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

Application No. 10/96

IN THE MATTER of Section 430 of the Cook Islands Act 1915 and Rule 348 of the Code of Civil Procedure 1981

AND

IN THE MATTER of the land known as TE POROTAKA SECTION 101, NGATANGIIA

AND

IN THE MATTER of an application by MATA NIA

Applicant

Mrs Browne for the Applicant
Mr R. Putua in person to object
Date of Judgment: 19 March 1997

JUDGMENT OF DILLON J.

On 16 January 1997 the Court issued an Interim Judgment indicating that the evidence presented by the Applicant was quite insufficient to justify a partition whereby the Applicant would in effect receive eight sections from the land subject to the application. That assessment of eight sections was based on the Notes of Evidence that were taken at the initial hearing of this application on 13 September 1996. At that hearing the Court assessed that NataNia, the Applicant, would receive eight sections. Mrs Browne conceded that would be the position. She said this :

"I don't have any argument with that. The only matter is previous decisions of this Court for disallowing the Putua family."

Mrs Browne, in a further explanatory memorandum, has now submitted that the Applicant would receive six sections and not eight. Although there is no explanation for this statement compared with the original concession when the matter was heard by the Court, the Court will accept Mrs Browne's assurances.

She then, in her submissions, proceeds to emphasise the importance of the family agreement that was entered into in 1956. She refers to two Occupation Right applications that were withdrawn in September 1980. She refers to a further application for an Occupation Right that was dismissed on 20 March 1985. The Notes of Evidence of that last hearing would appear to emphasise that the application was declined not for any reason of entitlement, but because of what the Court considered to be an unfair claim by the Applicant. The Court emphasised the unfairness in this way :

> "To me it would seem most unfair that a family arrangement which has been in existence for nearly 30 years should now be upset by Celia who was born in Tahiti, lived there all her life and has visited twice, and now comes here and takes this land which has been arranged by the family for 30 years."

It is clear from that decision that the Occupation Right application was declined because Celia, a complete outsider in effect, was proposing to take over land from owners who had resided permanently in Rarotonga for many years. In addition the application by Celia and the two previous applications were for Occupation Rights. This present application is for a partition and is significantly different.

In the earlier decision dated 16 January 1997 the Court commented as follows :

> "However if Mata Nia can provide evidence that she is surrendering substantial interests in other blocks where the same owners are involved then those would be proper considerations for the Court to consider."

In other words, if Mata Nia's application is for the purpose of consolidation of her interests in this particular block, and she is prepared to transfer other interests in other blocks to the owners who will be deprived in the Te Porotaka Section 101 block, then that would be a relevant consideration for the Court to take into account. There was originally no evidence of

such an arrangement, nor is such an arrangement referred to in these latest submissions by Mrs Bowie. The objection that has now been made would, for the circumstances to which I have referred, appear reasonable. While the 1956 agreement could support an Occupation Right application by Mata Nia, in my opinion it cannot support an application for Partition in 1997, some 40 years later. For that reason the application is dismissed.

Dillon J.