

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

APPLICATION NO. 1/2016

IN THE MATTER of Section 390A of the Cook
Islands Act 1915
AND
IN THE MATTER of the land known as **IIPATUNA
69A, ARORANGI**

AND
IN THE MATTER of an application to rehear the
Succession Order made on 14
September 1981 to the interest of
Tinirau Papela

BETWEEN **TEANUANUA DAN KAMANA**
of Tupapa, Retired on behalf of
the issues of Taputapuatea
Applicant

AND **SUSAN MIGUEL, ERUERA
NIA, THOMAS LOWRY,
SETH LOVE, SHANE LOVE,
PAULA LINEEN and MERE
MACQUARIE**
Respondents

Date of Application: 12 February 2016

Date of Referral for
Enquiry and Report: 3 January 2017

Date of Hearing: 24 to 26 May 2017

Date of Land
Division Report: 29 March 2018

Appearances: Mrs T Browne for the Applicant
Mrs S Miguel for the Respondents

Date of Judgment: 25 July 2018

JUDGMENT OF HUGH WILLIAMS, CJ

[WILL0454.dss]

[1] In an application dated 12 February 2016 the abovenamed applicant sought an order under s 390A of the Cook Islands Act 1915 cancelling a succession order made on 14 September 1981 to Tinirau Papeia (also Makea Tinirau) on the grounds that the order had been made in error in that the genealogies attached to the applications incorrectly showed Tinirau Papeia had only two issue whereas he had a prior relationship as a result of which a daughter was born. That daughter should have been included as one of the three successors to Tinirau.

[2] After Weston CJ had issued a minute in the matter on 1 August 2016, a number of other persons entered appearances and objections. That led to the present Chief Justice referring the application to the Land Division for an enquiry and report by virtue of a minute dated 3 January 2017. It was suggested that urgency be accorded the hearing in the Land Division because of the ages of some of those involved.

[3] The application was heard by Isaac J on 24 May 2017. The Judge heard from the applicant as well as two objectors and two other witnesses. He noted the application concerned the succession to the estate of Tinirau Pepehia¹ or Makea Tinirau also known as Makea Nui Tinirau Ariki who was born in 1874 and ascended to the title of Makea Nui Ariki upon the death of his father in 1921. One of her daughters was the last Makea Nui Ariki who held the position for 44 years until her death in 1994, following which the title remained vacant.

[4] After carefully recounting the cases for the applicant and respondent plus the legal principles to be applied, the Judge reviewed the London Missionary Society (“LMS”) records containing the conflicting use of the description “Makea”. Those records led the Judge to comment that he was “not persuaded by the evidence that the Makea named in the LMS records is Makea Tinirau”².

[5] He then turned to the naming of Taputapuatea contrasting the Cook Islands custom to name a child to show their heritage, in this case to a marae in Rarotonga. It followed that a number of persons may have used the name. Isaac J concluded that “Taputapuatea’s name on its own is not proof of any relationship to the Makea family”³ a conclusion he supported with reference to other evidence.

¹ As spelled in the report.

² At 30.

³ At 31.

[6] The Judge then turned to the applicant’s claim that he and his siblings knew of their heritage because of what their mother had told them and the lack of supporting evidence for that belief. That led him to the view that “there is no clear evidence of the intention Mr Kamana proposed for suggesting the name Taputapuatea that means his submission should be given weight over the interpretation offered by the respondents”⁴.

[7] Then, after recording other issues the Judge reached the view that:

“[37] When all of the above matters are considered, I do not believe the applicant is showing, on the balance of probabilities, that Makea Tinirau is the father of his mother Taputapuatea Kamana. As a result, I do not consider that this application can succeed.

[38] In the absence of more direct evidence I therefore recommend this application be dismissed.”

[8] As the application related to a succession order made more than five years before the filing of the application, the consent of the Queen’s Representative was required under s 390A(8) of the Cook Islands Act 1915 before the Chief Justice was empowered to make orders in relation to this application. Isaac J’s report was accordingly referred to the Queen’s Representative on 14 April 2018 with an accompanying memorandum advising His Excellency that the Chief Justice was minded to accept Isaac J’s recommendation.

[9] The Queen’s Representative consented to the making of orders in relation to this application by notification dated 29 May 2018⁵.

[10] In light of all of the above, Isaac J’s recommendation is accepted and the application is dismissed accordingly.

A handwritten signature in black ink, appearing to read 'H Williams', written over a horizontal line.

Hugh Williams, CJ

⁴ At 35.

⁵ Received by Chief Justice on 26 June 2018.