

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

No. 754/93

IN THE MATTER of Application No. 398/1990 by
MOE PONGA of Rarotonga
against Aporo Williams and
others, to revoke succession
orders to the interest of MOARI
in the land named ENUAKURA
SEC. 205B AVARUA

A N D

IN THE MATTER of Rule 338 of the Code of Civil
Procedure of the High Court
1981

A N D

IN THE MATTER of an Application for the
Rehearing by MOE PONGA of
Rarotonga

Applicant

A N D

APORO WILLIAMS &
OTHERS

Respondent

Mrs Pierre for Mrs Ponga
Mrs Browne for Aporo Williams & Others
Date of Judgment: 7 April 1997

DECISION OF DILLON J.

On 18 November 1993 this Court issued an eleven page judgment dealing with a similar application to revoke Succession Orders to the interests of Moari in the land known as

Enuakura Section 205B Block. That judgment traversed the history of this land, as well as others which were subject originally to exchange orders and other incidental transactions. The single issue which the Court was asked to determine was whether the Moari entitled to this land was Moari-a-Tairi, also known as Moari-Nio, or was Moari Williams. Mrs Pierre acted for Mrs Ponga in those initial proceedings, and Mrs Browne acted for Aporo Williams and others.

Mrs Ponga now reapplies to this Court for a further rehearing. Mrs Pierre is again representing her. Mrs Browne once again represents Aporo Williams the others.

The application for rehearing is based on three grounds as follows :

- “1. THAT fresh evidence from the Court records has now been found to confirm the confusion previously and to establish that MOARI f.a. in Enuakura 205B Avarua or Ponono 114, is not one and the same as MOARI WILLIAMS as accepted by the Court in its judgment aforementioned.
2. THAT I can now rely on “error” pursuant to Section 450, and “fraud” pursuant to Section 391 of the Cook Islands Act 1915 in that I now have fresh evidence to add to evidence already adduced to convince the Court that revocation of orders complained of can now be corrected as prayed and I invoke Section 391 of the Cook Islands Act 1915 and Section 380 as to supplementary jurisdiction.
3. THAT the Court have erred in dismissing my Application for Revocation of Succession Orders complained of in the hearing leading to the judgment of 18 November 1993 in that it relied substantially on the presumption that MOARI is one and the same as MOARI WILLIAMS.”

I have carefully considered the comprehensive and extensive submissions prepared by Mrs Pierre and as well the numerous exhibits such as genealogy, minute book extracts, and title references. Nowhere in all that material supplied by Mrs Pierre is there any evidence of fraud. There may be errors as the application refers or implies, but there is certainly no evidence of fraud. Insofar as the application relies on fraud, that allegation is dismissed.

I shall now concentrate on the ground of “error” relied upon as to those provisions of Section 450 of the Cook Islands Act 1915 which deal with that situation. Mrs Pierre concludes her lengthy submissions as follows :

"I am now satisfied with the evidence submitted and I hereby request the Court to consider and revoke the Succession Orders in respect of MOARI in favour of the issues of MOARI A TAIRI contained in MB 7/120 in the following lands :

Arataa Section 190V Avarua
Te Akara 183
Puariri 190.0.2 Avarua
Emuakura 205 Avarua

under the following grounds :

1. That Mrs Browne did not comply with the Court directives of 20 September 1996.
2. That Mrs Browne failed to file her submission within 1 month from 20 September 1996.
3. That Mrs Browne failed to refer a reply of her submission before the expiry date which is 20 October 1996.
4. That the three owners namely Moari, Teuira, Aitu are common owners in the blocks of lands abovenamed."

It will be apparent that three of the four grounds refer to the failure by Mrs Browne to strictly comply with a timetable set by the Court for the filing of her submissions. When this case was adjourned in Court, Mrs Browne was to file her submissions within one month, that is by 20 October 1996. Actually her submissions were dated 5 November 1996, but were not filed in Court until 18 November 1996. The Court does not intend to seek an explanation of this short delay by Mrs Browne. Certainly her clients should not be prejudiced, nor should Mrs Ponga gain an unfair advantage by any minor technique breach. There is no substance in that submission, and it is accordingly disallowed. I shall now concentrate on the allegation of error raised by the Applicant.

Mrs Pierre submitted that :

"... I rely heavily on evidence given by the three witnesses to confirm the relationship of Aitu Kitiona and Moari to Te Uira. The evidence given was that Moari became adopted by Te Uira as blood connection to her and not to Vakapora side."

However, scrutiny of those minutes do not support that Moari was adopted by Te Uira, who was married to Katea Vakapora. Mrs Pierre claims that in Minute Book 15, upon which she relies heavily, is evidence that "... Moari was adopted by Te Uira."

But Page 259 of that Minute Book states that Apaituru Rangi, when cross-examined by Mr Cowan, stated as follows :

"Katea took Moari in adoption - a blood relation."

There is no mention of Te Uira. On Page 262 Putua, in evidence, said :

"I heard Katea took Moari as his adopted daughter. I heard that through Katea's wife that adoption took place - not through the Vakapora connection. It might happen that way."

That evidence is hearsay and inconclusive. It was also given in a contested title case and not in relation to a succession application. On Page 269 Aitu, in evidence, said :

"Adopted children of Katea are Kitiona, Moari and myself - not related to Katea."

These Minute Book 15 extracts just referred to in the main relate to an alleged adoption by Katea and not by Te Uira. However, as I have said, all that evidence relates to a title dispute. It is unfortunate that Mrs Pierre did not include the total record of that disputed hearing but refers only to the three pages upon which I have just commented. As a consequence I have not had the opportunity of considering all the other evidence from all the other witnesses that Mrs Pierre has not disclosed.

Mrs Pierre places great reliance on the conflicting evidence of Aitu, firstly in 1943 and subsequently in 1955. She put it this way :

"Aitu is third witness who was Mr Williams own aunty told the Court that she do not know MOARI's relationship. Therefore it means that the MOARI she is saying is not related to her and I believe that Aitu should knew at the time it is not MOARI WILLIAMS she is referring to as no connection to her.

Evidence in MB 22/293 by Aitu, that Kitiona, Moari Williams and Pita are the adopted (not registered) children of TE UIRA. But evidence by Aitu contained in MB 15, Aitu do not know MOARI's relationship to her. Now Aitu did not include her as one of the adopted child of TE UIRA. Why, I don't know. Aitu changed her evidence 8 years afterwards, maybe because she was getting old. I do not agree to Aitu, it seems that she has been adopted by too many people. Aitu has made different statements -

- (i) In 1943 she's not related to MOARI.

- (ii) In 1955 her own cousin Moari Williams is one of the adopted child of Te Uira.
- (iii) In 1955, MB 22/293 a Moari was another sister of Te Uira who died without issue.

Now I look at the above statements, I heavy rely on evidence of 1943, as they are being recorded by witnesses in that Court proceedings. In 1955 Aitu is confused maybe because of age."

It is of course perfectly proper for Mrs Pierre to make submissions where, as she sees it, there is a conflict between evidence given in 1943 and evidence given by the same witness subsequently in 1955. However the circumstances surrounding the evidence recorded in Minute Book 15 and then later in Minute Book 22 are important and relevant. While we know that the evidence recorded in Minute Book 15 related to a title dispute, the evidence given by Aitu and recorded in Minute Book 22 was directly related to a Succession Application and the associated genealogy. There were no objections to Aitu's evidence and there was no challenge to the genealogy that she produced - which of course is now challenged by Mrs Ponga.

I believe that the genealogy produced by Mr Aporo Williams and labelled No. 11 in Mrs Pierre's List of Documents is very relevant to her application. On that genealogy is recorded this notation :

"Never adopted a child by the name of Moari."

Mrs Browne explains that seemingly apparent inconsistency as follows :

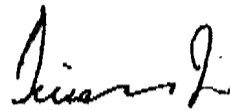
"Mrs Pierre refers to the genealogy given by Mr Aporo Williams. The Respondent's position is that Te Uira "adopted Moari Williams (but not legally registered)". There is no evidence of any legal adoption by Te Uira of a child by the name of Moari."

In order to do justice to Mrs Pierre's efforts on behalf of Mrs Ponga I have carefully considered the original judgment and the detailed submissions of Mrs Pierre and Mrs Browne. I have done this three times in order to assimilate the evidence and then on successive occasions some weeks later considered that evidence again afresh to ensure that I have not misunderstood or misconstrued any aspects of the submissions and the evidence, especially of that presented by Mrs Pierre.

As a result I am satisfied that the Moari in the land named Enuakura Section 205B is Moari Williams and is not Moari-a-Tairi alias Moari-a-Nio.

The application is therefore dismissed.

Mrs Pierre's application not only seeks cancellation of those previous succession orders but also \$11,200.00 in costs against Mrs Browne's clients. On the other hand Mrs Browne seeks costs in the sum of \$2,000.00. Counsel may wish to make short submissions on the question of costs now that a final decision has been delivered. The Registrar is to forward those submissions to me and I shall make an Order accordingly.



Dillon J.