the applicant needed to provide further evidence to establish that those affected did not sign the family arrangement, particularly in relation to the applicant's father. The applicant also alleged that Oriwa Kopa sold the Kaikou C5C3B2 block, which is referred to in the order for succession to Maro Hone Peti, without the knowledge or consent of her brothers. The Registrar noted that Kaikou C5C3B2 was sold prior to the succession orders complained of being made, and the sale was in accordance with the relevant provisions of the Māori Affairs Act 1953.

[36] The applicant did not address this matter in his 24 March 2024 submission. Having reviewed the Court record, I find there is not a sufficient case demonstrating on the balance of probabilities that an error was made. For example, forensic handwriting evidence has not been tendered to independently verify that the handwriting was forged. I also note the orders were made in 1958, but no appeal against them was lodged at the time. Therefore, I agree with the assessment made by the Registrar.

Order 7

[37] The applicant provided no new information relating to the order made at TKT 434A-R5/311 dated 10 August 1964, a confirmation of lease and sale of Maungapohatu South 1A6C block. Therefore, the Registrar relied upon the initial Report dated 7 June 2019 and recommended dismissal. This block was sold to Hamuera Hau by the Māori Trustee acting for the owners following a meeting of owners where a resolution was passed approving the sale. That resolution is recorded at 36 Whangarei MB 281-282. The rest of the history of this block is recorded at paragraphs 39-41 of the Registrar's 2019 Report. Having reviewed the Court record, I find there is not sufficient evidence to demonstrate on the balance of probabilities that an error was made.

Order 8

[38] As for the order recorded at 1 Whangarei (Succession) MB 318 dated 3 July 1989 regarding succession to Kawarahi Hapeta Hau, no new evidence was provided in the

applicant's 2019 submissions and therefore the Registrar relied upon the initial Report dated 7 June 2019 and recommended dismissal. The applicant did not provide new evidence in his 2024 submissions either.

[39] The Registrar noted the applicant sought corrections to the Court record based on anecdotal evidence that Reo Wirihana did not marry Kawarahi Hapeta Hau. The Registrar noted that the evidence before the Court was that they did marry but were separated for 40 years. I consider that the evidence provided by the applicant, being hearsay evidence, is insufficient. He again fails to demonstrate on the balance of probabilities that an error was made.

Order 9

[40] With respect to the final order complained of recorded at 28 Auckland MB 60-62 dated 23 May 2000 regarding a gift of shares from Te Rauna Wirihana Mau to Iriaka Wensor and Ngauta Tobin, the Registrar found there was no error and recommended dismissal. The complaint here was that Te Otinga Smith, who gave evidence to the Court, claimed to be a cousin to Te Rauna. Te Rauna could not attend the hearing as he was living in Australia. Te Otinga advised the Court that her mother and Te Rauna's mother were also cousins. The applicant claimed Te Otinga and Te Rauna are not cousins as they are one step removed from one another.

[41] The applicant made no further submissions on 24 March 2024. Having reviewed the Court record, I find there is not sufficient evidence to demonstrate on the balance of probabilities that an error was made. No birth certificates have been filed and nothing other than the applicant's assessment of the whakapapa is provided as evidence. This is insufficient evidence upon which to find that an error was made.

If there was an error, is it necessary to amend or cancel any orders?

[42] This application has taken many years to progress because of the depth of research needed to review the orders complained of; the delay while the applicant responded to the Registrar's reports; and internal issues within the Court.

[43] However, none of the allegations made or grounds raised by the applicant can be sustained. They are not supported by corroborating evidence, nor do they show that the Court failed to follow the law that prevailed at the time of each order. After reviewing the evidence, no error was found other than in the order made on 29 November 1920 at 13 Whangarei MB 192 regarding succession to Akuhata Kiwi.

[44] In that one respect I agree the order should be cancelled as Akuhata Kiwi was not an owner in the Oue 2B3 block and it is necessary in the interests of justice to correct the record.

Te Whakataunga me ngā Ōta
Decision & Orders

[45] The application is dismissed.

[46] Pursuant to s 44 of Te Ture Whenua Māori Act 1993, the order made on 29 November 1920 at 13 Whangarei MB 192 is cancelled.

[47] A further order is made pursuant to s 47(4) of Te Ture Whenua Māori Act 1993 making all consequential amendments necessary to give full effect to the above order made under s 44.

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

I whakapuaki i te 3.00 pm i Te Whanganui-a-Tara, rua tekau ma wha o Hānuere i te tau 2025.
Pronounced at 3.00 pm in Wellington on this 28th day of January 2025.

C L Fox
CHIEF JUDGE