

IN THE MAORI LAND COURT
OF NEW ZEALAND
TAITOKERAU DISTRICT

A20050015144

UNDER Sections 113 and 118, Te Ture Whenua Maori
Act 1993

IN THE MATTER OF Jack Redden

MARY REDDEN
Applicant

Hearing: 19 April 2007
(Heard at Whangarei)

Judgment: 11 April 2008

RESERVED JUDGMENT OF JUDGE D J AMBLER

Introduction

[1] is is an application pursuant to section 113 and section 118 of Te Ture Whenua Māori Act 1993 (“the Act”) to succeed to the Māori land interests of Jack Redden.

Background

[2] Jack Redden died on 16 April 1998. He was married to Mary Redden and had no issue. He holds interests in several blocks of Māori freehold land in Taitokerau.

[3] I reserved my decision of 19 April 2007 as I needed to consider which of Jack Redden’s wills were of legal effect. There is some contention within the whanau as to who should succeed.



[1] On 27 March 1997 Jack Redden executed a will prepared by the Public Trustee. By that will he left all of his interests to his wife if she survived him. Mary Redden did survive him but is not of the preferred classes of alienees and therefore is not entitled to receive the interests under the will: section 108. She does not wish to take a life interest. If this is Jack Redden's last will then pursuant to section 109 his Māori land interests will go to his siblings and their issue.

[5] On 17 September 1997 Jack Redden executed a further document in the following form:

"17 September 1997

39 Kensington Road
WAIHI

To Whom It May Concern

I Jack Redden hereby leave all my interest in Māori land to my brother Thomas Arthur Redden also known as Jock Redden of Waihi in New Zealand.

Yours faithfully

J. Redden.

Witness..... Shirley Bonney
13 Hobson St
Waihi

Witness..... Lynn Robb
Golden Valley Rd
Waihi"

[6] By this document Jack Redden left all his interests to his brother, Thomas Arthur Redden also known as Jock Redden. The issue for the Court is whether the 17 September 1997 document is an effective will.

The Law

[7] On 1 November 2007 the Wills Act 2007 came into force. However, it only applies to persons who die on or after 1 November 2007: section 4. Therefore, the former law applies to Jack Redden.

[8] *Neville's Law of Trusts, Wills and Administration* (9th Edition) comments on the formal requirements of a valid will as follows (page 288):

“The law has always recognised that wills, by their nature, are more likely to be the subject of amateur drafting than any other legal document and has never laid down any special form for a will to be found valid. No particular words are essential to the validity of the will, provided that the testator’s intentions are set out with sufficient clarity and that the document is executed in accordance with the prescribed formalities.”

[9] The formal requirements of execution of wills (prior to the operation of the Wills Act 2007) are prescribed by section 9 of the Wills Act 1837 (Imp) and section 1 of the Wills Act Amendment Act 1852 (Imp). Section 9 provides:

“And be it further enacted, that no will shall be valid, unless it shall be in writing and executed in a manner here and after mentioned; that is to say it shall be signed at the foot or end thereof by the testator or by some other person in his presence, and by his direction, and such signature shall be made with knowledge by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and subscribe the will in the presence of the testator, but no form of attestation shall be necessary.”

[10] Section 15 of the 1837 Act provides that an attesting witness and his or her spouse are deprived of any benefit under a will but the validity of the will itself is not affected.

Discussion

[11] I conclude that the 17 September 1997 document is a valid and effectual will and deals with the deceased’s Māori land interests. It impliedly revoked the earlier will in relation to those interests. Its meaning is plain and it has been properly executed.

Orders

[12] The Court makes the following orders pursuant to Te Ture Whenua Māori Act 1993:

- (a) Pursuant to section 113 the Court determines that the person entitled to succeed to the Māori land interests of Jack Redden is his brother Thomas Arthur Redden also known as Jock Redden

in accordance with the deceased's will of 17 September 1997;
and

(b) Pursuant to section 118 the Court vests the said interests in
Thomas Arthur Redden also known as Jock Redden.

[1] Thomas Arthur Redden died in 2004. His children want these interests to go into the Redden Whanau Trust. However, it is unclear whether Thomas Arthur Redden's Māori land interests have already been succeeded to.

[14] I direct that the Case Manager make further enquiries in relation to the late Thomas Arthur Redden. If Thomas Arthur Redden has already been succeeded to, and his successors have vested their interests in the Redden Whanau Trust, then the Case Manager is to refer this application back to the Court to amend the application to include a vesting of these interests into the Redden Whanau Trust. If Thomas Arthur Redden's interests have not been succeeded to then this application is at an end and his successors will need to apply to the Court to complete succession to his interests.

Pronounced in open Court in Whangarei at 3:51 am/pm on Friday the 11th day of
April 2008



D J Ambler
JUDGE

IN THE MAORI LAND COURT
OF NEW ZEALAND
TAITOKERAU DISTRICT

A20060023679

UNDER Section 18(1)(a), Te Ture Whenua Maori Act
1993

IN THE MATTER OF Motairehe 1

PETER DAVIES
ROSE DAVIES
Applicants

Hearing: 24 January 2007
(Heard at Auckland)

Judgment: 11 April 2008

RESERVED JUDGMENT OF JUDGE D J AMBLER

Introduction

[1] This is an application by Peter Davies for an order pursuant to section 18(1)(a) of Te Ture Whenua Māori Act 1993 ("the Act") to determine ownership of a dwelling on Motairehe 1 in favour of his daughter Noeleen Davies.

Background

[2] Both Peter Davies and Noeleen Davies are owners in Motairehe 1. In about 1991 Peter Davies and his wife Rose Davies built a dwelling on the land in reliance on a Licence to Occupy granted to them by the then Motairehe 1 Incorporation for a term of 30 years. There was a mortgage over the dwelling and apparently Noeleen Davies took responsibility for repaying the debt to the Home Mortgage Company. Mr and Mrs Davies ask that the

Court recognise Noeleen's payment of the cost of the dwelling by determining her to be the owner of the dwelling.

Discussion

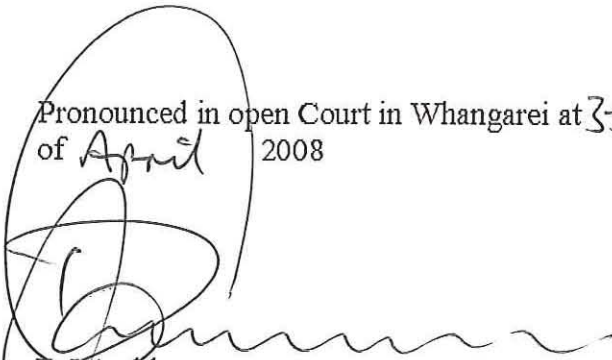
[3] I reserved my decision in order to consider the question of whether it is appropriate to make an order determining ownership of the dwelling in favour of Noeleen Davies when the dwelling is the subject of a Licence to Occupy in favour of her parents and whether the order determining ownership might need to be conditional upon an occupation order being granted.

[4] I have considered those two matters. I conclude that the Licence to Occupy does not prevent the Court from making an order determining ownership of the dwelling. The Court can determine ownership of an improvement on Māori freehold land separate from the actual incidence of occupation or use of that improvement. I also conclude that I do not need to make the order conditional upon an occupation order. In due course, Noeleen Davies may wish to apply to the Court for an occupation order in her favour. In the meantime, the Licence to Occupy is of full legal effect in favour of Peter Davies and Rose Davies.

Order

[5] Pursuant to section 18(1)(a) the Court determines that Noeleen Davies is the owner of the dwelling situated within Site C (comprising 2252m²) on Motairehe 1 in accordance with the Licence to Occupy executed on 8 February 1991.

Pronounced in open Court in Whangarei at ~~3:55~~ 3:50 pm on *Friday* the *11th* day of *April* 2008


D J Ambler
JUDGE