IN THE MĀORI APPELLATE COURT OF NEW ZEALAND
WAIARIKI DISTRICT

A20150003415
Appeal 2015/2

UNDER	Section 49 of Te Ture Whenua Māori Act 1993
IN THE MATTER OF	An appeal by Toro Haimona pursuant to s 49 of Te Ture Whenua Māori Act 1993 against a decision of the Chief Judge of the Māori Land Court made on 7 April 2015 at 2015 Chief Judge's MB 252 in respect of TE KARAKA NO 1A AND ROTOITI 3G1 BLOCKS
BETWEEN	TORO HAIMONA Appellant
AND	ATIKINI TE PUNI TAIATINI, DAVEY GARDINER, MANSELL TE HIRA HAIMONA AND TE KEHO TEDDY TAIATINI as trustees of TE KARAKA NO 1A AHU WHENU TRUST

Hearing: 12 November 2015
(Heard at Rotorua)

Court: Judge P J Savage (Presiding)
Judge L R Harvey
Judge S F Reeves

Appearances: J Koning for the Appellant
B Wall for the Respondent

Judgment: 27 October 2016

JUDGMENT OF THE COURT

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Introduction

[1] This appeal concerns a boundary between two blocks of Māori freehold land known as Te Karaka No 1A and Rotoiti 3G 1.

[2] Te Karaka No 1A was originally Māori freehold land comprising 18 acres 3 roods. On 9 September 1920 it was sold to Archibald Dennett and was subsequently deemed to be General land. [1] In 1925 Mr Dennett sold the block to Te Arawa District Trust Board.

[3] In 1998 the land was re-vested in five persons, declared to be Māori freehold land and an ahu whenua trust was constituted over the block.[2] The current trustees are Atikini Te Puhi Taiatini, Davey Gardiner, Te Keho Teddy Taiatini and Mansell Te Hira Haimona.[3]

[4] Rotoiti 3G 1 is Māori freehold land comprising approximately 7.1077 hectares. There are currently 8 beneficial owners.[4]

[5] On 15 December 1941 the Māori Land Court ordered that the boundary between Te Karaka No 1A and Rotoiti 3G 1 be adjusted in terms of the application filed by the Native Minister per s 151 of the Native Land Act 1931("the 1941 order").[5] A further order was also issued laying off a roadway over Te Karaka No 1A to give improved access to Rotoiti 3G 1.

The Chief Judge applications

[6] In 1996 Haki Haimona filed a s 45 application in relation to the 1941 order on the basis that Kinihori te Hira was never a beneficiary of Rotoiti 3G 1 and never consented to the boundary adjustment. Deputy Chief Judge Norman Smith declined to exercise jurisdiction and dismissed the application ("the 1996 decision").[6] It would appear that this decision was never subject to any successful appeal or review.

[7] On 22 July 2011 Toro Haimona filed a further application per s 45 seeking cancellation of the 1941 order. Mr Haimona alleged that the order was incorrectly made

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[1] 68 Rotorua MB 309 (68 ROT 309)
[2] 248 Rotorua MB 326 (249 ROT 326)
[3] 117 Waiariki MB 295-299 (117 WAR 295-299)
[4] 91 Rotorua MB 302-303 (91 ROT 302-303)
[5] 92 Rotorua MB 358 (95 ROT 358)
[6] 1996 Chief Judge's MB 624 (1996 CJ 624)

under s 529 of the Native Land Act 1931 and in breach of the notice requirements per s 151 of that Act.

[8] Mr Haimona submitted that he had been adversely affected by the order because his family have occupied dwellings on the land subject to the redefinition and adjustment of the boundary from before the 1941 order was made to the present day. Mr Haimona also submitted that he and his whānau no longer own the land upon which their dwellings are located and the owners of Te Karaka No 1A are attempting to remove them from those dwellings which will mean that they no longer have a connection with their land.

[9] The case manager provided a preliminary report on 14 September 2012. The proceedings were then referred to Judge Coxhead for inquiry and report. In his report of 11 December 2014 the Judge concluded that there was no clear error in the Māori Land Court relying on the consents of Kinihora te Hira and Hugh MacPherson. In addition, Judge Coxhead was not satisfied that Mr Haimona had shown there was a clear mistake concerning the capacity of Te Rangikauariro to consent to the boundary adjustment on behalf of the owners. Further, there was no evidence that the Judge was not satisfied, in 1941, that the boundary adjustment did not materially affect the interests of the parties at that time. Judge Coxhead recommended that the application be dismissed.[7]

[10] Chief Judge Isaac issued his decision on 7 April 2015, adopting the report and findings of Judge Coxhead.[8] The Chief Judge found that there was no evidence of an error in the presentation of the facts to the Court, or on the part of the Court, which would require him to amend the 1941 order.

The appeal

[11] Toro Haimona now appeals the grounds upon which the 2015 decision was dismissed.

[12] The appeal is opposed by the trustees of Te Karaka No 1A on the basis that there is no error in the Chief Judge's findings and it is in the interests of justice that the decision be upheld.

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[7] 2014 Chief Judge's MB 634 (2014 CJ 634)
[8] 2015 Chief Judge's MB 252 (2015 CJ 252)

[13] On 17 September 2015 this Court directed the parties to consider the preliminary issue of whether there is a right of appeal against a dismissal under s 44(5) of the Act.

[14] The appeal was heard in Rotorua on 12 November 2015.[9] At the hearing both the jurisdictional issue and the substantive merits of the appeal were argued.

[15] In this decision we deal solely with the preliminary issue of whether there is a right of appeal against a dismissal under s 44(5) of the Act.

Appellant's submissions

[16] Mr Koning submits that the Chief Judge, having heard the application and determined the merits, exercised his jurisdiction under s 44 and as such there must be a right of appeal per s 49(1) of the Act. The case was referred by Chief Judge Isaac to Judge Coxhead for inquiry and report per s 46(1) of the Act. By adopting that decision in full the Chief Judge heard and determined the application on its merits. Accordingly, counsel argues that Chief Judge Isaac did not decline to exercise jurisdiction under s 44 of the Act.

[17] In addition, Mr Koning submits that under s 44(5) there is no right of appeal where the Chief Judge declines to exercise discretion and dismisses the application. He says that the Chief Judge may decline to exercise jurisdiction where an application under s 45 does not relate to an order made by the Court or where the application does not otherwise come within s 44 of the Act. Alternatively an application may be dismissed where the applicant does not have standing or cannot claim to have been adversely affected by the order as required under s 45(1). Other examples would be non compliance with any direction under s 45(2) or an application that comes within s 44(4).

[18] Mr Koning contends that in his decision Chief Judge Isaac declined or refused to cancel or amend the order made by the Court in 1941. He says that this constitutes an order of the Chief Judge under s 4(b) of the Act and is therefore subject to a right of appeal to the this Court per s 49 of the Act. Counsel submits that the actual determination made by the Chief Judge should be properly categorised rather than unduly focussing on the nomenclature used at paragraph [10] of the decision.

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[9] 2015 Maori Appellate Court MB 686 (2015 APPEAL 686)

[19] Counsel then argues that the combined effect of ss 49(1) and 4(b) of the Act gives the appellant a right of appeal against the Chief Judge's decision and there are no grounds for reading those sections as being subject to s 45(1) of the Act.

[20] Mr Koning submits that the purpose of s 45 is to provide the Chief Judge with a statutory power of correction notwithstanding s 77 of the Act. The procedure under s 45 including any rights of appeal should be given a purposive interpretation given the scope of the jurisdiction, particularly when interpreted against the background of the Preamble. The exercise of special powers should not be given the narrow interpretation contended by the respondent. The narrow construction of s 44(5) conflates jurisdiction to hear and determine an application under s 45 with the power to grant a remedy under s 44(1) of the Act.

[21] The procedure under s 45 should be afforded a purposive interpretation given the scope of this jurisdiction when interpreted against the background of the preamble. It should not be given the narrow interpretation contended by the respondents.

[22] Counsel also submits that the issue of jurisdiction must be determined by the proper construction of the relevant provisions rather than relying on the authorities referred to by the Court.

Respondent's submissions

[23] Mr Wall argues that the legislation is clear that there is no right of appeal. Chief Judge Isaac declined to exercise jurisdiction and therefore the dismissal falls squarely under s 44(5) of the Act.

[24] Counsel further submits under s 44 there are two options for the Chief Judge to choose from; ss 44(1) (exercise jurisdiction) or s 44(5) (decline to exercise jurisdiction). In this instance Chief Judge Isaac chose s 44(5) and no right of appeal lies.

[25] Mr Wall submits that as a matter of public interest it is necessary for the Chief Judge to uphold the principles of certainty and finality of decisions. Parliament entrusted the Chief Judge with that responsibility in restricting the rights of appeal by the wording of ss 44(5) of the Act.

[26] Counsel also argues that it is incorrect for the appellant to submit that the jurisdiction is exercised upon the hearing of an application whatever the outcome. He says

that when read together ss 44 and 45 make it clear that the jurisdiction is only exercised in the event that an order is made or such other step is taken to remedy the mistake or omission under s 44(1) of the Act.

[27] As regards the definition of order in s 4(b) of the Act, Mr Wall argues that Parliament did not amend the definition to include a declining of jurisdiction and resulting dismissal of an application as per s 44(d). Further if there is confusion with s 4(b) then precedence should be given to s 44(5) as it is specifically worded. Mr Wall adds that the purpose of sections 44 and 45 is to give a limited power of correction only. The provisions have to be considered against s 77 and the restrictions therein. Clearly the intention of Parliament is that the power of correction is limited and fettered hence the detail in s 44(1) and the removal of the right to appeal by s 44(5). This restrictive approach echoes in the existence of s 45(2) concerning security of costs.

The Law

[28] The Special Powers of the Chief Judge are provided for in Part 1 of the Act comprising ss 44 – 48 of the Act. Section 44 states:

> **44 Chief Judge may correct mistakes and omissions**
>
> (1) On any application made under section 45 of this Act, the Chief Judge may, if satisfied that an order made by the Court [or a Registrar (including an order made by a Registrar before the commencement of this Act)], or a certificate of confirmation issued by a Registrar under section 160 of this Act, 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, cancel or amend the order or certificate of confirmation or make such other order or issue such certificate of confirmation as, in the opinion of the Chief Judge, is necessary in the interests of justice to remedy the mistake or omission.
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> (2) Subject to section 48 but notwithstanding any other provision of this Act, any order under this section may be made to take effect retrospectively to such extent as the Chief Judge thinks necessary for the purpose of giving full effect to that order.
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> (3) Notwithstanding anything to the contrary in this Act, the powers conferred on the Chief Judge by this section may be exercised in respect of orders to which the provisions of section 77 would otherwise be applicable.
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> (4) The powers conferred on the Chief Judge by this section shall not apply with respect to any vesting order made under Part 6 in respect of Maori customary land.
>
> (5) The Chief Judge may decline to exercise jurisdiction under this section in respect of any application, and no appeal shall lie to the Maori Appellate Court from the dismissal by the Chief Judge of an application under this section.

[29] In addition s 49 states:

> **49 Appeals**
>
> (1) Every order made by the Chief Judge or the Deputy Chief Judge under section 44 shall be subject to appeal to the Maori Appellate Court.
>
> (2) On the determination of any such appeal by the Maori Appellate Court, no further application in respect of the same matter shall be made under section 45.

Did the Chief Judge exercise his jurisdiction in declining the application?

[30] Mr Koning submits that the Chief Judge having heard the application and determined the merits of the application exercised his jurisdiction under s 44 and as such there must be a right of appeal per s 49(1) of the Act. He argues that s 44(5) does not apply as the Chief Judge exercised his discretion to decline the application.

[31] Mr Koning argues that s 44(5) is limited to situations where an application under s 45 does not relate to an order made by the Court, where the application does not otherwise come within s 44 of the Act or where the applicant does not have standing or cannot claim to have been adversely affected by the order as required under s 45(1). Other examples would be non compliance with any direction under s 45(2) or an application that comes within s 44(4).

[32] Mr Wall argues that it is incorrect for the appellant to submit that the jurisdiction is exercised upon the hearing of an application whatever the outcome. He says that when read together ss 44 and 45 make it clear that the jurisdiction is only exercised in the event that an order is made or such other step is taken to remedy the mistake or omission under s 44(1) of the Act.

[33] Mr Koning implores the Court to take a purposive approach to the procedure under s 45 including any rights of appeal given the scope of the jurisdiction, particularly when interpreted against the background of the Preamble. He argues that the narrow interpretation contended by the respondent conflates jurisdiction to hear and determine an application under s 45 with the power to grant a remedy under s 44(1) of the Act.

[34] We are guided by s 5 of the Interpretation Act 1999:

> **5 Ascertaining meaning of legislation**
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> (1) The meaning of an enactment must be ascertained from its text and in the light of its purpose.

> (2) The matters that may be considered in ascertaining the meaning of an enactment include the indications provided in the enactment.
>
> (3) Examples of those indications are preambles, the analysis, a table of contents, headings to Parts and sections, marginal notes, diagrams, graphics, examples and explanatory material, and the organisation and format of the enactment.

[35] Further guidance regarding the text of s 44(5) can be gleaned from the wording in the equivalent provisions of earlier legislation (even though they may be to different effect). This Court has not previously addressed the interpretation of s 44(5).

[36] The Special Powers of the Chief Judge were first provided for in s 7 Native Land Amendment and Native Land Claims Adjustment Act 1922:

> 7. (1.) Where through any mistake, error, or omission the Court or the Native Appellate Court by its order has in effect done or left undone something which it did not actually intend to do or leave undone, or where the Court or Native Appellate Court shall have decided any point of law erroneously, the Chief Judge may, upon the application in writing of any person alleging that he is affected by such mistake, error, omission, or erroneous decision in point of law, make such order in the matter for the purpose of remedying the same or the effect of the same respectively as the nature of the case may require; and for any such purpose may, if he shall deem it necessary or expedient, amend, vary, or cancel any order made by the Court or Native Appellate Court, or revoke any decision or intended decision of either of such Courts.
>
> (2.) Any order made by the Chief Judge upon such proceedings amending, varying, or cancelling any prior order shall be subject to appeal in the same manner as any final order of the Court**, but there shall be no appeal against the refusal to make any such order.**

[37] That provision was largely re-enacted per s 38 of the Native Land Act 1931.

[38] In addition the Māori Affairs Act 1953 provided:

> **452 Special powers of Chief Judge with respect to Court orders**
>
> (1) The jurisdiction conferred on the Chief Judge by this section shall be exercised only on application in writing made by or on behalf of a person who alleges that he has been adversely affected by an order made by the Court [or a Registrar] … and that the said order was erroneous in fact or in law by reason of a mistake, error, or omission on the part of the Court [or a Registrar], or in the presentation of the facts of the case to the Court [or a Registrar]. The Chief Judge may, in his absolute discretion, decline to exercise jurisdiction with respect to any such application.
>
> (2) On any application under this section the Chief Judge may require the applicant to deposit in an office of the Court such sum as he thinks fit as security for costs, and may summarily dismiss the application if the amount so fixed is not so deposited within the time allowed, and may if he thinks fit summarily dismiss any other application made under this section. [The Chief Judge shall have and may exercise in respect of any application or proceedings under this section the same power as the Court possesses under section 57 of this Act to make such order as it thinks just as to the payment of costs, and the provisions of that section shall, with any necessary modification, apply accordingly.]

> (3) The Chief Judge may refer any application under this section to the Court or the Appellate Court [or (where the application relates to an order made by a Registrar) to the Registrar] for inquiry and report, and may deal with any such application without holding formal sittings or hearing the parties in open Court.
>
> (5) On any application under this section the Chief Judge, if he is satisfied that there has been any mistake, error, or omission as aforesaid, may cancel or amend any order of the Court [or a Registrar] … or may make such other order as in his opinion is required for the purpose of remedying the mistake, error, or omission, and, notwithstanding anything to the contrary in this Act, any order made under this section may be made to take effect retrospectively to such extent as the Chief Judge thinks necessary for the purpose of giving full effect to that order.
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> (6) Every such order shall be deemed to be an order of the Court and shall be subject to appeal to the Appellate Court. On the determination of an appeal by the Appellate Court no further application in respect of the same matter shall be made to the Chief Judge under this section.
>
> (7) **No appeal shall lie to the Appellate Court from the dismissal by the Chief Judge of an application under this section**.
>
> …

[39] In *Raroa – Hahau B2* this Court heard an appeal against a decision of the Chief Judge declining to cancel one of the two orders complained of. It was held that in declining to make an order the Deputy Chief Judge had dismissed the application per s 452(7) from which no right of appeal lay. The Court then went on to comment on the nature of the Special Powers of the Chief Judge:[10]

> The provisions of Section 452/53 confer on the Chief Judge **a special** discretionary jurisdiction. No right of appeal exists in respect of a refusal to make an order. There is room therefore for argument, that as no appeal lies, there is no need to give reasons for the decision.
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> In the present case the Deputy Chief Judge called for an enquiry and report from the resident Judge. That Judge recommended the disputed order be set aside. In our view those circumstances were such that the Deputy Chief Judge should have given reasons for declining to follow that recommendation.
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> …
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> We must emphasise that this Court's decision is that there is no right of appeal from the Deputy Chief Judge's decision to refuse to make an order and that the additional observations are by way of comment only. They are made solely from a perusal of the record and without benefit of argument. We hope that they assist the Appellants in clarifying what we see as the reason for the refusal to grant relief.

[40] *Grant v Raroa – Ngamoe A1B1B* involved an appeal of a decision of the Chief Judge where he had exercised his jurisdiction to cancel a vesting order made by the Court. In the decision Deputy Chief Judge A G McHugh made observations about the limitations on the

[10] (1993) 33 Gisborne Appellate Court MB 164 (34 APGS 164)

exercise of the Chief Judge's discretion under s 452. This Court reviewed the principles relevant to the jurisdiction under s 452 observing:[11]

> The Chief Judge may exercise his jurisdiction under Section 452 on the application of a person alleging he is adversely affected by an Order of the Court but only where such party alleges that the said Order was erroneous in fact or in law by reason of a a mistake, error or omission on the part of the Court or Registrar or in the presentation of the evidence.
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> …
>
> Having assumed jurisdiction, the Chief Judge may only exercise the powers conferred upon him under the Act when he is satisfied that there has been a mistake, error or omission on the part of the Court or in the presentation of the evidence.
>
> In most instances this can only be done after due inquiry including a review of the evidence at the hearing or first instance weighed against the evidence adduced by the applicant in support of the allegations and any evidence adduced in opposition.

[41] In *Ratahi v Oke – Rangitaiki 28B12B2B2A* the Chief Judge discussed the scope of his jurisdiction under s 45:[12]

> [31] The scope of the Chief Judge's jurisdiction under section 45 is exceptional, and must be exercised with care. First, the Chief Judge must be satisfied that an error has been made. In *R v White (David)* [1998] 1 NZLR 264 the Court of Appeal considered the meaning of "is satisfied" in the context of the Criminal Justice Act 1985. In that case, the Court held that the phrase "is satisfied" means simply "makes up its mind" and is indicative of a state where the Court, after considering all of the evidence, comes to a judicial decision. It does not require the Court to be satisfied beyond reasonable doubt.

[42] We agree that the powers granted to the Chief Judge are a special discretionary jurisdiction. The scope of the Chief Judge's jurisdiction under section 45 is exceptional, and accordingly, must be exercised with care.

[43] To trigger the exercise of those powers the Chief Judge must be satisfied that there has been a mistake, error or omission on the part of the Court or in the presentation of the evidence. In order to be satisfied the Chief Judge will need to undertake due inquiry before coming to a decision. If the Chief Judge is satisfied that a mistake or error has been made he can then continue on to exercise his discretion as to whether or not to remedy the mistake or error.

[44] Section 44 cannot be exercised unless there is an error; the finding of an error is a prerequisite to the exercise of the jurisdiction.[13] It must first be established whether there is

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[11] (1993) 33 Gisborne Appellate Court MB 35 (33 APGS 35)

[12] [2009] Chief Judges MB 410 (2009 CJ 410) at [31] see also *Ellis – Matapihi No 1B No 2C No 2D* [2010] Chief Judges MB 25 (2010 CJ 25)

in fact a mistake or an omission in fact or law that has been made by the Court or the Registrar. Then it must be demonstrated that it is necessary in the interests of justice to remedy the mistake or omission.[14]

[45] In the present case Chief Judge Isaac referred the application for inquiry and report. Following the release of that report the Chief Judge issued his decision adopting the recommendation of Judge Coxhead that he decline to exercise his jurisdiction to amend or cancel the order. He also decided that the application should be dismissed.

[46] We find that the Chief Judge was not satisfied that there had been an error or omission such as to warrant the exercise of his powers per s 44 of the Act. So he declined to exercise his discretion to exercise of his powers per s 44. In doing so the Chief Judge dismissed the application and consequently, per s 44(5), no appeal lies from that decision.

Does the dismissal of the application constitute an order for the purposes of s 49?

[47] Mr Koning's argument is that Chief Judge Isaac declined or refused to cancel or amend the order made by the Court in 1941. He says that this constitutes an order of the Chief Judge under s 4(b) of the Act and is therefore subject to a right of appeal to this Court per s 49 of the Act.

[48] In response, Mr Wall argues that Parliament did not amend the definition of order in s 4(b) to include a situation per s 44(d) whereby jurisdiction is declined and the application thereby dismissed. Mr Wall argues that the purpose of s 44 and 45 is to give a limited power of correction only and if there is confusion with s 4(b) then precedence should be given to s 44(5) as it is specifically worded.

[49] In *Raroa – Hahau B2* the appellants appealed the decision of the Chief Judge declining to cancel an order made by the Court in 1967.[15] Counsel for the appellant argued that the Deputy Chief Judge in adopting the recommendations of the District Judge's Report made an order of the Court that could be subject to appeal. This Court considered the application of s 452(7) (equivalent to 44(5)) and stated that the Deputy Chief Judge in

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13 *Katipa v Dodds – Harataunga 2C1* [2015] Chief Judge's MB 635 (2015 CJ 635)

14 *McCallum v The Maori Trustee of Whanganui* [2014] Chief Judge's MB 541 (2014 CJ 541) see also *Grant v Raroa – Ngamoe A1B1B* (1993) 33 Gisborne Appellate Court MB 35 (33 APGS 35)

15 *Raroa – Hahau B2* (1993) 33 Gisborne Appellate Court MB 164 (34 APGS 164)

declining to make an order effectively dismissed that application and there is no appeal from that decision.

[50] At 25.3 of Mr Koning's submissions he states:

> In *Raroa* "…this Court's decision is that there is not right of appeal from the Deputy's Chief Judge's decision to refuse to make an order and that the additional observations are by way of comment only." This case was decided before the amendment of the definition of "order" under s 3(2) Te Ture Whenua Māori Amendment Act 2001/ Māori Land Amendment Act 2011. The definition of "order" in s 2/53 therefore did not include the provision in s 4(b)/93 providing that an order of the Chief Judge under s 44/93 expressly includes "…a refusal to make an order…of a kind referred to in…paragraph (a)(iii).

[51] Section 4 of the Act states:

> **order,** in relation to the court,—
>
> (a) means—
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> (i) an order, judgment, decision, or determination of the Maori Land Court or the Maori Appellate Court; and
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> (ii) an order made by a Registrar in the exercise of a jurisdiction or power pursuant to section 39(1); and
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> **(iii) an order made by the Chief Judge under section 44; and**
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> (iv) an order or decision made by a Judge, the Chief Judge, or the court under sections 26B to 26ZB; and
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> (b) includes a refusal to make an order, judgment, decision, or determination of a kind referred to in paragraph (a)(i) or paragraph (a)(ii) or paragraph (a)(iii).

[52] The current definition of "order" was substituted, on 11 April 2001, by section 3(2) of Te Ture Whenua Maori Amendment Act 2001. As originally enacted s 4 provided the following definition for Order:

> "Order", in relation to the Court, means any order, judgment, decision or determination of the Māori Land Court or the Māori Appellate Court; and includes a refusal to make an order.

[53] We do not agree that the dismissal of an application constitutes an order per s 4(b). As foreshadowed the exercise of the Chief Judges power to amend or cancel an order is only triggered after the Chief Judge is satisfied that such remedies should be undertaken. The Chief Judge may then make an order as, in the opinion of the Chief Judge, is necessary in the interests of justice to remedy the mistake or omission.

[54] In the present case the Chief Judge was not satisfied that an order should be made to remedy the mistake or omission contended for by the applicants. The Chief Judge did not refuse to make an order. He could not make an order because he was not satisfied that an error or mistake had been made.

[55] We agree with Mr Wall that precedence should be given to the clear wording of s 44(5) and find that no right of appeal lies in the present case. Having determined the preliminary issue there is no need to make findings on substantive issues.

Decision

[56] The appeal is dismissed.

[57] Our tentative view is that costs should lie where they fall. If counsel disagree they have 1 month to exchange memoranda.

Pronounced in open Court on Thursday this 27th day of October 2016

P J Savage **JUDGE** (Presiding)	L R Harvey **JUDGE**	S F Reeves **JUDGE**