IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CIVIL DIVISION)

OA 4/2008 AND 5/2008

IN THE MATTER	of the Declaratory Judgment Act 1994
AND	
IN THE MATTER	of **TOTOKOITU SECTION 22 LOT 6, TAKITMU** and the Deed of Lease dated 10th August 2007 and LAT. NO. 448/2007 and Certificate of of Confirmation dated 18th December 2007
AND	
IN THE MATTER	of an application by **TEUPOO BATES** of Arorangi, Rarotonga, Cook Islands **Applicant**
AND	**TANGAROA TEAMARU** and **NGAMATA TEAMARU** both of Rarotonga, Cook Islands (Lessors) **First Respondent**
AND	**MARGARET HOSKING** and **TEREAPII HOSKING** both of Rarotonga, Cook Islands (Lessees) **(OA 4/2008) Second Respondent**
AND	**HENRY MARAMA NGAMARU** and **RUTH MAKIRU NGAMARU** both of Atiu, Cook Islands (Lessees) **(OA 5/2008) Second Respondent**

Ms Rokoika for Applicant
Mr Frederick Hosking for Margaret and Tereapii Hosking
Mrs Tata Wichman Power of Attorney for Tangaroa Kainuku
Ms Ngamata Teamaru in person
Date: 6 October 2008

DECISION OF WESTON J

1. I have, before me, two applications for declaratory orders in relation to a number of leases. The original lease in time was entered into

on 20 June 2000. It concerned an area of land totalling 6095 square metres described as Part 22 Lot 6 Takitumu. The landowners are a brother and sister Tangaroa and Ngamata Teamaru. The lessee is the nephew who they have referred to as Maru.

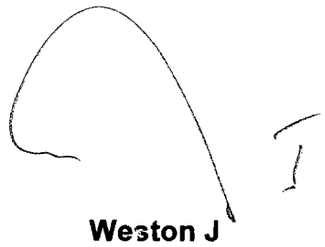
2. In 2003, and unbeknown to the landowners, the nephew had assigned the lease to Mr Bates. This was recorded in a Deed of Assignment dated 19 December 2003. In 2007, the landowners entered into new leases There are two of them and they are dated 10 August 2007. Mr and Mrs Hosking are the lessees under one of those and the relevant block of land was 2070 square metres. The second lease was to Henry and Ruth Ngamaru and that concerned an area of land of 2013 square metres. It was not immediately clear on the face of these three leases that they all concerned the same block of land.

3. I have heard evidence form Miss Andrews and am satisfied that the two smaller blocks that were the subject of the leases entered into in 2007 are part of the bigger block entered into in 2000. Indeed, I think that it is now common ground in the Court that that is so and that there has been a double up in the leases. It is not entirely clear how it has occurred. Certainly, it does not seem to be any fault of the Survey Department. It may be the Land Court overlooked these. In any event the First Respondents plainly are at fault because they should not have entered into the second leases at the same time as the original one existed. However, as they have said, they were not aware that their nephew had assigned the lease to Mr Bates.

4. I am in no doubt that the leases entered into in 2007 are invalid because they concern part of the original lease entered into in 2000. Accordingly I grant the applications for declaratory orders and make the declarations sought in each of the applications. That

is, I declare first that the lease dated 10 August 2007 between Tangaroa Teamaru and Ngamata Teamaru to Margaret Hosking and Tereapii Hosking of Totokoitu Section 22, Lot 6 Takitumu containing 2070 square metres for a term of 60 years from 1 September 2007 is an invalid lease. Secondly, I declare that the lease dated 10 August 2007 between Tangaroa Teamaru and Ngamata Teamaru to Henry Marama Ngamaru and Ruth Makiru Ngamaru of Totokoitu Section 22, Lot 6 Takitumu containing 2013 square metres for a term of 60 years from 1 September 2007 is an invalid lease.

5. Miss Rokoika on behalf of Mr Bates has sought costs against the First Respondents in both of the applications. I can understand why Mr Bates has made the application. He has been put to unnecessary cost through no fault of his own. On a solicitor and client basis, his costs total $1224.00. I have inquired as to the financial position of the First Respondents. Tangaroa Teamaru is aged 85 and he is on a benefit. Ngamata Teamaru is aged 82 and she is also on a benefit. Mrs Wichman on behalf of Tangaroa, and Ngamata on her own behalf, have advised that they do not have the means to pay these costs. I am not going to force them to pay the full amount of the costs, even though I think this is a case where Mr Bates in the normal course would be entitled to that. However, I think it is appropriate they pay some small amount to recognize their role in this matter and accordingly I direct that the First Respondents, that is, Tangaroa on the one part and Ngamata on the other, each pay $50.00 towards the costs of this application. The costs are payable to Ms Rokoika on behalf of Mr Bates.



Weston J