IN THE MĀORI LAND COURT OF NEW ZEALAND
WAIĀRIKI DISTRICT

A20140001657

UNDER	Sections 115 and 118 of Te Ture Whenua Māori Act 1993
IN THE MATTER OF	RONALD CLIFFORD BENNETT (deceased)
BETWEEN	MATAI DAVID BENNETT Applicant
AND	

Hearings: 95 Waiāriki MB 40-46, dated 3 April 2014
4 August 2014
(Heard at Rotorua)

Appearances: Kahu Bennett in person
Janet Bennett in person

Judgment: 5 August 2014

RESERVED JUDGMENT OF JUDGES L R HARVEY & M P ARMSTRONG

Introduction

[1] Matai Bennett applies for succession to the interests of his late father Ronald Bennett who died on 18 August 2010. He did not leave a will. According to the evidence before the Court, the deceased had three unions. One with Awatea Mateparae with whom he had two children, one with Joy Bennett to whom he was married and they had four children. His last relationship of some 35 years was with Janet Isabel Bennett with whom they have a whāngai daughter Kiri Anne Tupaea. In all, the deceased left six natural children and at least one whāngai, Mrs Tupaea.

[2] Initially, it was proposed that she be recognised as a whāngai entitled to succeed. However, since then some of the natural children of the deceased and two of his siblings are said to object to the inclusion of Mrs Tupaea or any other person as a whāngai entitled to succeed to the interests of the deceased.

[3] The issue for determination is whether or not Mrs Tūpaea should be recognised as a whāngai according to tikanga Māori *and* entitled to succeed.

Submissions for Ms Bennett

[4] Ms Bennett implored the Court to refuse the application to recognise Mrs Tūpaea as a whāngai. She said that according to Ngāti Tūwharetoa custom it would be inappropriate and improper for Mrs Tupaea to succeed as she is not a member of that tribe or its hapū.

[5] Ms Bennett further submitted that she had discussed the issue with the kaumātua of her hapū and they were all agreed she says that Mrs Tupaea was not entitled to succeed as a whāngai according to tikanga Māori. As foreshadowed, Ms Bennett said she had talked to two of the deceased's sisters who also agreed that it was not appropriate for Mrs Tupaea to succeed to the land as a whāngai. Her brother Matai Bennett was also opposed to the inclusion of Mrs Tupaea.

[6] In addition, Ms Bennett argued that Mrs Tupaea was entitled to succeed to the interests of her natural father who she claimed was connected with Ngāti Porou and with her mother, Janet Bennett who was of Ngāi Tāhu.

[7] Further, Ms Bennett contended that if Mrs Tupaea was to be recognised as a whāngai then other children who had been raised by her father were also entitled to be regarded with that status.

Submissions for Kiri Anne Tupaea

[8] Mrs Tupaea did not attend the hearing but offered to attend by audio visual means which was not possible given the absence of the technology from this registry. She did however provide a detailed written submission. Mrs Tupaea, in summary, emphasised that the deceased brought her up from a very young age and always regarded her as his daughter. She also spoke of fractured whānau relations and historical difficulties which she said no doubt contributed to the current opposition to her inclusion as a whāngai and as a child entitled to succeed.

[9] Janet Bennett had little to say other than that she was surprised and disappointed with the stance now being adopted by her step-children. She made the point that certain of her late partner's children had not expressed any opposition to the proposal to have Mrs Tupaea included in succession after being recognised as a whāngai.

[10] Janet Bennett also made the point that while Mrs Tupaea's natural father did connect with Ngāti Porou, as she has had little to do with him over the years and she did not consider that pursuing those interests would be a fruitful course to follow.

The Law

[11] Section 115 states:

> **115 Court may make provision for whangai**
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> (1) In the exercise of its powers under this Part of this Act in respect of any estate, the Court may determine whether a person is or is not to be recognised for the purposes of this Part as having been a whāngai of the deceased owner.
> (2) Where, in any such case, the Court determines that a person is to be recognised for the purposes of this Part as having been a whāngai of the deceased owner, it may make either or both of the following orders:
> (a) An order that the whāngai shall be entitled to succeed to any beneficial interest in any Māori freehold land belonging to the estate to the same extent, or to any specified lesser extent, as that person would have been so entitled if that person had been the child of the deceased owner:
> (b) An order that the whāngai shall not be entitled to succeed, or shall be entitled to succeed only to a specified lesser extent, to any beneficial interest in Māori freehold land to, or than that, which that person would otherwise be entitled to succeed on the death of that person's parents or either of them.
> (3) Every order under subsection (2) of this section shall have effect notwithstanding anything in section 19 of the Adoption Act 1955.

[12] The leading authorities on the status of whāngai are the Māori Appellate Court decisions *Kameta v Nicholas*[1] and *Hohua – Estate of Tangi Biddle or Hohua*.[2] The reasoning of these decisions is adopted here.

Discussion

[13] Section 115 enables the Court to either recognise a person as a whāngai who is then entitled to succeed or is not. Therefore we must consider whether or not the evidence is sufficient to enable us to make a determination as to the status or otherwise of Ms Tupaea as a whāngai. We then have to consider further whether or not it is appropriate for any such individual so recognised to be entitled to succeed at all, or to a lesser degree or make a determination that the individual who has been recognised as a whāngai is not entitled to succeed.

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1 *Kameta v Nicholas – Estate of Whakaahua Walker* [2011] Māori Appellate Court MB 500 (2011 APPEAL 500)

2 *Hohua – Estate of Tangi Biddle or Hohua* (2001) 10 Waiariki Appellate Court MB 43 (10 APRO 43)

[14] There seems little doubt that Mrs Tupaea was indeed raised by the deceased and Janet Bennett as whāngai. This does not appear to be a point of real contention. Accordingly, we accept the evidence that Mrs Tupaea was, according to tikanga Māori, a whāngai.

[15] Turning to the second issue, it is well settled in the *Hohua* case that, in the context of Ngāi Tūhoe by way of example only, whāngai can be recognised and are entitled to succeed to land where the adopted child is a member of the *same* hapū as the deceased parent. This custom is also adhered to in several other tribal districts. This is not unsurprising given the primacy of hapū in a traditional context of land management and title derivation. While there will always be exceptions to any custom or rule concerning the importance of both whakapapa to and "ownership" of land, in general terms we endorse the proposition that, where consistent with local customs, absolute interests in land are primarily reserved for members of the hapū.

[16] It is clear from the evidence on the Court file that the majority of the interests held in the name of the deceased can be said to derive principally from the Ngāti Tūwharetoa rohe. This was not a point in dispute during the hearing. We also note that Janet Bennett did not challenge the assertions of her step daughter concerning the latter's understanding of tikanga-a-hapū as it applies within the Ngāti Tūwharetoa confederation. We reiterate that in our experience this understanding also accords with the customs of a number of tribal groups of the Waiariki region.[3]

[17] Mrs Tupaea herself confirmed in her submission that she is not of Ngāti Tūwharetoa descent. We consider that the onus is on Mrs Tupaea to prove that it would be appropriate and consistent with the customs of the relevant hapū of Ngāti Tūwharetoa and any other affected iwi, for her to succeed. As there is no evidence to support this view we cannot take her application for inclusion with a right to succeed absolutely any further. We can however, subject to certain conditions, entertain Mrs Tupaea's inclusion as to a life interest which we discuss later.

[18] In any event, we are satisfied, in the absence of submissions to the contrary, that Mrs Tūpaea was raised by the deceased as a whāngai in accordance with tikanga Māori. However, for the reasons mentioned, we do not accept that Mrs Tūpaea is entitled to succeed to the Māori land interests of the deceased absolutely.

[19] The only real possibility for Mrs Tupaea is if her siblings agreed to her inclusion as to a life interest only. If they continue to be divided on this point then there remains the possibility that Mrs Tupaea could be included as to a life interest from the shares of her siblings who have agreed to her

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[3] See also *Mihinui - Maketu A100* (2007) 11 Waiariki Appellate MB 230 (11 AP 230)

inclusion. Understandably, given their submissions, Kahu Bennett and Matai Bennett would doubtless not want any of their shares to go to Mrs Tupaea, even as to a life interest.

[20] One final point. Section 109(2)-(3) of the Act provides:

> **109 Succession to Māori freehold land on intestacy**
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> …
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> (2) Where the owner of a beneficial interest in any Maori freehold land dies intestate leaving a person who is the owner's surviving spouse or civil union partner, that person is, subject to subsection (4), entitled as of right to an interest in that interest for life, or until he or she remarries or enters into a civil union or a de facto relationship.
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> (3) Such a surviving spouse or civil union partner may, on the death of the deceased or at any time thereafter, surrender in writing his or her entitlement under subsection (2), whereupon the court shall vest the interest absolutely in the persons entitled to succeed to the interest.

[21] According to information on the Court file Janet Bennett and the deceased were not legally married. As he died intestate Janet Bennett, being his de facto partner, is not entitled to a life interest. However, the Court may make provisions per s 116 relating to the income of the estate in Janet Bennett's favour for life or any shorter period. If this information is incorrect then Janet Bennett should advise the case manager immediately.

[22] In any case, before a decision on whether to make any order per s 116 of the Act, which may include giving the income from any of the deceased's interests to Janet Bennett for her lifetime or until she enters into a relationship in the nature of marriage, we consider it necessary to hear from the affected parties, the deceased's children and Janet Bennett. They have 1 month from the date of this judgment to file any submissions. Following that we will then issue a further decision.

Decision

[23] The application for recognition of Kiri Anne Tūpaea as a whāngai of Ronald Bennett (deceased) is granted without entitlement to succeed.

[24] There are orders per ss 113 of Te Ture Whenua Māori Act 1993 determining that Hinewai Fergusson, Whetu Bennett, Kaahu Bennett, Matai Bennett, Murdock McKenzie and John Bennett are entitled to succeed with substitution of issue where appropriate.

[25] Kiri Anne Tupaea can be included as a successor as to a life interest only in the shares of those children of the deceased who agree to such inclusion. Any of the natural children who wish to include Kiri Anne Tupaea in their share of the deceased's interests should confirm this position in writing within 1 month from the date of this judgment.

[26] Janet Bennett and the natural children of the deceased are entitled to file any further submissions within 1 month on whether or not orders per s116 of Te Ture Whenua Māori Act 1993 are appropriate in this case. The case manager is to provide a copy of that provision to the parties.

[27] Failing any response further orders per ss 118 and 242 of Te Ture Whenua Māori Act 1993 may issue in chambers vesting the interests and dealing with any funds held.

[28] There will be no order as to costs.

Pronounced at 2.15 pm in Rotorua on Tuesday this 5th day of August 2014

L R Harvey
JUDGE

M P Armstrong
JUDGE