

Maori Land Court Amendment Rules 1998

PURSUANT to section 95 of Te Ture Whenua Maori Act 1993, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and with the concurrence of the Chief Judge of the Maori Land Court and 2 of the other members of the Rules Committee, makes the following rules.

Contents

| | | Page |
|----|--|------|
| 1 | Title and commencement | 2 |
| 2 | Register of applications | 2 |
| 3 | Issue of Panui | 2 |
| 4 | Evidence by affidavit or declaration or other form | 2 |
| 5 | Instruments to be produced to Registrar | 2 |
| 6 | Plan of subdivision of Maori freehold land to be forwarded to Registrar | 2 |
| 7 | Preliminary matters | 3 |
| 8 | Dismissal of appeal | 4 |
| 9 | Summons to witness | 5 |
| 10 | Application for Part 4 search | 5 |
| 11 | Particulars to be filed with application to determine beneficial entitlements to Maori freehold land | 5 |
| 12 | Certificate of confirmation of Maori freehold land | 6 |
| | Schedule | 6 |
| | New form 16 substituted | |

1 Title and commencement

- (1) These rules may be cited as the Maori Land Court Amendment Rules 1998, and are part of the Maori Land Court Rules 1994¹ (“the principal rules”).
- (2) These rules come into force on the 28th day after the date of their notification in the *Gazette*.

2 Register of applications

Rule 17(2) of the principal rules is amended by omitting the word “Transfer”, and substituting the word “Registry”.

3 Issue of Panui

The principal rules are amended by revoking rule 31, and substituting the following rule:

“31

The Panui must be issued within 14 days after its closing date.”

4 Evidence by affidavit or declaration or other form

Rule 44 of the principal rules is amended by adding, as subclause (2), the following subclause:

- “(2) An affidavit, declaration, or affirmation to be used in any proceedings before the Court may be sworn or made in New Zealand before a Judge or a Registrar or before a Solicitor of the High Court or a Justice of the Peace.”

5 Instruments to be produced to Registrar

Rule 114(1) of the principal rules is amended by omitting the word “alienation”, and substituting the word “confirmation”.

6 Plan of subdivision of Maori freehold land to be forwarded to Registrar

The principal rules are amended by inserting, after rule 167, the following rule:

¹ SR 1994/35

“167A

- (1) Where the owner of any Maori freehold land lodges in the Land Registry Office a plan of a subdivision of that land or any part of that land, the owner must, as soon as practicable after lodging the plan, forward a copy of the plan to the Registrar for the Maori Land Court district in which the land is situated.
- “(2) The copy of the plan is required for the purposes of sections 127 and 128 of the Act.
- “(3) Where the Registrar receives a copy of a plan under subclause (1), the Registrar may, by an application in form 1, apply to the Court for a consolidated order under section 128 of the Act.”

7 Preliminary matters

The principal rules are amended by revoking rule 172, and substituting the following rule:

“172

- (1) On receipt of a notice of appeal, the Chief Judge must—
 - “(a) Appoint a presiding Judge and 2 or more other judges to hear the appeal with the presiding Judge; and
 - “(b) Fix the time, date, and place for the hearing of the appeal; and
 - “(c) Give directions on the sum of money, if any, to be lodged with the Registrar by the appellant as security for costs, and the time within which any such sum must be lodged.
- “(2) The presiding Judge must, in consultation with the Chief Judge, attend to all other interlocutory matters that arise before the hearing, including—
 - “(a) Setting the record of the case on appeal; and
 - “(b) Giving directions on any matters the presiding Judge may think fit including—
 - “(i) The filing of any further particulars or the filing and exchange of any other written submissions required of the parties by the Court:
 - “(ii) Requests for adjournment:

- “(iii) Conferences of parties or intended parties under section 67 of the Act:
 - “(iv) Any request for leave to amend the grounds for appeal if that request is filed before the date fixed for the hearing of the appeal, and a copy of that request is served on all other parties to the appeal.
- “(3) The Registrar must forthwith notify the appellant by letter of—
- “(a) The decision made by the Chief Judge with regard to the time, date and place for the hearing of the appeal; and
 - “(b) Any other decision or any directions given by the Chief Judge or the presiding Judge in accordance with subclause (1) or subclause (2).
- “(4) The presiding Judge may, on application made by the appellant within the time fixed by the Chief Judge in accordance with subclause (1)(b), extend the time for lodging any security for costs, and may, if the presiding Judge thinks fit, reduce the amount of security for costs.
- “(5) If a notice of appeal has been filed against any order or orders, the presiding Judge may reduce or remit the fee payable in respect of any notice of appeal that may be filed against any other order or orders made in the same proceeding on the same day as the first-mentioned order or orders.”

8 Dismissal of appeal

The principal rules are amended by revoking rule 174, and substituting the following rule:

“174

- (1) If the appellant—
- “(a) Fails to lodge the sum fixed under rule 172(1)(c); or
 - “(b) Fails to comply with any direction of the Court under rule 172(2)(b)(i)—
- within the time specified by the Court, the Registrar must refer the file to the presiding Judge.

- “(2) The presiding Judge may, where the file is referred in accordance with subclause (1), upon such notice (if any) to the appellant as the presiding Judge directs,—
- “(a) Extend, for a period not exceeding 14 days, the time within which the appellant is required to take the required action; or
- “(b) Make an order dismissing the appeal.
- “(3) On the making of an order dismissing the appeal, the appeal is deemed to have been finally disposed of.
- “(4) If the appellant fails to prosecute the appeal at the time fixed for the hearing of the appeal, the Maori Appellate Court may dismiss the appeal with such order as to costs as it thinks fit, and that Court may, in its discretion, allow the appeal to be reinstated at any time during the same sitting upon such terms as it thinks fit.
- “(5) When an order is made under subclause (2) or subclause (4), the Registrar must give notice of the order to the persons to whom notice was given under subclause (1) or subclause (2) of rule 171.”

9 Summons to witness

Form 5 in Schedule 1 of the principal rules is amended by omitting the words “As witness the hand of the Judge and the Seal of the Court this day of 19 Judge”, and substituting the words “As witness the hand of the Registrar and the Seal of the Court this day of 19 (Deputy) Registrar”.

10 Application for Part 4 search

Form 14 in Schedule 1 of the principal rules is amended by adding at the foot of the form the words “No fee”.

11 Particulars to be filed with application to determine beneficial entitlements to Maori freehold land

Schedule 1 of the principal rules is amended by revoking form 16, and substituting the form set out in the Schedule.

12 Certificate of confirmation of Maori freehold land

Form 21 in Schedule 1 of the principal rules is amended by omitting from the heading the word “ALIENATION”, and substituting the word “CONFIRMATION”.

Schedule

Rule 11

New form 16 substituted**Form 16**

Rule 102(3)

Particulars to be filed with application to
determine beneficial entitlements to maori
freehold land

Te Ture Whenua Maori Act 1993, Section 113

Name by which deceased was commonly known:

Name of applicant:

Relationship of applicant to deceased:

1. The deceased was also known by the following names:
2. The deceased was male (*or* female) and was aged or thereabouts.
3. The deceased died at on the of 19 and attached is a copy of the full death certificate or a photocopy thereof.
4. The deceased was, at the time of death, legally married to

or

4. The deceased was, at the time of death, a widower (*or* widow).
5. The spouse of the deceased survived the deceased but has since died.

or

Form 16—*continued*

5. The spouse of the deceased survived the deceased but has since remarried.

or

5. The spouse of the deceased survived the deceased and desires to take his (*or her*) entitlement to an interest for life or until remarriage.

or

5. The spouse of the deceased survived the deceased and desires to surrender his (*or her*) entitlement to an interest for life or until remarriage and attached is his (*or her*) written surrender of that entitlement.

or

5. The spouse of the deceased survived the deceased but at the date of the death of the deceased there was a separation order (*or* a separation agreement made by deed or other writing) in force in respect of the marriage between the surviving spouse and the deceased.

[Where there has been no formal grant of administration, paragraphs 6 to 8 must be completed]

6. The deceased left no will and the person (*or persons*) entitled to obtain a grant of administration does not (*or do not*) intend to seek any such grant.

or

6. The deceased left a will and the person (*or persons*) entitled to obtain probate does not (*or do not*) intend to seek such probate. *[If this option applies, the original will must be produced at the hearing]*

7. The estate of the deceased otherwise consisted of assets of a nature that did not (*or do not*) require to be formally administered.

Form 16—*continued*

8. The deceased's funeral account and all other estate debts have been paid in full.

[Paragraphs 9 to 20 must be completed in all cases]

9. The deceased left the following natural children living at his (or her) death:

| <i>Name</i> | <i>Sex</i> | <i>Age</i> | <i>Postal address</i> |
|-------------|------------|------------|-----------------------|
|-------------|------------|------------|-----------------------|

10. The deceased left the following legally adopted children living at his (or her) death:

| <i>Name</i> | <i>Sex</i> | <i>Age</i> | <i>Postal address</i> |
|-------------|------------|------------|-----------------------|
|-------------|------------|------------|-----------------------|

11. The following children of the deceased died, during the lifetime of the deceased, without leaving issue:

| <i>Name of deceased child</i> | <i>Date of death</i> |
|-------------------------------|----------------------|
|-------------------------------|----------------------|

12. The following children died, during the lifetime of the deceased, leaving issue:

| <i>Name of deceased child</i> | <i>Name of issue</i> | <i>Sex</i> | <i>Age</i> | <i>Postal address:</i> |
|-------------------------------|----------------------|------------|------------|------------------------|
|-------------------------------|----------------------|------------|------------|------------------------|

13. The deceased left no issue, but left the following brothers and sisters living at his (or her) death, including brothers and sisters of the half blood:

| <i>Name of brother or sister</i> | <i>Sex</i> | <i>Age</i> | <i>Postal address</i> | <i>Parentage if of the half blood</i> |
|----------------------------------|------------|------------|-----------------------|---------------------------------------|
|----------------------------------|------------|------------|-----------------------|---------------------------------------|

14. The following brothers and sisters died, during the lifetime of the deceased, without leaving issue:

Form 16—*continued*

Name of brother or sister Date of death

15. The following brothers and sisters died, during the lifetime of the deceased, leaving issue:

| <i>Name of brother or sis- ter</i> | <i>Name of issue</i> | <i>Sex</i> | <i>Age</i> | <i>Postal address</i> |
|--|------------------------------|------------|------------|-----------------------|
|--|------------------------------|------------|------------|-----------------------|

16. The deceased left no issue and no brothers or sisters, and attached is a whakapapa showing the person nearest in the chain of title to the deceased who had issue living at the deceased's death and the names sex, ages, and postal addresses of that issue.

17. The deceased left the following **whangai** living at his (or her) death:

| <i>Name</i> | <i>Sex</i> | <i>Age</i> | <i>Postal address</i> | <i>Parentage</i> |
|-------------|------------|------------|---------------------------|------------------|
|-------------|------------|------------|---------------------------|------------------|

18. Has the whanau of the deceased conferred, and does the whanau accept that the person or persons described in paragraph 17 above should be recognised by the Court as having been whangai of the deceased?

Yes/No

19. The persons legally entitled to succeed to the beneficial freehold interests in the Maori freehold land (to which this form relates) have agreed on a family arrangement, details and evidence of which including written consents will be produced at the hearing.

20. Have the beneficiaries considered a whanau trust?

Yes/No

Form 16—*continued*

If not, do they wish to discuss this matter with a Trust Officer of the Court?

Yes/No

Signed by the Applicant
on the day
of 19

.....

Signature of Applicant

NOTES:

1. Strike out words or paragraphs which do not apply.
2. Add further details on a separate sheet if necessary.
3. Check that any material or documentation required to be attached to these particulars in accordance with paragraphs 3 and 16 above (if applicable) is attached.

MARIE SHROFF,
Clerk of the Executive Council.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules, which come into force on the 28th day after the date of their notification in the *Gazette*, make various amendments to the Maori Land Court Rules 1994.

Rule 2 amends rule 17 of the principal rules to substitute the correct statutory title for the Land Registry Office.

Rule 3 revokes rule 31 of the principal rules, which relates to the issue of Panui, and substitutes a new rule. The new rule provides that the Panui must be issued within 14 days after its closing date. At present the Panui must be issued no less than 14 days after its closing date.

Rule 4 amends rule 44 of the principal rules, which relates to the form of evidence before the Court. A new subclause is added which provides that an affidavit, declaration, or affirmation may be sworn

before a Judge or Registrar of the Court or a solicitor or a Justice of the Peace.

Rule 5 amends rule 114 of the principal rules to reflect terminology now used in section 155 of Te Ture Whenua Maori Act 1993.

Rule 6 inserts a new rule 167A into the principal rules. The new rule provides that where the owner of any Maori freehold land lodges in the Land Registry Office a plan of a subdivision of that land the owner must forward a copy of the lodged plan to the Registrar of the Maori Land Court. Where the Registrar receives a copy of a plan, the Registrar may apply to the Court for a consolidated order under section 128 of the Act.

Rule 7 revokes rule 172, which relates to preliminary matters, and substitutes a new rule. The new rule provides that the Chief Judge (and not the presiding Judge) must fix the time, date, and place for the hearing and fix security for costs.

Rule 8 revokes rule 174 of the principal rules and substitutes a new rule. The new rule differs from the existing rule in 2 respects. Firstly, subclause (1) contains different cross-references as a consequence of the new rule 172. Secondly, the new rule provides that if an appellant fails to lodge security for costs or to comply with directions the Registrar must refer the file to the presiding Judge for a decision as to whether the appeal should be dismissed. Under the existing rule the Registrar may make an application for the appeal to be dismissed. The consequence of this amendment is that there is no application to dismiss the appeal that is required to be publicly notified.

Rule 9 amends form 5 in Schedule 1 of the principal rules, which is the summons to witness form. The amendment makes a correction to the form to make it consistent with rule 53 of the principal rules.

Rule 10 amends form 14 in Schedule 1 of the principal rules, which is the form relating to an application for a Part 4 search. The words **No fee** are added to make it clear that no fee is payable for such an application.

Rule 11 revokes form 16 in Schedule 1 of the principal rules, which is the form of particulars to be filed with an application to determine beneficial entitlements to Maori freehold land. Paragraph 7 of the existing form has been omitted in the new form. This reflects the fact that because of the enactment of section 3 of Te Ture Whenua

Maori Amendment Act 1994 the Court can now make vesting orders regardless of the value of the deceased's interest in freehold land.

Rule 12 amends form 21 in Schedule 1 of the principal rules to reflect terminology now used in section 155 of Te Ture Whenua Maori Act 1993.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 13 August 1998.
