

**IN THE MĀORI LAND COURT OF NEW ZEALAND
AOTEA DISTRICT**

**A20090017831
CJ 2009/48**

UNDER Section 45, Te Ture Whenua Māori Act 1993
IN THE MATTER OF Te Rangi Kaiamokura
BETWEEN TUTEA SMALLMAN
Applicant

Judgment: 19 March 2015

DECISION OF DEPUTY CHIEF JUDGE C L FOX

Introduction

[1] This application filed by Tuatea Smallman (the applicant) pursuant to section 45 of Te Ture Whenua Māori Act 1993 (the Act) seeks to amend a succession order dated 16 August 1978 at 5 Tokaanu (Succession) MB 286-287 relating to Te Rangi Kaiamokura, the husband of Marotoa Parekarangi (the applicant's great-grandmother).

Background

[2] The Case Manager's Report and Recommendation dated 30 June 2014 sets out the background to the application. The report is produced in full as follows:

REPORT AND RECOMMENDATION

Introduction

1. This application filed by Tuatea Smallman (the applicant) pursuant to section 45 of Te Ture Whenua Māori Act 1993 (the Act) seeks to amend a succession order dated 16 August 1978 at 5 Tokaanu (Succession) MB 286-287 for Te Rangi Kaiamokura. The application cites an interest of Marotoa Parekarangi in Waipapa 1D2. The applicant has stated that Marotoa was his great-grandmother and the third of the four wives of Te Rangi Kaiamokura.

In fact, the interest of Te Rangi Kaiamokura in Waipapa 1D2 was vested in successors at 29 Tokaanu MB 384 on 16 February 1950, and not at 5 Tokaanu (Succession) MB 286-287 on 16 August 1978. This appears to be an inadvertent error by the applicant and should not distract our attention from the essence of his claim. This report will focus on the order 29 Tokaanu MB 384 dated 16 February 1950 as the order that actually vested the deceased's interest in Waipapa 1D2 in successors. That order was based on previous evidence at 25 Tokaanu 119 dated 9 March 1933.

2. The applicant claims that the order complained of is incorrect because Te Rangi Kaiamokura was not of Tuwharetoa descent and did not whakapapa to this land. That claim is unclear in the application but becomes clear from the applicant's correspondence on file. The applicant claims that the only connection by the deceased to Tuwharetoa is through his third wife, Marotoa Parekarangi who died in the mid 1870's. The applicant is of the opinion that "*The principle applicant, Hingaia Te Rangikaiamokura [the fourth wife – also known as Hingaia Huruao] was assisted by Rangipoia [a child of the deceased] and others without realising that it would be erroneous in law*". Thus he claims that there is a mistake, error or omission in the presentation of the facts of the case to the Court. In fact, Hingaia died on 17 October 1940 – before either application was filed for the two orders dated 16 February 1950¹ and 16 August 1978².

¹ 29 Tokaanu MB 384

² 5 Tokaanu (Succession) MB 286-287

- The original succession from which evidence was taken for the orders complained of was prosecuted on 9 March 1933³ by P A Grace.
- The order dated 16 February 1950⁴ was prosecuted by Mr Grace (presumably Puatata Alfred Grace who prosecuted the preceding application that day - and a number of other applications before the Court). Mr Grace appears frequently in the Court records of the time assisting various applicants. The applicant is not recorded in the minute
- The applicant for the order dated 16 August 1978⁵ was Mary Louise Chapman (also known as Ruingarangi te Rewha), a granddaughter of the third wife, Marotoa or Te Rewha Parekarangi and a full sibling of the current applicant's father. Mrs Chapman prosecuted that application herself.

The involvement of Hingaia presumed by the applicant in respect of the successions is not reflected in the Court minutes. The point is recorded here for clarity – it has little impact on the outcome of this application.

3. The applicant claims that he has been adversely affected by the order complained of upon the following grounds (recorded as discussed with the applicant and in his correspondence):

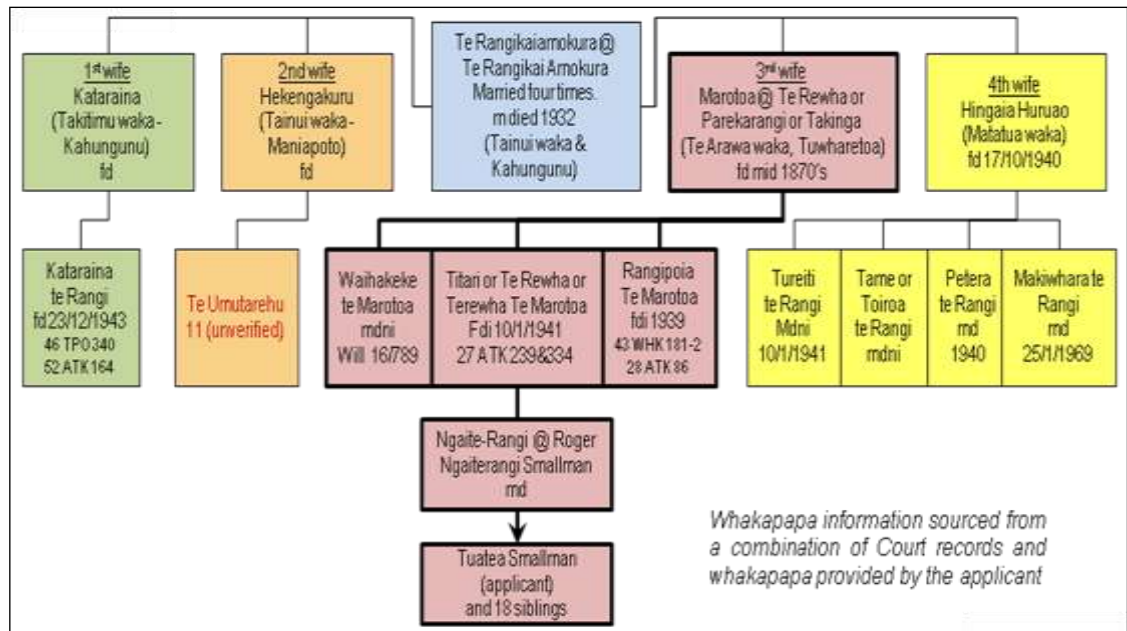
Te Rangi Kaiamokura (or Te Rangikaiamokura) had four wives (see below). Only one of those wives was from Tuwharetoa, namely Marotoa Parekarangi (the applicant's great grandmother). The applicant considers that Te Rangi Kaiamokura should not have owned this interest in the first place. He believes that the deceased acquired the interest only because his third wife Te Marotoa Parekarangi died in the 1870's before ownership of the original Waipapa block was determined by Freehold Order dated 16 May 1914⁶. Te Rangikaiamokura is named in that order with 11 shares. The claims that Marotoa Parekarangi should appear on the Freehold Order as the foundation stone for the ownership of Waipapa, notwithstanding that she was deceased. Had this occurred, the succession order would have been limited to the children of Marotoa and would not have included the children of the deceased's other wives. The applicant claims that the deceased's children who were not by his third wife should not be owners in respect of those 11 shares, which he believes rightfully belonged to Marotoa. The descendants of Te Marotoa Parekarangi are shown in pink and in bold below, in the context of other known whakapapa information for the other three wives. The applicant states that only Te Marotoa has a whakapapa link to Tuwharetoa:

³ 25 Tokaanu MB 119

⁴ 29 Tokaanu MB 384

⁵ 5 Tokaanu (Succession) MB 286-287

⁶ 4 Tokaanu MB 159



Concise history of Order sought to be amended

4. Although the applicant seeks to amend the succession order dated 16 August 1978⁷, the application refers only to the interest of Te Rangi Kaiamokura in Waipapa 1D2. As indicated above, that interest was actually vested on 16 February 1950⁸ upon the basis of previous evidence from an earlier succession dated 9 March 1933⁹. The applicant seeks to exclude the children of Te Rangi Kaiamokura's first and fourth wives and to restore the interest to Marotoa Parekarangi. The child of the second wife was not included as a successor and is not discussed further here. That child appears only in the information filed by the applicant. I have found no material in the Court record about this person. Whether or not s/he existed is incidental to this application – s/he was never a successor.
5. The succession was tested by Chief Judge M C Smith under section 452 Māori Affairs Act 1953¹⁰ on 20 March 1980¹¹. The persons identified as successors to Te Rangikaiamokura were confirmed by the Chief Judge as correct. The Chief Judge found an error only in the proportions allocated to the successors and corrected that error: *"I see no need to refer this application to the Māori Land Court for enquiry and report because there is no dispute as to the children of the deceased [Te Rangikaiamokura], or as to the persons entitled to be substituted for the deceased ones. The order complained of is manifestly incorrect, the error apparently arising through mental aberration of the Judge"*.

The proportions of substitute successors had been miscalculated in the order then complained of – the essence of the succession was not otherwise affected by the recalculation. The matter is mentioned here to highlight the Chief Judge's confirmation of the successors of Te Rangikaiamokura.

⁷ 5 Tokaanu (Succession) MB 286-287

⁸ 29 Tokaanu MB 384

⁹ 25 Tokaanu MB 119

¹⁰ Applicant was Ngarangi Chapman

¹¹ 3 Chief Judge's MB 39-41

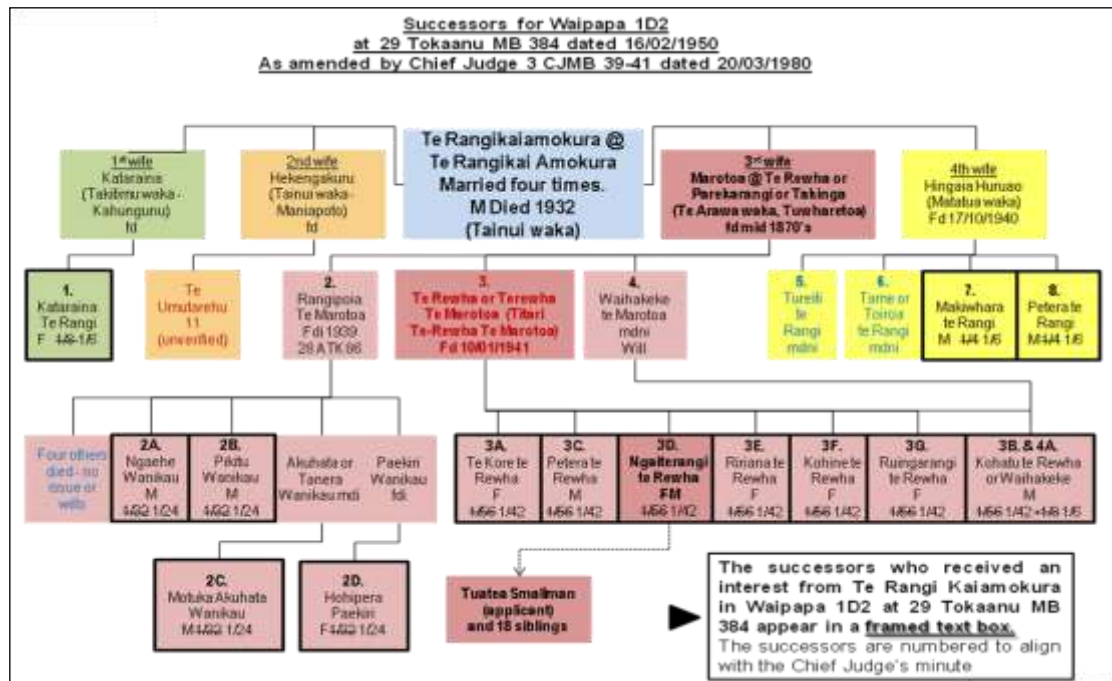
6. The deceased's interests in the succession dated 16 August 1978¹² were vested by arrangement to reduce fragmentation of the interests. All successors were not included in all lands. However, Waipapa 1D2 escaped that arrangement, having been vested by the earlier order dated 16 February 1950¹³ in all successors.

The applicant makes no reference to the arrangement in his application. In discussions with him, he confirms that he seeks re-distribution of the interest to all the children of the third wife, Marotoa. Marotoa had the following children, all to Te Rangi Kaiamokura:

- Waihakeke te Marotoa: male deceased (no issue) left a will in favour of Kohatu te Rewha or te Waihakeke. Kotuku was a child of Waihakeke's full sibling, Titari or Te Rewha or Terewha Te Marotoa (succession dated 27 February 1959¹⁴ in terms of the will)
- Titari Te-Rewha Te Marotoa; female (died 1941) was the applicant's grandmother (succession dated 21 March 1944¹⁵ to seven children, including the present applicant's father)
- Rangipoia Te Marotoa: female (died 1939) had eight children, four of whom died without issue (succession dated 2 June 1968 and 20 November 1945¹⁶ to the remaining four children, with substitution of issue for deceased successors).

7. Successors/Beneficiaries

Successors to Te Rangikaiamokura for Waipapa 1D2¹⁷ were as follows:



¹² 5 Tokaanu (Succession) MB 286-287

¹³ 29 Tokaanu MB 384

¹⁴ 38 Tokaanu MB 7-8

¹⁵ 27 Tokaanu MB 239 and 334

¹⁶ 43 Whakatane MB 181-2 and 28 Tokaanu 86

¹⁷ 29 Tokaanu MB 384 on 16 February 1950

The successors to the interest in Waipapa 1D2 were as follows (as amended by the Chief Judge on 20 March 1980¹⁸ and using from that minute:

- the numbering system
- adjusted proportions
- aliases plus other names from elsewhere in the Court record
- note that the tribal affiliations are as advised by the applicant

<u>Name</u>	<u>Sex</u>	<u>Proportion</u>
<u>Descendant of 1st wife</u>		
Kataraina (Takitimu waka - Kahungunu)		
1 Kataraina Te Rangi	f	1/6
<u>Descendants of 3rd wife</u>		
Marotoa or Te Rewha or Parekarangi or Takinga (Te Arawa waka, Tuwharetoa)		
2 Substitute successors for Rangipora te Marotoa (Rangipoia Te Marotoa):		
2A Ngaehe Wanikau	m	1/24
2B Pikitu Wanikau	m	1/24
2C Motuka Akuhata Wanikau	m	1/24
2D Hohipera Paekiri	f	1/24
3 Substitute successors for Te Rewha te Marotoa (or Terewha or Titari Te Marotoa):		
3A Te Kore te Rewha (or Te Kore te Rewha)	f	1/42
3B Kohatu te Rewha (or Kohatu Waihakeke)	m	1/42
same as No 4A below		
3C Petera te Rewha	m	1/42
3D Ngaiterangi te Rewha (or Roger Smallman)	f	1/42
3E Ririana te Rewha	f	1/42
3F Kohine te Rewha (or Rohine te Rewha)	f	1/42
3G Ruingarangi te Rewha	f	1/42
4 Substitute successor for Waihakeke te Marotoa in terms of his will:		
4A Kohatu Waihakeke (or Kohatu te Rewha)	m	1/6
same as No 3B above		
<u>Descendants of 4th wife</u>		
Hingaia Huruaio (Matatua waka)		
5 Tureiti te Rangi	mdni	nil
6 Toiroa te Rangi	mdni	nil
7 Makiwhara te Rangi (died 25/1/1969)	m	1/6
8 Petera te Rangi (died 1950)	m	1/6

8. Affected Blocks (Aotea District)

<u>Blocks</u>	<u>Shares</u>
Waipapa 1D2 – now superseded.	9 shares out of
The only blocks currently remaining in the Court's current database (MLIS) are:	399 11/12 ^{ths} shares
Waipapa 1D2B1	
Waipapa 1D2B2	
Waipapa 1D2B3A	
Waipapa 1D2B3B	
All these blocks are affected by the succession	

¹⁸ 3 Chief Judge's MB 39-41

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

9. The following documents are attached:

- a) Minutes and orders at:
 - 5 Tokaanu (Succession) MB 286-287 dated 16 August 1978 (the order stated in the application)
 - 29 Tokaanu MB 384 on 16 February 1950 (the order actually complained of)
 - 25 Tokaanu MB 119 dated 9 March 1933 being the order for which evidence was based for both orders above
 - Chief Judge's amendment at 3 Chief Judge's MB 39-41 dated 20 March 1980
- b) A copy of application file for 5 Tokaanu (Succession) MB 286-287 dated 16 August 1978
- c) Detailed whakapapa
- d) Numerous letters from the applicant setting out his claim

10. The Court's research shows that:

On the surface, the applicant has challenged the succession order whereby Te Rangi Kaiamokura's interest in Waipapa 1D2 was vested in successors on 16 February 1950¹⁹. The real essence of his claim has however emerged as a challenge to the right of Te Rangi Kaiamokura to any interest in Waipapa 1D2 in the first instance. There is copious correspondence on this file that reveals that the applicant's real concern: that Te Rangi Kaiamokura only acquired these shares because his third wife Marotoa died in the mid 1870's before ownership of the land was determined by the Court on 16 May 1914²⁰.

Research has revealed that:

- Te Rangi Kaiamokura is an original owner on the Freehold Order for Waipapa dated 16 May 1914²¹. There were 1211 owners for 10,346 acres. The deceased is owner No 782 with 11 shares out of a total of 10,346 shares
- Part of the Partition Order for Waipapa No 1 dated 22 January 1918²² can't be located. Some of the ownership schedule is missing. However Te Rangi Kaiamokura must have been an owner as he appears again on the Partition Order for Waipapa No 1D dated 8 March 1921²³. There are 16 owners for 386 acres 3 roods 39 perches. He is owner No 12 with 9 shares out of a total of 402 shares

¹⁹ 29 Tokaanu MB 384

²⁰ 4 Tokaanu MB 158

²¹ 4 Tokaanu MB 159

²² 9 Tokaanu MB 295-296

²³ 14 Tokaanu MB 172

- He appears again on the Partition Order for Waipapa No 1D2 dated 17 February 1949²⁴. There are 17 owners for 384 acres 3 roods 39 perches. He is owner No 12 with 9 shares out of a total of 399 11/12 shares.

The rights to succession of the shares owned absolutely by the deceased are set out in the Māori Land Act 1931 under which the order was made upon intestacy. That order has been tested by the Chief Judge on 20 March 1980²⁵ and corrected only as to proportions allocated to the successors.

In reality, the applicant's issue lies with the Freehold Order for Waipapa dated 16 May 1914²⁶ where the deceased is listed with 11 shares. Discussions with the applicant held to clarify the intent of his correspondence and application have confirmed that his claim is as above. The applicant has been invited to consider filing a fresh application (with supporting evidence) to the Chief Judge to more accurately reflect his claim and to refer to the order that he actually complains of, namely the Freehold Order for Waipapa dated 16 May 1914²⁷. This existing application fails to adequately capture his complaint. It should be either withdrawn or dismissed and a replacement application filed.

Details of subsequent Orders affecting lands to which application this relates

11. In light of the circumstances set out in the preceding paragraph No 10, it is not appropriate to research and express the consequential orders here – the wrong order is complained of. That exercise ought to be carried out if and when the appropriate application is filed. It is recommended that the Aotea staff assist the Special Applications team at that time to complete that exercise, if required.

Details of payments made as a result of the Order

12. It is not known whether any funds have been paid to successors. The comments in section 11 above apply - that exercise ought to be carried out if and when the appropriate application is filed.

Reference to areas of difficulty

13. The application failed to accurately identify the order complained or to make the complaint precise. The essence of the claim has been gleaned from many letters filed by the applicant. These letters contain large amounts of family and tribal history that have made it difficult to extract the essence of the claim. It has been necessary to confirm the findings with the applicant by way of discussions that have included the whakapapa annexed to this report. I am satisfied that the applicant's claims are now accurately reflected in this report and that he should now have an opportunity to file an appropriate replacement application, with supporting relevant evidence. The applicant is currently considering that option. Alternatively, the applicant could amend this application, also subject to relevant evidence being filed.

Consideration of whether matter needs to go to full hearing

14. The matter should not go to hearing until the applicant has filed a replacement (or amended) application with supporting relevant evidence. There is insufficient evidence on file at this time and the application continues to refer

²⁴ 29 Tokaanu MB 218-219

²⁵ 3 Chief Judge's MB 39-41

²⁶ 4 Tokaanu MB 159

²⁷ 4 Tokaanu MB 159

to the wrong order. A replacement application is needed for the matter to progress. The fee for that replacement application should be waived pursuant to Regulation 6 Māori Land Court Fees Regulations 2013 – the applicant should not be asked to pay a further fee due to the five year delay in processing his application.

Recommendation of course of action to be taken

15. If the Chief Judge is of a mind to exercise his jurisdiction, then it would be my recommendation that:
- a) A copy of this report be sent to the applicant to give him an opportunity to comment or respond, in writing, within 28 days of the date of this Report.
 - b) The applicant be invited to withdraw this application and to file a replacement application that correctly identifies the order actually complained of. The replacement application should set out concisely the complaint and provide supporting relevant evidence. The fee for that replacement application should be waived pursuant to Regulation 6 Māori Land Court Fees Regulations 2013 – the applicant should not be asked to pay a further fee due to the amount of time it has taken to process his application thus far.
 - c) If no objections are received, or should a replacement application be filed then this application should be dismissed as the matter cannot proceed as currently presented in the application

Discussion

[3] I note no objection was received. I also note that pursuant to s 44 of Te Ture Whenua Māori Act 1993 the Chief Judge or Deputy Chief Judge acting upon delegation may cancel or amend an order made by the Court or a Registrar, if satisfied that the order 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 Chief Judge or Deputy Chief Judge may also make such other orders as, in the opinion of the Chief Judge or Deputy Chief Judge, is necessary in the interests of justice to remedy the mistake or omission.

[4] The applicant has requested that the order that is the subject of this application be amended. In terms of *Tau v Nga Whānau O Morven & Glenavy – Waihao 903 Section IX block*²⁸ and *Ashwell – Rawinia or Lavinia Ashwell (nee Russell)*²⁹, the burden of proof rests with the applicant to prove the existence of the alleged mistake or omission either by the Court or in the presentation of evidence in the order complained of.

²⁸ [2010] Māori Appellate Court MB 167 (2010 APPEAL 167)

²⁹ [2009] Chief Judge's MB 209-225 (2009 CJ 209)

[5] However, having considered the Case Manager's Report and the sufficient opportunities afforded to the applicant opportunity to provide evidence to support his claims or recast his application, I do not consider that the applicant has satisfied me that a mistake or omission has occurred at the order that is the subject of this application.

[6] As a result of the above discussion this application must fail.

[7] Accordingly the application is dismissed.

[8] A copy of this decision is to go to all parties.

Dated at Gisborne this 19th day of March 2015.



C L Fox
DEPUTY CHIEF JUDGE