

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

APPLICATION NO. 461/2019

IN THE MATTER of sections 409(c) and 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 55,**
ARORANGI and an application to
determine costs

BETWEEN **CHRISTINE MARY TEE**
Applicant

AND **MARIE TAOKIA**
Respondent

Hearing date: 7 October 2019

Appearances: M Henry for the Applicant
W Rasmussen for Respondent

Decision: 24 June 2020

DECISION OF JUSTICE P J SAVAGE AS TO COSTS

Introduction

[1] The applicant, Christine Mary Tee, applied for an interim injunction which was heard on 7 October 2019. I granted the injunction, conditional on a draft order being filed.

[2] The applicant has now applied for costs. The applicant is also requesting that the respondent, Marie Taokia, pay for damage which she allegedly caused to the applicant's property. As no application for damages has been filed, this judgment will only consider the issue of costs.

Submissions

Applicant

[3] Counsel for the applicant filed submissions as to costs on 10 October 2019.

[4] The applicant submitted she tried to resolve the matter with the respondent before seeking the Court's intervention for injunctive relief. This included approaching the respondent directly, involving the police to provide warnings, and having senior family members speak to her.

[5] The applicant submitted the position as to taura oire and the rights that flow from them has been clarified by the Court recently, so it is difficult to understand how the respondent could properly advance the grounds in her defence. The applicant submitted there is no tenable basis to support the submission that her occupation right had expired or was subject to a stipulated timeframe.

[6] The applicant additionally submitted that the respondent was served with a copy of the application and her affidavit on 27 August 2019, but notice of an objection was not received until 2 October 2019. This created a limited window for the applicant's counsel to take instructions and file submissions. The applicant submitted the respondent's late filing should be taken into account by the Court in determining costs.

[7] The applicant requested that the respondent should contribute 60-70% of her costs, which totalled \$1,673.72.

Respondent

[8] Counsel for the respondent filed a memorandum in response to the applicant's costs submissions on 24 October 2019.

[9] The respondent opposed the costs application on the grounds that she was compelled to oppose the interim injunction sought by the applicant and that her opposition was not unreasonable and had substance.

[10] The respondent submitted she advanced a reasonable question about occupation rights on taura oire land, which invited a distinction from the Court on the description and legal status of occupation rights. She submitted authorities were unclear on whether occupation rights on

taura orie land has the same terms and conditions of ordinary occupation rights and thus can expire if a building is not constructed on the land.

[11] The respondent disputed that the delay in responding to submissions increased costs for the applicant, stating making amendments to pleadings are part of the normal process of litigation.

[12] The respondent submitted the applicant should bear her own legal costs.

[13] No submissions in reply were received by the applicant.

Law

[14] The key principle is that costs usually follow the event. The general starting point is a contribution towards 66% of costs incurred by the successful party.¹

[15] The Court can also objectively assess the overall merits of the case, making an award that is reasonable and reflects costs reasonably incurred.²

[16] In *Maina Traders v Ngaoa Ranginui* the Court set out factors which may influence 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);
- 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);

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].

- 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.

Decision

[17] The applicant was the successful party in this matter and is entitled to costs.

[18] The applicant attempted to resolve the matter with the respondent through various means before applying to the Court. The respondent filed their defence to the application over 1 month after it was served, and only 5 days before the hearing. I agree that this would have put the applicant to additional cost.

[19] However, the issue concerning taura orie was an important one and it is beneficial to encourage discussion on areas of the law if there is uncertainty.

[20] Having regard to the factors above, I am of the view that an award at 70% is appropriate and I order that the respondent pay the sum of \$1,170.00 to the applicant.

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

Date Wellington this 24th day of June 2020.

PJ Savage
JUSTICE