

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

APPLICATION: 456/2023

UNDER

Sections 429 and 430, Cook Islands
Act 1915 and Rule 348, Code of Civil
Procedure 1981

IN THE MATTER OF PAENUI 89B2B, ARORANGI

BETWEEN

**URIAKE TIRIAERE
Applicant**

AND

**NGA JESSIE
Objector**

Hearing: 10 and 14 July 2023

Appearances: T Moore for the Applicant

Judgment date: 14 June 2024

JUDGMENT OF JUSTICE C T COXHEAD



Introduction

[1] This is an application by Uriake Tiriaere for a partition order over Paenui 89B2B, Arorangi (the land block). Mr Tiriaere makes this application pursuant to ss 429 and 430 of the Cook Islands Act 1915 (the Act) and r 348 of the Code of Civil Procedure 1981 (the Code).

Background

[2] Paenui 89B2B covers a total of 2.5962 ha and is divided into two sections: Paenui 89B2B1 and Paenui 89B2B2.

[3] The original title of the land block was Paenui 89B and was created by order of the Native Land Court, as it then was, on 21 May 1952. At that time, Paenui 89B covered 5.0 ha of land and was recorded as having 8 shares. According to the 1952 freehold order, the shares were divided as follows:¹

Ngatupune Uti ... 1 share
Keuvai Te Tire ... 1 share
Kopu Arangaro ... 1 share
Teremoana Atua ... 1 share
Tuaineiti Aerepo ... 1 share
Tiare a Tiare ... ½ share
Tangirakoa Tiare ... ½ share
Teinatiria Tiare ... ½ share
Aumata Auangete ... 1 share
Ngaro Ringia ... 1 share

[4] Each share – when the land originally in the land block is divided equally – is entitled to around 6000m².

[5] Since 1952 there have been two partitions of the land block. The first was in 2014 in favour of the kopu of Aumata Auangete, where they were granted a partition over 6601m² (2014 partition). The second was in 2019 when the kopu of Tuaineiti Aerepo were granted a partition over 5580m² (2019 partition).

¹ Affidavit of Uriake Tiriaere, 20 March 2023, at appendix “B”.

[6] The 2014 partition divided Paenui 89B into Paenui 89B1 and Paenui 89B2. The 2019 partition divided Paenui 89B2 further and created Paenui 89B2B, the land block in this matter.

[7] Meetings of owners in the land block were held on 24 November 2021 (2021 meeting) and 3 October 2022 (2022 meeting).

[8] The purpose of the 2021 meeting was to introduce and discuss the proposal by the children and grandchildren of Teremoana Atua to partition out their share of the land block. According to the 2021 meeting minutes, the meeting was chaired by Junior Areai and the attendees were:²

Uriake Poko Tiriaere [the Applicant] and also rep. brothers and sisters

Upoko Poko and also rep. brother and sister

Arumetua Kataina and also rep. brothers and sisters

Nga Jessie and also rep. the Ngarangi line

Tutuvaine Matapo and also rep. the Matapo family

Mrs. Betty Kauvai nee Pareina Ngatupuna – late arrival

Tearoa Aumata – Paenui Rangatira – late arrival

Maine Aerepo – Observer.

[9] The minutes of the 2021 meeting confirmed the resolution, which stated:³

THAT the majority of the landowners/representative present on this land PAENUI SECTION 89B2B ARORANGI consented to the requests by the children and grandchildren of Teremoana Atua to partition their share of the above land.

[10] The second meeting in 2022 was held as the partition agreed to in the 2021 meeting was not actioned due to the impact of the COVID-19 pandemic. In attendance at this meeting was:⁴

Chairman – Junior Areai

Secretary – Nooroa Ingaua

Nga Tiriaere

Uriake Tiriaere [the Applicant]

Tumii Tiriaere

Betty Kauvai

Nga Jessie

² Affidavit of Mr Tiriaere, at appendix “C”.

³ Above n 1, at appendix “C”.

⁴ Above n 1, at appendix “D”.

Puapii Taurarii
Arumetua Arangaro
Ngatokorima Tiare
Tearoa Aumata (Paenui Rangatira)
Kikore Ahsin
Mata McNair.

[11] At the 2022 meeting owners were presented with a map of the land block which indicated the area over which Mr Tiriaere would be seeking the partition on behalf of his kopu. Nga Jessie, the Objector in this matter, did not oppose the proposal in this meeting. Instead, he stated that he just wished that Mr Tiriaere and the kopu of Teremoana Atua would have looked at other parts of the land block as a section of the area over which the partition was to be sought was already leased out.

[12] Between 19 October 2022 and 27 October 2022, some owners of the land block signed and dated a survey map of the land block showing the area over which Mr Tiriaere would apply for a partition order. Notably, Mr Jessie was not one of the owners who approved the survey map.

[13] On 20 March 2023, Mr Tiriaere applied to the Court on behalf of his kopu for the 6326m² indicated and discussed in the 2022 meeting.

[14] The matter was heard by me on 10 and 14 July 2023.

[15] At hearing Mr Moore indicated that he would provide the Court with a copy of Justice Isaac's 2020 decision for a partition by Manase Samuel on behalf of the Aerepo Kopu of Paenui 89B2, Arorangi.⁵

[16] I received the decision Mr Moore referred to and the transcript on 7 February 2024.

Applicant's Submissions

[17] Mr Moore filed a memorandum of submissions for the Applicant on 20 March 2023. The submissions set out much of the background above as well as the relevant case law as identified by Mr Moore.

⁵ *Samuel – Paenui 89B2, Arorangi* (11 March 2020, App 170/19).

[18] Mr Moore submitted that, while no valuation of the areas proposed to be partitioned has been done, there is relative equality overall in the proposed partition and the landowners are satisfied that no one will receive less than two-thirds of the full value to the land that they are entitled to by law.⁶

[19] Mr Moore submitted that Mr Tiriaere and his kopu understand that there is a lease on part of the proposed area for the partition to a member of Mr Jessie's kopu. Mr Tiriaere and his kopu understand that they will not have use of that area of the partition until 2071, when the lease ends. This leased area was identified as "A" on the Infrastructure Cook Islands map provided to the Court.⁷

[20] Mr Moore submitted that Mr Jessie's kopu's entitlement would also be around 6000m² and that, at present, Mr Jessie's kopu is occupying land over 50 per cent more than their entitlement through leases and occupation rights.

Objector's Submissions

[21] Mr Jessie did not raise or file his objection to Mr Tiriaere's application until the morning of 10 July 2023, when the matter was first to be heard by me. Mr Jessie's objection is raised on behalf of the Ngarangi lines of the owners of the land block.

[22] Mr Jessie submitted that the partition is inappropriate due to the genealogy of the family tree and that, in light of that, the allocation of shares in the original Paenui 89B block was incorrect.

[23] Mr Jessie argued that the determination of shares, as recorded in the 1952 freehold order establishing Paenui 89B, is not fair as the Ngarangi line only have two shares, while the Rotana line have six shares. Mr Jessie believes that as the ownership of Paenui 89B began with two sisters, Ngarangi and Rotana, each line should have received an equal number of shares.

[24] Subsequently, Mr Jessie submitted that the Rotana line has been taking advantage of the land block with the 2014 partition and 2019 partition being awarded to kopu from the Rotana line.

⁶ Cook Islands Act 1915, s 435(1).

⁷ Second Affidavit of Uriake Tiriaere, 10 July 2023.

[25] Mr Jessie contends that granting this partition application would cause the scale of justice to tip, and result in a miscarriage of justice.

The Law

[26] Section 429 of the Act provides a wide discretion to the Court to determine whether the partition is inexpedient in the public interest, or the interest of the owners or other persons interested. It states:

429 Jurisdiction to partition Native land

The Native Land Court shall have exclusive jurisdiction to partition Native freehold land.

Such jurisdiction shall be discretionary, and the Court may refuse to exercise the same in any case in which it is of opinion that partition would be inexpedient in the public interest or in the interests of the owners or other persons interested in the land.

[27] Section 430 provides for the making of partition orders:

430 Partition orders

Native freehold land may be partitioned by the making of partition orders.

Each such order shall constitute without any conveyance or other instrument of assurance the title to the parcel of land therein included.

[28] Dillon J in *Ruaroa & Vaipapa Section 89D* found that the responsibility of how the land should be apportioned rests with the owners and should be made with their consent.⁸ The Court should only intervene in situations where one group of owners is unreasonable, unfair, inequitable, and unconscionable and deprives common owners of their fair share of occupancy or usage of their inheritance.⁹

[29] In *Beren – Teuiateke 48E, Raukura 48A1, & Avaavaroa 11A*, Isaac J granted a partition order where the owners had reached an agreement as to how their land should be partitioned.¹⁰ The agreement had taken considerable effort on the part of the owners and their legal advisors,

⁸ *Ruaroa & Vaipapa Section 89D* [1988] CKHC 5.

⁹ *Ruaroa & Vaipapa*.

¹⁰ *Beren – Teuiateke 48E, Raukura 48A1, & Avaavaroa 11A, Takitumu* (11 July 2013, App 371/12, 358/12, 347/12).

leading Isaac J to find that it was clear from the agreement that the partition was not inexpedient in the interest of the owners.¹¹

[30] The Court in *Pirake – Pue Section 130, Lot 7* found that granting the partition in that matter would be seen as a breach of the Court’s jurisdiction and public interest as it would have dispossessed certain owners of their interests in the land.¹²

The Issue

[31] The issue for determination by me is whether it would be inexpedient in the public interest or in the interest of the owners or other persons interested to grant the partition in favour of Mr Tiriaere.

Discussion

[32] From the evidence presented to the Court, a majority of owners support the partition application.

[33] There is opposition. However, the opposition is aimed at the underlying ownership in the original block Paenui 89B including it would appear those areas already partitioned as noted above being the 2014 partition and the 2019 partition.

[34] Mr Jessie submitted there was an error in the allocation of shares in the original Paenui 89B block. His concerns related to the 1952 order that determined shareholdings. As Mr Jessie submitted in his view, the 1952 order should have allocated equal number of shares to each line. Clearly, his opposition to the partition is directed more at the underlying ownership and the order that was made in 1952 rather than the partition itself. Mr Jessie should consider filing an appropriate application if he has a valid case with regard to his concerns with the 1952 order. His concerns cannot be addressed via opposition to a partition application.

[35] The applicants have undertaken a process in order to obtain support for the partition. As they have noted the original order noted 8 shares in the title with an area of 5 hectares which is roughly 6,000 m² per share.

¹¹ *Beren*, above n 10, at [11]-[12].

¹² *Pirake – Pue Section 130, Lot 7, Avarua* (05 March 2012, App 185/10).

[36] The area the applicants seek is just in excess of 6,000 m² and this is due to wanting lands in one already existing block area, rather than seeking 6,000 m² of land scattered throughout the original Paenui 89B block.

[37] Further in partitioning in the area they seek, they are aware of a current lease in the area and understand that they will not be able to use the area under lease until 2071, when the lease ends.

[38] I find that the majority of owners support this partition and as a result the partition should not be inexpedient to public interest or the interest of the owners.

[39] It is not surprising that this kopu are seeking to partition their shares out from this land given other kopu have partitioned out their shares.

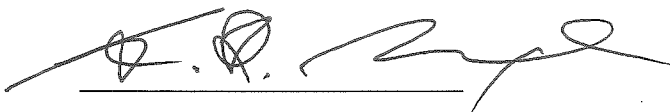
Decision

[40] For the reasons that I have noted above, I exercise my discretion to grant this application for partition.

[41] The partition is subject to the applicant completing a final survey of the land in terms of the place of partition as per the plan which has been attached to the partition application. That survey needs to be completed within 12 months from this decision.

[42] Copy of decision is to go to all parties.

Dated at Rotorua Aotearoa/New Zealand this 14th day of June 2024.



C T Coxhead
JUSTICE