IN THE LAND COURT OF THE COOK ISLANDS
HELD AT RAROTONGA

IN THE MATTER of Section 450 of the Cook Islands Act 1915

A N D

IN THE MATTER of an Application for amendment of an Order by MATA NICHOLAS

JUDGMENT

This is an application by Mata Nicholas under the provisions of Section 450 of the Cook Islands Act 1915 and is the last in a series of three applications by Mrs Nicholas dealing with land interests which were succeeded to by Ramea on the 17th September 1943.

Initially, three applications were filed, but for convenience and with the consent of Counsel all applications and all the evidence were considered at the one hearing which occupied two days. At the conclusion of all the evidence and the filing by Counsel of detailed legal argument the Court proceeded to deal with the three applications in the following manner :

(1) The application under Section 391 alleging fraud was held not to be proven and the application was dismissed. The question of costs was reserved.

(2) The application under Section 390A required the preparation by the Court of a report to the Chief Justice. This was done. The Chief Justice by a decision dated the 17th August 1984 dismissed the application under Section 390A. No order as to costs was included in that decision.

(3) The application under Section 450 was adjourned until the Chief Justice made a final decision on the Section 390A application. The question of costs on this application was reserved.

Now it was agreed by Counsel prior to the original hearing that all the evidence called would be treated as applying to all applications. No applications for adducing additional evidence having been received this Court will now proceed to deal with the adjourned Section 450 application on the evidence already heard and the submissions already made.

Section 450 provides that "a Succession Order made in error may be at any time revoked by the Land Court ...." The applicant says that the Court made the original Succession Order in error because it determined :

"That Ramea was a child of Maanga. (Ramea was not the child of Maanga. Raumea was Iobu Ramea and was adopted by Aporo.)"

In support of this application by Mrs Nicholas, four witnesses were called. For the purpose of completeness, I propose to include in this decision the summary of this evidence I prepared when making my report to the Chief Justice on the Section 390A application.

1. Pakitoa Mani : This witness was 68 years of age; and is a feeding child of Maanga. He stated that Maanga also had two feeding daughters, namely, Pativai and Vaine. Vaine was also known as Makeu. A significant aspect of his evidence was that he claimed his father, Maanga, never told him that his father had another son, Ramea. He claimed that he learnt of it, for the first time, at the Court hearing.

2. Teava Teina : This witness was 49 years of age, whose mother was Vaine Makeu which was the only name by which she knew her mother.

3. Mata Nicholas : This witness is aged 53 years and is the applicant in these proceedings. Her mother before her made applications to the Court and to the Appeal Court to try and rectify what she believed was the error in Ramea succeeding to certain lands. Mrs Nicholas is carrying on with the present application in the belief that there is an injustice in the original Succession Orders which were made some 40 years ago. She recounted what she believed Mr Charlie Cowan had done to her family when conducting the case on the original succession; she made allegations against Mr David Metuarau of the Land Court staff, suggesting that by collusion and connivance the original succession was made resulting in Taravaki Section 17A being awarded to Ramea, who had then leased this land to David Meuarau for a term of 30 years from the 1st of June 1947, the area being 15 acres 1 rood 15 perches and the rental being $20 per annum. On cross-examination by Mr Tylor, this evidence was either modified, or to some degree nullified, which could indicate that Mrs Nicholas's evidence was either a little over-enthusiastic or, to a degree, a little too colourful.

4. Tutai Panapa : This witness was aged 57 and related how Ramea had collected the airport compensation monies when it was the witnesses father who had planted the coconuts for which the compensation was based.

   This witness, however, made a serious allegation against her father who she said related to her subsequently that David Metuarau had told her father to tell lies in Court and that, in fact, Ramea was not the son of Maanga.

In opposition to the application, another four witnesses were called, whose evidence, again taken from the earlier report, is

as follows :

1. Mr J.J. McCauley : Mr McCauley is the present Commissioner of Crown Lands; was the previous Judge of the Land Court and is acknowledged as a person with very wide experience in Maori geneology, history and customs. He gave evidence that it was quite common for a person to have many and varied names. He also went into considerable detail to expound the principle of Rangatira-Ki-Te-Ara. The record of Mr McCauley's evidence is both interesting and instructive although I am afraid not conclusive in so far as the relationship of this principle to the period from 1900 to the present time. Mr McCauley conceded that the principle about which he spoke applied only to the prior 1900 period so that while it was interesting, the question of its applicability to the present matter is in doubt.

   Perhaps the relativity of this principle of Rangatira-Ki-Te-Ara in relation to the present application and, in bearing in mind that this application related originally to a Succession Order, may be gauged by the short question and answer that the Court put to Mr McCauley. That was as follows :

   "Court: Have you ever heard, in all your experience, which is pretty wide, of anybody claiming right succession by means of this principle Rangitira-Ki-Te-Ara?

   A. No Sir."

2. Manuela Temu : This witness was aged 84, remembered Ramea and what Ramea had said to Banaba regarding the planting of Ramea's land which Banaba and Tungane were using for cropping and living on.

3. Po Putauru : This witness remembered Maanga - knew him well - also knew him as Makeu.

4. Maria Henderson: Mrs Henderson stated that Ramea was her grandfather, whom she knew personally. He was also known as Iobu Ramea - as Kopu - as Tipimingi - and as Tangaroa. She was not able to offer any explanation as to why Ramea was not mentioned in Maanga's Will; in other words why did Maanga leave Ramea, if he was his son, out of the Will. Likewise Mrs Henderson was not able to give any explanation regarding Ramea's Birth Certificate.

There is undoubtedly a serious conflict of evidence. However I am able to reach a decision based on the following matters which I consider both important and significant.

(1) The Succession Order was made by this Court on the 17th September 1943; it was affirmed at a rehearing on the 30th September 1943; and it was upheld on appeal in 1947. Those three Court hearings were held 40 years ago when people then would have much better knowledge, than people now, of early geneology. That knowledge and that geneology was

accepted by the Court on three occasions.

(2) Tutai Panapa claimed that when she was only 15 years old (she is now aged 57 years) Panapa, her father, told her he had lied in Court about Ramea being Maanga's son. She did not claim to know who was the father of Ramea. Firstly this is a very serious and somewhat callous allegation for a daughter to make against her father. Secondly she says she was told this when she was 15 years old. Now some 42 years later it would nearly be too dangerous to rely on, even if supported in some way by corroborating witnesses or evidence. But there is no corroboration of this at all and the Court is asked 42 years later to rely on the recollection of what a father is alleged to have told his 15 year old child.

(3) Mrs Panapa claims she gave this information about her father to Mrs Nicholas some 15 or 20 years ago but it is only now that this serious allegation against Panapa is brought to the Court for the first time.

(4) Manuela Temu aged 84 knew Ramea; Maria Henderson stated that Ramea was her grandfather and that she knew him personally.

Impressed as I am, with the sincerity of Mrs Nicholas; acknowledging as I do, the discrepancies which even now after all these Court hearings, still exist; I find that the evidence submitted in support of the application does not override the evidence called to oppose the application. In fact the evidence called by Mr Tylor and Mrs Henderson confirms the orders of the three previous Court decisions. The real difficulty confronting Mrs Nicholas or in fact anyone in like circumstances is the lapse of time from making the original orders. Forty years have now elapsed since two Court sittings and an Appellate Court made decisions which Mrs Nicholas now says were incorrect. For these reasons the application to revoke the Succession Order made on the 17th of September 1943 is refused.

Costs have been reserved on previous applications; and should now be finalised. I will hear submissions from Counsel on quantum, and the Registrar is to make a special fixture for this to be considered. Counsel may care to consider that :

(1) I do not believe Mrs Nicholas's applications were frivolous or without substance;

(2) Costs on substantive applications cannot merit punitive awards of costs or amounts intended to result in a complete indemnity of all the costs of the successful party's attorney.

(3) Costs should be so awarded in the Land Court to ensure that reasonable litigation is not prohibited by the fear of expensive Counsel.

(4) Successful litigants are entitled to a contribution towards

the costs they have incurred.

Judge

8 March 1985