

84-449

IN THE HIGH COURT OF NEW ZEALAND

A. 28/76

NEW PLYMOUTH REGISTRY

229

IN THE MATTER of the Family Protection Act 1955

- a n d -

IN THE MATTER of the Estate of
K H A W E (alias

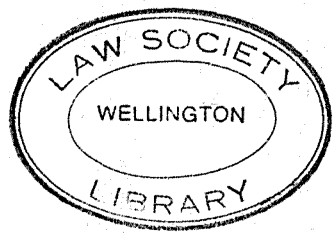
late of Normanby in the Province of Taranaki, Married Woman, deceased

BETWEEN H R H I N D of Pukekohe, Married Woman

PLAINTIFF

A N D F B U L F I N of Hawera, Solicitor as executor and trustee of the estate of Kataraina Hawe (alias Kataraina Rangiwānanga)

DEFENDANT



Judgment: 2 March 1984
Hearing: 2 March 1984
Counsel:

DW Mem

ORAL JUDGMENT OF CASEY J.

This application for further provision out of the estate of K Hawe is brought by her daughter, Mrs Rhind. The testatrix died on 1975 leaving a Will dated 20th March of that year under which the whole of her estate went to her three grandchildren, being children of her deceased son W Hawe who had been killed in an accident only a short time before she made her Will. I have no doubt that she felt that their needs justified the provision of the whole of the estate in their favour. She had two children, the Plaintiff and Wally, both of whom were adopted and as far as the evidence

is concerned, both were dutiful and there is no suggestion of any estrangement or other reason why the Plaintiff should have been disinherited. At the date of the late Mrs Hawe's death, Wally's children were aged [redacted] The Plaintiff now has four children aged [redacted] born after the testatrix died. At the date of her death they were aged [redacted] respectively. She cares for two grandchildren of her own, both of whom are now aged [redacted]

The Plaintiff can be described as being in adequate circumstances and she and her husband are both working. The grandchildren provided for under the Will are now starting to make their own way in life and Counsel were able to give me up-to-date particulars of their situation. The assets of the estate set out in the Trustee's affidavit comprise the dwelling house at Normanby, the capital value of which at 1st October 1980 was \$16,800, and it is accepted it may now be worth in the vicinity of \$22,000 to \$23,000. She also had a number of Maori land interests totalling approximately \$38,000 taken at Government Valuation for the land itself and the capitalised value of the income on the shares in the Incorporations. I do not propose to go into details but it is generally accepted that there would be difficulties in attempting to realise the shares in cash and their real value lies in the income they might produce, and the feeling among the family about their association with these particular lands.

Mr Bulfin informs me that in respect of three of the blocks [redacted] there are pending rent reviews, and it is expected the income from them will increase substantially in the near future. The estate share in those is worth \$21,908 and \$6,291 respectively and they are by far the most valuable of the deceased's interests in the Maori land and Incorporations.

It is conceded that the dwelling should remain with the three grandchildren. I think the parties and their Counsel have adopted a responsible attitude towards this application.

There is no dispute by Counsel for the grandchildren that the deceased did fail in the moral obligation she owed to the Plaintiff for her maintenance and support. Looking at the matter in the broad way that the Court is required to do in such applications, there was no reason why the late Mrs Hawe should have left her completely out of consideration, notwithstanding what appears to have been undoubtedly her view at the time that she should make provision for the children of her dead son Wally. It is to her credit the Plaintiff has not pressed the matter very vigorously and I am sure everyone hoped it could be settled without recourse to the assistance of the Court.

I am satisfied that there has been a breach of the moral obligation contemplated by the Act, and my task now is to decide in what way this should be remedied, bearing in mind that the Court is not entitled to remake the testatrix's Will. I can only interfere with it to the extent necessary to answer the breach of the obligation which she owed to the Plaintiff. Counsel have endeavoured to help me and I acknowledge my indebtedness to them and to Mr Bulfin for his helpful comments about the likely attitude of the two branches of the family to the blocks of land. As a result I have determined that further provision should be made for the Plaintiff and it should consist of the transfer to her of the deceased's share in Rua-o-te-Moko 2B which was valued at \$3,504.48 and a half-share in all the other blocks of Maori land or interests in Incorporations set out in Schedule B to Mr Bulfin's affidavit of 20th October 1983. Because of the financial position of the estate and its dependence on the income from these properties to meet the current indebtedness and costs, I direct that in the meantime the income from all these interests go to the Trustee to repay the debts and expenses and to meet the costs of the parties to this application, together with the Trustee's own costs. For the Plaintiff I fix \$500 plus disbursements, and \$400 for the grandchildren represented by Mr Mori.

Solicitors:

Middleton Young & Co., New Plymouth, for Plaintiff
 Horner & Burns, Hawera, for Defendant
 Nicholson Kirkby Sheat & Co., New Plymouth for grandchildren