

IN THE COURT OF APPEAL OF THE COOK ISLANDS  
HELD AT RAROTONGA  
(LAND DIVISION)

C.A.9/93

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IN THE MATTER of Section 421 of the  
Cook Islands Act 1915  
and Rules 341-347 of  
the Code of Civil  
Procedure of the High  
Court 1981

AND

IN THE MATTER of the uninvestigated  
Land known as TE-II  
A-MAUI in the Tapere  
of Pokoimu, Arorangi  
District, Rarotonga

AND

IN THE MATTER of an application for  
Investigation of Title  
by TEINA RIRI NGAPOKO  
TUTU-ARIKI JONASSEN  
(NEE TAUEI) of  
Rarotonga, Retired.

Coram: Sir Ian Barker (Presiding)  
Hillyer J A  
Henry J A

Hearing: 6 July 1994

Counsel: Mr R. Holmes for Appellant

Date of Judgment: 6 July 1994

(ORAL) JUDGMENT OF THE COURT DELIVERED BY HENRY J A

This is an appeal against a judgment of the Land Division of the High Court given on 14 September 1993. The judgment concerned applications brought pursuant to Sections 421 and 423 of the Cook Islands Act 1915 to investigate certain customary land and seeking determination of persons entitled thereto.

In his judgment the Judge indicated that the sole basis of the application was what he termed an indirect challenge to an earlier investigation of adjoining land known as Pokoinu 107 block which was ordered in 1905. Mr Holmes, in the present appeal now contends that there are other bases upon which the applications are being pursued and which were not fully put before the Court below. In particular it is said that an acknowledgement to the Court below that it was the Tuaeí family which now claimed some interest to the 107 block was incorrect: the claim was in fact based on descent from Mene Mereana Ariki. Secondly, it was submitted that there is evidence that that family has an established interest in Pokoinu 107 block. Furthermore, Mr Holmes also wishes to contend that further evidence establishing that the Tuaeí line has entitlement to other immediately adjoining land should also be taken into account in considering the applications.

In all the circumstances and having regard in particular to the fact that the applications were, as is this appeal, unopposed, we think the appropriate course is for the matter to go back to the Land Division of the High Court for reconsideration.

The appeal is allowed and pursuant to Section 56 of the Judicature Act 1980-81 the applications are remitted back to the Land Division for rehearing. The security for costs is to be refunded to the appellant.

