

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

APPLICATION NO. 2/2018

IN THE MATTER of Section 390A and 409(d) of the Cook
Islands Act 1915
AND
IN THE MATTER of the land known as **PUNAMAIA
SECTION 190E2B3C, AVARUA**
BETWEEN **GRAHAM SIMPSON** Applicant
AND **IVA TEURA PETAU PARSON** Respondent

Date of Application: 17 May 2018

Date of referral
to Land Division: 12 July 2018

Date of hearing in Land
Division and date of
Oral Decision of Coxhead J: 11 July 2019

Appearances: Mr T Moore for Applicant
Mr W Rasmussen for Respondent

Judgment: 9 August 2019

JUDGMENT (No.1) OF HUGH WILLIAMS, C.J.

[WILL0634.dss]

[1] The background to this application pursuant to s 390A of the Cook Islands Act 1915 is as set out in paras [1]-[5] of the Court's minute of 12 July 2018, which read:

[1] On 17 May 2018 the applicant, Mr Simpson, made an application to the Chief Justice pursuant to s 390A for orders amending three succession orders made on 14 November 1994, 18 July 2006 and 22 February 1992 in respect of the lands known as Punamaia Section 190E2B3C No.1 - No.4 respectively.

[2] Put broadly, the allegation was that on 9 March 1977 four separate Orders of Partition were made in respect of the land known as Punamaia 190E2B3C which divided the parent title into Punamaia 190E2B3C No's 1-4.

[3] On 9 November 1977 the Orders for Partition were recalled and a rehearing ordered but, on 25 June 1982, when the application which had resulted in the separate Orders of Partition was called, there was no appearance and the application was dismissed.

[4] That notwithstanding, Registers of Title were at some stage issued in relation to each of Punamaia 190E2B3C No's 1 - 4 and dealings have taken place in relation to those four titles subsequently with some being entered on the parent title.

[5] The nub of Land 2/2018 was that because the original Partition Orders had been recalled, reinstated and set aside, the derivative titles should never have been issued and the dealings on them never entertained.

[2] Put in more detail, the submissions filed by Mr Moore, agent for the applicant, dated 17 May 2018 said that the Court number for the orders for partition which were recalled, reheard and then dismissed¹ was 234.1977 but errors arose as the registry failed to record the dismissal of 234.1977 on the Register of Title of the parent title when that application was dismissed on 25 June 1982 and that, because of that error, the registry accepted applications for succession to the interest of Tere Pori (deceased), Metua Pori (deceased), and Timi Pori (deceased) in respect of Punamaia 190E2B3C No's 1 to 3 respectively, those succession orders having been made on 14 November 1994, 18 July 2006 and 24 February 1992, again respectively. According to Mr Moore's submissions, at each of the hearings on those three days the Court was not made aware that the orders for partition had been recalled, a rehearing ordered and the rehearing application dismissed in respect of the parent title.

[3] Coxhead J's report of 11 July 2019, after recounting the recent history, detailed how the partitions occurred, noted the dismissal of the rehearing in 234.1977 and said² "no new Court orders for partition of Punamaia 190E2B3C were made for Lots 1, 2, 3 or 4. Therefore at that time no orders creating Punamaia 190E2B3C, Lots 1, 2, 3 or 4 existed" but the registry created a Register of Title for those blocks and failed both to enter the 9 November 1977 orders recalling the partition orders and failed to enter the order of 25 June 1982 dismissing the recalled partition application.

¹ As set out in para 3 above.

² At 12-14.

[4] After noting the succession orders in respect of three blocks, the Judge commented:

[18] The Court's intention of recalling the application was so the Tairi sisters could have the opportunity to be included in the hearing. However, the Court recalled the partition order, a rehearing was ordered, and then the application was dismissed.

[19] Subsequent succession orders did not confirm and seal the 1977 orders that were made based on error and mistake.

[20] No orders of partition for Punamaia 190E2B3C blocks 1, 2, 3 or 4 existed and cannot be said to exist because the Court has been working on the basis that they did exist. ... The succession orders were made on an incorrect register of title basis, based on error and mistake. It is those succession orders that need to be corrected.

[21] In my view, there have been clear errors that need to be rectified. The Court orders for a recall, rehearing and dismissal have been ignored.

[5] It is clear that errors have occurred in relation to Punamaia 190E2B3C, both of fact and law, and that accordingly the Chief Justice has jurisdiction – subject to the consent of His Excellency, the Queen's Representative under s 390A(8) – to correct the mistakes errors and omissions under s 390A(1).

[6] However, the precise terms of the order which should be made remain a little unclear.

[7] The application simply sought orders amending the orders of 14 November 1994, 18 July 2006 and 24 February 1992 in respect of Punamaia 190E2B3C No's 1 to 3 inclusive, so that the three succession orders are each made in respect of the parent title, but precisely what amending orders are sought is not apparent, particularly when the making of the orders sought by Mr Simpson would appear to leave the Register of Title for Punamaia 190E2B3C No.4 extant. If the orders of 9 March 1977 in respect of Punamaia 190E2B3C No's 1-3 are to be amended, it would appear to be appropriate also to amend the order of that date in respect of Punamaia 190E2B3C No.4.

[8] Messrs Moore and Rasmussen can take it that, provided His Excellency, the Queen's Representative, consents, pursuant to s 390A(8), to the Chief Justice making orders in this matter, a final judgment will be issued correcting the errors made but, in the meantime, they are invited to collaborate and submit for consideration draft orders which reverse the errors.

[9] They should file those draft orders within 10 working days of delivery of this judgment, following which an application will be made to His Excellency, the Queen's Representative, for a s 390A(8) consent.

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