

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

**APPLICATION NO. 135/18**

IN THE MATTER OF Section 446 of the Cook Islands Act 1915  
AND  
IN THE MATTER OF the land known as Tuareanui Section 40 and  
Arakuo Makea Section 35, Takitumu District  
BETWEEN HUGH BAKER FOR AND ON BEHALF OF  
THE RIGHTFUL SUCCESSORS TO THE  
INTERESTS OF MAKEA TAKAU  
Applicant  
AND  
SUSAN LOVE DE MIGUEL ON BEHALF OF  
KOPU MAKEA NUI TAKAU, KOPU MAKEA  
NUI TEREMOANA AND KOPU RANGI  
MAKEA  
Respondent

Hearings: 3 October 2018  
8 October 2018  
11 October 2018  
12 October 2018  
Appearances: T Manarangi for the applicant  
S Love De Miguel in person  
Judgment: 19 September 2019

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**JUDGMENT OF JUSTICE P J SAVAGE**

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## **Introduction**

[1] The dispute which arises in these proceedings is whether two land blocks, known as Tuareanui Section 40 and Arakuo Makea Section 35, belong to the family of Makea Takau, or whether they are held under the title of Ariki, which carries with it the right to hold and control certain tribal lands.

[2] This is an application for succession to Makea Takau made pursuant to s 446 of the Cook Islands Act 1915. The application is filed by Hugh Baker for and on behalf of the persons who are the blood descendants of Upokotoko, Tataraka and Mere, the siblings of Rangi Makea.

[3] Rangi Makea has already succeeded to the interests of Makea Takau in Tuareanui Section 40 and Arakuo Makea Section 35. However, Mr Baker submits that Makea Takau was awarded a beneficial interest in both lands, and therefore all her children should have succeeded to her interests, rather than Rangi Makea solely.

[4] The application is opposed by Susan Love De Miguel, a descendant of Rangi Makea. She argues that the lands are Ariki title land and therefore in accordance with the will of Makea Takau and in accordance with Māori custom, Rangi Makea was the rightful successor.

## **Background**

[5] Tuareanui Section 40 and Arakuo Makea Section 35 (the blocks) are parcels of land located in the district of Takitumu. Tuareanui Section 40 is approximately 58 acres and 28 roods and Arakuo Makea Section 35 is approximately 100 acres. The district of Takitumu belonged to Kainuku and Pa Ariki (the tribal chiefs) and the district of Te-Au-O-Tonga to Makea Takau Ariki.

[6] By order of the Court of 3 July 1903, Tuareanui Section 40 was vested in Makea Takau solely. The order records Makea Takau's interest as being restricted to "a life interest only no power of devise".<sup>1</sup> However, this restriction has been crossed out. As the alteration is not initialled by the Judge, it is unclear whether that alteration formed part of the original order.

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<sup>1</sup> MB 1/20.

[7] On 15 April 1903 the Court made an order vesting Arakuo Makea Section 35 also in Makea Takau solely. However, that order stated that alienation was restricted except as to the existing lease.<sup>2</sup>

[8] Subsequently, four succession orders have been made to the successors to Makea Takau on the basis of being Ariki. These orders were in favour of Rangi Makea, followed by Makea Nui Tinirau Ariki, Makea Nui Takau Ariki and then Makea Nui Teremoana Ariki, in which the lands are currently vested in. These are not direct parent-child successions, and it seems clear the lands were transferred on the basis of them being Ariki lands.

[9] In 1987, Teariki Akamoeau Manarangi (a blood descendant of Upokotoko, referred to in paragraph [2] above) applied to this Court under s 390A of the Cook Islands Act 1915 to have the four succession orders made by the Court amended or varied to show each successor as having succeeded beneficially, as opposed to having succeeded by virtue of the office of Ariki.<sup>3</sup>

[10] This application was heard by Justice Dillon who reported it to the then Chief Justice, Sir Clinton Roper. In short, Justice Dillon recommended that the succession orders should be cancelled. The Chief Justice directed a further hearing should be held and provided opportunities for counsel to provide further submissions.

[11] On 5 December 1994, Justice Dillon issued a memorandum adjourning the matter. Unfortunately, Makea Nui Teremoana Ariki, referred to in paragraph [9] above, died in 1995. This, along with a subsequent application filed in 2004 by June Baudient claiming that the Ngati Raina clan were the rightful owners to one of the subject blocks, has prolonged the determination of the 1987 application.<sup>4</sup>

[12] The short point is, however, the s 390A application has never been concluded.

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<sup>2</sup> MB 1/4. The existing lease was of 30 acres to Percy Brown.

<sup>3</sup> *Manarangi v Ariki* HC Rarotonga, 3 June 1992.

<sup>4</sup> *Baudient v Tavioni* [2012] UKPC 35.

## **Procedural History**

[13] The matter first came before me on 3 October 2018. The applicant was represented by Mr Manarangi and the respondent by Mr Short. Mr Moore and Ms Henry also appeared on behalf of interested parties to the matter. During the course of the day it became apparent that the parties were not ready to proceed. Therefore, I adjourned for five days for the parties to prepare for hearing.

[14] I reconvened the hearing on 8 October 2018, with Ms Henry withdrawing from the matter. However, the hearing could not proceed. Mr Short sought an adjournment.

[15] The matter resumed on 10 October 2018. Mr Short at that time sought leave to withdraw as counsel and Ms De Miguel was left self-represented. Due to the late filing of submissions, I again adjourned the matter.

[16] On 11 and 12 October 2018, the matter proceeded to hearing. At the hearing, both parties made submissions to the Court and raised concerns about the 1987 application still being live and awaiting a decision.

[17] I indicated that I would refer the file to the Chief Justice for his consideration. I also granted the respondent one month to make any further submissions.

[18] On 29 October 2018, Ms De Miguel filed these further submissions and Mr Manarangi filed submissions in reply on 21 November 2018.

## **Discussion**

[19] This is another file lost in the system and only recently retrieved. It is clear from the Court minutes that I had misgiving as to the propriety of proceeding to hear this matter when there was an application under s 390A still before the Chief Justice.

[20] I invited counsel to withdraw that application, but he declined. I do not think it is proper for me to take the matter any further forward, but rather draw the matter to the Chief Justice's attention, which I now do.

[21] The Registrar is directed to refer the entire file to the Chief Justice.

**Decision**

[22] Accordingly, the application is dismissed.

Pronounced at Wellington on the 19<sup>th</sup> day of September 2019.

P J Savage  
**JUSTICE**