Update
Wills and Succession

Service 79 — August 2022

Index

The index has been updated up to Service 78.

Case commentary

Chapter 4 — Formal requirements — validation of wills by High Court — s 14, Wills Act 2007 — codicils

In *Estate of Kim* [2022] NZHC 676, the High Court validated several handwritten notes as codicils. The documents purporting to be codicils contained a number of testamentary wishes but did not appoint an executor. See [4.7.1].

The validation of notes as codicils under s 14 of the Wills Act 2007 emphasises the continued importance of the codicil as testamentary documents: *Re Garrett* [2022] NZHC 52 and *Re Brown* [2022] NZHC 858. See [4.7.1], [4.7.3] and [4.7.4].

Chapter 4 — Formal requirements — successful validation of wills by High Court — s 14, Wills Act 2007

Successful recent cases of validation of wills under s 14 of the Wills Act 2007 include:

- *Re Rawson* [2022] NZHC 771
- *Re Estate of Holt* [2022] NZHC 280
- *O'Neill v Slieker* [2022] NZHC 358

See [4.7.4].

Chapter 4 — Formal requirements — successful validation of wills by High Court — s 14, Wills Act 2007 — testamentary intentions of deceased

Public Trust v Parkinson [2022] NZHC 38 concerned a will-maker who had prepared a will with the Public Trust but failed to follow up with the Public Trust to confirm the will. It was unclear if this failure reflected the finality of the decision or because a final decision had not yet been reached. Katz J was not satisfied on the balance of probabilities that the document reflected the testamentary intentions of the deceased. See [4.7.4].

Chapter 4 — Formal requirements — successful validation of wills by High Court — s 14, Wills Act 2007 — testamentary intentions of deceased

In *Mason v Mason* [2022] NZHC 491, the Court was not satisfied that an unexecuted draft constituted the final testamentary intentions of the will-maker on the basis that there were plausible explanations, such as a relationship breakdown, in addition to unfinalised intentions to deal with Māori Land holdings. See [4.7.4].

Chapter 6 — Construction of wills — correction of wills — s 31, Wills Act 2007

Re Brown [2022] NZHC 1183 the misdescription was not in relation to the property itself but in respect to an interest or share in it. Section 31 was invoked to correct the will to properly dispose of the share. See [6.2].

Chapter 7 — Gifts by wills — conditional gifts

In *Morais v Venis* [2022] NZHC 522, Mander J held that a direction made that a house is to be left to the Roman Catholic Bishop of the Christchurch Diocese "for the exclusive use of their canons" did not prevent its lease to lay persons since the bishop used its profits for the support of priests and their pastoral work. See [7.17].

Chapter 16 — Māori wills — validity of will — Māori land interests

The Māori Land Court can make a decision about whether a will is valid but it has held that the if the claimed will does not purport to dispose of Māori land interests then there is no point in a determination being made: *Towler — Succession to Mona Towler* (2021) 435 Aotea MB 37 (435 AOT 37). See [16.7.01].

Chapter 16 — Māori wills — gift to spouse — intestacy — s 109AA, Te Ture Whenua Maori Act 1993 (Succession on intestacy subject to spouse's or partner's rights to occupy and receive income)

When Te Ture Whenua Māori (Succession, Dispute Resolution, and Related Matters) Amendment Act 2020 came into effect on 6 February 2021, on intestacy a surviving spouse is entitled to a right to receive income from the testator's Māori land interests and to occupy any principal family home on such land until they enter into a new relationship, die or give the interests up in writing. While the spouse is entitled to these rights the final beneficiaries can succeed to the Māori land interests. The effect of this is the final beneficiaries vested with the property are entitled thereafter to make decisions about the land interest subject only to the rights allowed to the spouse: *Gardiner v Hingston — Succession to Heta Kenneth Hingston* (2021) 268 Waiariki MB 50 (268 WAR 50). See [16.11.01] and [16.22].

Chapter 16 — Māori wills — whāngai — intestacy — s 115, Te Ture Whenua Maori Act 1993 (Court may determine whangai and descent relationships of whangai)

The provisions relating to the succession entitlements of whāngai changed with the legislative amendments that came into effect on 6 February 2021. From that date, if a person is determined under s 115 of the Te Ture Whenua Maori Act 1993 by the Court to be a "whāngai" to a deceased, then they may to be treated as a "child" of the deceased entitled to succeed upon intestacy under s 109: *Grant v Grant — Succession to Harry Grant* (2021) 104 Tairawhiti MB 122 (104 TRW 122). See [16.12.04] and [16.23].

Chapter 16 — Māori wills — whāngai — Te Waipounamu District (South Island) exception — s 109, Te Ture Whenua Maori Act 1993 (Succession to Maori freehold land on intestacy)

There are exceptions to the general rules concerning leaving Māori land interests to children which are specific to Te Waipounamu District (South Island). South Island Landless Native Land Blocks interests cannot be left by will and can only be succeeded to in accordance with the intestacy provisions set out in s 109. In such cases "children" can included adopted children who may not have bloodlines to the land. This situation contrasts with interests in Titi island lands which can only be succeeded to by those with Rakiura bloodlines: *Hiroti — Succession to Rira Peti Hiroti* (2021) 72 Te Waipounamu MB 271 (72 TWP 271). See [16.12.08].

