

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

Application 519/94

IN THE MATTER of Section 391 of the
Cook Islands Act 1915

AND

IN THE MATTER of the land known as
Tutakimoa Section 14C

AND

IN THE MATTER of an application by
RIMA URIARAU

Mr Dymond for the Applicant
Mr Mitchell for T.A. Manarangi and A. Manarangi as Respondents

Date of Hearing : 1 July 1995
Date of Judgment :// September 1995

JUDGMENT OF DILLON J.

The Applicant in these proceedings seeks an Order that the confirmation of resolution of assembled owners made on 13 March 1984 in respect of a Deed of Lease between the land owners of Tutakimoa Section 14C and Mr T.A. Manarangi be cancelled. Reliance for this application is based on Section 391 of the Cook Islands Act 1915. That Section provides as follows :

“The Land Court may at any time annul any Order obtained by fraud.”

That jurisdiction now applies to the High Court. The grounds of Mrs Uriarau's application are as follows :

- "1. That the said Order was obtained by fraud.
2. That the land owners did not consent to the granting of the lease.
3. As appear in the affidavit of the applicants and other affidavits and declarations of some land owners and Mr Jock MacCauley filed herein."

At the hearing, the evidence adduced and the submissions made divided this application in effect into two parts. The one relating to the allegations of forgery of certain proxies; the other to the circumstances of a meeting of owners pursuant to the requirements for confirmation of the lease subsequently by the High Court. It would be convenient to deal with the allegations of forgery of the signatures by way of introduction to this judgment.

The applicant is Mrs Rima Uriarau, an elderly lady who lived for many years in Rarotonga and who now makes serious allegations against Mr Teariki Manarangi who were, in those early days, the closest of friends and who regarded each other as close relatives. Mrs Uriarau lived with the Manarangi family and explained how she cared for Mr Manarangi in those early days. Subsequently she went to live in New Zealand and has lived there for most of her life. She provided a background to her close association with the Manarangi family; of meetings that were held in New Zealand dealing with land matters; and how when she returned to Rarotonga she found that a building had been erected on land which she had always believed belonged to herself and her family. In the course of giving evidence she strenuously proclaimed that she had never executed the proxies and which formed the basis of her application. The extent of her allegations can perhaps best be summed up by one of the original affidavits she swore to on 2 August 1994. It will be convenient to refer to this in detail as exactly the same wording was used by three other owners who gave proxies, which will be the subject of a further investigation. Mrs Uriarau stated on oath as follows :

- "1. I reside at Auckland, New Zealand.
2. I have been shown a proxy certificate signed on the 9th day of January 1983 which supposedly was signed by myself using the name Rima Teariki Solomon.

3. I did not sign, nor did I appoint John James MacCauley to be my proxy and to act for me.
4. I have never met Mr MacCauley in my life.
5. I would not appoint a proxy to someone I do not know."

Earlier this week I received the transcript of the evidence given by Mrs Uriarau and the others who were called to support her application. The evidence recorded clearly indicates the difficulties that Mrs Uriarau had in recollecting events both in New Zealand and in Rarotonga, and the confusion which was no doubt responsible for some of the allegations that were contained in her evidence, but more particularly the large number of denials that she made when examined by her own Counsel Mr Dymond, and in cross-examination by Mr Mitchell. This can be quite easily understood as Mrs Uriarau is an elderly lady and as such appeared to me to suffer from a genuine difficulty in trying to recollect events that had taken place six or seven years previously in New Zealand. For example, the difficulty that Mrs Uriarau suffered under was when she denied that the affidavit that Mr Dymond had arranged for her to execute, she had never executed.

Mr Tepana Uriarau also gave evidence in support of Mrs Uriarau's application. He also had difficulty in recollecting events but was not as certain as Mrs Uriarau in disassociating himself from the signature on the proxy form. The third witness dealing with the proxy evidence was Mr George Browne. While Mr Browne explained that he was not aware of the appointment of Mr MacCauley as far as he could recall, he nevertheless supported Mrs Uriarau's application and wished the order of confirmation in respect of the lease to be cancelled on the basis of the fraud alleged by Mrs Uriarau, an allegation he supported.

On the file is a report from a Mr John Alexander West, a New Zealander who practises as a forensic document examiner and handwriting analyst on his own account. Mr West claims to have made a special study of evidential documents since 1963 and was the Chief Document Examiner for the New Zealand Police for some twenty years. By agreement between Counsel Mr West was not called as a witness from New Zealand. His report, however, deals with the four suspect proxies, and without going into the comprehensive and detailed analysis that he undertook, it is fair to say that he found no evidence of forgery and that any variations in the

signatures were not consistent with the allegations that the signatures were forged. He also was able to certify that there was no obvious indications of forgery, either by copying or tracing.

The evidence of Mr West appears to conclusively establish that none of the signatures on the proxies were in fact forged signatures. At the end of the evidence called by Mr Dymond, he was prepared to concede that the only issue was limited to the involvement of Mr MacCauley and whether he was at a preliminary meeting of owners; and whether he did in fact exercise the proxies which Mr Dymond conceded had been made out in his name. This concession by Mr Dymond substantially narrowed the investigation into the circumstances of this preliminary meeting of owners. The background to that is as follows :

Mr Anthony Manarangi, son of Mr Teariki Manarangi, was at the relevant time the Solicitor-General acting in that position in the Crown Law Office in Rarotonga. Also at the relevant time Mr MacCauley, a retired Land Court judge, was acting as a clerk in the Crown Law Office dealing principally with the administration of Crown Lands. In evidence Mr Anthony Manarangi explained that, because he was inexperienced at that time in land matters, he sought the advice and assistance of Mr MacCauley who is widely recognised as an expert, especially in the history and genealogy of most of the families in Rarotonga. There is no doubt that Mr MacCauley did in fact assist Mr Manarangi in the preliminary work because Mr MacCauley has acknowledged the various documents that he prepared in his own handwriting, showing the genealogy of some of the owners and various other particulars that were relevant to any negotiations seeking a lease of Tutakimoa Section 14C, of which the applicant was an owner and of which Mr Anthony Manarangi's father was also an owner.

In summary, Mr Manarangi under oath said that he sought the advice of Mr MacCauley and because of his position in Rarotonga society as a respected and independent person, arranged for proxies to be prepared in favour of Mr MacCauley. He arranged to have these executed in New Zealand by the four members of the Uriarau family who now say that they did not sign the proxies and did not appoint Mr MacCauley as their agent. Mr Anthony Manarangi said that he had arranged with his father, when visiting New Zealand, for these proxies to be signed. Without specifying an exact date or the circumstances, assumed that his father

returned with the proxies duly signed and these were then put on Mr Manarangi's file for the next stage of acquiring a lease.

Pausing at this point, Mr MacCauley, on the other hand, asserts that throughout his whole career he has never acted as a proxy holder as he believed that this was contrary to his position of independence as a Land Court judge. I can quite understand that stance that he had adopted during the time that he was a judge of the Court. I am not sure whether it necessarily follows when he is no longer a Judge of the Court. However, be that as it may, Mr MacCauley's evidence is quite definite that at no stage in his life has he ever acted as a proxy holder; that he did not know these members of the Uriarau family who were living in New Zealand, and that he never agreed to act for them. I have paused at this point to consider the signing of the proxies and the appointment of Mr MacCauley. Taking the evidence of Mr Anthony Manarangi, and of Mr MacCauley up until this point in time, it is clear that Mr Anthony Manarangi prepared proxies in Mr MacCauley's name and arranged for these to be signed in New Zealand. There is no doubt that these proxies were signed by the four members of the Uriarau family. There is no doubt that Mr Anthony Manarangi and Mr MacCauley had discussions about the Uriarau family ownership of the land and Mr MacCauley wrote out, in his own handwriting, several pages of detail concerning the land in question. It could well be that Mr Anthony Manarangi had considered Mr MacCauley would be a very desirable proxy holder but had not discussed that issue with him when the proxies were prepared and sent off to New Zealand for execution. That would be a situation which would fit in with the facts up until this point.

However, the crucial issue to be decided relates to events which now follow. The Land (Facilitation of Dealings) Act 1970 requires a formal application for confirmation of a resolution of assembled owners which is a procedure preparatory to the granting of a lease. This Act requires a quorum to be present to consider any proposed resolutions, in this case a lease in favour of Mr Teariki Manarangi of the land known as Tutakimoa Section 14C. That application to the High Court was dated 29 March 1983 and was signed by Mr Anthony Manarangi on behalf of his father. As a result of that application a meeting of the assembled owners pursuant to Section 50 of that Act was held at 3.00 p.m. on Tuesday, 8 February 1983. Mr T. Raitia was the chairman of the meeting, and was the Recording Officer acting on

behalf of the Registrar of the High Court. It is recorded in his own handwriting that the people present were as follows :

- “1. Teariki Akamoeau Manarangi
2. J.J. MacCauley, proxy for
 - Eiao Uriarau
 - Tepana Uriarau
 - Ngamatua Uriarau
 - Rima A. Teariki Toekutu”

On the basis of that representation the Chairman, Mr Raitia, certified that a quorum was present within the prescribed time and that the meeting proceeded to consider the proposed resolution which was passed without modification. Again, in his own handwriting, the Chairman recorded as follows :

“After briefly discussing the resolution those present unanimously agreed to do it. Resolution carried.”

After a resolution by assembled owners has been agreed to, the consent of the Leases Approval Committee must then be obtained before any application can be dealt with by the Court.

On the basis of that resolution and that approval, the matter came before the High Court on 13 March 1984, more than a year after the meeting of owners, and the deed of Lease pursuant to that resolution was confirmed. The Deed of Lease was subsequently signed on behalf of the Court by the Registrar.

It is this meeting which now becomes the focal point for the serious allegations which in effect are levelled against Mr Anthony Manarangi, who stated that he has no interest in the lease itself but did assist his father in guaranteeing finance for the development of the section.

It will be recalled that Mr MacCauley stated quite categorically that he had never acted as a proxy holder and that he did not act as a proxy holder on this occasion for the four members of the Uriarau family. However, he now goes further and says that he was not at that meeting of owners in the Courthouse on 8 February 1983. On the other hand Mr Anthony Manarangi

on oath has said that Mr MacCauley was there, and he is able to swear to that fact because he had walked over to the Court with Mr MacCauley and was in fact sitting in the back of the Courthouse room during the meeting process. He stated that there were four people in the room at the Courthouse on 8 February - there was his father, Mr MacCauley, the chairman and himself. Since he was not entitled to take any part in the actual meeting he simply sat at the back of the room. I repeat, Mr MacCauley said that he was not at that meeting of owners.

Mr Raitia gave evidence and was able to confirm from his own writing the details of the meeting to which I have already referred. He stated that he was able to recall the circumstances of the meeting from the minutes that he took at the time of the meeting itself which were later typed out from that hand written record, either that day or the following day. Mr Raitia said that he used to take anything up to 100 meetings a year and on some days prior to the Court sessions opening he would do two, sometimes three, meetings a days. He was able to say that Mr MacCauley was present at the meeting because he recorded that fact in his own handwriting.

There was one further witness who could have been called. That was Mr Teariki Manarangi. It was stated by Mr Mitchell that Mr Teariki Manarangi, because of his age, was not able to recall the circumstances of the meeting that took place on 8 February 1983. For that reason it was obvious there was no point in calling him as a witness.

At the hearing Mr Mitchell called one further witness, Constable Henry. He is attached to the Fraud Squad and was deputed to enquire into the complaint originated by Mrs Uriarau but supported by Mrs Uriarau's Power of Attorney, a Mrs Annie King. I took from the Constable's evidence that it was Mrs Annie King who was the principal instigator in pursuing Police action on the allegations of fraud which was alleged to have been committed in respect of the proxies. However, it has been established that there were no forgeries in respect of the proxies or of the Power of Attorney. Constable Henry's evidence is of relevance. Questioned by Mr Mitchell, his evidence was as follows :

"Q. To whom did you speak, who was the complainant?

A. Most occasions it was only Rima or Annie King.

Q. What was the complaint?

A. The signatures on the proxy forms were not theirs. The complaint was forgery.

Q. That has been the case right up to last week.

A. Yes.

Q. You probably gathered today that they are their signatures. When did you first hear that?

A. Last week."

Then as a result of further questioning Constable Henry indicated that Mrs Annie King denied that the signatures were the Uriarau family. Again, even when evidence was shown to Mrs Annie King, she claimed that it was not Rima's signature. From the Constable's evidence it appears that it was the applicant's Power of Attorney, Mrs Annie King, who was the instigator of the Police enquiries and who refused to accept that the signatures were in fact not forgeries.

While I have referred to the Constable's evidence for the purpose of completeness, this does not assist in determining the circumstances of the meeting at the Court House, when it is alleged that four people were present - the Chairman conducting the meeting, Mr Raitia; Mr Anthony Manarangi sitting at the back of the meeting; and Mr Teariki Manarangi and Mr MacCauley representing the owners. Mr Anthony Manarangi says that Mr MacCauley was present. Mr Raitia said that Mr MacCauley was present because as a result of his perusing his own handwritten minutes of the meeting he has recorded Mr MacCauley as being present. Mr MacCauley, in giving evidence, said that he was not present on that date and to lend weight to his assertion he claimed that he has never in the whole of his career acted as a proxy holder for the reasons that I have already recorded.

CONCLUSION

The circumstances of this case are both serious and unusual.

They are serious because the allegations involve fraud - the forging of signatures on proxy forms and the use of those forged proxies to mislead the Court and secure the illegal lease of Tutakimoa 14C.

They are unusual in that the initial allegation of forged proxies was directed against Mr Anthony Manarangi who was the previous Solicitor-General. Now with the acknowledgment by the Applicant that the proxies are not forgeries, the emphasis of the application was then directed to the meeting of owners held in the Courthouse on 8 February 1983. This is where the unusual aspect of this case develops. Mr Anthony Manarangi said Mr MacCauley and himself were both present at that meeting. Mr MacCauley said he was not present. It is not often a Judge is required to determine which of directly opposing evidence is to be accepted - viz that of a previous Solicitor-General or that of a previous Judge of the Land Court.

As I see it there can be several alternative explanations for this direct conflict between Mr Anthony Manarangi and Mr MacCauley.

Mr Anthony Manarangi refused to testify that Mr MacCauley was lying when he said that he did not attend the meeting - rather he relied on Mr MacCauley's alleged previous lapses of memory while working for him in the Crown Law Office as the more probable explanation.

Mr Dymond questioned Mr MacCauley on this issue and the record discloses the following :

"Q. Were you at a meeting held in the Courthouse on 8 February 1983 to consider a lease of 14C from the landowners to NonD.?"

A. Not that I can recall."

It is true that Mr MacCauley, in subsequent evidence, became more definite so that his "recall" was that he was not at the meeting and that it was incorrect to say that he was.

The relevant evidence upon which I am required to make a finding of fraud may be summarised as follows :

1. The investigations by the Police Fraud Squad which were initiated by the Applicant and her Attorney, Mrs Annie King, have failed to establish the forgeries that were originally alleged;
2. The Applicant now concedes that she and the three other members of the Uriarau family did sign the proxies and that they are not forgeries as originally alleged in their affidavits;
3. The four proxies they signed did appoint Mr MacCauley to act on their behalf;
4. Mr MacCauley did in fact assist Mr Anthony Manarangi in connection with the leasing proposals for the Tutakimoa 14C land as confirmed by documentation in his own writing;
5. The Court records prepared by the Court Clerk, Mr Raitia, in his own handwriting disclose that Mr MacCauley was present at the meeting on 8 February 1983 and did represent the four members of the Uriarau family.

I am left in no doubt that the Court records of the meeting in the Courthouse on 8 February 1983 were correctly recorded by the Court Clerk who acted upon the four proxies now acknowledged to have been signed by the Applicant and the other three members of the Uriarau family.

The application seeks to cancel the Order for Confirmation made on 13 March 1984. That application is refused. Leave is reserved to either party to file submissions on the question of costs.



Dillon J.