CA NO. 1/16

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

BETWEEN	**RICHARD RICHARD BROWNE**
	Appellant
AND:	**NGAMAU MUNOKOA AND DIANE BROWNE HOLFORD**
	Respondent

Coram:	Barker JA (presiding) Fisher JA Paterson JA
Hearing:	14 November 2016
Judgment:	14 February 2017
Counsel:	A Manarangi for Appellant Mrs T Carr (Land Agent for Respondents appearing by special leave)

JUDGMENT OF THE COURT

Solicitors: Manarangi PC for Appellant

Preliminary

[1] Mrs T. Carr appeared for the Respondents by special leave of the Court. She is neither a legal practitioner nor a party. However, she is related to the Respondents and, as a member of the extended family involved, has an interest in the appeal. Mrs Carr explained that whilst lawyers had been involved at some stage for the Respondents, for reasons that were unclear to the Court, the lawyers had chosen not to appear at the appeal hearing.

[2] The Court emphasises that section 57(2) of the Judicature Act 1980-1 is quite explicit on representation in this Court: "*No party shall be represented by an agent save in exceptional circumstances and with special leave of the Court.*"

[3] We do note however that Mrs Carr presented her submissions professionally and effectively. The Court is grateful both to her and to Mr Manarangi of counsel for their assistance.

[4] On 21 October 2016, memoranda were filed in the Court office by Ethel Soochoon (nee Napa) and Kathy Napa-Brebner. Each was in similar terms and each purported to withdraw support for the Appellant. Each claimed that she had made an affidavit supporting the Appellant in the proceedings before Isaac J in the High Court. They now allege that the Appellant had not disclosed certain facts to them. Neither would have sworn the affidavit in support had she known of these facts. Both now agreed with Isaac J's judgment in favour of the Respondents and purported to withdraw their support for the Appellant.

[5] Neither memorandum was sworn or affirmed. The facts allegedly not disclosed by the Appellant were not stated. No application to call further evidence on appeal was made. No opportunity was given to the Appellant to comment on the allegations made against him. Mrs Carr for the Respondents did not rely on these memoranda as part of her case. Accordingly, since there is no application before this Court to hear further evidence on appeal, the Court does not consider these memoranda.

Introduction

[6] This is an appeal from a judgment of Isaac J given in the Land Division of the High Court. The hearing before the Judge concluded on 30 August 2015; final written submissions were not filed until 3 November 2015. The judgment was not given until 29 July 2016.

[7] Isaac J had before him two competing applications to succeed to Richard Pare Browne ("the deceased") who died on 21 November 2005 with no natural issue. The first applicants were:

(a) Richard Browne ("the Appellant") who was formally adopted by the deceased and his wife (also deceased) under section 465A of the Cook Islands Act 1915 ("the Act"); and

(b) Teparekura Browne ("Pare") who was the deceased's feeding child but who was never formally adopted.

[8] The second applicants – the Respondents in this appeal – are two of the deceased's nieces, children of siblings of the deceased. The Judge had before him a genealogy which was not in dispute which included the relevant family tree.

[9] The Judge dismissed the applications of Richard and Pare and granted that of the Respondents. Pare did not appeal. Richard's appeal was argued before us.

[10] The Appellant's claim in the High Court was supported by an affidavit sworn by representatives of some of the families of the deceased's siblings. The affidavit did not list the names of those members of the particular families alleged to have concurred in the view that the Appellant should succeed. Nor could it cover all in the category since the two Respondents clearly did not support the Applicant's claim. One proposed deponent did not sign and swear to the affidavit. It now appears that the two persons referred to in paragraph [4] above now wish to withdraw any support they may have given to the Appellant.

Background

[11] The relevant background as recorded by the Judge is as follows:

> "[2] The deceased and his wife, Kurai (also deceased) raised Richard from the age of three and formally adopted him when he was 16. Richard has no blood connection to his adoptive parents. The deceased and his wife raised Teparekura from birth as their feeding child, but never formally adopted her. She is the natural daughter of the deceased's brother, Eric.
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> [3] No land was set aside for Richard at the time of his adoption. When applying for the adoption order, Kurai told the court that, despite the adoption, 'boy will not get our lands, and that he had already inherited 'a number of his natural mother's lands'. When making the adoption order, the judge noted it was '[n]ot to affect succession to lands'.

> [4] In 1973, an occupation order was made in Richard's favour over a section of the Turamatuti section. The order was granted after the deceased called a meeting to seek the family's agreement, which was forthcoming. In 1981, Richard converted his occupation right to a lease, again with the support of the Browne family. In 2007, a meeting of owners agreed to Richard's request for a five year extension of the lease. They consented to his plan to sublease the section and agreed that after the lease's expiry, the section would vest in his children. However, pursuant to a vesting order on 19 February 2007 the land was vested to Richard and his wife.
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> [5] The parties agree that the deceased set aside land interests for Richard in his will. It appears that these interests were leaseholds, rather than shares in land. In relation to one of these leaseholds, the deceased's orange plot, the second applicants note that the deceased and his brother had told the Court, four years after Richard's adoption, that "if any question should arise as to who should succeed to his orange plot that it should go to his adopted daughter (not registered) Pare."

[12] The Respondents claimed also that the deceased later willed the leasehold land to the Appellant without consultation with the blood family and the owners.

[13] Isaac J decided that the Appellant could not succeed to his adoptive father because native custom did not permit succession by an adopted child other than in exceptional circumstances and not when any of the next-of-kin objected. The appeal therefore is concerned with deciding whether the Judge was correct in so holding.

[14] The right to succession of an adopted child to the land interests of his adopting parents has concerned Cook Islands courts fairly frequently over the years. Papers prepared (a) in 1970 and 1977 by the House of Ariki, (b) in 1977 by the Koutu Nui (for the rest of this judgment collectively referred to as "the House of Ariki papers") provided opinions on relevant native custom and emphasised the importance of the blood connection. They recommended the enactment of legislation which would settle the question of the succession rights of adopted children. However, no such legislation has been enacted. The Judge relied on these documents as providing evidence of native custom.

[15] The House of Ariki Papers were reviewed by a Commission of Inquiry in 1996. Again, various recommendations concerning the rights of succession to land by adopted children were made but not adopted by the Legislature.

[16] The Judge referred to the recent decision of this Court in *Hunt and Others v de Miguel* (CA 2, 3, 7, 8/14 19 February 2016) which discussed Article 66A of the Constitution which deals with the proof and legal significance of custom and usage.

Isaac J's judgment

[17] The Judge first considered the relevant sections of the Cook Islands Act 1915 ("the Act"), namely sections 446, 465 and 465A, viz:

> "**446. Succession to deceased Natives** – The persons entitled on the death of a Native to succeed to his real estate, and to his personal estate so far as not disposed of by his will, and the persons entitled on the death of a descendant of a Native to succeed to his interest in Native freehold land, and the shares in which they are so entitled, shall be determined in accordance with Native custom, so far as such custom extends; and shall be determined, so far as there is not Native custom applicable to the case, in the same manner as if the deceased was a European.
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> **465. Effect of adoption** – An order of adoption shall have in respect of succession to the estate of any Native the same operation and effect as that which is attributed by Native custom to adoption by native custom.
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> **465A Effect of orders of adoption on interests in Native land** – No order of adoption, other than an order made under this Part of this Act or under section 9 of the Cook Island Amendment Act 1921 or under Part XXA of this Act shall have any force or effect in respect of succession to any interest in Native Land."

[18] After rightly noting that it is not for the Court to define custom but merely to follow custom, Isaac J proceeded to ascertain what was the custom relating to adoption based mainly on the House of Ariki Papers and previous court decisions.

[19] Isaac J considered that the House of Ariki Papers established that an adopted child has no rights to the land and title of the family if the child has no blood connection with the ancestral landowner, other than in exceptional circumstances. He reviewed several court decisions, particularly those known as the *Emma* decisions (i.e., *re succession to Tuokura Maeva* (1968) Minute Book 156 and on appeal (1970) (Land Appellate Court 215). These cases had been decided before the House of Ariki Papers were produced.

[20] The Judge held that the House of Ariki Papers and the decision of this Court in *Short v Whittaker* [2003] CKCA7 did not upset the *Emma* decisions which should be read as providing a "*never say never*" approach to succession by an adopted child not of the blood. "Exceptional circumstances" could produce a different outcome and give an adopted child the right to unconditional succession.

[21] According to the Judge, succession by an adopted child depended on whether the child's adoption had fully "matured" as shown by the full acceptance of the adoption by the next-of-kin entitled to succeed to the adopting parent. If any objection from any next-of-kin exists, the family cannot be deemed to have recognised fully the

adopted child. Isaac J noted that in the *Emma* cases, the deceased had no surviving blood relatives and therefore there was nobody to object to the adopted child's succession.

[22] Because the Appellant could not show that all those entitled to succeed supported his application, the Appellant had not crossed the high threshold of meeting the exceptional circumstance of enabling an adopted child – not of the blood – to succeed to his adopting father's land. The Judge considered that the Appellant's application was not in accordance with the custom relating to adoption as set out in the House of Ariki Papers. Consequently, the Appellant's application was dismissed and succession to the siblings of the deceased as set out in the agreed family tree was ordered.

Appellant's Submissions

[23] The Appellant reviewed numerous authorities including the first instance *Emma* decision of Chief Judge Morgan and the decision of the Land Appellate Court on appeal, given on 27 April 1970). The appeal decision noted the difficulty in determining native custom since no evidence had been produced from which the Court could adduce a set of rules relating to adoption. "*What is claimed to be Native custom varies from island to island, from village to village, and even from family to family. There are also different kinds of adoptions and adoptions pass through various degrees.*"

[24] The Land Appellate Court after noting that some legislative statement on adoption would be desirable, was of the opinion that neither Cook Islands law nor Native customs precludes a legally adopted child from succeeding to an interest in Native freehold land owned by its adopting parent. The Court agreed with Chief Judge Morgan at first instance that statements such as that by the Judge who made Richard's adoption order to the effect that the adoption order did not affect succession to land, lacked legal authority.

[25] In *Re Pauarii* (CKCA 3/85 - 8 October 1985), this Court, in a judgment delivered by Sir Thaddeus McCarthy, approved Chief Judge Morgan's statements in the first *Emma* case as follows:

> "(a) 'As the adoption order itself does not confer upon the adopted child an unqualified right to succeed the court is required to determine the issue in accordance with Native Custom'.

> (b) '... there are degrees or recognition of an adoption. ... the making of a Court order of adoption (are) only the first steps in what might or might not lead to a final recognition by the foster parent and his near family of a complete adoption'.
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> (c) 'The need for recognition by the near family can be better appreciated if it is remembered that the adopted child will probably want to use some or all the lands of his foster parent'.
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> (d) 'Between the first steps and the final complete adoption, there are degrees which govern succession to the foster parents estate'.
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> (e) 'An adopted child may return to its own parents, or it may live partly with its foster parents and partly with its natural parents. In such cases, the adoption never becomes complete, but particularly in the second case, the foster parent and his family may and usually do set aside certain lands ...'
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> (f) '... it still remains for evidence to show what lands if any the adopted child will take and that evidence will almost certainly have to come from the next of kin of the foster parent'.

[26] The Court said of the use of the term "maturing" in respect of the recognition of an adoption:

> "In many of the discussions of this principle and, as we have noted, in the judgment appealed from, the term "maturing" is adopted – it is said that recognition must have matured, etc. The word is doubtless a useful one, and has the weight of some years' use; but we would like to stress that the maturity which is spoken of in this context is not necessarily the slow continuing biological-type maturing which is often associated with that word: rather it is a development, which can move spasmodically; it is far from constant, it can be quick, it can be slow, and it can be precipitated by events rather than time. We prefer to use the term develop."

[27] In *Short v Whittaker* (supra) this Court considered that House of Ariki Papers "*... do not have the binding force of statute yet they must convey strong evidentiary values*". The Court there held that an adopted child could succeed to her natural parents' land and did not require the consent of her natural siblings to do so.

[28] In *Teariki v Strickland* (CKCA 7/06, 30 November 2007), this Court did not see *Short v Whittaker* as requiring a "rethink" of the two *Emma* judgments and affirmed the restrictively-expressed right of adopted children to inherit land rights from their adoptive parents.

[29] The essential submission for the Appellant was that Isaac J was wrong to have held that the adoption of the Appellant was not "*mature*" (or "developed") enough within the meaning of that term as shown in the cases, when he held that a single objection to the adopted child's succession by one of the next-of-kin is enough to prevent any application for succession by an adopted child not of the blood. This was the same

despite the grant of occupation rights to the Appellant by the deceased in his lifetime, which were converted, first to a lease and then to a vesting order, which may have indicated acceptance of the adoption. The deceased also was granted an occupation right – later converted to a lease – over some of the land on which the Appellant constructed a house using the interest in the land as security.

[30] Counsel for the Appellant referred to other decisions which in our view do not detract from or alter the long-established statements of Chief Judge Morgan as endorsed by the judgments of this Court referred to earlier.

[31] In the High Court, the Appellant had intended to call the deponents of the defendant referred to in paragraph 10. However, the agent for the Respondents told the Judge that this would not be necessary and they were not called. The Respondents maintained their opposition at the High Court and as the issue of the deceased's siblings' next-of-kin, objected to the Appellant's claim to succession.

Respondents' Submissions

[32] The Respondents emphasised that the *Emma* cases could be distinguished. Emma, an adopted child, was not related by blood to her adoptive mother who was the last of her blood line. There were no objections from next-of-kin because none existed. "Maturity" of adoption did not assist Emma in obtaining absolute succession even though she had been given part of the land by her adoptive mother. None of the subsequent cases had altered the rule as articulated in the *Emma* cases.

[33] The Respondents submitted that the House of Ariki Papers were evidence of custom and as such were deemed important by Article 66A(4) of the Constitution. Next-of-kin determined the succession rights of adopted children. The Respondents contested the Appellant's assertion that all the next-of-kin had accepted the maturity of the Appellant's adoption.

[34] The fact that the leasehold land had been willed to the Appellant by his adoptive father without consultation with the next-of-kin did not support his right to absolute succession. No Native custom supports this proposition. Chief Judge Morgan in the first *Emma* case held that no custom entitles absolute succession by the adopted child when there are objections from the next-of-kin.

Discussion of legal principles

[35] It was common ground that in accordance with ss 464 and 465 of the Cook Islands Act, the Appellant's succession rights were to be determined in accordance with Native custom.

[36] As to proof of Native custom, Article 66A of the Constitution provides:

> 66A. **Custom** - (1) In addition to its powers to make laws pursuant to Article 39, Parliament may make laws recognising or giving effect to custom and usage.
> (2) In exercising its powers pursuant to this Article, Parliament shall have particular regard to the customs, traditions, usages, and values of the indigenous people of the Cook Islands.
> (3) Until such time as an Act otherwise provides, custom and usage shall have effect as part of the law of the Cook Islands, provided that this subclause shall not apply in respect of any custom, tradition, usage or value that is, and to the extent that it is, inconsistent with a provision of this Constitution or of any other enactment.
> (4) For the purposes of this Constitution, the opinion of the Aronga Mana of the island or vaka to which a custom, tradition or value relates, as to matters relating to and concerning custom, tradition, usage or the existence, extent or application of custom, shall be final and conclusive and shall not be questioned in any court of law.

[37] *Hunt & Others v de Miguel* (supra) deals thus with proof of custom in a discussion about Article 66A:

> "51. In summary the view of the Court is that of the various competing interpretations put forward by the parties, it is the Crown's submissions which express the true interpretation of Article 66A. In short, the effect of Article 66A(4), in this Court's opinion, is that if a properly constituted Aronga Mana makes a relevant ruling or finding as to a point of custom or usage in their respective area/vaka, then **as a matter of evidence** that opinion must be treated as final and conclusive by the Court – and the Court is unable to go behind it.
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> 52. Thus, if the Aronga Mana in a local area/vaka (such as Te Ao o Tonga) has made a finding on a point of custom as to the appointment of an Ariki or other chiefly title in that area (such as the Makea Nui title), then the Court's role – whether or not it was broader before the enactment of Article 66A – must now be taken as limited to determining: (a) whether the asserted custom is consistent with Cook Islands statutory enactments and/or the Constitution; and (b) if so consistent, whether the customary rules have been complied with in the appointment of the relevant chiefly title.
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> 53. This position can only apply prospectively after the enactment of Article 66A, and this limitation lessens any possible concern about voiding past decisions of the Court *per incuriam.* Moreover, and important, as an evidentiary matter Article 66A(4) can only apply where an Aronga Mana (if such a body exists in the relevant vaka) has reached an "*opinion or decision*" for the purposes of Article 66A(4). In the present case, as noted below, there was no evidence that a properly constituted Aronga Mana had given an opinion on the appropriate custom. Accordingly, the Court remains free in the present case to determine both (a) the appropriate custom to be

followed in appointing the Makea Nui; and (b) whether that custom so determined has been comply with.

The true Interpretation of Article 66A(4)

54. In interpreting the meaning of Article 66A(4), the key point is that the wording of the constitutional provision (necessarily the starting point for a statutory interpretation inquiry) is relatively clear and unambiguous:

> *For the purposes of this Constitution,* ***the opinion or decision of the Aronga Mana*** *of the island or vaka to which custom, tradition, usage or value relates,* ***as to matters relating to and concerning custom,*** *tradition, usage or the existence, extent or application of custom* ***shall be final and conclusive and shall not be questioned in any court of law.***

[38] In the present case, as in *Hunt & Others v de Miguel*, there was no evidence that an *Aronga Mana*, duly constituted, had given any opinion on the custom at issue. The Constitution does not define an *Aronga Mana*, nor how it is to be constituted, nor who is to determine and verify its composition nor the mechanism by which it is to express its opinion as to custom. Paragraph 73 of the *Hunt & Others v de Miguel* decision expresses regret that the Legislature has never addressed these issues and suggests solutions for the *lacunae* created by Article 66A. The Court once again makes a plea for enlightenment from the Legislature on this issue.

[39] Consequently, the Court must look elsewhere for evidence of custom. Essentially two sources are available to us. The first is the House of Ariki Papers. We agree with the views expressed in *Pauarii* (supra) and *Short v Whittaker* (supra) that the Papers represent an important source of evidence. They certainly made for a restrictive view of the right of an adopted child – not of the blood – to succeed.

[40] The other source is the evidence that had been provided to the Courts in previous cases as recorded in the judgments concerned. What emerged from that evidence was that there was no universal rule as to the customary succession rights of adopted children not of the blood due to variance across islands, villages and families (*Succession to Tuokura Maeva deceased (* 1968) at 156; *Succession to Tuokura Maeva deceased {* 1970), above at 70-71). Some evidence suggested that adopted children not of the blood could never receive more than a life interest while other evidence suggested that adopted children not of the blood had frequently been entered as owners without restriction (*Succession to Tuokura Maeva deceased* (1968), above at 161).

[41] The first point that clearly emerges from those sources is that in every case evidence ought to be adduced as to the particular custom applicable to the island, village or family concerned. If evidence can be given as to the opinion of the Aronga Mana of the island or vaka to which a custom, tradition or value relates, it will be final and conclusive. Even where such an opinion is not available, reliable evidence from some other source as to the custom applicable to the particular locality in question will take priority over any attempt to arrive at more general principles.

[42] However in many cases, including this one, particular evidence of that kind has not been provided. In those circumstances the Court must make do with general principles from the two sources to which we have referred. We agree with Isaac J that the *Emma* decisions set out the Courts' interpretation of custom based on such evidence as they then had before them; that those Courts did not have available to them the House of Ariki Papers; that in the absence of specific evidence of custom in any particular case, the Court's approach should now be crafted from both those sources; that for a child not of the blood, adoption alone is not sufficient to confer a right of succession; and that in addition to the adoption it must be shown that the adoption had "matured" in the sense that the adoptee was accepted by the adoptive family.

[43] The one aspect of Isaac J's approach which we think unworkable concerns the date at which succession rights crystallise. To qualify as a right of succession, the right must be capable of objective determination as at the date of the deceased's death. Many important legal consequences follow from the right to succeed to property. Among others, they include the immediate right to possession and income, the right to exclude others from the property, and the liability to pay national and local taxes. Property ownership cannot be left in a state of limbo. Litigation may be necessary to resolve any dispute over who has the right to succeed to property. But, even then, a court's judgment over succession rights will have retrospective application. It will establish ownership as from the date of the deceased's death.

[44] There would be real difficulties in a test which tried to base succession rights on the attitude of individual members of a deceased's family *after* the deceased had died. It would mean that no-one could say who had succeeded to a given property until all members of the deceased's family had been traced, and their consent obtained. Until that had occurred one or more members of the family could veto the succession. The consents might never be obtained. The scheme would be unworkable in the absence of a legislative scheme setting appropriate time limits and procedures. Even then it

would have more in common with a scheme for making a communal gift to the adoptee after the deceased's death than a right of succession as that term is normally understood.

[45] We accept that for present purposes maturation of an adoption must be demonstrated by the adoptee's full acceptance by the adoptive family. Whether the adoptee had been fully accepted by his or her adoptive family necessarily involves a value judgment to be exercised in the light of all the facts leading up to the deceased's death. There is no right of veto exercisable after the deceased had died.

[46] Two further aspects require clarification. One concerns the meaning of "acceptance" for present purposes. The *Emma* cases focus on family status, and therefore acceptance as a member of the family, rather than intentions in relation to property succession in particular. With Isaac J, we are inclined to take a restrictive view of qualification for adoption succession rights. We therefore accept that it is for the adoptee to show that by the time the deceased died, the family accepted that he or she would be treated in the same way as a deceased person's natural children for succession purposes. In principle that might be shown by direct evidence or as a matter of inference.

[47] Also requiring clarification is the meaning of "family" for present purposes. There is an ever-widening circle of persons to whom anyone can be said to be related. At some point the connection between the deceased and distant relatives will be so remote that it would be unrealistic to expect them to play any meaningful part in family attitudes towards the adoptee. Our impression from the cases is that in determining whether an adoptee has been "accepted" for present purposes, greater weight was intended to be given to the attitude of the adoptee's adoptive parents and siblings than to the attitude of distant relatives. Between those extremes there may be room for varying degrees of weight to be given to the roles and attitudes of various family members.

[48] In summary, as a general rule, a non-blood adoptee has no succession rights unless he or she establishes that by the time the deceased died the deceased's family had accepted that he or she would be treated in the same way as a the deceased's natural children for succession purposes. For this purpose greater weight is to be given to the attitude of the deceased and immediate family than to more distant relatives. Those principles remain subject to any contrary opinion of the Aronga Mana

of the island or vaka concerned, or to reliable evidence from some other source as to the particular custom applicable to the particular locality in question.

Had the Appellant's adoption "matured" by the date of death in the present case?

[49] Isaac J considered that the adoption of the Appellant had not "*matured*" sufficiently because of the opposition to these proceedings from at least the two Respondents who were next-of-kin. Isaac J did not attempt to determine whether the Appellant had been accepted by his adoptive family by the date of death. This Court, therefore, must decide whether there was sufficient evidence in the High Court to determine that question.

[50] The current opposition of the Respondents might be regarded as indirect evidence of a lack of acceptance of the Appellant before the deceased died but views expressed after the competing applications for succession were filed, necessarily carry little weight.

[51] The principal indication that the appellant was accepted as a member of the family was the 1973 occupation order of part of the deceased's land in his favour which occurred after the family had agreed to it. This occupation order was converted into a lease of in 1981, again with family support which also was demonstrated in 2007 when the family consented to a five-year extension of the lease and a planned sublease. They also agreed that on expiry of the lease the land should vest in the Appellant's children. However, the land was vested in the Appellant and his wife.

[52] The Appellant also claims that the deceased willed Turamatuti land to him. This purported devise was without consultation with the next-of-kin.

[53] The deceased's action in leaving land to his adopted son, the Appellant, rather negates the statement made by the Appellant's mother at the time of the adoption order, as recorded in the background facts referred to in paragraph 11 of this judgment. That statement whilst having no binding force is nevertheless a clear indication of the adoptive mother's view expressed at the date of the Appellant's adoption when he was aged 16. There was also a statement by the deceased's brother – also thus recorded – that the deceased did not set aside any land for the Appellant in his lifetime.

[54] The evidence of the attitude of the next-of-kin to the adoption of the Appellant – as expressed during the lifetime of the deceased seems unequivocally to have been

supportive of his adoption by the deceased. They did not oppose the Appellant's benefiting from the deceased's actions with regard to the land on which the Appellant built his home. Opposition to the Appellant's succession appears to have come after the death of the deceased. In the Court's view he evidence shows that the adopted status of the Appellant had 'matured'/'developed' sufficiently over the years to entitle him as an adopted child to succeed to his adopting father's land.

Decision

[55] The appeal is allowed and the orders sought by the Appellant in the High Court may be made. Liberty to apply to the High Court, if there is no agreement as to the form of the order.

[56] Costs to the Appellant $2,000 plus disbursements as fixed by the Registrar. Costs in the High Court in favour of the Appellant to be fixed by that Court.

Barker JA

Fisher JA

Paterson JA