IN THE HIGH COURT OF THE COOK ISLANDS

HELD AT RAROTONGA

(CIVIL DIVISION)

IN THE MATTER of Plaint No. 301/95, Appln No. 195/96, HARIKISUN BROTHERS Ltd, Plaint No. 335/96, Land Appln No. 196/96, TURNERS & GROWERS FRESH LTD., Plaint No. 203/94, Misc. No. 44/96, Plaint No. 204/94, Misc No. 20/96 MEATCO LTD., Plaint No. 74/95, Misc. No. 19/96, TIAKI WUATAI

Applicants

AND NORRAINE (NOO) HEATHER of Arorangi, Rarotonga, Businesswoman trading as Raro Supersave also known as Pomani Noo Tangata Enterprises.

Respondent

Counsel: Mr. Brian Mason for Applicants
Mr. M.C.Mitchell for Respondent.

JUDGMENT OF QUILLIAM C.J.

The Respondent carried on the business of a supermarket in premises at Arorangi and, as a result of claims made against her for money alleged to be owing, judgments were entered against her in the High Court in favour of each of the Applicants. Application was then made for the issue of a charging order over the land on which the business had been carried on and which was registered in the Respondent's name. That application came before me on 27 July 1996 when I was informed that the question of the title to the land was not only in issue but was basic to the question of whether there could be a charging order. I accordingly referred the application to the Land Court for determination

and on 13 September 1996 Dillon J made an order by consent for the issuing of the charging order. Preliminary steps with a view to sale of the property were then taken.

Applications have now been made by the Respondent for a rehearing of the application for a charging order and for suspension of the charging order in the meantime, and also for rehearings of the various judgments on which the charging order was based. Those applications were referred to Dillon J who in turn has referred them to me. I have received a joint memorandum from counsel as to procedure and, in accordance with that memorandum, submissions from counsel.

There are two principal matters requiring determination:

1. Whether the application for a rehearing of the charging order is a proceeding which may be brought under s. 390A of the Cook Islands Act 1915 and, if so, whether such application should be granted.
2. Whether there should be rehearings of the various judgments.

As to the latter, it must be observed that each of the actions in respect of which judgments have been entered was duly served on the Respondent and in no case did she take any step in the proceeding. In these circumstances it is difficult to see any basis on which a rehearing could be justified. However, I reserve that question until it is seen whether the land can in any event be made the subject of a charging order.

While it would have been open to the Respondent to apply for leave to appeal against the decision of Dillon J to issue the charging order, she has elected to apply under s. 390A, and the question is whether she has the right to do so.

Section 390A provides:

"(i) Where through any mistake, error, or omission whether

of fact or of law however arising... or when the [Land Court] has decided any point of law erroneously, the (Chief Justice) may...amend, vary or cancel any order made ...or revoke any decision...

(ii) There shall be no appeal against the refusal to make any such order

(iii) The (Chief Justice) may refer any such application to the (Land Division) for inquiry and report."

The wording of that provision is clear and I have no doubt that, in an appropriate case, the allegation of an error of law can be dealt with under the section. The Chief Justice, however, is given a discretion in the matter and the real question now is whether the proper course is to apply s. 390A or to leave the Respondent to her rights of appeal. Those rights are conferred by s. 26 of the Cook Islands Amendment Act 1946 and also by Article 60 (2) of the Constitution.

While I have some hesitation in saying that s. 390A is to be rggarded only in the nature of a "slip" rule, as argued on behalf of the Applicants,I think it is clear that it was intended to apply mainly to minor errors of an incidental nature. What is involved in this case is more than incidental. It is a basic question of title and so must be regarded of significance.

What I regard as determinative of the present application is that it is inapproptiate for the incidental finding of a Judge of the Land Court on a matter of significance to be reviewed by another Judge of the Land Court, notwithstandingthat such review is subject to the scrutiny and decision of the Chief Justice. What is involved here is a decision as to an important matter of law, and the only proper course is for that decision to be the subject of appeal to an appellate court.

I accordingly decline the application made under s. 390A.

The time within which the Respondent was able to appeal was 21 days (R. 17 of the Court of Appeal Rules 1981) but there is power for the High Court or the Court of Appeal to extend that time. In the circumstances which have arisen here it is difficult to think that the Respondent would now be refused an extension, but that should be determined after the Respondent has applied for leave if that is the course she now wishes to take.

The application for rehearing of the judgments is reserved and may be the subject of further application depending on the outcome of any appeal.

There will be an order for a stay of the charging order until further order of the Court. This will depend on whether the Respondent elects to proceed with an appeal. That decision must, however, be made within a reasonable time. Accordingly, if no application for leave to appeal has been made within 21 days from the delivery of this Judgment then an application to discharge the order for a stay may be made.

At this stage the costs will be reserved.

12/4/17