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

Appln NO. 287/83

IN THE MATTER of Section 221 of the Code of Civil Procedure of the High Court, 1981

A N D

IN THE MATTER of an Order made by the High Court on the 26th day of July 1983 granting succession by VAINE NOOROA O TARATANGI PAUARII to the interest of PAUARII TANETUAO in the land RUAROA & VAIPAPA S.89D ARORANGI

JUDGMENT

On the 26th July 1983 this Court made a Succession Order in favour of Vaine Nooroa O Taratangi Pauarii to succeed to the interests of his adopted mother in the land known as Rauroa & Vaipapa Section 89D Arorangi. Mrs Browne appeared on that application. The file records show Mr Tylor miscalculated the timing of Mrs Browne's application with the result that an Order had been made before his objection could be presented to the Court - a good example of why objections should be notified both to the Court and Counsel or applicants prior to the commencement of Court sittings. In the result a rehearing was requested by Mr Tylor; granted by this Court; evidence taken; and submissions presented.

The deceased died on the 22nd of August 1970, aged 70 years. The applicant was born on the 20th January 1952 and was adopted by the Deceased on the 7th February 1955. The deceased and the applicant at the time of the adoption lived in New Zealand. The deceased returned to Rarotonga in 1965 or 1966 and the applicant stayed on in New Zealand living with his natural mother. There was a suggestion that because of the deceased's age, health and poor financial circumstances the adopted child may have gone to live with his natural mother some time before the Deceased returned to Rarotonga in 1965 or 1966. There was no definite evidence on that point. Nor was there evidence that the deceased was looking after the applicant prior to his adoption when he was aged 3 years. Assuming that the deceased had the child from birth until her return to Rarotonga in 1965 or 1966 then she looked after the applicant for a maximum period of 14 years. When the deceased returned to Rarotonga she was aged 66 and the application 14. Evidence was also given of her poor health,

strained financial circumstances, and "not good" living conditions. These factors were clearly the reason for her being unable to continue looking after the applicant and deciding to return to Rarotonga.

With that background I am required to consider whether the applicant is entitled to succeed to the interests of the deceased, his adopted mother.

Mrs Browne says that in effect this is a son applying to succeed to his mother's interests. Mr Tylor on the other hand says :

(1) The adoption order itself precludes the application sought;

(2) The adoption has not matured to the stage of justifying such an entitlement;

(3) That the Deceased, herself being adopted, the interests must go back to the issue of Mangavai.

When the adoption order was made the Court added the words - "not to affect interests in native lands". It is not clear what this endorsement means. It could be :

(a) interests in native lands of the adopted mother;

(b) interests in native lands of the natural mother;

(c) the adoption order shall not affect and therefore not entitle the child to any interest in native lands of the adopted mother;

(d) the adoption order shall not affect and therefore not entitle the child to any interests in native lands of the natural mother;

(e) the adoption order shall not affect and therefore not entitle the child to interests in native lands of either one or both the adopted mother and/or the natural mother.

Mr Tylor who opposes the application to succeed by the adopted child relied on the criteria as to Maori custom on adoptions as set out in the Judgment of Judge Morgan and referred to in Minute Book 28/156.

One of these criteria is any limitations imposed at the time of the making of the adoption order. Here Mr Tylor says that there is a clear restriction - "that at the time the child was adopted he was not to come into the family land". If that were the case we would not have the need for the present decision. Unfortunately the order is not clear as to whether the Court was referring to a limitation or an entitlement - that is the adoption order was "not to affect interests in native lands". There is no question that adopted children do have rights to interests in native lands - Section 465 states this and native custom permits this.

If the endorsement on the adoption order had stated "not to succeed to interests in native lands of Pauarii" then the intention would have been quite clear and certain. But in this case we do not know if the reference is to the interests in native lands of the adopted mother; or the natural mother. Nor do we know if "not affect" means the adopted child may succeed or may not succeed his adopted mother's interests.

In those circumstances I must decide whether the adoption has matured or so matured as to entitle the applicant to come within the criteria of establishing a right in accordance with native custom. Maturity must of necessity relate to circumstances which because of their very nature will never be constant. Maturity in my view could in certain circumstances materialise say in five years; in other circumstances it may take 25 years.

In the present case we have a 52 year old lady adopting a child; living in New Zealand together where she brings up the child until he is 14; and then when she is 66, in poor health; in not good living conditions; and financially not well off; she arranges for her child to stay on in New Zealand to be looked after by his natural mother while she returns to Rarotonga where she dies four years later. I have no doubt that if she had remained in New Zealand for the last four years of her life and continued to look after her child and had died there then this would have clearly indicated a maturity of adoption justifying entitlement to succession. Taking into account the factors which compelled the deceased to leave the child for the last four years of her life, I believe the evidence justifies a recognition of this adoption and a consequential maturity which according to native custom entitles this adopted child to succeed to his adopted mother's interests in this land. There will be a Succession Order in his favour solely.

On the application for rehearing, the question of costs was reserved. Initially Mr Tylor corresponded with Mrs Browne and offered security of $150 for costs on the rehearing. That was a reasonable proposal. Mr Tylor's objection was not without merit and in the circumstances I will limit costs in favour of Mrs Browne to the original offer of $150.00.

Judge

8 March 1985