IN THE MĀORI APPELLATE COURT OF NEW ZEALAND
WAIĀRIKI DISTRICT

APPEAL 2019/10
A20190007086

UNDER	Section 58 of Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Maketu A Section 39 Block and Lot 2 Deposited Plan South Auckland 25586 (formerly Maketu A42C Block) and a judgment made at 215 Waiāriki MB 95-112 on 20 June 2019
BETWEEN	RUBY TE PAE CLARKE Appellant

Hearing: 12 November 2019
(Heard at Rotorua)

Counsel: G Dennett, for the Appellant

Court: Judge L R Harvey (Presiding)
Judge S R Clark
Judge M P Armstrong

Date: 29 November 2019

JUDGMENT OF THE COURT

Copies to:
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[1] Ruby Clarke was the sole owner of Maketu A39 and Lot 2 DPSA 25586. She settled the lands as a joint family home for herself and her husband, Robert Clarke, pursuant to the Joint Family Homes Act 1964. At that time both blocks were General land.

[2] In 1994, Mr and Mrs Clarke then sought and were granted an order to restore the status of the land back to Māori freehold land. However, when the deputy registrar was entering the block details into the Court's MLIS system, she mistakenly recorded that the Clarkes held the block in equal shares as tenants in common rather than as joint tenants. Mr Clarke passed away in 2006. His shares in these blocks were then understandably, but incorrectly, succeeded to by his daughter, Rawinia Clarke-Brayshaw, and then by his grand-daughter, Jeannie Overington.

[3] It is well settled that, as a joint tenancy, upon Mr Clarke's death, both blocks should have returned to Mrs Clarke absolutely by right of survivorship. Because the deputy registrar entered Mr Clarke as holding a separate interest as a tenant in common, that separate interest has now been succeeded to by his daughter, and then his granddaughter. This is the principal error that has led to the present litigation. We consider that it needs to be corrected.

[4] There is no real dispute that the deputy registrar made an error entering the ownership as tenants in common, rather than as joint tenants. The respondent, Ms Overington, did not appear before us. In the Māori Land Court, she did not dispute the error, but rather argued that this order, and those that followed, would have to be formally challenged and amended before the current applications could proceed.

[5] Judge Coxhead accepted that such an error occurred. However, he held that he did not have the jurisdiction to correct or amend the error, given the subsequent succession orders that were granted. We agree.

[6] Pursuant to s 86 of Te Ture Whenua Māori Act 1993 we have the jurisdiction to correct the error made by the deputy registrar. We consider we should do so. However, this provision cannot be used to correct the subsequent succession orders.

[7] Section 44 of the Act provides that the Chief Judge may cancel or amend an order where satisfied that it was erroneous in fact or law because of any mistake or omission on the part of the deputy registrar. The succession orders were granted in this case based on the

mistake by the deputy registrar which recorded that Mr Clarke held a separate interest in the blocks as a tenant in common.

[8] The first succession order to Mr Clarke was granted on 1 November 2007. Section 77 of the Act provides that any order affecting Māori land is conclusive after 10 years. Such an order cannot be held to be invalid by any Court whether on the grounds of want of jurisdiction or any other ground whatsoever. The only exception to that provision is an application to the Chief Judge per section 44 of the Act.

[9] Accordingly, while the subsequent succession orders complained of in this appeal should be corrected, we consider that only the Chief Judge has the jurisdiction to do so per ss 44 and 45 of the Act.

[10] We raised this point with Mrs Clarke's counsel Mr Dennett. He confirmed that Mrs Clarke is elderly, of limited means and she should not be put through the cost and delay of fixing the deputy registrar's mistake. We agree, but this does not change the fact that the succession orders can only be corrected per s 45 of the Act. We consider the current application should be amended to include an application per s 45 of the Act. If it is, we will raise with the Chief Judge whether it is appropriate to refer the s 45 application to us for inquiry and report per s 46(1) of the Act. While such an approach is at the discretion of the Chief Judge, this seems to us to be an appropriate and efficient step given our conduct of this appeal.

[11] We also accept Mr Dennett's submission that Mrs Clarke is entitled to a prompt resolution of this long outstanding error, given the circumstances of this case. For those reasons we have decided to adopt this particular approach.

[12] Although Ms Overington did not appear on the appeal, and indicated she would abide the decision of the Court, she may not have anticipated the turn this proceeding has taken. Accordingly, she should be sent a copy of this minute and be given an opportunity to respond.

[13] We now issue the following orders:

(a) Pursuant to section 56(1)(f) of the Act, the ownership of Maketu A39 and Lot 2 DP25586 as recorded by the deputy registrar upon the change of status to these blocks on 6 September 1994, is amended to give effect to the true

intention of the Court that they were owned by Robert Raupatu Clarke and Ruby Te Pae Clarke jointly.

(b) Mr Dennett is to confirm by Friday 6 December 2019 whether his client consents to the present appeal being amended to include an application per s 45 of the Act seeking to amend the succession orders granted on 1 November 2007, 318 Rotorua MB 3-11 and on 1 June 2017, 163 Waiāriki MB 231-236, on the basis that these orders are erroneous because of a mistake on the part of the deputy registrar in the presentation of the facts to the Court.

(c) Ms Overington is to file her response, if any, by 13 December 2019.

[14] The file is then to be referred to us for further directions.

Pronounced at 2.15pm in open Court at Rotorua on Friday this 29th day of November 2019

L R Harvey	S R Clark	M P Armstrong
JUDGE	**JUDGE**	**JUDGE**