

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

APPLICATION NO. 287/2016 and 329/2016

IN THE MATTER of section 409(d) of the Cook Islands Act
1915 and rule 132 of the Code of Civil
Procedure of the High Court 1981

AND the land known as **AKAOA, Section 65,
Lot 3 Arorangi**

BETWEEN **IRO RANGI**
Applicant

AND **JULIA TUAKE**
Respondent

Hearing date: 11 and 18 May 2016

Appearances: T Moore for Respondent

Decision: 12 December 2019

DECISION OF JUSTICE WW ISAAC AS TO COSTS

Introduction

[1] The applicant, Iro Rangi, filed two applications on 15 April 2016. The first was to cancel a permanent injunction. The second was an application to order the respondent, Julia Tuake, to remove coconut trees and a hedge that she planted on the right of way.

[2] I heard these matters on 11 May and 18 May 2016 and dismissed both applications. Leave was granted to the parties to file submissions as to costs.

[3] Mr Moore, agent for the respondent, has filed several memoranda with the Court regarding costs. The applicant has not filed any costs submissions with the Court.

[4] Mr Moore now seeks a decision from the Court on costs.

Submissions

Respondent

[5] Mr Moore sent a letter to the applicant on 2 June 2016, attempting to reach a settlement on costs. He requested 80% of the bill of \$2,175.30, amounting to \$1,740.24. The applicant declined the offer on 14 June 2016. Mr Moore filed his first memorandum with the Court on 15 June 2016, setting out details of this exchange.

[6] Mr Moore filed a second memorandum with the Court on 18 May 2017. Mr Moore submitted that the respondent has incurred further costs by having to make costs submissions. He suggested that the Court consider granting the respondent a charging order over the applicant's interest in the land. This would remain in place until costs are paid.

[7] Mr Moore filed a third memorandum with the Court on 4 June 2019. He asked the Court to make a costs order in the sum of \$2,175.30 as well as an additional sum of \$300 for costs incurred in the meantime.

[8] A further memorandum was filed with the Court on 31 October 2019. Mr Moore referred to the judgment of *Kainuku Jr v The Proprietors of Punamaia 190E2A1 Incorporation* where the Court dealt with a similar situation of a party not responding to cost submissions.

[9] Mr Moore has submitted that the costs of \$2,175.30 were reasonably incurred. The respondent is seeking increased or full indemnity costs on the basis that the applicant's conduct put the respondent to additional cost and expense that it is entitled to recover on the following grounds:

- (a) The applicant's procedural conduct in failing to serve the respondent for 14 days after filing the first application, requiring the agent to drop all other work to appear in Court.
- (b) The applicant failed to follow Court direction for the second application, by essentially submitting the same documents as were dismissed in the first application.

- (c) The lack of merit in the applications, with the first application being wholly misconceived as it asked for the lifting of a permanent injunction on commonly owned land.
- (d) The failure of the applicant to accept the legal issues at stake by making the same arguments as were dismissed in the first hearing and by continuing to reject the Court's judgment.

Applicant

[10] Aside from the letter dated 14 June 2016 declining the respondent's offer to settle costs, no further submissions have been received by the applicant.

[11] In the letter, it was clear that the applicant did not accept the ruling of the Court. The applicant continued to press that the coconut trees be removed.

Law

[12] Under s 92 of the Judicature Act 1980-81, costs are at the discretion of the Court.

[13] The key principle is that costs usually follow the event. A general starting point is a contribution towards 66% of costs incurred by the successful party.¹ The Court can objectively assess the overall merits of the case, making an award that is reasonable and reflects costs reasonably incurred.²

[14] The Court in *Maina Traders v Ngaoa Ranginui* set out factors which can be considered in determining an award of costs:³

- a) The length of the hearing (the longer the hearing, the more it is worth, but waste of time should be penalised);
- b) The amount of money involved (the greater the amount, the greater the responsibility, and the fee warranted);

¹ *Tuake v Ngate – Akoa 65, Arorangi* (2014) at [29] citing *Glaister v Amalgamated Diaries Ltd* CA99/03, 1 March 2004 at [9] and [14].

² At [30].

³ *Maina Traders v Ngaoa Ranginui* (2013) CKHC, App 225/2011, 9 February 2013 as cited in *Tavioni v Cook Islands Christian Church Inc* [2018] CKLC 2; Application 196.2014 (26 September 2018) at [19].

- c) The importance of the issues, in a monetary or a non-monetary sense, to either the parties or generally (the greater the importance, the greater the demand for skill and care, and a commensurate fee);
- d) The legal and factual complexity (the more intricate and difficult the case, the greater the fee);
- e) The amount of time required for effective preparation;
- f) Whether argument(s) lacking substance (but not necessarily frivolous or vexatious) was/were advanced;
- g) Abuse of the process of the Court;
- h) Any failure to comply with the rules, or an order or direction of the Court (to the extent such non-compliance has impeded progress);
- i) Unreasonable or obdurate refusal to settle, so far as known to the Court;
- j) Unrealistic attitudes, or inadequate payments into Court;
- k) Technical or unmeritorious points;
- l) The degree of success achieved by the parties (a party may succeed on only one of a number of causes of action, or succeed but for significantly reduced relief. Success only in part frequently is recognised by significant reduction in costs awarded);
- m) Whether the hearing was lengthened or shortened by the conduct of either party.

Discussion

[15] The issues before the Court were not legally or factually complex. This is reflected in the transcript of the proceedings which lead to the orders made.

[16] The applicant was given an opportunity to settle the issue of costs but because of his apparent refusal to accept the Court's decision, he did not accept the offer.

[17] These applications of Iro Rangi were opposed by the respondent Julia Tuake. She was successful and is therefore entitled to costs.

[18] As the issues in this case were not complex, I consider that costs should be set at 40% of that which is sought.

Decision

[19] I make an order that the applicant contribute \$870.12 to the respondent's costs.

[20] A copy of this decision is to be distributed to all parties.

Dated at Gisborne this 12th day of December 2019.

W W ISAAC
JUSTICE