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

APPLICATION NO. 10/2010

IN THE MATTER of Section 390A of the Cook Islands Act 1915

AND

IN THE MATTER of the land known as

1. **AVARUA SEC. 190A1**
2. **AVARUA SEC. 190A2**
3. **TE TAORA SEC. 128D**
4. **TUTAKIMOA SEC. 14E**
5. **TAPATEA SEC. 107B1**
6. **TAPATEA SEC. 107B2**
7. **TAPATEA SEC. 223**
8. **PARAKO SEC. 134**
   AVARUA

AND

IN THE MATTER of an Application for the Chief Justice to investigate mistakes made by Chief Judge Morgan, in giving his judgment on the Emma Moetaua case on 29 May 1968

AND upheld by the Appellate Court some time afterwards, no date in an appeal filed by Makeanui Teremoana Ariki

BETWEEN **HOWARD TAIRIATA STRICKLAND**, holding the title of Tairi-te-Rangi Rangatira, under Makeanui Ariki and the Tairi-te-Rangi family resident in the Cook Islands, Tahiti and New Zealand

(Applicants)

AND

1. **TAUPINI JOHN TEARIKI**
2. **OTENIERA JOHN TEARIKI**
3. **TEREEMI JOHN TEARIKI**
4. **RIMATUTOKO TERAI JOHN TEARIKI**
5. **JOHN JOHN TEARIKI**
6. **VAIORA JOHN TEARIKI**

(Respondents)

Counsel:	Mr George for Applicants Mrs Browne for Respondents
Submissions:	Various dates
Hearing:	27 August 2012
Judgment:	28 August 2012

JUDGMENT OF THE CHIEF JUSTICE

The application

[1] On 1 October 2010 Mr George filed an application under section 390A, Cook Islands Act 1915, on behalf of Mr Strickland and in relation to the eight parcels of land shown on the intituling. Mr Strickland swore an affidavit in support annexing a number of extracts from various Minute Books. At the same time as filing that application, Mr George, again on behalf of Mr Strickland, filed another application under number 555/10 in relation to the same eight parcels of land.

[2] The two applications as above both focus on a decision made by Chief Judge Morgan in 1968 (upheld on appeal). The second of the two applications (555/10) sought much the same end as the section 390A application but via an allegation of fraud. In the application made under section 390A, Mr George made it clear that if that application were successful then the fraud application would be discontinued.

[3] As I understand Mr George's application under section 390A, he argues that the Chief Judge got it wrong in 1968 in concluding that the Tairi-te-Rangi line had become extinct when he awarded the applicant, Emma Moetaua, succession rights to Tuokura (sometimes spelt "Tuakura") Maeva's land. Mr George argues that, as a matter of fact and law, that finding was mistaken in that the family line was not extinct. The application then speculates at paragraph 2:

> *"If Chief Judge Morgan had not arrived at the above "mistaken and wrong conclusions", he may have awarded Emma Moetaua a life interest in the above lands."*

[4] Although the Section 390A application focuses on the Chief Judge's Judgment of 1968, the alleged error impugning that decision is said to be an underlying fraud which occurred in 1874-1876 when Maeva Maui (alias Maeva Tairi) allegedly acted fraudulently in relation to the existence of another line of the family. The essential contest comes down to this. Had the line of the family descending from Tairi (as opposed to Maui or otherwise) come to an end?

[5] On the one hand, Maeva said that he descended from his great-grandfather Maui, one of two brothers (both sons of Makea Pini). The other brother, he said, was Tairi whose last survivor was Pau Tairi. That is,

the Tairi line died out with Pau Tairi (Mr George says this proposition *"is a lie"*). This is the position taken by Mrs Browne.

[6] On the other hand, Mr George argues that the above-described genealogy is false and that Maui was not actually a brother of Tairi and, indeed, Tairi had at least two other brothers known as Rupe and Nukumeaea. Mr George denies that Tairi's line died out with Pau Tairi. Rather, he submits, the family line is alive and well and living (mainly) in Tahiti. Mr Strickland claims to act on their behalf.

[7] As far as I can tell, Mr George particularly relies on the following key factors to support his claim that Maeva Maui committed a fraud:

[a] a translation of an extract from the Minute Book of Queen Heimataura Tamatoa Tamaeva V which is said to be the record of a meeting held on 8 November 1874 (although, confusingly, the abstract is also dated 1 January 1900);

[b] an extract from Minute Book 26/30 recording the evidence of Rau Avivi (mother of Mrs Parker as discussed below) claiming she was the only one of the Tairi line of the family in Rarotonga with the balance living in Tahiti which Mr George says (wrongly as it turns out) has never been rejected by the Court. Morgan CJ is said to have *"ignored"* this evidence;

[c] the fact that the applicant, Mr Strickland, had succeeded to the Tairi-te-Rangi title in 1990 which was subsequently confirmed by the Court.

[8] Mrs Browne submits that the Minute Book referred to in paragraph [7] [a] above is called Pa Upokotini and is the same Minute Book relied upon in earlier cases to make the same claim as Mr George now makes. Mr George denies this. However, he does accept that the information contained in the above-described Minute Book is the same as that contained in Pa Upokotini. In all the circumstances I find that the Minute Book relied upon by Mr George is effectively the same as that previously before the Court as discussed below.

[9] In his final submissions dated 8 June 2012 Mr George restated the case as follows:

[a] the Chief Judge made a fundamental mistake in 1968 in his conclusion that the Tairi-te-Rangi line had all died out with Pau Tairi;

[b] the Chief Judge referred to MB 26/30 which provides evidence that there were many Tairi-te-Rangi descendents including in Tahiti but he did not follow that evidence through to its logical conclusion;

[c] there was no evidence before the Court which would have allowed the Judge to reach the conclusion that the Tairi-te-Rangi line had died out;

[d] the question of delay was not fatal to the section 390A application;

[e] new evidence was produced before Hingston J in 2006.

Procedural history

[10] As already noted, the section 390A application was filed in October 2010. A notice of opposition was filed in March 2011. The file was then referred to me. On 29 June 2011 I issued the first of a series of Minutes. In that first Minute I noted that there were some aspects of the application which were difficult to follow. I said *"with respect, there is too little organisation and insufficient explanation contained in the application, memorandum and affidavit"*. This lack of clarity has remained a problem throughout. Notwithstanding, I have given Mr George the benefit of the doubt and, indeed, convened a hearing in order to resolve some outstanding issues that remained unclear.

[11] In my first Minute, I went on to note that there was an outstanding appeal from the decision of Hingston J in M188/2010 dated 23 February 2011. This decision resulted from an application by Matangaro Sanderson concerning the same eight parcels of land. I said that my decision on section 390A should await the decision of the Court of Appeal.

[12] I also made some preliminary observations and, in particular, that I thought it likely that the section 390A application would fail. I hoped this would help focus the applicant.

[13] Although I had invited the parties to tell me when the Court of Appeal decision (from the decision of Hingston J) was delivered, that did not occur.

In April 2012 I learned by other means that the Court had issued its Judgment on 19 October 2011. I then read the Judgment of the Court. I issued a further Minute on 17 April 2012 requesting copies of some of the earlier decisions covering the subject land. I also asked Mrs Browne (acting for the respondents) to provide details of those instances where Mr Strickland had accepted that the so-called fresh evidence in 2006 was the same evidence as that given in the hearings in 1996 and 1999 (discussed below).

[14] Mrs Browne responded but I heard nothing from Mr George. I then issued a third Minute noting that Mr George had not complied with my earlier request. I said that the application was dismissed as a consequence.

[15] Mr George then responded saying he had not received my Minute (No. 3). In Minute (No. 4) I recalled Minute (No. 3). I invited Mr George to comply with my earlier requirements. He then did so in submissions dated 8 June 2012. I also received a Memorandum from the Respondents dated 9 July 2012.

[16] Some matters remained uncertain and I issued Minute (No. 5) recording these. Following that I convened a hearing as already noted.

Previous Judgments

[17] Some or all of the eight parcels of land which are the subject of this section 390A application have been the subject of other decisions of the High Court and Court of Appeal. In summary, the other Judgments are:

[a] Judgment of Morgan CJ given 29 May 1968 subsequently upheld by the Land Appellate Court on an exact date uncertain but sometime in 1968;

[b] Judgment of Dillon J dismissing an application by Mrs Parker brought under section 450, Cook Islands Act, arguing that Pau Tairi had not died without issue (31 January 1996);

[c] Judgment of Smith J dismissing a second section 450 application by Mrs Parker on the basis there was no new evidence (14 December 1999);

[d] Judgment of Smith J dismissing a section 450 application by Mii Collier (heard at the same time as Mrs Parker's second application described above) (14 December 1999);

[e] Judgment of Smith J dismissing a section 450 application by Mr Strickland (challenging a succession order made in November 1996) (19 September 2005);

[f] Following a hearing in February 2006, Hingston J issued a decision on 22 August 2006 allowing an application by Mr Strickland for rehearing of the 2005 Judgment mentioned above in [e] under section 221 but this decision was overturned by the Court of Appeal on 30 November 2007;

[g] On 23 February 2011 Hingston J in his Judgment already described above in paragraph [11] refused to strike out a claim by Matangaro Sanderson but this decision was overturned by the Court of Appeal on 19 October 2011.

[18] To a greater or lesser extent all of these cases have concerned the eight subject parcels of land. On numerous occasions now, the Judgment of Morgan CJ has been upheld or endorsed. Equally, on many occasions, some or all of the arguments now run by Mr George have been considered and rejected.

[19] As a starting point I adopt, with respect, the summary by the Court of Appeal given in its Judgment dated 30 November 2007:

> *"[5] We start with the 1968 judgments. The first is a decision of Chief Judge Morgan dated 29 August 1968 wherein he determined who would succeed to the interest of Tuokura Maeva in the eight parcels of land. At the end of a closely-reasoned judgment, he determined that Emma should succeed to Tuokura.*
>
> *[6]*
>
> *[7] In the course of his judgment, the Chief Judge noted that the rights of an adopted child (not of the blood) to succeed to land of the foster parent had always been "somewhat confusing". He went on to review the "two extremes" of the argument. On the one hand, an adopted child (not of the blood) could receive no more than a life interest. On the other hand, there were many cases where such children had taken unrestricted interests.*

[8] *The Court found there was no absolute rule as to the relevant custom. It was a matter of evidence in each case. Here, the evidence supported the making of succession orders in favour of Emma. Such orders were made. They were unrestricted.*

[9] *There was then an unsuccessful appeal by Makeanui Ariki against the decision of Chief Judge Morgan. In accordance with the then Court structure, this appeal was determined by the Land Appellate Court. For all present purposes, a decision of the Land Appellate Court is to be regarded as a decision of the Court of Appeal (s. 20 The Constitution Amendment Act (No. 9) 1980-81).*

[10] *The Land Appellate Court said of the first instance decision:*

> *"The decision and this appeal turn on the rights of adopted children to succeed to the interests of their adopting parents."*

[11] *The extent of those rights (the rights of adopted children to succeed) depended on custom. Without setting out a comprehensive view, the Court posed the essential question for resolution in the case before it as follows:*

> *"does the law or Native Custom preclude a legally adopted child from succeeding to the interests of its adopting parent."*

[12] *The Land Appellate Court concluded that Emma was not precluded by custom from succeeding. Therefore the appeal failed and the succession orders made by Chief Judge Morgan effectively were upheld. For convenience we will refer to the combined effect of the judgment of Chief Judge Morgan and of the Land Appellate Court as the "1968 judgments".*

[13] *That was where the matter lay until 1996 when an application was made to the High Court pursuant to s. 450, Cook Islands Act. S. 450 is in the following terms:*

> *"Revocation of succession orders – a Succession order made in error may be at any time revoked by the Land Court, but no such revocation shall affect any interest theretofore acquired in good faith and for value by any person claiming through the successor nominated by the order so revoke." (emphasis added)*

[14] *We shall return to that application shortly. Before we do, we note various developments that occurred in the period between 1968 and 1996 which, ultimately, have some relevance to our decision.*

[15]

[16]

[17] *The second intervening event was that Emma died on 23 January 1982. Her death does not appear to have generated*

any immediate applications to the High Court concerning her land.

[18] *The application referred to in paragraph [13] came before Dillon J in the High Court. This s. 450 application was made by a Mrs Parker in relation to two of the eight parcels of land. It appears to be accepted that the issues raised by Mrs Parker were essentially the same as those now being advanced by the Respondent. Mrs Parker argued that a succession order made in 1918 should be revoked because Pau Tairi had not died without issue, contrary to the assumption made in 1918.*

[19] *Dillon J, in his decision of 31 January 1996, rejected Mrs Parker's application. Mrs Browne appeared as counsel in that case to oppose the application. Mr Lynch as counsel appeared in support. On page 2 of his judgment, Dillon J referred to both counsel making submissions. This seems to put paid to Mr George's suggestion that Mrs Parker was unrepresented.*

[20] *Mrs Browne argued that Dillon J was bound by the 1968 decision of the Land Appellate Court. However, the Judge was not necessarily persuaded by this, preferring to base his view on the evidence before him (it appears that the hearing had occurred on 13 December 1994). In the event, he was not satisfied that the evidence adduced provided any basis to revoke the relevant succession order. Hence the failure of the application.*

[21] *Later, in or about November 1996, Dillon J made succession orders in relation to the eight parcels of land (these were not before the Court but it is common ground that such were made). Emma had died without issue. The succession orders were made in favour of her uncles and aunts. We understand that such would be a properly orthodox order if Emma held the parcels of land on an unrestricted basis (as Mrs Browne argues). Mr George's subsequent application (see below) focused on these succession orders.*

[22] *Three years later, further applications were brought pursuant to s. 450 of the Act. These applications resulted in two judgments of the High Court, given by Smith J, on 14 December 1999. Hearings had been conducted before Dillon and McHugh JJ but both had died before giving judgment.*

[23] *The first of Smith J's judgments concerned another application by Mrs Parker. He dismissed the application, concluding there was no substantive new evidence before him. He said new evidence was little more than an elaboration upon the evidence rejected by Dillon J in January 1996.*

[24] *The second of Smith J's judgments concerned an application by Mii Collier. It is not entirely clear from the judgment which of the eight parcels of land was involved. It involved at least one of them but possibly more.*

[25] *The judgment records a submission by the applicant that, in 1968, the family had "consented" to Emma succeeding because her adoptive mother "left a will". There seems to be good evidence that Tuokura desired that Emma should succeed to the eight parcels of land. This application, like the first, failed. The Judge considered himself bound by the Land Appellate Court decision of 1968 and referred, further, to the doctrine of res judicata.*

[26] *In October 2003 this Court issued its judgment in Maui Short v Whittaker and Others (CA 3/2003). Mr George, in large measure, based his case on this, and we return to it below.*

[27] *On 3 March 2005, the Respondent was formally declared by Smith J to be the title holder Tairi Te Rangi Rangatira. It appears that Mr Strickland has been recognized in this title since 1990. Mr George relied on the formal declaration in 2005 as justifying the steps then taken by Mr Strickland. But, as will become clear, we do not believe that declaration is particularly relevant.*

[28] *In 2005, the Respondent brought an application in his name pursuant to s. 450. It concerned all eight parcels of land. The Respondent sought to revoke the succession orders made by Dillon J in late 1996. There was no express attempt to challenge the unrestricted succession orders made in 1968 in favour of Emma.*

[29] *This application was dismissed by Smith J in a judgment dated 19 September 2005. In short, he considered he was bound by the 1968 judgments. Smith J mentioned Mr Strickland's status as title holder. But he clearly did not consider it determinative.*

[30] *Mr Strickland was not satisfied with Smith J's decision. Mr George, on his behalf, filed both an appeal to this Court and, also, an application for a rehearing pursuant to R 221 of the Code. He elected to proceed with the application for rehearing and in our view must be taken as having abandoned the appeal.*

[31] *Hingston J was prepared to entertain the R 221 application but did not say that he was doing so. As noted below, we believe he acted incorrectly. Following prompting from the Court, Mr George accepted that he had proceeded under R 221 because he thought he stood a better chance of succeeding compared to the proper route using an application under s. 390A of the Act. While we commend his candour, we do not approve the course taken by him. We understand, however, that that course may reflect a practice that has grown up in the Land Division of the High Court. If there is such a practice, we deprecate it.*

[32] *Hingston J heard evidence and argument in February 2006 and issued his judgment, a brief two pages, in August 2006. This is the judgment under appeal. We discuss this judgment in more detail below.*

> [33] *This superficial summary (even so, it is longer than we might desire) illustrates just how many times the respondents have had to resist attack in relation to the subject land. While we express no view on the merits, we note it is entirely unsatisfactory that they should have faced so many challenges, even though all (or virtually all) appear to have raised essentially the same issues. And Hingston J's telescoped decision to allow the rehearing would have generated a further hearing still."*

[20] I note Mr George's recognition (see paragraph [31] in the quoted extract of the Court of Appeal Judgment referred to above) that the section 390A application would be difficult to sustain. As this Judgment makes clear, Mr George was right to acknowledge that he faced difficulties under section 390A. Unfortunately, this does not seem to have deterred Mr Strickland.

[21] Notwithstanding the summary above, I do need to say a little more about several of these judgments. I start with that of Morgan CJ which has already been well introduced. There were two matters for decision by the Court. First, to ascertain what had happened within the family and who had survived and who had not. Secondly, to deal with the law of adoption and how that affected succession to the relevant land. The instant section 390A application is concerned with the first of these two matters.

[22] It was common ground at the hearing before Morgan CJ that the Tairi-te-Rangi line of the family had died out. No one at the hearing said otherwise.

[23] That, though, was not the only basis upon which the Court reached that conclusion. At pages 4 and 5 of the Judgment there is extensive reference to various extracts from Minute Books. In the main, these are the same Minute Books now relied upon by Mr George. There is specific reference to Minute Book 26/30 which is a significant plank in Mr George's case (see paragraph [7] above). Morgan CJ referred to the evidence of Rau Avivi but noted that it had been rejected by the Court. On page 5 the Judge also noted that there were probably living descendents of Makea Pini (some seven generations earlier) but concluded that none of them was closely related to the deceased, Tuokura. The Judge also noted that the various genealogies were incomplete and that *"it is impossible, today, to find any person who could give a complete genealogy from Pini."*

[24] On the basis of the above summary, it can be seen that the Judge was alert to the issue that Mr George now raises. The fact that he decided the point

against the argument now run by Mr George is not proof that he made an error.

[25] Secondly, the Judgment of Dillon J given on 31 January 1996 also addressed this same topic. The Judge specifically referred to the same Minute Book which Mr George now relies upon (see paragraph [8] above). At page 2 the Judge expressed reservations about this evidence. Ultimately, Mrs Parker's application was rejected. There was no new evidence which caused the Court to revisit the order made by Morgan CJ and upheld by the Land Appellate Court in 1968.

[26] Thirdly, the Judgment of Smith J given on 14 December 1999 put little store on the fact that the Rangatira title had been conferred on Mr Strickland. The Court of Appeal subsequently took the same view in 2007.

[27] Fourthly, the application considered by Hingston J and addressed in his Judgment dated 23 February 2011 was of a different dimension. The claimant argued that she was descended from Tuokura. That is the line of the family which Mr George says is tainted by fraud. In that sense, then, the application was fundamentally inconsistent with that now made by Mr George. However, it is significant that the Court of Appeal, in allowing the appeal, restated its endorsement of the decision of Morgan CJ as upheld by the Land Appellate Court in 1968 (see, in particular, paragraph [50]).

The eight parcels of land

[28] The eight parcels of land which are subject to the section 390A application are not described at length in the papers filed. However, Mrs Browne has also lodged a copy of submissions filed by her in the 2007 Court of Appeal matter. In those submissions she sets out some useful detail at pages 4-6. In this section of her submissions she refers to the various orders made on investigation of title and/or by way of partition. As I read these submissions, they make it clear that, at the relevant dates (most of which are in the period 1906-1918 (although some come later)), the line of the family descending from Maui through to Maeva is upheld as part owner of the relevant parcels.

[29] There is no jurisdiction for me to go behind an investigation or partition (see section 390A(10)). Although Mr George does not directly challenge the orders made upon investigation or the orders of partition, the fundamental challenge brought by him requires me, in effect, to disregard those orders.

In the course of argument on 27 August Mr George accepted that this must be correct.

[30] Even if I were satisfied, on the evidence, that I should disregard the earlier orders (and I am not), I believe I do not have jurisdiction to set aside the decision of Morgan CJ on the argued basis.

[31] This point was not directly raised by counsel but it seems to me a fundamental problem standing in the way of the application. I discussed it with counsel at the hearing on 27 August 2012. Nothing that Mr George then submitted changed my view as above. Therefore I dismiss the application on that ground alone. However, out of deference to the application, I also address the arguments raised by Mr George.

Any new evidence?

[32] Despite Mr George's submission to the contrary, I am quite satisfied that he raises no new matters by way of evidence. That is, there is nothing new in addition to the matters previously considered by Judges such as Morgan CJ, Dillon J and Smith J in the Judgments already set out above. I start by drawing attention to paragraph [51] of the Judgment of the Court of Appeal dated 30 November 2007. There, the Court noted that it seemed unlikely that Mr George would have been able to persuade the Chief Justice that there was new evidence which was admissible.

[33] Mr George points to the evidence given in the 2006 hearing before Hingston J. He says that certain persons gave evidence that they were descended from the Tairi-te-Rangi line. Of course, in the most literal of senses, this is fresh evidence because these actual persons had not given that evidence before.

[34] However, in a legal sense, it is not new evidence. Indeed, and with respect, it was evidence of little real worth. An assertion by a living person today that he or she is descended from someone many generations ago may be of little use unless it is backed up by something more. Here, there is very little contemporaneous evidence that Mr George can show, and such evidence as there is, has already been considered by the Court on a number of occasions.

[35] Mrs Browne cross-examined Mr Strickland when he gave evidence on 20 February 2006. In that cross-examination she put to him the proposition that

there was nothing new in his case (see page 61 of the transcript). He agreed. Mrs Browne now points to this as an admission that there is no new evidence before the Court. Mr George says (see page 8 of his submissions) that such an inference cannot be taken from that line of questioning. I disagree. If a fundamentally different or new case was being advanced in 2006 then I would have expected Mr Strickland to say so while under cross-examination. He did not.

[36] I find there is no new evidence now before the Court in addition to that previously considered both by this Court and the Court of Appeal.

Discussion

[37] Mr George's essential argument is that the Tairi line of the family did not die out. That has been rejected by the Court on several occasions. It is clear, from reading the Judgment of Morgan CJ, that he was aware that such an argument had been previously ventilated and rejected. See his Judgment at pages 4 and 5. He expressly notes that the evidence given by Rau Avivi and set out in Minute Book 26/30 had been rejected by the Court. It is not a case of him being mistaken (as Mr George argues). The most recent submissions received from the respondents give a Minute Book reference for the Court's rejection of the argument. This is MB 26/219 dated around May 1965. Here, the Court expressly records that the evidence of Rau Avivi *"is no more convincing"*. The Court said it did not accept the genealogy given by her.

[38] In all the circumstances it seems to be well established that Maeva's line eventually came to an end with Tuokura. This was the background to the 1968 orders in favour of Emma. There is no suggestion in any of the materials leading up to this that there was an acceptance that another line of the family was alive and well in Tahiti. Minute Book 11/301 records Tuokura as saying that she had no children but only one cousin. Tuokura is also recorded as saying *"I am only one of the family – one cousin beside me – cousin has no issue and I have none"* (MB 17/159 – referred to by Morgan CJ).

[39] Even considered afresh the materials now relied upon by Mr George as described above are not persuasive. The translated extract of the Minutes of the meeting held on 8 November 1874 is highly ritualised. It appears that the outcome of the meeting was to approve Maeva taking the Tairi-te-Rangi title back to Rarotonga. Importantly, though, the extract throws no particular light

on whether the branch of the family in Tahiti thrived or otherwise. Mr George's argument requires the Court to assume that Tepaeru as referred to in the Minute Book is actually Pau Tairi. There is no evidence of this. And once it is understood that the evidence subsequently given by Rau Avivi was rejected by the Court (as Morgan CJ noted) then there really is no basis for Mr George's submission. Certainly, it is difficult to see how a fraud allegation could be mounted on such slim foundations.

[40] I am satisfied there is no basis for me to go back to 1874 and unravel everything back to then. Even without such a conclusion, I would have had considerable reservations about exercising my discretion to seek a report from a Judge of the Land Division simply because of delays in bringing the section 390A application. The various grounds ventilated by Mr George have been before the Courts on previous occasions (as already noted). If, contrary to my conclusion, there were now new grounds advanced, I would have expected these to have been advanced on the earlier occasions or good reason why that had not occurred.

[41] Moreover, it is an impossible job to go back to 1874 and to discern, with any real precision, what happened. Morgan CJ also noted this. It seems that the land ownership issue has been determined, since at least the early 1900s, on the basis that Maeva's line was the sole surviving family line (which then ended with Tuokura). There would need to be good evidence before I would unravel all of this. The evidence presented by Mr George is of such small dimension that it comes nowhere near such a standard.

Conclusion

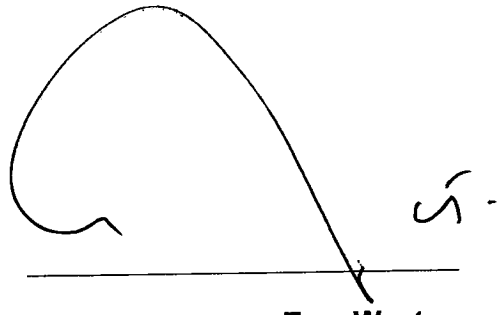
[42] The application is dismissed.

[43] For the avoidance of doubt, I have not determined the fraud allegation in application 555/10. However, as I have discussed, the allegation made in that application is substantially the same as that made in this section 390A application which I have now dismissed. Mr Strickland should think carefully before proceeding with that application. So should Mr George. There are high responsibilities on counsel alleging fraud.

[44] For the avoidance of doubt, I need to make it clear to Mr Strickland (and others of his family) that future attempts to re-litigate this issue will be

reviewed with great care by this Court. It is possible that such applications may be met by substantial costs orders if they are unsuccessful.

[45] The respondents, having prevailed, are entitled to costs. In the circumstances, I indicate a readiness to entertain indemnity costs. I invite counsel to address on that basis. Mrs Browne should file her submissions within fourteen days of receipt of this Judgment and Mr George fourteen days thereafter. Such submissions should be limited to no more than five pages. Anything beyond that will not be read.



Tom Weston
Chief Justice