

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

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

AND

IN THE MATTER of **KAROARIKI SECTION**
38, AREORA

AND

IN THE MATTER of an application by
RANDOLPH GEORGE to
amend the Freshold Order
dated 3 September 1919

Mr George in person to support his application
Mr Tanga in person to oppose the application
Date of Judgment: 2/ January 1997

JUDGMENT OF DILLON J.

This is an application under 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.”

This section dealing with Orders obtained by fraud is quite different to the provisions of the preceding section, namely 390A. That section makes provision where through any mistake, error or omission an incorrect Order has been made then there are detailed steps which will enable in certain established circumstances for appropriate amendments to be made. Sub-section 10 of Section 390A provides as follows :

“This section shall not apply to any Order made upon investigation of title or partition save with regard to the relevant interests defined thereunder but the provisions of this

sub-section shall not prevent the making of any necessary consequential amendments with regard to Partition Orders."

The Freehold Order upon which this application is based was made on 3 September 1919. An application as already referred to could not be based on Section 390A alleging mistake, error or omission. Consequently the only method of attacking the 1919 Order is for the applicant to establish fraud.

There are numerous cases throughout the Land Court's history where judges have explained to litigants the difficulty of establishing fraud on the one hand; and on the other hand such a serious allegation requires a high standard of proof to support such serious allegations involving fraud.

In this case, the Applicant alleges that Tati gave false evidence at the 1919 Court sitting and that Mr George's ancestor Toki's evidence was rejected.

What is the history behind these allegations? It would seem that Mr George's uncle, Numa George, endeavoured on several occasions to bring similar applications which have been rejected by the Court as unproven. On 20 August 1970 Numa George made a similar application in connection with Arakura Section 421. That application was dismissed by the Court on the basis that no or insufficient proof of fraud, trickery or deceit had been furnished to the Court in support of the application.

The same Numa George brought a similar application in connection with Te Vairoa Section 452. That application was withdrawn by Mr George, and at the same time the Court made the following observation :

"Particulars of the fraud must be exactly given and the allegations must be established by strict proof."

Finally, in 1970 Numa George again filed an application for annulment, this time in respect of the present land. After hearing evidence in support of that application the Court dismissed the same and made the following observations :

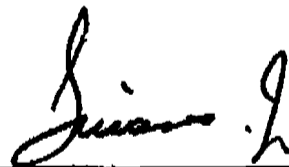
"Apart from outlining the circumstances, the Applicant called one witness only who said he had seen members of the Simpson family occupying but admitted this was after investigation, as it must have been as witness was only six years old in 1919. The difficulty is that after 51 years it is extremely difficult to furnish strict proof of anything."

Now, 27 years after Numa George made that application in respect of this present land, his nephew Randolph attempts once again to attack the Freehold Order on the basis of fraud without calling any evidence, but based simply on submissions alleging that Toki was correct in his evidence, that his evidence should not have been rejected, and that Tati fabricated his genealogy, thus committing fraud.

It is now nearly 80 years since the original Order was made and despite the various attempts to which I have referred to challenge the genealogy and to endeavour to establish that a fraud was committed back in 1919, this present attempt by Randolph George is no better than the several attempts by his uncle, Numa George, 17 years previously.

I can but only repeat the statement by the Commissioner back in 1970 concerning proof in such cases. It is a very high standard that is required for very obvious reasons. Allegations of fraud are most serious charges. The more serious the charge the more certain must be the proof. The certainty required in order to prove fraud is absent from these pleadings. I have no doubt that Mr George, like his uncle, is sincere in his belief as to his genealogy. Belief, however, is not proof, no matter how sincere. Just as the applications by Numa George were dismissed, and others were withdrawn by him when he realised that he did not have the evidence to support his applications, so must this application be dismissed for the very same reasons and because no evidence has been produced which satisfactorily establishes that fraud was committed on 3 September 1919 when the Court made the original Freehold Order.

The application is therefore dismissed.



Dillon J.