

IN THE MĀORI LAND COURT OF NEW ZEALAND
TE WAIPOUMAMU DISTRICT

Place: Wellington
Present: C M Wainwright, Judge
Claire Mason, Clerk of the Court

Date: 21 March 2005

Application No: A20040001782
Subject: Pera Rogers or Aperahama (Pera) Tutanekai Pokaihau
Section: 113/93, 118/93
Hearing: 5 October 2005
Applicant: Te Marunui Toki

INTERIM DECISION

Introduction

Te Marunui Toki has applied under section 113/93 and 118/93 of Te Ture Whenua Māori Act 1993 seeking orders relating to the estate of his grandfather, Pera Rogers or Aperahama (Pera) Tutanekai Pokaihau ("Mr Rogers"). Mr Rogers died intestate.

Background

Mr Toki's application was first heard on 5 October 2004. The following matters were raised during the hearing:

- (a) Mr Rogers' land interests in Kohatutaka A, B, C, D, E and F which he held as a joint tenant; and
- (b) Mr Rogers' shares in The Proprietors of Ngāti Whakaue Tribal Lands Incorporated ("the Incorporation").

I adjourned the application to chambers for further consideration of these matters. I have reached an interim decision as to who is entitled to take Mr Rogers' interests in Kohatutaka A, B, C, D, E and F. I have yet to form a view as to Mr Rogers' shares in the Incorporation and request further information on this matter (see my directions below).

An additional matter also needs to be investigated before I can make orders under section 118/93. This is whether whāngai of Mr Rogers' children can succeed to the interests to which their matua whāngai is entitled.

Discussion

Mr Rogers' Māori land interests fall into two categories: the interests numbered 1 to 6 in Schedule 3 are held by him as a joint tenant, whereas the interests numbered 7 to 11 are held by him as a tenant in common. Whether Mr Rogers held his interests as a joint tenant or a tenant in common affects who is entitled to succeed to his interests.

(a) Interests held under a joint tenancy

Mr Rogers held Kohatutaka A, B, C, D, E and F, as a joint tenant. Kohatutaka A, B, C, D and E are still held subject to a joint tenancy.

Under a joint tenancy, a joint tenant cannot dispose of his or her interest by will. Instead, when a joint tenant dies, his or her interest accrues to the surviving joint tenants in accordance with the right of survivorship.¹ Therefore, Mr Rogers' successors are not entitled to these interests. Instead, the remaining joint tenants, listed in Schedule 2, are entitled by virtue of the right of survivorship.²

Kohatutaka F, number 6 in Schedule 3, is the Otuaa Marae. Prior to 1965, Mr Rogers and those named in Schedule 2 held Kohatutaka F as joint tenants. However, it was set apart as a Māori reservation in 1965. The previous joint tenancy lapsed and Kohatutaka F was vested in trustees. Therefore, Kohatutaka F no longer forms part of Mr Rogers' estate and neither those listed in Schedule 1 nor in Schedule 2 are entitled to succeed to his former interest in it.

(b) Interests held under a tenancy in common

Mr Rogers' remaining Māori land interests numbered 7 to 11 in Schedule 3 are held by him as a tenant in common. Under a tenancy in common, there is no right of survivorship. Instead, an owner holds a separate and fixed share, which is not affected by the death of another owner. The owner can dispose of his or her interest by will or, if the owner dies without leaving a will, his or her successors can take it under the rules of intestacy.³

Therefore, Mr Rogers' interests numbered 7 to 11 in Schedule 3 can be vested in his successors. Since Mr Rogers died without leaving a will, his successors fall to be determined according to section 109/93, which states that those entitled on intestacy are the children of the deceased. Mr Rogers had 10 children, only two of which are still alive. In this situation, the shares that would have vested in his children who are now deceased will go to each of their children in equal shares.

¹ G W Hinde, D W McMorland and Sim, *Land Law in New Zealand* (Wellington, Butterworths, 1997), para. 9.034.

² If any of the joint tenants listed in Schedule 2 have died, then Mr Rogers' interests will accrue to those joint tenants who are still alive.

³ G W Hinde, D W McMorland and Sim, *Land Law in New Zealand* (Wellington, Butterworths, 1997), para. 9.045.

Those entitled to succeed to the land interests numbered 7 to 11 in Schedule 3 under section 109/93 are listed in Schedule 1.

(c) *Whāngai*

As outlined above, those entitled to succeed to the land interests Mr Rogers held as a tenant in common are listed in Schedule 1. However, I am not in a position to proceed to the next stage and vest these interests in Mr Rogers' successors because I am of the view that the list of successors is incomplete.

There are three whāngai listed by the applicant as potential successors to Mr Rogers. They are Michell Moka, Lesley Anne Moka and Edward Rodgers. I have the discretion under section 115/93 to make an order that a whāngai is entitled to succeed to a deceased's Māori land interests. I cannot however exercise this discretion where no evidence has been filed on the whāngai status of Michell Moka, Lesley Anne Moka and Edward Rodgers.

Therefore, these whāngai have, for the present time, been excluded from the provisional list of successors in Schedule 1. If Michell Moka, Lesley Anne Moka and Edward Rodgers want to succeed to the interests of their matua whāngai, then they must file memoranda with the court setting out why they should be recognised as the whāngai children of their respective adoptive parents. Relevant to the Court's consideration of whāngai status are:

- (i) Whether other members of the whānau accept the whāngai status claimed; and
- (ii) The tikanga of this whānau with regard to succession to land interests by whāngai.

(d) *Shares in the Incorporation*

Mr Rogers also held 952.98 shares in the Incorporation. These shares are derived from Mr Rogers' interests in Puketawhero B7A and Wharenuui B, which were brought under the Incorporation on 26 July 1960 at 113 ROT 72.

There is a question as to whether Mr Rogers' shares have been transferred to the correct beneficiaries. Court staff wrote to the Incorporation inquiring as to whether Pera Rogers or Pera Tutanekai Pokaihau held shares in the Incorporation. In a letter from the Incorporation dated 23 March 2004, it stated that an Application for Transmission of shares filed by Beatrice Harris in relation to shares held by Pera Rogers was "approved by the Committee of Management at their meeting held on 20 July 2004." In response, the Court notified the Incorporation that it transferred these shares to the wrong transferees and asked that the Incorporation rectify the matter. On 20 April 2004, the Incorporation supplied the Court with a Schedule of Māori land interests for Pera Rogers or Aperahama Tutakenai, stating that he owned 952.98 shares in the Incorporation.

I cannot determine from this correspondence whether:

- (i) Mr Rogers' shares were transferred to those named in Beatrice Harris' Application of Transmission; and, if so, whether

- (ii) the share register has been amended and the shares been transferred back into the name of Mr Rogers.

I ask that the Incorporation clarify these matters before the next hearing of this application.

Orders

I make an order under section 18(1)(a)/93 vesting the deceased's interests numbered 1 to 5 in Schedule 3 in the surviving joint tenants listed in Schedule 2.

I direct the case manager to set this application down for further hearing at the June sitting of the Christchurch Court to hear submissions relating to the whāngai status of Michell Moka, Lesley Anne Moka and Edward Rodgers.

I direct the case manager to send this interim decision to the Incorporation and ask them to file their response to my queries before the next hearing of this application.

Dated at Wellington 21 March 2005

C M Wainwright
JUDGE

SCHEDULE 1

NAME		SEX	
1	Te Whango or Fay Hauraki	F. d	d. 1991
	1a Rongomai Wilkinson	F	
	1b Hone or John Rogers	M	
	1c Moeroa Hauraki	F	
	1d Eparaima or Ebby Hauraki	M	
	1e Martin Hauraki	M. d	No issue
	1f Te Awahi Mocaraka	F	
	1g Murphy Hauraki	M	
	1h Paeo Lorraine King	F	
	1i Caroline Fay Hauraki	F	
	1j He Wai Mereana Hauraki	F	
	1k Hana Hauraki	F	
	1l Ripeka Cameron	F	
	1m Lawrence Hauraki	M	
	1n Rahema Hinemoa Hauraki	F	
2	Eruera or Edward Rogers	M. d	No issue
3	Hana Wikaira or Moka	F. d	
	3a Hui or Sue Moka	F	
	3b Tengad or Paddy Moka	M. d	
	3b1 Sherman Moka	M	
	3b2 Patrick Moka	M	
	3b3 Kristel Moka	F	
	3b4 Raymond Moka	M	
	3b5 Christopher Moka	M	
4	Mare or Morris Rogers	M. d	d. 1979
	4a Te Rau Aroha Whānau Trust		
5	Pakira or Buckley Rogers	M. d	
	5a Gregory Rodgers	M	
	5b Rita Ann Rodgers	F	
6	Hone Rogers	M. d	No issue
7	Hone or John Rogers	M. d	
	7a Mereana Rodgers	F	
	7b Rita Ann or Olive Rodgers	F	
	7c Aperahama Hohepa or Karl Rodgers	M	

8	Maora or Molly Toki	F. d	d. 2001
8a	Hukatai Moana Toki	F	
8b	Mihi Taungarangi Toki	F	
8c	Te Marunui Toki	M	
8d	Buller Te Aranga Toki	M	
8e	Maria Faith Toki	F	
9	Ripeka or Peki Hereroa	F. d	
9a	Buckley or Butchy Watene		
10	Te Pura or Buller Rogers	M	
11	Mata Weller	F	

SCHEDULE 2

	NAME	SEX
1	Korowaenga Raunateri	M
2	Oti Tarawa	M
3	Pere Hone Hare	M
4	Rehopoama Horomana Matarae	M
5	Renata Hone Mate	M
6	Wairua Hori Hiku	M

SCHEDULE 3

BLOCK	CURRENT OWNER	SHARE
1 Kohatutaka A	Joint tenancy	
2 Kohatutaka B	Joint tenancy	
3 Kohatutaka C	Joint tenancy	
4 Kohatutaka D	Joint tenancy	
5 Kohatutaka E	Joint tenancy	
6 Kohatutaka F	Trustees named at 27 KH 262-263	
7 Kohatutaka 6K1B	Pera Tutanekai Pokaihau	31.326
8 Maungaturoto D1A and Others (Aggregated)	Pera Tutanekai	526.069
9 Punakitere 2B3E2A	Pera Tutanekai	2.037
10 Ngāti Whakaue Tribal Lands Inc		952.98
11 Pukeroa Oruawhata	Aperahama Rogers	0.20167