

**IN THE HIGH COURT OF NIUE
(LAND DIVISION)**

Application No. 10694

IN THE MATTER Part Hikutavake Sections 11 and 12, Plan
879

BETWEEN **LALOMANOGI TOGIAKONA**
Applicant

AND **EKALESIA KERISIANO NIUE (EKN)**
Respondent

AND **EKALESIA KERISIANO**
HIKUTAVAKE
(EKH)
Respondent

AND **UNAMED PARTIES/BODIES**
RESIDENT IN HIKUTAVAKE
Respondents

RESEVED JUDGMENT OF CHIEF JUSTICE P J SAVAGE

[1] This is an application by the magafaoa of land occupied by a church seeking to stop all activities by that church on that land until the matter can be heard in the sittings of the High Court in Niue, in March 2013. It is clear that as magafaoa she has power to control the occupation of the land in terms of the Niue Land Act 1969.

[2] The land has been occupied by the church for many years and at this distance and on the very brief papers filed before me I cannot reach anything like a concluded view of the matter but I will deal with it as best I can.

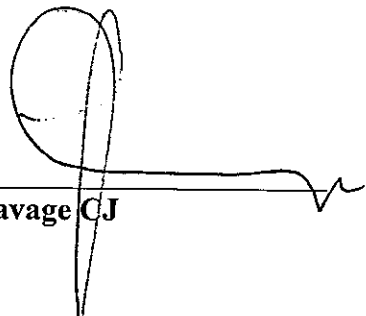
[3] It is clear that the real essence of the difference between the parties is not whether or not the site, should be the site for a church but the applicant's real complaints appear to relate to politics and factionalism within the church. It seems to me at first blush that there may be a very good argument that the applicant is misusing her position as magafaoa to have her own way in church politics.

[4] On that basis it is by no means clear that there is a arguable case. The question of balance of convenience to the parties is also pivotal to the decision as to whether an interim injunction should issue. The papers do not demonstrate to me that the applicant's position will be called into question in any way if matters are left to play out within the politics of the church between now and March.

[5] Even if those matters were surmounted by the applicant I have a view that between now and March there could well be some healing or at least negotiation in the spirit of Christmas, which the issue of an injunction might impede.

[6] Because it is not immediately apparent to me that there is an arguable case. Because the balance of convenience does not favour the applicant at this stage and also on the exercise of my discretion I decline to issue an interim injunction. The matter is to be set down before Isaac J in the sittings of the High Court in Niue in March 2013.

Dated at Rotorua, New Zealand this 24 day of December 2012


P J Savage CJ