

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

Appln 2/90

IN THE MATTER of the land
known as RUAROA
and VAIPAPA
SECTION 89D

A N D

IN THE MATTER of a Succession
Order dated 18
March 1953 to
the interest of
TAKAA

To : The Chief Justice
High Court
RAROTONGA

REPORT BY DILLON J.

The applicant in these proceedings is Maria Ngaputa and her application is in effect a follow on from a previous Section 390A application which was considered by me and reported to the Chief Justice on 8 March 1985.

To briefly summarise the situation concerning the applicant, the following are the agreed facts :

1. At a Court sitting on 18 March 1953 Elizabeth Teputuariki gave incorrect evidence as to the geneology she was recording at that time.
2. Elizabeth, at a subsequent Court hearing, acknowledged that mistake.
3. This Court made an Order on 12 August 1953 allocating the interests of land in the above blocks by consent based on an agreement of the owners as to occupation and not as to geneology.

Those findings have been set out in detail in a three page decision already submitted to the Chief Justice on 8 March 1985.

The last paragraph of that report states as follows :

"An application to cancel or amend the Succession Order made on 18 March 1953 which is now based on incorrect evidence could well form the basis of an application to

this Court under Section 390A. I am of the opinion for the reasons set out above that this application relating as it does to the Order made on 12 August 1953 cannot be supported by the evidence and cannot justify an Order under Section 390A, and I would so recommend accordingly."

The purport of that recommendation to the Chief Justice was a concession that the Order made on 18 March 1953 was incorrect, but that since the subsequent Order made on 12 August 1953 was based on occupation rights and not rights based on geneology, there was therefore no mistake requiring the exercise of the Court's powers under Section 390A.

It must be remembered that the application previously considered and the subject of that report dated 8 March 1985 referred to an amendment of the Order made on 12 August 1953 and did not refer to the Succession Order made on the basis of mistaken evidence earlier on 18 March 1953. It was for this reason that the report concluded in part with the observation referred to above and now repeated as follows :

"An application to cancel or amend the Succession Order made on 18 March 1953 which is now based on incorrect evidence could well form the basis for an application to this Court under Section 390A."

That sentence, on reflection, could perhaps have been better expressed. The application now being considered refers to that particular paragraph and that the Court expressed an "... opinion that an application for amendment of Succession should have been made." (The underlining is mine.) The report did not say that but was merely differentiating between the two Orders, one on 18 March 1953 and one subsequently on 12 August 1953. The reference that the applicant "could" file an application under Section 390A against the 18 March 1953 Order was stated simply to differentiate between the subsequent 12 August 1953 Order. That expression that an application "could" be made against the 18 March Order but not the 12 August Order has now been turned into a "... should have been made". As I have conceded, the necessity for making that observation, or not having expressed it a little better, might be the basis for the present application.

Having made those observations the question now to be considered is if the Succession Order made on 18 March 1953 was corrected, what is the applicant's intention given that a Consent Order has already been made on 12 August 1953. If the intention of this application is to amend the Succession Order made on 18 March does the applicant anticipate a right to amend the Consent Order made on 12 August 1953 - this more especially since the Court has found that the Consent Order on 12 August 1953 was made on the basis of occupation. Consequently the 12 August Order has no relationship to geneology, whether right or wrong or corrected.

The result of these observations raises the question of exactly what is the purpose of the application and even if granted, what effect will it have on the Consent Order already made without reference to the mistaken geneology, but rather based by agreement on occupation.

The Court believes that it is entitled to have further information from the applicant as to the real motives behind the present application so that those intentions can be considered at the same time as the report to the Chief Justice is concluded. If the intention is in some way to attack the Consent Order made on 12 August 1953 then I do not believe that the application should be recommended.

If, however, the application is to correct the record insofar as the incorrect geneology given on 18 March 1953 is concerned, so that its voracity is relevant to other blocks where there are similar owners, then of course that would be a proper basis on which the application should be considered. Without further information, however, I do not believe that the present application is relevant insofar as the Ruaroa and Vaipapa Section 89D blocks are concerned.

For that reason this is an interim report to be submitted to the applicant who may file further submissions covering the issues which I have set out.

Dated the

3rd.

day of

June

1992.

James J.

Judge