

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

APP. NO. 457/94

IN THE MATTER of the land known as Taputapuatea
Section 224, Avarua Rarotonga

BETWEEN **ERIC BROWNE** and **NONO**
MANARANGI for and on behalf of
the Objectors to the Investiture of Ina
Nui Love to the Title of Makea Nui
Ariki

Applicants

AND **INA NUI LOVE** of Rarotonga for
and on behalf of her Supporters to
her Investiture to the Title of Makea
Nui Ariki

Respondents

AND

IN THE MATTER of Section 409(a) of the Cook Islands
Act 1915

AND

IN THE MATTER of a Restraining Order made by the
Court on App No./94 by **ERIC**
BROWNE and **NONO**
MANARANGI and others against
INA NUI LOVE and others as
Respondents

AND

IN THE MATTER of an Application for Variation of
Restraining Order by **VEIA ATUA**
LOVE-LOWRY of Rarotonga

Applicant

AND

the Applicants under App No. /94
by Messrs **ERIC BROWNE** and
NONO MANARANGI of
Rarotonga

Respondents

Mrs Veia Love-Lowry appears for herself as Applicant
Mr Manarangi for the Respondents
Date of Hearing : 17 November 1994
Date of Judgment : 25 November 1994

JUDGMENT OF DILLON J.

On 30 October 1994 (New Zealand time) the Court considered an application for an Ex Parte Application for Injunction in respect of a potential conflict dealing with the Palace Para-o-Tane. The Palace and the surrounding environments were occupied by people opposing the investiture of Ina Nui Love while the Court was told that supporters of Mrs Love were marching towards the Palace to take it over. It was the potential for a confrontation which was likely to ensue that prompted Inspector Tini to also make representations at that Court hearing in October. The evidence that was presented to the Court on that occasion has been documented and has been recorded to ensure that any subsequent criticism of that Order could relate to the facts and circumstances as presented to the Court on that occasion.

That occasion has now arisen as a result of this application by Mrs Love-Lowry who applies for a variation of what is referred to as a restraining order which I have assumed refers to and relates to the injunction to which I have previously referred. In addition Mrs Love-Lowry applies for an award of costs.

This application is based on a detailed affidavit which has been sworn to and filed in support of the application. In summary Mrs Love-Lowry complains that she was evicted by the Police from the Palace; that she has been living there since March 1994; and that the applicants for the injunction do not live in the Palace or the grounds surrounding it. Mrs Love-Lowry further complains that since her eviction on that afternoon of 29 October 1994 (Cook Islands time) she has been subjected to ridicule and verbal abuse and that she has also been subjected to derogatory remarks and actions by followers of those who supported the original injunction proceedings. In addition Mrs Love-Lowry complains that the Police have been of no help to her in the predicament in which she finds herself. She claims that as a result of what has happened she has been denied her fundamental rights which are assured under the Constitution and that it is because of all these matters to which I have briefly referred that she considers that she is entitled to a variation of the restraining order, and in addition an award of costs.

Those are the matters deposed to by Mrs Love-Lowry in her affidavit. A hearing was held by way of an international conference call and Mrs Love-Lowry provided further evidence in support of her application. She said that she had lived in the Palace since she was six months old. She was not notified of the application for an injunction and that as a result of the way she has been treated

she feels she has been regarded as a squatter when in fact she was brought up in this building. She complained bitterly about Messrs Manarangi and Browne and gave details of her family history and their entitlement to the Makea title. In this connection she indicated that she had asked Messrs Manarangi and Browne, either singly or together, to make their intentions to her as to whether they sought election to the title, and it was for this reason that she wanted by way of the application now sought her reinstatement in the Palace, together with the recovery of hotel costs which she had incurred.

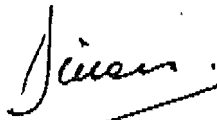
Mr Manarangi for the Respondents explained that the Palace was built from funds of the whole Makea tribe and that as such the Palace was set aside for the use and occupation of the Makea of the day which title is still to be decided. Since everyone has a common right to that building until the rightful Makea has been appointed and decided, Mr Manarangi believed that it was only right that the Palace be preserved until that time and that it should not be subjected to occupation by anyone, irrespective of claimants' beliefs or entitlements. Mr Manarangi referred to a bungalow in the Palace grounds and the applicant has a right to that building. He indicated that Ina Nui Love was living in that bungalow at the present time, being a house which is divided into two units. Mr Manarangi conceded that the present applicant has rights to live in that house, namely the bungalow, which he indicated was not subject to the injunction proceedings.

It is for the Court to decide therefore the rights of the applicant based on the evidence that she has presented.

The original injunction was granted not on the question of the rights of the applicants, Messrs Manarangi and Brown, but rather on the question of maintaining good order and discipline, the responsibility of the Police in Rarotonga. Inspector Tini, who had no interest in the appointment of a successor to the Makea title, but as a senior police officer, expressed serious concern at a potential confrontation between various factions which he believed the Police could have difficulty in controlling if it got out of hand. That decision to grant an injunction was made, therefore on the basis of peace and order - the responsibility of the Police Department. Nothing has been presented to me which would indicate that the situation which existed on 30 October 1994 has altered in any way in November 1994. It is, in the Court's view, essential that the rights of all parties be preserved. That is the rights of Ina Nui Love; the rights of her sister, the present applicant; the rights of Mr Manarangi and Mr Brown, whatever they may be; and the rights of any other person who may ultimately claim the Makea title. Until the Makea family determine who

shall be the holder of this title then it is abundantly clear that a neutral position should be preserved whereby nobody should occupy the Palace pending confirmation of such appointment. There is plenty of precedent for such a decision. For example, the last title case dealing with the Tinimana title.

It is clear, according to Mr Manarangi, that the applicant is not deprived of accommodation which is available to her in the bungalow. For that reason her application is declined and the question of costs is reserved.



Dillon J.