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

CA.14/93

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

AND

IN THE MATTER of the land known as
AKAOA SECTION 66 in the
Tapere of Akaoa, District of
Arorangi, Rarotonga, and
WAITEROTA SECTION 69F in
the Tapere of Arorangi,
Rarotonga, Tapueinui and
ARATAA SECTIONS 91H, H2
and 91HB in the Tapere of Rutaki,
District of Arorangi, Rarotonga,
and the land known as
VAIOKURA SECTION 94F in the
Tapper of Akaoa in the District of
Arorangi, Rarotonga

AND

IN THE MATTER of an application by
EXHAM WICHMAN of
Rarotonga, Carver

BETWEEN: EXHAM WICHMAN
Appellant

AND: PURETU CAFFREY
Respondent

Coram: Barker JA (presiding)
Hillyer JA
Henry JA

Hearing: 5 July 1994

Counsel: R W Holmes for Appellant
Mrs T Browne for Mrs Caffery Respondent

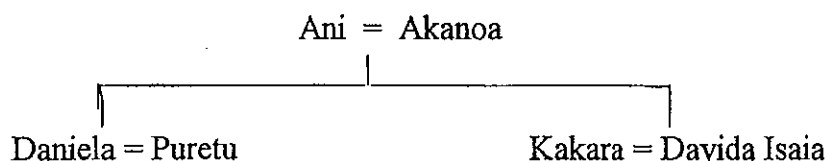
Judgment: 2 August 1994

JUDGMENT OF THE COURT DELIVERED BY HENRY J A

This appeal is against a judgment of the Land Division of the High Court delivered on 18 November 1993. Dillon J dismissed an application made pursuant to s.450 of the Cook Islands Act 1915 to revoke certain succession orders made in 1921 in respect of certain blocks of land. Section 450 empowers the Court to revoke a succession order made in error.

Shortly stated, the case for the appellant is that the evidence adduced established that his mother, Ani, as an adopted daughter, should have succeeded her adoptive mother, Kakara, to the lands following Kakara's death on 4 August 1921.

The immediate relevant genealogy is :



The appellant's mother, who died in 1964, was Ani, the natural daughter of Stanley Heather. The present claim is that she and Te Paeru, the daughter of Puretu, were both adopted by Kakara by native custom at an early age. Kakara had no natural issue.

Evidence was given by the appellant, but as he was not born until 1931, some 10 years after the death of Kakara, his claim of acceptance of Ani by Kakara and her extended family is of limited value.

The evidence primarily relied upon by Mr Holmes to support the fact of adoption is the content of the early Minute Books of the Land Court, particularly records concerning succession to the land known as Vaiokura 94F. It is however necessary to look at the relevant entries in their totality. They disclose :

1. Minute Book no.9 pages 22-23 (2 November 1921) concerning succession to Kakara in Waiterota 69F and Akaoa 66. Daniela applied for succession orders and deposed that Kakara died in August 1921, leaving no issue. There were no objectors and orders were made in his favour.
2. Minute Book no.9 page 23 (2 November 1921) concerning succession to Kakara in Vaiakura 97F Arorangi. Daniela claimed as before, but there was an objection by David Isaia. The application was adjourned "for presence of Tinomana and meeting of family as it appears to be Ariki land".
3. Minute Book no.9 page 187 (9 June 1922).
The adjourned application as to 94F was resumed. Daniela deposed that Kakara had no issue of her own, but adopted his daughter Te Paeru at birth and brought her up. Te Paeru lived with Kakara, and was 15 when Kakara died. He said that the adoption was not registered. Davida admitted the adoption, but would not agree to Te Paeru succeeding. He also objected to Daniela succeeding, and said that Tinomana should decide. Tinomana Tuoro said he wished to talk to the parties, and the application was adjourned for that purpose.

4. The hearing resumed later that day and at pages 190-191 the following is recorded:

"944. Succn to Kakara (dec'd) in Vaiakura 94.F:
From page 187.

Daniela: I agree to Tapaeru's name.

Davida Isaia: Kakara adopted Ani also - Kakara my wife.
See p.178.

June 9th 1922:

Ani f. about 20, daughter of Stanley Heather.

Daniela: I admit that adoptn.

Tinomana Tuoro:

I raise no objectn to the two adoptn children.

No pre. objections.

Succn order made in favour of :-

- | | | | |
|----|-----------|-------------|----------|
| 1. | Ani Isaia | f. 20 years | |
| 2. | Tapaeru | f. 15 " | Equally. |

Ord: 5/0.

Trustee for Ani Isaia to be
Davida Isaia.

Trustee for Tapaeru to be
Daniela.

Order made on
Daniela's appln.

944: (Dup. of above) - Davida Isaia's appln.
Dismissed."

From these records, Mr Holmes submitted that Ani was shown to have been adopted by native custom and that pursuant to s. 8 of the Cook Islands Amendment Act 1921 the adoption was effective to entitle her to succeed to the additional lands.

A necessary corollary to and indeed part of his submission was that Te Paeru should also be included in the succession orders as being an adopted daughter of Kakara.

There was strong evidence in the Court below to establish that Te Paeru was both the respondent's mother and also the natural daughter of both Daniela and Puretu. The relationship is recorded in Te Paeru's death certificate and confirmed in genealogies given to the Court in 1934 in the Tinomana case. Mrs Caffery gave supporting evidence before Dillon J that her mother was Te Paeru, that Te Paeru had not been brought up by Kakara and had not regarded Ani as her sister. Mrs Caffrey did concede that Ani was a feeding child of Kakara, but denied that adoption by native custom had ever resulted.

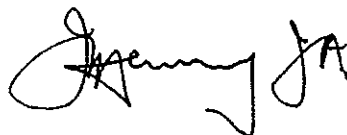
The important features can in our view be summarised :

1. No objection was taken to the succession applications made by Daniela in 1921 to 69F and to 66, and on which orders were made on the same day as objection was taken by Davida to the 97F application. Those orders were inconsistent with the appellant's present claim.

2. The objection to 97F and the subsequent succession orders made in favour of Te Paeru and Ani are explicable as being in respect of Ariki land to which Kakara had earlier succeeded. The orders had the consent of Tinomana Tuoro.
3. The extraordinary length of time which has elapsed since the orders were made, in particular, the absence of any suggestion from the appellant's mother during her lifetime that there was an entitlement such as is now claimed.
4. The evidence establishing that Te Paeru's father was Daniela and the previous finding in the Tinomana case that Te Paeru was not adopted and was therefore excluded from the Ani line.
5. The absence of any supporting evidence of substance that there had been an adoption or adoptions by native custom.

When those factors are properly weighed and taken in conjunction, the Judge's conclusion that the succession orders in question were not made in error was clearly justified. The evidence overall does not establish that Ani and Te Paeru were adopted so as to give them entitlement to succeed to Kakara's interests in these particular lands.

The appeal is therefore dismissed. The respondent is entitled to costs which we fix at \$1500 plus disbursements (if any) as fixed by the Registrar.



Solicitors:

Ross Holmes law Partnership, Avarua, for appellant
Clarkes, Avarua, for respondent