

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

J.P. Appeal No. 2/97

IN THE MATTER of Section 409(c) of the Cook
Islands Act 1915 and Rule 132 of
the Code of Civil Procedure of
the High Court 1981

A N D

IN THE MATTER of Section 76 of the Judicature
Act 1980-81

A N D

IN THE MATTER of the land known as **TE PUNA**
SECTION 50A TAKITUMU,
RAROTONGA

A N D

IN THE MATTER of an Application by the
Defendants for leave to appeal

A N D

IN THE MATTER of an Application for an Interim
Injunction by **NOOROA PEPE**
DOHERTY (nee) KAMANA

Applicant - Respondent

A N D

PUATI MATAIAPO his agents,
servants or contractors

Defendants - Appellants

Mr Puati Mataiapo for Appellant
Mr Willmot for Respondent
Date of Hearing : 1 February 1997
Date of Judgment : 1 February 1997

JUDGMENT OF DILLON J.

Mrs Doherty obtained an Occupation Right recorded in Minute Book 35/117 on 21 June 1976. The area for this Occupation Right is 1,700 square meters and is in the usual form.

Mrs Doherty lives in New Zealand and accordingly to Mr Willmot has been aware, since obtaining that Occupation Right, of the strong feeling of members of the Te Puna family who live at Titikaveka. In fact, not only Mrs Doherty's section, but large areas of land at Titikaveka, have been the subject of prolonged and very often bitter and acrimonious litigation over many years. These disputes relate back to the original Orders of Investigation in the 1908-1910 era. In fact, it was these lands that were the subject of proceedings to the Court of Appeal, and subsequently to the Privy Council, although the latter were abandoned. In 1988 special legislation was passed to permit the rehearing of evidence for disputed Te Puna lands. On this point it was significantly important in this particular case that the questioning of any sections pursuant to the rehearing of Te Puna Lands Act were subject to Clause 2 of that Act which enabled a rehearing, provided any such application was made within six months of the commencement of the Act, namely 30 October 1980. The Appellant has not filed an application within the time frame specified in that legislation.

Nevertheless it is well known and recognised that these deep seated grievances have existed for many, many years, and this factor has been acknowledged by Mrs Doherty through Mr Willmot.

Mr Willmot, in the course of an international conference call earlier today, explained that in 1980 when Mrs Doherty endeavoured to establish a home on this section, serious trouble arose. He indicated that it was clear that violence was very likely, knives were involved and life threatening demands were made. As a result of this hostility Mrs Doherty desisted from her intention of establishing a home on her Occupation Right. She now wishes to proceed to exercise the rights which she has held since 1976.

Because of the hostility and the threats that she has received she applied to the Court for an injunction. Mr Webb, Justice of the Peace, heard the parties and in a carefully worded summation explained to the parties the Occupation Right held by Mrs Doherty gave her an interest in this land which could not be interfered with and which, as a result, justified issuing against the present Appellant an interim injunction. The Appellant is warned that he must not stop Mrs Doherty from going on the land, and her use of the land must not be interfered with.

To that extent the Justice has correctly interpreted the facts and the concept of the Occupation Right providing security for Mrs Doherty to proceed with her building programme.

There are, however, two facets of this case which the Justice may not have adequately addressed in arriving at his decision. These are as follows :

1. The Occupation Right was granted in 1976. It is now 1997, some 21 years later. The Occupation Right provides, in Clause 6, provision as to usage. This provision states as follows :

“If it is shown to the satisfaction of the Court that the land has not within five years after the date of commencement of this Order been used as a site for a dwelling house, the Court, at its discretion, may make an Order cancelling the said right of occupation.”

There is also another provision in the Occupation Right, namely Clause 2, which states as follows :

“The right of occupation shall be for the term of 20 years, and thereafter for so long as Pepe Kamana (nec Doherty) and her direct descendants or any of them shall occupy.”

Now it is clear that Mrs Doherty has not complied with those terms. Her non-compliance is for very good reasons, namely that she was anxious not to upset the Te Puna family, and not to become involved in the highly volatile situation which occurred when she tried to utilise the section back in 1980. Conceding those reasons, nevertheless the Appellant quite rightly refers to the non-compliance of those two clauses.

2. This Court is well aware of the background to these Te Puna lands. The Appellant claims that the Te Puna family have worked this land; that Kata and Tane have planted coconuts on this particular section; that Trevor Clarke, the Solicitor, has been asked to deal with the Te Puna claims; and the reference already given to the special legislation all contribute to a situation which should clearly be dealt with by a full scale hearing, and should not be dealt with in the limited arena of an international conference call.

The next Court sitting has been fixed and is to be held in April. Mr Willmot has said that Mrs Doherty has returned to live in New Zealand. It is clear that all parties should have a full and

frank opportunity to place their cases before the Court. For this purpose the Registrar should make a special fixture for Mrs Doherty's injunction to be made permanent at the April sittings of the Land Court. This will provide the opportunity for all parties to give evidence and to state their cases.

Such a proposal will not unduly delay Mrs Doherty who is in New Zealand and who has been delayed now for some 21 years. It will also provide the opportunity for the Appellant to see whether his reference to Mr Trevor Clarke will be of assistance in presenting his case, while Mrs Tutai Parker, who gave evidence before Mr Webb, can proceed with the preparation to applications to which he referred at that hearing. In order to secure those proposals suggested by the Court, an injunction is now issued against both Mrs Doherty and the Appellant, and all people claiming an interest in this land. That means that neither Mrs Doherty nor any of the Te Puna family are allowed onto this section, nor to use it in any way, until such time as a decision has been given by the Land Court after a full hearing in April at a special fixture which is to be arranged by the Deputy Registrar, and all parties are to be notified.

The question of costs are to be reserved.



Dillon J.