

IN THE COURT OF APPEAL  
OF THE COOK ISLANDS  
HELD AT RAROTONGA

C.A. 5/93

IN THE MATTER of S.409(f) of the  
Cook Islands Act 1915

AND

IN THE MATTER of the TINOMANA ARIKI  
title

BETWEEN

MATARII VAINERITUA

Appellant

AND

RUTA HOSKING

Respondent

Coram: Barker JA (Presiding)  
Hillyer JA  
Henry JA

Hearing: 4, 5 July 1994

Counsel: R.W. Holmes for appellant  
Mrs T.P. Browne for respondent

Judgment: 8 ~~July~~ <sup>August</sup> 1994

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JUDGMENT OF THE COURT DELIVERED BY HILLYER JA

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This is an appeal against a decision of Dillon J given on 25 June 1993 in the High Court at Rarotonga.

The hearing in the High Court took some time. Lengthy conference calls between the Cook Islands and New Zealand were held on 16, 17 and 27 September 1991. There were

then hearings before Dillon J in Rarotonga on 16, 17 and 27 September 1991, 9 and 10 December 1991, 3 and 4 April 1992 and 13 and 14 April 1992. The decision by His Honour was a full and careful one occupying 52 pages. It held that the respondent, Mrs Hosking, had the right to hold the title of Tinomana Ariki.

The decision was under S.409(f) of the Cook Islands Act 1915. That section provides that the High Court shall have jurisdiction "to hear and determine any question as to the right of any person to hold office as an Ariki or other native chief of any island". This Court in Kainuku v Nia (1991) held that the function of the Court under S.409(f) is "not to appoint but to ascertain the right of a person to hold the Ariki title".

There were two applications before the High Court. One by Mrs Matarii Vaineritua ('the appellant'), the other by Mrs Ruta Hosking ('the respondent'), each seeking declarations that she had the right to hold the office of Tinomana Ariki and that the other did not. It may be helpful at this stage to set out a small glossary of some of the terms used in the judgment.

Kopu - Family

Ariki - Paramount Chief

Ngati - Tribe

Tinomana - Arorangi area

Mataiapo - High ranking chief of a sub-tribe

Kopu Ariki - Family Chiefs

Tinomana Ariki - Paramount Chief of the Arorangi  
Tribe

There has previously been litigation about the Tinomana Ariki title; the judgment of the Land Court in the Tinomana Ariki title case dated 1 December 1975 refers to the history of the title and the method of election of previous holders.

At the time when Christianity was introduced to Rarotonga, Enuarurutini was Ariki of Aorangi. He had three wives at the time - Te Poria-a-Pa, Oakirangi (daughter of Tepai) and Akaiti-a-Rua.

Various geneologies of the descendants of Enuarurutini may be found in the Court records. Taira Rere in his book produced a geneology based on information contained in the Court records and from members of the Tinomana family. The book and the geneology were relied upon in the Tinomana Ariki case in 1975. Feeding children; i.e. children who are looked after but not adopted and legally adopted children are not shown in the geneology.

The Land Court in the Tinomana Ariki case declared Napa Tabei to be the Tinomana Ariki. The grounds were that the majority of the Kopu Ariki had elected him to hold the title. At page 6 of its decision the Court said -

"Napa Tauei was elected by two families and by three of the five branches of the other family. The Court presumes that this constitutes the majority of the Kopu Ariki."

Naomi Tapa appealed to the Court of Appeal. The appeal was heard on 13 and 14 May 1976. There were six grounds of appeal, one of which was that "the Court wrongly decided that the Kopu Ariki have the power to elect Tinomana Ariki". Naomi Tapa claimed that the power to elect Tinomana Ariki was vested in the Mataiapos of Arorangi.

At page 3 of the Court of Appeal decision, their Honours held -

"After a careful consideration of the evidence we have no doubt that the Kopu Ariki have the power to elect Tinomana Ariki."

At page 5 they said -

"We are of the opinion we would properly hold that the Kopu Ariki comprises the descendants of the three wives of Enuarurutini only."

At page 7 they said -

"The nub of the matter, however, is the election of the Ariki and we have found that the Court below was correct when it held that the respondent was rightfully elected by the Kopu Ariki as defined in the decision. The investiture may, but does not necessarily, follow the election as has been pointed out in the evidence which gives instances of many appointments to Ariki, Mataiapo and Rangatira titles which have not been followed by any form of investiture, for example the election of the late Tinomana Te Pai Ariki."

The judgment of the Court of Appeal therefore confirmed that -

1. The Kopu Ariki has the power to elect Tinomana Ariki;
2. The Kopu Ariki comprises the descendants of the three wives of Enuarurutini; and
3. The investiture may, but does not necessarily follow the election.

No doubt as a result of the bitterness of the disputes in the past and the problems that were finally settled only by the decision of the Court of Appeal in that case, members of the family met and hammered out an agreement which has been referred to as "the 1975 agreement". Because of its importance, we set it out in full -

"NOTICE FOR TINOMANA ARIKI TITLE

WE, the family of Tinomana Ariki hereby confirm that we have elected NAPA TAUEI NAPA, a member of the Oakirangi family to hold the Ariki title of Tinomana.

We also confirm that from today onward the Ariki title of Tinomana be elected in the following manner -

- (a) There are three families of Tinomana Ariki today from the three wives of Enuarurutini, Tepori-a-Pa, Oakirangi a Tangiau and Akaiti-a-Rua.
- (b) The title to rotate in these ways:
  - (i) Napa Tauei Napa will hold the title on behalf of the Oakirangi family.
  - (ii) When Napa Tauei Napa dies the family of Akaiti-a-Rua will elect a new Tinomana from their family.
  - (iii) When Tinomana from Akaiti dies Tepori-a-Pa family will elect a new Tinomana from their family.
  - (iv) When Tinomana from the Tepori-a-Pa dies it will go back to the family of Oakirangi to elect a new Tinomana.
  - (v) This is to be the system forever.

- (c) When the holder of the title is elected then they refer it to the House of Ariki of Ngati Tinomana and that Ngati Tinomana will confirm it. The Ngati Tinomana have the right to the Ariki or refuse any decision from any family. When the Ngati Tinomana confirms the Ariki then the speaker of the Ngati Tinomana will notify the elders (Mataiapo and Rangatira) and the people of the Vaka (clan)."

It is quite clear from the document that the intention was that only one person should be elected, selected or nominated from the Akaiti-a-Rua line. There is a dispute between the parties as to the proper translation and intention of the agreement which was written in Maori. Both the Maori version and the translation were prepared by Taira Rere who wrote an article "The Choosing of a new Ariki" which is as follows -

"After Tinomana Napa III the Kopu Ariki will choose who will hold the title of Tinomana. The selection of the new Ariki will (then) not be as troublesome as the election of Tinomana Napa, because the Kopu Ariki (now) understands that -

1. The Kopu Ariki alone will select the new Ariki.
2. The one that will hold the title of Tinomana Napa, will have to be chosen from the descendants of Akaiti as agreed upon in the agreement drawn up and agreed by the Tinomana family.

When Tinomana Napa passes away, the Tinomana family will meet to decide who will be the new Ariki. The Ariki family will be told that the Akaiti line will have to choose one amongst them to hold the title. Then the Akaiti line will meet and choose some one capable among themselves to be the Ariki of Puiakura. Maybe that there will be some disagreement amongst them or maybe they will not have any problems with the selection of one. Nevertheless they are not the ones to elect the Ariki they are only to choose a candidate to hold the title, it will be the Tinomana family that will confirm who will be the new Ariki. That was the agreement that was agreed upon.

If the Tinomana family agrees then that person will be the new Ariki but if that person is not accepted by the Ariki family then they will reject that person, then the Akaiti line will have to meet again to choose a new candidate. It will continue like that until they bring forward a candidate that will be accepted by the Ariki family to hold the title..."

The reference to Akaiti throughout this document is clearly a reference to Akaiti-a-Rua.

Mr Holmes submitted that the document signed by "some of the Kopu Ariki" of the Ngati Tinomana in 1975 could not bind the Kopu Ariki of the Ngati Tinomana to follow the procedures set out therein. He suggested further that there was a difficulty with the translation of the document. The Court interpreter at his request translated paragraph (c) of the document as follows -

"After that branch elected the person they nominated to hold the title they will refer that to the House of Ariki of Ngati Tinomana and all the Ngati Tinomana will confirm that decision. Ngati Tinomana had a right to accept or to object to any decision by any branch. After Ngati Tinomana had confirmed their decision then the spokesperson of Ngati Tinomana will report the matter to the Ui Rangatira and the people of Aorangi."

Mr Holmes suggested that the question of what happens when the Ngati Tinomana refuse or object to the decision of the Akaiti-a-Rua line was not dealt with in the 1975 document. He said that the right to elect was in the Kopu Ariki, that they did not have only the right to select the person nominated by the Akaiti-a-Rua line. He pointed to a passage in which Mr Rere, referring to the Akaiti line says -

"Nevertheless they are not the ones to elect the Ariki they are only to choose a candidate to hold the title. It will be the Tinomana family that will confirm who will be the new Ariki. That was that agreement that was agreed upon."

Mr Holmes submitted that there is no justification for the additional requirement referred to by Mr Rere that, in the event of the Ariki family rejecting the candidate, the Akaiti line would have to meet again to choose a new candidate and that it would continue like that until they brought forward a candidate who would be accepted by the family to hold the title.

Mr Holmes submitted that the 1975 document did not correctly set out Maori custom. He said the Kopu Ariki had the sole power to elect the Tinomana but that it was desirable, where possible, for the Tinomana title to rotate amongst the descendants of the three wives of Enuarurutini. The Kopu Ariki had the right he said to decide upon the death of each Tinomana whether or not such rotation should occur. They had the power to elect a person of their choice in the event of the line whose turn it was for the title nominating a candidate not acceptable to them.

He bases this submission on disagreement as to the translation of a word in the document on the one hand as "select" and on the other hand as "elect".

In our view, however, the document is perfectly intelligible in the way it is set out. The intention of



the document is clear. If the Ngati Tinomana objected to (or rejected) the decision of the Akaiti-a-Rua branch that branch would then have to choose another candidate. If that was not the position, the whole point of the rotation would have been lost. The parties had agreed that the title should rotate. There would be an election, selection or nomination by the Akaiti-a-Rua branch of the family. That candidate would be put forward to the Kopu Ariki. The Kopu Ariki would have the right to confirm or reject that nomination from the Akaiti-a-Rua line but not to put forward someone else to be the candidate.

Mr Holmes further submitted that His Honour was wrong in fact and in law in concluding that the 1975 agreement was binding on the parties. His Honour, however, did not say that the agreement was binding. He said (at p.50) -

"The procedure of electing the Tinomana had been established and declared by the 1975 agreement and accepted by both applicants."

He said (at p.51) -

"The procedure for electing a Tinomana is that set out in the 1975 agreement."

He did not say that the Kopu Ariki could not cancel or vary that agreement if a properly constituted meeting of all the Kopu Ariki decided to do so. There is no evidence of any agreement to change or not to follow the 1975 agreement. On the contrary, the evidence is that it was accepted. For example, at a meeting on 10 July

1991, a meeting of the appellant's supporters, Mr Jonassen the chairman wrote -

"The 1975 Kopu Ariki agreement

- 8.1 The chairman explained the content of the 1975 Kopu Ariki agreement in full to the meeting. He mentioned that the signatories on the said document clearly show that the three Kopu Ariki of Tinomana namely the Kopu of Oakirangi are Tinomana Tepai Tangiaiu, the Kopu of Tepori-a-Pa and the Kopu of Akaiti-a-Rua agreed by an absolute majority to the Tinomana election system being on a rotation basis between them."

Mrs Vaineritua was present at that meeting. There is no record of her having objected to the agreement. In the notes of evidence of 10 December 1991 at page 41, Mr Jonassen said that he had always maintained the force of this agreement. In the evidence on 13 April 1992, Mrs Vaineritua was asked if she accepted the 1975 agreement. She said "Yes. It was Napa thing agreed to".

Mr Holmes appears to base his argument on the statement that a word "Iki" meant "nominate" and that it does not mean "elected". We do not think this matters. The person nominated would be elected by the branch to be put forward to the meeting of the Kopu Ariki.

If one looks through the minutes of the meeting of 12 September 1993 with which we deal shortly, time and again people accepted the principle that the title should rotate amongst the three families. Mrs Vaineritua even put this point forward in respect of her claim that she was a member of the Akaiti-a-Rua branch.

Mr Holmes submitted -

"Neither Mrs Hosking or her witnesses disputed Mrs Vaineritua's evidence that she had been accepted as a member of the Akaiti-a-Rua line. They accepted that she had a blood relationship to the Kopu Ariki of the Ngati Tinomana through the Te-Pori-Pa line. Mrs Browne's submissions do not appear to dispute Mrs Vaineritua's right to be a candidate for the succession to the Tinomana title."

It was disputed that Mrs Vaineritua had a right to be put forward by the Akaiti-a-Rua line but the only point in Mrs Vaineritua giving that evidence could have been that the Akaiti-a-Rua line had, at the time, the right to nominate. If the Kopu Ariki could have rejected the nomination of anyone by the Akaiti-a-Rua line and elected any other line, there would not have been any point in Mr Holmes trying to establish that Mrs Vaineritua was a member of the Akaiti-a-Rua line.

We conclude that the Kopu Ariki agreed both in 1975 and in 1991 that the new Tinomana Ariki should be selected or elected or nominated (the result is the same) by the Akaiti-a-Rua line and confirmed or rejected by the Kopu Ariki. In the result, as we shall point out later, there was no rejection of Mrs Hosking by the Kopu Ariki. The question of what to do in those circumstances did not arise. The point was that all parties accepted that there should be a rotation of the title and that it was Akaiti-a-Rua's turn.

THE MEETING OF 13 JUNE 1991:

There was a meeting of the Kopu Ariki of the Akaiti-a-Rua held on 13 June 1991. The previous Tinomana Ariki, Tinomana Napa, died on 4 June 1991 and the Akaiti-a-Rua family met to choose the new candidate. The learned Judge decided that Mrs Vaineritua's position relative to that meeting was that she did not and could not rely upon that meeting. This he said was a meeting of the Kopu Ariki of Akaiti-a-Rua. At that meeting Mrs Vaineritua was not considered. Mrs Hosking was supported by the Akaiti family with the exception of the Ikitainu family to which Mrs Vaineritua was connected by adoption. Mr Holmes, said the learned Judge, did not rely on that meeting. The evidence was clear that the majority who were in attendance at that meeting supported Mrs Hosking.

From the evidence before the Court it appears 2½ out of 3 families - the Tuoro, the Akaiti and the Tutuvera families supported Mrs Hosking. Her name, she says, therefore went forward as the candidate from the Akaiti-a-Rua branch of the family. It is significant that she was the only candidate and that there could be only one. Half of the Akaiti branch of the Akaiti-a-Rua, Exham Wichman's branch, had indicated they wanted to go back home and think things over. Ema Puna said -

"My sister then asked Mrs Hosking if we could go back home and discuss it amongst ourselves."

The evidence on behalf of the applicant confirms that Mrs Hoskings was nominated by Phillip Tuoro of the Tuoro branch and seconded by Ngamau Munokoa attorney for Apai Wichman of the Tutevera branch. If Exham's branch had supported Mrs Hosking the nomination would have been unanimous but 2½ out of 3 was an adequate majority. The matter is easier to understand by reference to the genealogy attached hereto headed "13 June 1991 Meeting of Akaiti-a-Rua Family".

THE MEETING OF 12 SEPTEMBER 1991:

This is accepted as a meeting of the Kopu Ariki held at the Palace (as it had to be to elect the Tinomana). It was called for the purpose of electing (or rejecting) the Tinomana Ariki chosen by the Akaiti-a-Rua branch. The meeting was called by Mr Rena Jonassen who clearly opposed Mrs Hosking. It may well be for that reason, the meeting was a turbulent one. It lasted for over five hours and was punctuated by calls to Mr Jonassen to vacate the chair. Attempts were made from time to time by Mr Jonassen to lay down the method of voting but these were unsuccessful. Such methods as a show of hands or signatures on a list showing those who supported or opposed Mrs Hosking were suggested but there was no agreement.

Mr Holmes suggested that Mr Jonassen as chairman had the right to impose his will on the meeting both as to the

method of voting and towards the end of the meeting to have the meeting adjourned. The meeting, however, did not agree. The voting suggested by Mr Jonassen was described by Mrs Browne as "papaa" voting which means "white man" - literally four layers, from the observation that the first Europeans wore several layers of clothing.

Mrs Browne submitted that the election or confirmation took place in the Maori way. That is by representatives speaking for different branches, standing up and saying "I support Mrs Hosking" or words to that effect.

We were taken through a geneology and through the evidence by Mrs Browne at length and it seems clear that there was a majority of support for Mrs Hosking at that meeting. On the basis that each branch, the descendants of the three wives, had one vote, the support was as follows -

(a) Akaiti a Rua (1) -	1. Tuoro	1/3	
	2. Tutevera	1/3	
	3. Akaiti	(1/3)	
	Matanoanoa	<u>1/6</u>	
	Exham	1/6	5/6

(b) Oakirangi (1) -	Enua	1/4	
	Ema	1/4	
	Taei)		
	Rangi)	<u>Split</u>	1/2

15.

(c) Te Pori (1) -	Taromi	1/6	
	Tepori	1/6	
	Matoi	1/6	
	Ani	1/6	
	Isaia	<u>split</u>	4/6

In support of Mrs Hosking  $5/6 + 3/6 + 4/6 = 12/6$   
 $= 2$

Both therefore on the basis of majority of two to one or on the basis of a proportion of each vote, there was a majority for Mrs Hosking. That clearly justifies and confirms the finding of the learned Judge that the meeting of the Kopu Ariki of the Ngati Tinomana held on 12 September 1991 provided a majority support for Mrs Ruta Hosking.

Mr Holmes challenged that finding. He said no vote was held at the meeting on 12 September 1991. This was accepted by the learned Judge who said -

"There was certainly no voting anyway."

Simply because there was no "papaa" vote, does not mean that the meeting did not confirm the nomination of Mrs Hosking as Tinomana. If a majority of the meeting took the position that Mrs Hosking had been elected by the Akaiti-a-Rua line and for that reason should be the Tinomana, that is the end of the matter.

I have mentioned that Mr Jonassen tried to adjourn the matter until the following day but that there was no agreement to the adjournment. The respondent claims

that when an adjournment was suggested by Mr Jonassen people simply got up and said that they would not go to another meeting and that the meeting of 12 September was final. Mrs Browne pointed to the evidence given by Mrs Greig, Mrs Ngamau Wichman, Aporo Dean, Porotu Caffrey, Terepai Dean and Iro Rangī to confirm this. Mrs Ngamau Munoko confirmed that she approached Mrs Vaineritua to oppose meeting on 13 September because there was a family wedding at her residence on Saturday 14 September. Mrs Browne submitted that that was a very significant matter. The size of such a wedding would require days to prepare. The ladies would not have been able to attend a meeting on 13 September and have the family wedding on 14 September.

There was a meeting on 13 September (called by Mrs Vaineritua) at which only one of Mrs Hoskings' supporters was present. The rest were supporters of Mrs Vaineritua. Understandably Mrs Vaineritua was "elected" as Tinomana but the evidence is clear that this was not a true meeting of the Kopu Ariki. Mr Holmes submitted that the learned Judge failed in his judgment to deal with the effect of the meeting of the Kopu Ariki on 13 September. No doubt that is because this was not a true meeting of the Kopu Ariki called for the purpose of electing the Tinomana Ariki. Further the learned Judge held that Mrs Vaineritua was never elected by the Kopu Ariki of the Akaiti-a-Rua family. For that reason, on the basis of the findings already made in relation to the



1975 agreement, she could not have been elected Tinomana Ariki on 13 September 1991.

There were subsequent meetings on 16 and 23 September 1991 at which the Judge held there was unanimous support for Mrs Hosking; but these of course were not meetings of the Kopu Ariki called for the purpose of electing the Tinomana. Equally, there were investitures of both Mrs Vaineritua on 16 September and subsequently Mrs Hosking; but these could not effect the result of the meeting of 12 September. By 16 September, the parties were locked in litigation. The first conference call to His Honour was held on that day.

There were other questions raised at the trial. In particular, whether Mrs Vaineritua could by reason of her adoption and alleged "blood relationship" be a candidate for the Akaiti-a-Rua but with some courage Mrs Browne did not pursue this matter before us. She relied on the 1975 agreement, or more particularly, on the procedures set out in the 1975 agreement, and on the meeting of 12 September. In the light of the findings made she did not need to pursue the question whether Mrs Vaineritua could be a candidate.

In the result we uphold the learned Judge's finding that Mrs Hosking had the right to hold the office of Tinomana Ariki and we dismiss the appeal.

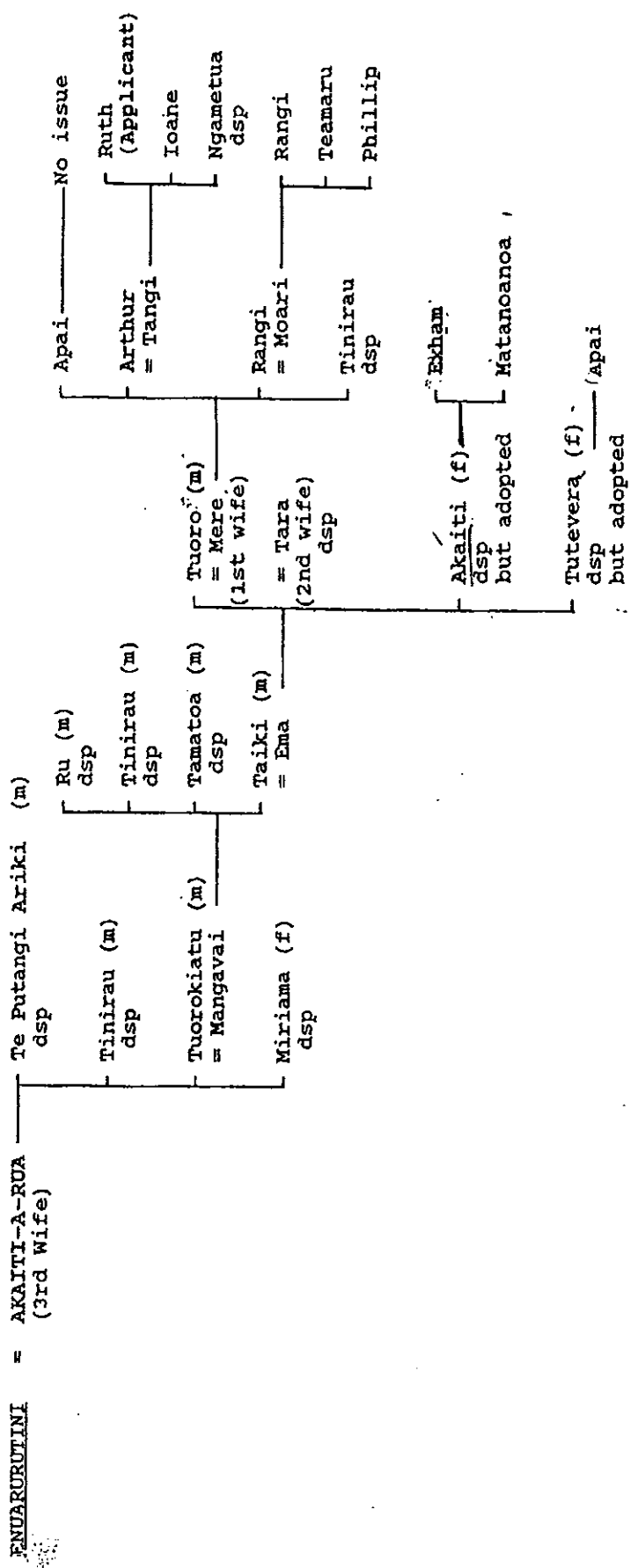
18.

The respondent is entitled to costs which we fix in favour of the respondent at \$5,000 plus disbursements as fixed by the Registrar.

D. M. V. V. J. A.

13 June 1971 meeting of Akaiti - a-Rua family

Doc 16



DSP means had no children

Tuoro, Matanoanoa and Tutevera lines voted for Mrs Hosking