

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

APPLICATION NOS: 74/03
645A/02

IN THE MATTER of Section 450 of the Cook
Cook Islands Act 1915

AND
IN THE MATTER of TE ARAKURA SECTIONS
83A & B1, 2 & 3
ARORANGI

AND
IN THE MATTER of an application by TAU
SAMUEL to revoke the
Succession Orders made
on the 21st May 1942 in
favour of NGAMETUA and
27 March 1944 in favour of
TAIMAU to the interest of
MARIA A RONGO
Applicant

AND
IN THE MATTER of an application by
TAUARIKI TAIMAU on
behalf of the descendants
of NGAMETUA and
TAIMAU to revoke the
Succession Order made in
October 1912 vesting the
interest of MARIA A
RONGO in MOEAU
Applicant

Mrs Browne for applicant in 74/03
and to oppose 645A/02
Mr Mitchell for applicant in 645A/02
and to oppose 74/03
Sir Geoffrey Henry to assist Mr Mitchell
Date of Hearing: 8 September 2003

DECISION OF SMITH J

These applications seek to revoke orders (deemed by the Court of Appeal on 7th
July 1988, to be succession orders) in favour of Ngametua, on 21st May 1942 and

2.

Taimau on 27 March 1949, (Application 74/03) and Moeau and Taria on 1 April 1937 (Application 645A/02) respectively, in relation to the land known as Te Arakura S 83A & B1, 2 & 3.

On the 20th May 1975 the interests of the owners were incorporated in terms of Section 7 of the Land (Facilitation of Dealings) Act 1970.

Section 490/15 provides that the revocation of a succession order shall have no effect on any interest therein acquired in good faith and for value by any person claiming through the successor nominated by the order so reached.

Any change in the title should not therefore affect the establishment of the Body Corporate, although that is a matter which may require further consideration.

In as far as the orders relate to the same land, and depend substantially upon similar genealogies, it is intended to deal with both applications together.

The subject land was investigated and a freehold order made in favour of Moeau for life with remainder to Maria a Rongo, S. 83A, and Maria a Rongo a Manava for S. 83B

On the 26th August 1970 a combined partition of both blocks was made creating the following titles:

(i)	83A & B1 vested in	Metua Moeau	1/4
		Te Anoano	1/4
		Tariatu Mairi	1/20
		Voaroma Mairi	1/20
		Oruarau Mairi	1/20

3.

Teremoana Mairi	1/20
Tane Mairi	1/20
Taimau	1/4

- (ii) 83A & B2 vested in the same owners as above in the same shares.
- (iii) 83A B3 also vested in the above owners in the same shares.

Following the death of Maria a Rongo, the Court on the 23rd October 1912 made succession orders in favour of Moeau and Taria equally. That is the order sought to be revoked in application 654A/02.

Moeau's interests was vested in Metua Moeau by succession order dated 1st April 1937, and the Court on the same day vested the interest of Taria in Te Anoano to the intent that they shared the land equally.

On the 21st May 1942 the Court made an order for "Amendment of Title" and included Ngametua for a half share in the land, and on 27th March 1944 a further order for "Amendment of title" included Taimau to share equally with Ngametua in the half share awarded to her.

These two orders were initially challenged upon the grounds that the Court lacked jurisdiction to amend freehold orders. While this was accepted by the Chief Justice and the orders cancelled, the Court of Appeal in its decision referred to above revoked this and reinstated the succession on the basis that the orders were in fact succession orders.

It is the orders in favour of Ngametua and Taimau that are challenged in application 74/03.

4.

The Court has heard and perused various genealogy produced to the Court dated from 1904, with both claimants relying upon various genealogies produced.

Mrs Browne claims that the land was land of Manava, as was found by the Court at the time of the Title investigation 1904-1905, when the lands were vested in Moeau for life and Maria a Rongo a Manava. She claims that as Moeau held the title he was the person entitled to succeed to Maria. She argues that neither Ngametua nor Taimau are from the Manava line and should not be included.

Mr Mitchell however contends that upon the death of Maria without issue, the land must revert to source, and claims that the genealogy produced establishes that Ngametua and Taimau are descended from the line of Manava and entitled to be included in the title.

It is pertinent to note at this stage, that Tauariki, the mother of Ngametua and Taimau, applied to be admitted to the title on the 9th June 1922 and the 1st April 1937 but both applications were dismissed.

A perusal of the minute books, MB9/190 and MB 12/52, recording the dismissal of these applications shows that the Court does not appear to have been entirely satisfied that Tauariki is not entitled.

At MB 9/190 on 9th June 1922 it is recorded that the Court stated:

"It is not clear that Tauariki had a direct right by blood, but she may have. The Court will not decide this at present.

As Taria is deceased without issue – the best way is for Moeau (see Record 101) to apply for succession and then ask Court to put in name of Tauariki and Tangi either above or with

5.

him as successors.”

That was not done, and on the 1st April 1937 the following orders were made:

Succession order in favour of Metua Moeau to the interests of Moeau.

Succession order in respect of the interest of Taria in favour of Te Anoano for life with remainder to Moeau.”

Following an application under S 390A/15 the life interest of Te Anoano was converted to an absolute interest on the 24th September 1923.

At the time these succession orders were made, there was an application to include Ngametua and Taimau, children of Tauariki but the Court records that it was not investigating the title but dealing with succession.

Later on the same day it is recorded while the Court was dealing with succession to Taria; “I am yet to be satisfied that Tauariki has a right to come into the title. There were hearings before Judge Gudgeon and McCormack – See notes reference in last case, also before me in 1922, see 9/189 and today.

Te Anoano has no blood right and no issue even if she gets in also likely she will only want to bring in her adopted children.”

Obviously even at this time the presiding Judge has not been satisfied entirely that Tauariki should be totally excluded.

Finally, in 1942, MB 14,16-18 and 33 the Court traversed the evidence relating to Tauariki and produced over the years and found that Tauariki was from Manava and entitled to be in the land, and placed Ngametua on the title.

6.

In his written judgment, the learned Judge appears to rely upon statements made by Moeau and Taria that Tauariki was of the Ngati Manava.

In support of this, the Court further referred to the evidence in MB 9 page 189 where Moeau gave evidence to the effect that "Tauariki comes from another branch of the Manava family."

Subsequently, on the 27th March 1944 Taimau was included to share in the half share granted to Ngametua.

It is worthy to note that from that date in 1944 the orders stood unchallenged until 1983, almost 40 years later when application was made to cancel the orders made in favour of Ngametua and Taimau.

By that time, the interests of the owners had been incorporated and the Body Corporate had granted a lucrative lease producing substantial revenue!

Any suggestion that the owners were not earlier aware of the orders now being challenged cannot be sustained since between 1944 and 1983 there were only 8 owners in the land and all would have known the history of the lands.

Rather than dissension between 1944 and 1983 there appears to have been a deal of harmony amongst the owners.

Mr Mitchell produced a copy of MB 29 page 359 and 360 relating to the combined partition in 1970. There the minutes record, "Metua Moeau (Samuel) sworn I understand the position and agree on behalf of the other owners."

7.

Further, on the 20th May 1975 the Court appointed a Committee of Management for the Body Corporate, comprising of:-

Metua Moeau
Tauariki Taimau
Iaveta Short.

No objections were lodged against their appointment.

When the Court is faced with a challenge of orders made many years ago, it is required to measure the decisions of the owners at the time of the orders against the demands of the current owners.

The fact that the owners in 1944 and for many years later did not challenge the orders now complained off bears considerable weight. They obviously worked in harmony and peace, a peace only broken by the demands of some of the current owners who appear not to heed the tolerance and acceptance of their forebears.

This Court, like previous Courts has some difficulty in determining the relative rights of the owners challenged.

However, the decision of the Court on 21st May 1942, MB 16/174 indicates a clear acceptance of the entitlement of Ngametua. This Court has found nothing which moves it to cancel that order.

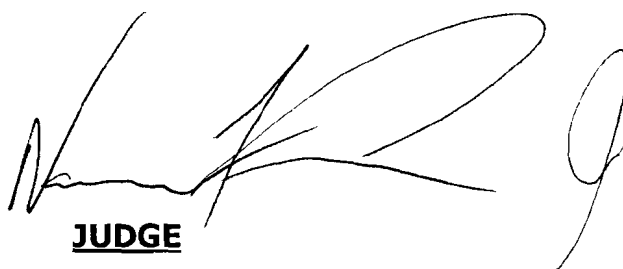
Further, the fact that the order in favour of Taimau on the 27th March 1944 was made without objection precludes any interference with that order.

8.

In the absence of any conclusive evidence warranting cancellation of the orders, and because of the acceptance of those orders by the owners at the time the Court declines both applications.

Both are dismissed.

The matter of succession to interests in an Incorporation created in terms of Section 7 of the Land (Facilitation of Dealings) Act 1970 will be taken up with the Registrar.



JUDGE