

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

APPLICATION NO. 390A 7/16

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

AND

IN THE MATTER of the lands known as **VAIMAANGA
SECTIONS 3 & 3A, TAKITUMU and
AKAPUAO 42E, TAKITUMU**

AND

IN THE MATTER of an application by **GEORGE HOSKING,**
Raina Mataiapo

Applicant

AND

**MIIMETUA JOSEPH MAREARAI and
TEOKOTAI JOSEPH MAREARAI**

Respondents

Date of referral of

Application to Land Division: 22 July 2016

Date of Hearing:

28 July 2016

Report to the Chief Justice:

12 April 2018

Appearances:

Mr G Hosking / Mr R Holmes for Applicant (328/16)

Mr T Moore / Mrs T Carr for Applicants (191/14, 194/14 & 558/14)
and for Respondents (328/16)

Judgment:

20 June 2018

JUDGMENT OF HUGH WILLIAMS, CJ

[WILL0436.dss]

[1] By applications dated 16 May 2016 and 15 June 2016 the abovenamed applicant George Hosking as Raina Mataiapo sought a rehearing by way of rescinding Succession Orders to two land blocks known as Vaimaanga Section 3 and Akapuaao Section 42E, both in Takitumu. More particularly, these were:

- a) A Succession Order made on 10 February 1964 vesting Te Rima Raina's 1/8th interest in Vaimaanga Section 3 in Metua a Maitoe as from 27 December 1983; (MB 26/49)

- b) a Succession Order also made on 10 February 1964 vesting Maitoe Raina's sole interest in Akapua Section 42 in Metua a Maitoe as from 27 December 1983 (MB 26/49);
- c) a Succession Order made on 14 November 1994 vesting Metua a Maitoe's interest in both Vaimaanga Section 3 and Akapua 42 in Miimetua Joseph Marearai and Teokotai Joseph Marearai as from 20 May 1984 (MB 10/46).

[2] By Minute dated 22 July 2016 Weston CJ, after referring to a number of unsatisfactory aspects of the application, referred the file to the Land Division for preparation of the report.

[3] A hearing of this and related applications took place on 28 July 2016 and by report dated 12 April 2018 Isaac J, after carefully reviewing the evidence of both parties observed¹:

“[29] Much of the evidence presented before me, and in fact much of the applicant's case, is based on a challenge to the evidence presented to the Court during the 1964 hearing. This includes Tutae Ateina's admission that she gave false evidence to the Court during that hearing. The evidence that was presented during that hearing has stood for multiple generations and being relied on by the Court for over fifty years. It should not be amended lightly.

[30] As previously noted, s 390A places a high burden of proof on the applicant and there are presumptions that the orders were made lawfully and that the evidence given at the time that the orders were made was correct.

[31] In my view there was a lack of verifiable evidence presented before me in this case to dispute the longstanding history of the Raina family and the evidence that was presented was insufficient to rebut the two presumptions discussed above. I consider, therefore, that the burden of proof required under s 390A to amend the Succession Orders has not been met.

[32] I recommend that the Chief Justice dismiss the application.”

[4] It is clear from Isaac J's report that the success or otherwise of these applications depended on credibility findings concerning the evidence and that the judge, after careful consideration of the competing submissions and testimony, reached the conclusion set out above.

¹ at [29] – [32]

[5] There is no basis on which the present Chief Justice could justifiably overturn the recommendations of Isaac J reached on the Judge's assessment of the credibility of the witnesses. The applications are accordingly dismissed.

[6] It is for the parties to decide on the effect that decision might have on applications 328/16, 191/14, 194/14 and 558/14 and, if costs are in issue, memoranda may be filed.

A handwritten signature in black ink, appearing to read 'H Williams', written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams, CJ