

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

**APPLICATION NO'S 390A 11-15/15**

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

AND

IN THE MATTER of the lands known as **AREUTU & TE  
AUVAERE 189G, MARAEPURE  
189C, PUNATAIA 189B, VAIOTAPU  
187I, TE KAKA, TE KAUTU & EURI  
129N, VAIAKURA 127S1, MURIVAI  
127R1, TUATEA 189F, TE VAIROA  
127D, VAIKAI 187H1,  
PARERAVAKAI 127, AVARUA and**

**TUINIKAU 17E, TAKITUMU and**

**AREPUA 6, VAIEKE 16K2, TIREKI  
13T, MURIVAI 13A3, TUKIA 17B,  
MATAVERA and**

**TUANAKI 89c, TAPIRIATUA 94B,  
RUAROA & VAIPAPA 89D,  
MAIOKARERE 89K2, ENUAVAI  
90I1, ARORANGI and**

**TOREA 12J2, TA MAKIRAU 13D,  
MATARIVA 13J, AREMANGO  
7B2B2B, PUATAI 6Y, NGATANGIIA**

AND

IN THE MATTER of applications for Revocation of  
Succession Orders to Rongorangi  
Tetupuariki @ Rongorangi Dick  
Browne by **MARY SAMUELA**

Applicant

AND

**DOUGLAS TE PUARIKI BAYLEY  
for JAMES JACKSON BROWN**

Respondent

Date of Applications: 5 November 2015

Date of Referral to  
Land Division: 1 June 2016

Date of Hearing in  
Land Division: 1 May 2019

Appearances: Ms M Francis (originally) and Mrs T Browne (latterly) for Applicant  
Mr M Short, Mr T Moore (originally) and Mr Bayley in person, for  
and as Respondent

Date of Land Division Report: 7 May 2019

Date of Judgment: 27 May 2019

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**JUDGMENT OF HUGH WILLIAMS, CJ**

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[WILL0579.dss]

[1] On 5 November 2015 the applicant, Mary Samuela, filed the five applications set out in the intituling pursuant to ss 390A, 450 and 448 of the Cook Islands Act 1915 seeking rehearing of succession orders made on 20 October 1997 and 3 March 2014 in Applications 89-93/14 and 398/96 to the interests of Rongorangi Dick Brown<sup>1</sup> @ Rongorangi Tetupariki<sup>2</sup> on the grounds that Rongorangi Dick Brown had two children, James Jackson Brown and Mary Samuela, not just the former.

[2] Details of the applications were that James Jackson Brown, who succeeded to Rongorangi Dick Brown who died in 1983, was not the sole child of Rongorangi Dick Brown but that Mary Samuela was also a child as a result of a liaison between Rongorangi Dick Brown and Tearii Samuela<sup>3</sup>, something the applicant said she only learned about shortly before filing the applications.

[3] The applications were supported by affidavits by the applicant, Tina Meti Taramai Roriki and Tutu Mangavai Esetera Ngaputa sworn on 31 October and 4 November 2015 though the persuasiveness of that evidence was somewhat clouded by the two last deponents withdrawing their affidavits by letter dated 19 November 2015.

[4] The application was also supported by comprehensive submissions initially from Ms Francis dated 31 December 2015 and opposed by a notice of objection filed by Mr Moore on 16 November 2015.

[5] After considering the then position concerning the files, Weston CJ, on 1 June 2016, referred the matters to the Land Division for a report saying the essential question for the Land Division to decide was whether James Jackson Brown had a half-sister, namely the applicant.

[6] Procedural difficulties then occurred<sup>4</sup> but the defended application finally came before Isaac J for hearing on 23 April 2018. At that hearing, as the Judge's report dated 7 May 2019 details, the main issue relating to proof was whether the parties most directly involved would

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<sup>1</sup> Also spelled "Browne".

<sup>2</sup> Also spelled "Tetupariki".

<sup>3</sup> Also called "Teari Metua Samuela".

<sup>4</sup> See, for example, the report by Savage J dated 16 August 2016.

consent to undertaking DNA testing to prove or disprove their relationship. After a consent memorandum signed by counsel was filed on 27 April 2018 an order for such testing was made with the test result carried out in New Zealand in accordance with the provisions of the Family Proceedings Act 1980 (NZ). The analysis, carried out by a private firm, DNA Diagnostics, on samples derived from the applicant and James Jackson Brown, showed them to be “460 times more likely to be half siblings than unrelated”. The scientist summarized the results as showing that they “strongly support that Mary Samuela-Anderson [sic] and James Jackson [sic] are half sibling” A likelihood index rating provided that strong support.

[7] The applications were then recalled on 1 May 2019 with Mrs Browne, by then acting for the applicant, relying on the result of the DNA relationship test, making submissions as to the absence of any paternal information on Mr Brown’s death certificate and referring to the affidavits<sup>5</sup>.

[8] Mr Bayley had filed an affidavit sworn on 30 April 2019 raising questions as to whether the DNA testing had been properly carried out. Isaac J’s report, summarised Mr Bayley’s objections and noted his submissions that “DNA testing should not be undertaken in the Cook Islands as it was contrary to custom. ... he also stated that DNA testing was new to the Cook Islands and there are no Cook Islands laws to allow DNA testing”<sup>6</sup>.

[9] That led the Judge to observe:

[17] As stated earlier the issue in this case was whether or not Rongorangi Tetupuariki was Mary’s father.

[18] The parties agreed that the best way to prove or disprove this allegation was DNA testing.

[19] The testing was carried out by consent and the results show that Mary and James are 460 times more likely to be siblings.

[20] When this is coupled with the affidavit evidence in support, it is highly probably that Rongorangi Tetupuariki was Marys’ father.

[21] The submissions and evidence filed by the respondent and Mr Bayley no do [sic: “do not”?] lessen this probability.

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<sup>5</sup> Though Isaac, J said there was “no reason to revisit those documents” at [10].

<sup>6</sup> at [12] and [15].

[22] Having regard to the above I would recommend you exercise your jurisdiction in terms of s 390A to grant the application and revoke the succession orders dated 20 October 1997 and 3 March 2014 to the interest of Rongorangi Dick Brown @ Rongorangi Tetupuariki and substitute new succession orders in respect to the deceased interests in both his children, James Jackson Brown and Mary Samuela.

## **Discussion and Decision**

[10] As noted, the essential question in relation to each of these applications was whether the applicant could prove to the required standard that she and James Jackson Brown were half siblings, both having Rongorangi Tepuariki @ Rongorangi Dick Brown as father.

[11] The supporting affidavit evidence says that Rongorangi Dick Brown died on 19 November 1983<sup>7</sup> and had two children, the applicant who was born of a relationship between Rongorangi Dick Brown and Tearii Metua Samuela and James Jackson Brown who was the second child of Rongorangi Dick Brown's later marriage to Constance Ray. Nothing was said of the elder child but it seems that by 2013 the son James Jackson Brown was the only surviving offspring. Tutu Ngaputa said that James has a physical handicap and has lived for most of his life at the Wilson Home in Auckland New Zealand<sup>8</sup> and that by late 2012 was being treated for cancer<sup>9</sup>.

[12] Mr Bayley's affidavit said that one of the samples submitted for DNA testing was "faecal material from a Stoma bag taken from James Loris Kautai Jackson Brown [sic] in 2009" taken when he was in hospital. He said that "no definitive conclusion may be reached without a match of DNA from James paternal/maternal lineage as a half sibling story was never raised by Rongorangi"<sup>10</sup>.

[13] The DNA relationship report speaks of one of the samples as being Stoma tissue taken from "James Jackson"<sup>11</sup>.

[14] That review shows that there are inconsistencies in the ways the persons from whom the samples were taken – and others – are named in the papers on file.

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<sup>7</sup> *Roriki* para 3, *Ngaputa* para 3.

<sup>8</sup> *Ngaputa* para 4.

<sup>9</sup> *Samuela* para 7.

<sup>10</sup> *Bayley* paras 2 and 3.

<sup>11</sup> DNA Diagnostics report p1.

[15] It is crucial to ensure that those persons are the persons from whom the samples were tested and the relationship probability determined.

[16] In view of that, this matter will be adjourned, for:

- a) an affidavit to be filed confirming that Mary Samuela and Mary Samuela-Anderson are, as seems likely, the same person; and
- b) an affidavit is filed showing that James Jackson Brown (or Browne) is the same person as the James Loris Kautai Jackson Brown described in Mr Bayley's affidavit and the same person listed as James Jackson in the DNA relationship report.

[17] If, as seems likely, those affidavits provide the necessary linkages, on the evidence there seems no reason to reject the conclusions reached in the DNA relationship report and, by extension, the conclusions reached and recommendations by Isaac J.

[18] This is, as far as is known, the first occasion when DNA relationship testing has been utilised as a form of proof in land applications in the Cook Islands and, as noted, Mr Bayley challenges the admissibility of such evidence on the grounds earlier mentioned.

[19] That method of proof, however, is widely used in other jurisdictions and, unless it can be demonstrated to breach Native custom – as to which there is no evidence in this case – there is no reason why, subject to the usual safeguards as to the reliability of any particular form of evidence, it cannot be used in the Cook Islands. It is widely used overseas as an aspect of proof in both civil and criminal matters. Its conclusions are, of course, subject to the usual requirements of proof, including such things as the manner of obtaining, storing and testing the necessary samples, but provided those evidential requirements are satisfied the results of DNA relationship testing are admissible in the Cook Islands. Indeed, although in a large proportion of land applications the necessary samples may no longer be available, where they are available, they would seem to provide more reliable proof – or disproof – of family relationships than traditional genealogies. At least, where available, DNA relationship testing may be useful to fortify, or not, the genealogical evidence which so often forms part of the proof in Cook Islands Court cases, particularly land applications.

[20] The proper safeguards in relation to the reliability of such evidence are well-established in other jurisdictions but should, if the samples are still available<sup>12</sup>, include the opportunity for parties objecting to the admissibility of DNA relationship testing reports to obtain their own test and report on the issue. However, where, as here, the order for DNA testing was made by consent, no such issue arises.

[21] The matter is adjourned for the provision of the required proof and, in relation to those succession orders made on 20 October 1997 so come within the ambit of s 390A rather than s 450, referral to the Queen's Representative for his consent prior to orders being made by the Chief Justice.

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**

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<sup>12</sup> Testing often destroys the samples, or makes further testing difficult.