

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

**Application No: 2023-00059**

|                      |                                                                                                  |
|----------------------|--------------------------------------------------------------------------------------------------|
| <b>UNDER</b>         | Section 44(2) of the Niue Amendment Act (No. 2) 1968 and Rule 12(1) of the Land Court Rules 1968 |
| <b>IN THE MATTER</b> | of an Application for Injunction – Pt Hikutavake                                                 |
| <b>BETWEEN</b>       | OPILI TALAFASI and OTHERS<br><b>Applicants</b>                                                   |
| <b>AND</b>           | IAN HIPA and LALONANOI<br>TOGIAKONA<br><b>Respondents</b>                                        |

**Date:** 19 October 2023 (ITALY)

---

**JUDGMENT OF CHIEF JUSTICE C T COXHEAD**

---

## **Introduction**

[1] On 12 July 2023, the Court received an application for an injunction from Mr Opili Talafasi and others (“the applicants”) of Hikutavake.

[2] The applicants ask the Court to grant an order to stop the removal of houses that are standing in the middle of the village at Hikutavake.

[3] Mr Ian Hipa and Mrs Lalonanogi Togiakona (“the respondents”) are the Leveki Mangafaoa for what is commonly known as the “Hikutavake Mission Land”.

## **Procedural Matters**

[4] When I received the application, it was unclear whether there was any urgency with this matter. However, I have dealt with it on an emergency basis.

[5] I issued directions on 24 July 2023 seeking further responses from the applicants and the respondents and indicated that once all the information was filed, I would decide the matter on the papers.

[6] I then issued a further minute on 14 August 2023 allowing further time for information to be received from the applicants and the respondents. Again, I indicated that once all information was filed, I would decide the matters on the papers.

[7] The matters are now at a point where all information appears to have been filed.

[8] I note that the application was filed by Mr Talafasi “and others”. I therefore take it that this is an application by all those that signed the letter of support, not just Mr Talafasi.

## **Applicants’ submissions**

[9] The applicants submit that the respondents intend to demolish hurricane scheme houses that are not on Hikutavake Mission Land, that is, houses that are not on lands the respondents are Leveki Mangafaoa of.

[10] The applicants say the respondents do not have any authority over those houses, namely the Poimafisi and Puletua hurricane scheme houses, because they are outside the Hikutavake Mission Land.

[11] Further the applicants state that, even with respect to the hurricane scheme house on the Hikutavake Mission Land, the respondents do not have authority to demolish that house, due to a lack of consultation in that:

- (a) Mr Talafasi is the appointed Ulumotua for the Hikutavake Ekalesia. He states that it is a recognised post in the Niue Ekalesia organisation, and he is the person responsible for village Ekalesia matters. Mr Talafasi claims that at no stage have the respondents contacted him to discuss their intention to demolish the Pastor's house.
- (b) There has been no consultation with the Ekalesia or with Mr Talafasi as the Ulumotua. The applicants claim that they are not merely stalling the clearance of the two buildings; they are applying for an injunction as there has been a failure to consult with the members of the Hikutavake Ekalesia.
- (c) Ideally, for the applicants, this matter should be addressed through the Hikutavake Village Council, and they say there has been no consultation with that Council.
- (d) There has been a lack of consultation and approval by the property owners. That is the reason why there has been a need to get an order from the Court under the Public Health Act 1965, as the demolition is not authorised by the owner of the house.
- (e) The meeting called by the respondents on 5 July 2023 was after the application for an injunction was filed. Further, the list of people in attendance at the meeting are not all the people who needed to be there including, in particular, Mr Talafasi as Ulumotua for the Hikutavake Ekalesia.
- (f) The respondents have failed to adhere to the basic requirements of land law in not consulting the necessary parties before any major decision is made.

The claim is that the demolition of the houses is a major decision and there should have been consultation with, at least, the above people.

[12] Further matters the applicants note are:

- (a) The Government on many occasions has tried to demolish many of the so-called abandoned and derelict houses but have failed to do so.
- (b) There is a lack of evidence to support the argument that there is higher risk in times of tropical cyclones.
- (c) The motion in the House, that the respondents claim has no meaning, even if passed will have little effect – there have been many motions which have been passed by the House, and no action has been taken to implement them.

### **Respondents**

[13] The respondents submit that there are no grounds or valid reasons as to why the application for an injunction should be granted.

[14] Importantly the respondents, Mr Hipa and Mrs Togiakona, are the two Leveki for the Fonua Lotu in Hikutavake Church.

[15] In their view the two buildings pose a risk during cyclones and have been an eyesore for the village for the past decade. They are a health risk.

[16] The matter was previously brought to the attention of the Village Council, to which nothing was done about it.

[17] The respondents claim that the application for the injunction is an attempt to stall the process of clearing the two buildings.

[18] The respondents claims that the tupuna of the Ekalesia, Mrs Lalonanogi, together with approval of a majority of the Hikutavake Ekalesia, who are also residence in the Village, have agreed to proceed with the clearing. This was also discussed and agreed several years

back, and the removal of the buildings has been mentioned several times by elders of the Church, but has never been actioned.

[19] Further the respondents say that at the last assembly, held on 7 June 2023, the majority of assembly members voted and agreed for all old derelict buildings to be demolished due to the risk and danger during cyclones and due to health issues.

[20] The respondents say that it has been pointed out many times by Judges who preside over cases in Niue, that such matters should not be directed to the Courts, but should be dealt with in Niue by the people.

[21] The respondents claim that the applicants will continue to oppose any positive work in the Village progressing forward.

[22] The intent is to clear the old derelict buildings and source funds to rebuild.

[23] The application should be dismissed as there are no valid reasons or grounds to justify the injunction.

[24] The respondents have also provided notes from a meeting held on 5 July 2023, which was clearly before the injunction application was filed on 12 July 2023. The notes show the issue of clearing the two derelict buildings was discussed and, according to the meeting notes, all in attendance agreed for the houses to be cleared once blessing of both buildings had taken place. The notes show an intention to remove the old Pastor's house and rebuild a new house.

[25] It is also recorded that Pamela Togiakona wanted the Village to be consulted. In response it was noted by the respondent, Mrs Togiakona, that consultation had already been completed.

[26] The respondents also provide a list of people, being members of the Hikutavake Ekalesia Kerisiano Church, who support the clearance of two derelict buildings in Hikutavake, being the old community hall and the Pastor's home. There is also a letter of support from the Acting Director of Health, Peter Fetau, confirming support that from the health perspective the two buildings in Hikutavake pose a health risk and should be cleared.

There is also a letter of support for the demolition of the two buildings from the Director of Niue Tourism.

[27] It is also recorded that a motion was placed by Common Role member, Honourable O’love Jacobsen, at the Niue Assembly meeting held on 7 June 2023. There was a unanimous consensus by the Members of Parliament in support of the derelict buildings being demolished.

## **Law**

[28] The current application was made under s 44(2) of the Niue Amendment Act (No. 2) 1968 (“the Act”) which grants the Court wide scope for invocation of relevant sections, beyond those mentioned explicitly in an application:

### **44 Applications to Land Court**

[...]

(2) In the course of the proceedings on any application, the Land Court may, subject to this Act, Rules of Court, and any other enactment, without further application and upon such terms as notice to parties and otherwise as the Court thinks fit, proceed to exercise any other part of its jurisdiction the exercise of which in those proceedings the Court thinks necessary or advisable.

[29] Based upon s 44, the sections that are relevant to the submissions of the applicant are ss 47(1)(e) and (f) of the Act set out this Court’s authority when considering an application for an injunction:

### **47 Jurisdiction of the Land Court**

(1) In addition to any jurisdiction specifically conferred upon the Land Court by any enactment other than this section, the Land Court shall have exclusive jurisdiction –

[...]

- (e) To grant an injunction against any person in respect of actual or threatened trespass or any other injury to Niuean land;
- (f) To grant an injunction prohibiting any person from dealing with or doing any injury to any property which is the subject-matter of any application to the Land Court

[30] The authority of Leveki Mangafaoa over their lands is set out in s 15 of the Lands Act 1969:

## **15 Powers and functions of Leveki Mangafaoa**

(1) The Leveki Mangafaoa of any land, subject to this section and to the terms of his appointment and to any order or direction of the Court, shall have power to control the occupation and use of the land under Niuean custom and shall have power to alienate the land in accordance with the subject to Part 3.

(2) In the exercise of his powers under this section the Leveki Mangafaoa shall under Niuean custom consult with the members of the Mangafaoa whether resident in Niue or elsewhere and shall in particular meet the requirements as to consultation laid down by section 17(3) in relation to the sale and lease of land and the giving of security charges over land.

### **Decision**

[31] The issue raised in this application concerns the Leveki's decision to demolish two buildings. It does not appear to be contested that those two buildings are derelict. A Ministry of Health letter of support confirms that there are health issues with the derelict buildings.

[32] The applicants have not stated what section or authority is relied on for the granting of the injunction.

[33] I consider the application on the basis that it seeks a permanent injunction as opposed to an interim injunction. This must be the case as this is not a situation where the applicants are asking to halt matters pending the outcome of proceedings currently before the Court.

[34] Section 47(1)(f) of the Act gives the Court jurisdiction to grant an injunction prohibiting any person from dealing with or doing any injury to any property which is the subject-matter of any application to the Land Court. This section is not applicable given there is no related application before the Court, although the applicants say they do intend to file an application at some time. The nature and substance of that application is not known and, as I have noted, has not been filed.

[35] Section 47(1)(e) of the Act provides that the Court has jurisdiction to grant an injunction against any person in respect of actual or threatened trespass or any other injury to Niuean lands.

[36] In applying for a permanent injunction, it is common that the applicants must also fulfil the legal elements relating to the action of trespass before the Court will exercise its jurisdiction to grant the remedy.

[37] In this case, we have the legal administrators of the land, being the Leveki Mangafaoa, exercising their powers correctly in terms of the land they are authorised to administer. They would only be trespassing if they were looking to demolish houses on lands they are not the Leveki Mangafaoa for.

[38] This is not a situation where it is claimed that the respondents are trespassing on the land, rather the claim is that the respondents have failed to carry out the appropriate consultation in coming to their decision as Leveki Mangafaoa.

[39] The evidence before the Court shows that there have been meetings and the issue has been discussed not only at the Village Council and at Hikutavake Ekalesia level, with a letter of support from members of the Hikutavake Ekalesia Church, but also at a wider level in terms of the Health Department, Tourism office and all the way to the Niue Assembly.

[40] The Leveki Mangafaoa are authorised to make decisions in terms of the land they are appointed to care for.

[41] Based on information before the Court I am satisfied the respondents have been through a satisfactory process in terms of obtaining the views and opinions of the Mangafaoa, the owners, the church and wider community in coming to their decision.

[42] The injunction application is dismissed.

Dated at Florence, Italy this 19th day of October 2023.

---

C T Coxhead  
**CHIEF JUSTICE**