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

CA NO. 1/2017

BETWEEN	**ATTORNEY-GENERAL FOR THE MINISTRY OF JUSTICE (SURVEY DEPARTMENT)**	
	Appellant	
AND	**TAI KOKAUA**	
	First Respondent	
AND	**HENRY BROWN**	
	Second Respondent	

Coram: Williams P (Presiding)
Barker JA
White JA

Hearing: 12 June 2017

Counsel: Mr D James, Solicitor-General for Appellant
Mr C Little for First Respondent
Mrs T Browne for Second Respondent

Judgment: 6 July 2017

JUDGMENT OF THE COURT

A. The appeal by the Attorney-General against the interim High Court compensation decision is dismissed.

B. The High Court interim directions relating to determination of quantum of compensation remain in place.

C. The Attorney-General is to pay the sum of $3,000 in costs to each of the First and Second Respondents, together with disbursements as fixed by the Registrar.

D. Costs in the High Court should be determined by that Court in light of this judgment.

Solicitors: Crown Law Office for Appellant
Little & Matysik PC for First Respondent
Browne Harvey & Associates PC for Second Respondent

Introduction

[1] The First Respondent, Tai Kokaua (Tai), mistakenly built a home in 2006 on land owned by the Second Respondent, Henry Brown, and his family (the Landowners). Tai had relied on an incorrect survey map obtained from the Survey Department, now the Ministry of Justice, represented by the Solicitor-General (the Crown).

[2] Following protracted Court proceedings in the Land Division of the High Court, which we describe below,[1] Savage J, in an interim decision delivered on 15 February this year, indicated he intended to make orders:[2]

a) for occupation in favour of Tai under s 129A of the Property Law Act 152 (the PLA); and

b) for compensation against the Crown in favour of the Landowners based on a finding of negligence by the Survey Department in giving Tai the incorrect survey map and a finding there was no contributory negligence by anyone else.

[3] The Judge also indicated in his interim decision that the issue of quantum of compensation would be determined later. In the absence of agreement between the parties, a further hearing would be held following receipt of further submissions.

[4] The Crown appeals against the High Court compensation order on the following grounds:

a) The Land Division of the High Court lacked jurisdiction to make the order;

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[1] At [8] - [15]

[2] *Tai Kokaua v Brown* HCCI (Land Division) App No. 4/2007, 15 February 2017, at [67]

b) The High Court had no jurisdiction to make the order because the PLA does not bind the Crown;

c) The High Court's finding of negligence was wrong;

d) The High Court's finding that there was no contributory negligence by anyone else was wrong;

e) There was a breach of the rules of natural justice at one of the hearings in the case; and

f) There were serious difficulties involved in determining the quantum of compensation.

[5] Tai and the Landowners oppose the appeal. The Landowners also say that if the Crown appeal is allowed and the order for compensation in their favour is set aside the occupation order in favour of Tai should also be set aside. Tai opposes this suggestion.

[6] As we have reached a clear view that the Crown appeal against the compensation order must fail, we are able to adopt the High Court Judge's summary of the background and refer briefly to the procedural history of the case and the reasons for the Judge's decision before addressing each of the Crown's grounds of appeal.

Background

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

> "**Background**
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> [2] Both the Aitu/Brown families and the Kokaua family had previously been owners in the land known as Pokoinu Section 107. On 17 May 1991, in response to an application by the Landowners, the Court partitioned Pokoinu Section 107 (the Partition Order), as follows:
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> a. Pokoinu 107H (107H) in the name of Mata Mereana and Mavis Aitu Pori in equal shares; and

b. Pokoinu 107J-M (107J-M) in the names of the remaining owners, including Tai.

[3] On 12 June 1991 Mrs Browne, acting for the Aitu/Brown families, advised the Survey Department of the Partition Order, by letter. She attached four plans, noted the instructions for the partition and suggested that the Survey Department obtain the Court transcript of the Partition Order. The Partition Order was recorded against the Register of Titles of the parent block. The titles of 107J-M and 107H record that these sections were created by that Partition Order.

[4] Some years later, about 2003, Tai decided that she wished to build a house for herself on the family land. She sent her niece, Ann Raymond, as her agent, to ascertain what land was available. Ms Raymond acquired a survey map for the Pokoinu section from the Survey Department, which she and the private surveyor, Kenneth Tiro, used to identify 107J-M as a possible section that Tai and her sister could acquire occupation rights over. Using the documentation from the Survey Department, Mr Tiro produced a plan for the proposed occupation rights, which Ms Raymond took to a family meeting on 8 December 2013. At this meeting, the family consented to Tai and her sister (Noora) applying for occupation rights over 107J-M.

[5] On 24 February 2004 this Court granted two rights of occupation over 107J-M to Tai and Noora, in accordance with Mr Tiro's plans. Tai's occupation right (the Occupation Right) covered 2015m2 at the front of the section. Noora's occupation right covered 2045m2 at the back. Sometime in early 2004, the date is contested, Tai and her husband cleared the land over which the Occupation Right had been granted to her. They began building a home in mid-2006.

[6] In late 2006 the Landowners realised that something was amiss regarding the plans for 107J-M and 107H. In 2007 they discovered that the plans relied upon for the Kokaua sisters' occupation rights had erroneously included part of 107H within the 107J-M survey. Not only that, but the Court had subsequently granted occupation rights to two of the Landowners, Henry Brown, and his sister, Maryanne Brown, which overlapped with the Kokauas' occupation rights. It then transpired that Tai had mistakenly built her home entirely on 107H."

Procedural history

[8] The protracted history of the High Court proceedings is also described by the Judge.[3] In essence there were competing applications in 2007 by the Landowners and Tai in respect of 107H on which Tai had mistakenly built her home. The Landowners' application was for a rehearing of Tai's occupation

[3] At [7] - [11]

right under s 390A of the Cook Islands Act 1915, while Tai's application was under ss 129 or 129A of the PLA.

[9] There were hearings of these applications in the Land Division of the High Court before Hingston J on 18 March 2008 and Savage J on 19 October 2010 and 11 and 20 October 2011. Evidence filed for the parties and taken at each of these hearings provided the basis for the factual findings made by Savage J in his interim decision.

[10] During the 18 March 2008 hearing before Hingston J there were suggestions by the Judge that the Survey Department had been negligent and should be liable for compensation. As the Survey Department was not a party to the proceeding at that stage, steps were subsequently taken pursuant to directions made by the then Chief Justice to join the Survey Department as a party to the proceeding and for a third party notice to be served by Tai on the Ministry of Works (Survey Department) claiming compensation for the loss of the use of 107H.[4] The third party notice was issued on 28 November 2008.

[11] Following service of the third party notice on the Ministry of Works, the then Chief Justice made further directions by consent relating to filing by the Ministry of its statement of defence and the further hearing of the applications, including a direction for witnesses who had already given their evidence to attend again for cross-examination by Crown counsel.[5] It is clear from the High Court transcript of the hearings before Savage J that all of the relevant witnesses were recalled for cross-examination by Crown counsel and that further evidence was called for the Crown.

[12] At the hearing on 20 October 2011 before Savage J, the Judge determined that the two applications should be heard separately.[6] This led to a fresh application being filed by Tai on 21 October 2011 seeking orders that:

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[4] Minutes of Williams CJ dated 9 November 2007, 28 June 2008 and 11 November 2008

[5] Minute of Williams CJ dated 23 December 2008

[6] Above n 2 at [8]

a) she be granted a right of occupation of 107H; and

b) the Landowners or the Crown pay compensation by reason of their negligence.

[13] No notices of opposition appear to have been filed by either the Landowners or the Crown. In particular, the Crown did not file any notices of opposition alleging contributory negligence by Tai or the Landowners. Nor did the Landowners file a separate application for compensation for negligence against the Crown. Instead all parties filed further submissions in the period 2012 to 2014.

[14] The application by the Landowners under s 390A of the Cook Islands Act 1915 was dealt with by Weston CJ on 19 July 2012 with the cancellation of Tai's occupation right under that Act.

[15] This left for determination Tai's occupation and compensation applications.

The High Court decision

[16] As already noted, Savage J has indicated he is prepared to grant Tai's application for an occupation order under s 129A of the PLA. His reasons are:

a) Section 129A is available to Tai because she is a person with an interest in a piece of land (107J-M) and she clearly built "on a wholly other piece of land" (107H);[7]

b) It is uncontested the survey plans provided by the Survey Department were incorrect;[8]

c) Relying on the inaccurate survey plan, Tai built on 107H in the mistaken belief that it was part of 107J-M;[9]

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[7] At [25]
[8] At [26] - [27]

d) In doing so, neither Tai nor her agent knew the land was the incorrect land;[10]

e) As the Landowners ultimately accepted Tai should be entitled to some form of relief, it was just and equitable to make an order under s 129A (2) of the PLA;[11]

f) It was just and equitable for Tai to be granted relief in the nature of a right to possession of the land she occupies;[12]

g) Tai should receive an occupation right under the same terms and conditions as the previous Occupation Right over the quarter acre of 107H upon which her home is built, as well as the additional quarter acre of land which she and the Landowners agree cannot be separated from the rest of the section because of difficulties with the terrain;[13]

h) The requirements of s 50 of the Cook Islands Amendment Act 1946 are met because, in the exceptional circumstances of this case, a majority of the Landowners of 107H wish to grant an occupation right to Tai on the terms mentioned above.[14]

[17] Having reached the conclusion that Tai is entitled to an occupation order, the Judge then indicated he intends to make an order for compensation against the Crown in favour of the Landowners. His decision is based first on a finding of negligence against the Survey Department in respect of the incorrect survey plans.

[18] As the Judge's finding of negligence is challenged by the Crown, we set out the Judge's reasons for his finding in full:

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[9] At [27]
[10] At [27] - [28]
[11] At [29] - [30]
[12] At [31] - [33]
[13] At [34] - [35]
[14] At [36] - [38]

"[58] Having perused the file and the documentation submitted I find that on the balance of probabilities the Survey Department was negligent in maintaining its records, such that the land was misidentified in plans held in the Department's possession. The Survey Department has conceded that it owed a duty of care to those seeking its information to keep its records up to date and accurate (although that duty is limited to amending its records as authorised by law). It was entirely foreseeable that failure to fulfil this duty could result in land being misidentified in the manner that has occurred, or similar.

[59] I do not accept that Tai is responsible for the mistake, for the reasons I already discussed in relation to her entitlement to relief. In relation to the Landowners, I am similarly unconvinced that they bear responsibility for the incorrect plans or the reliance place on them. I do not agree that the first respondents are responsible for failing to follow up with the sealing of the partition order. Mrs Browne submitted to the Court that the letter that she sent to the Survey Department, along with the relevant plans, should have been sufficient for the Survey Department to be aware that it needed to update its records. If the Survey Department required the Landowners or their legal counsel to personally deliver the Partition Order to the Survey Department, they should have responded to the letter to say so.

[60] The Survey Department appears to argue that, despite the receipt of the letter, it was not legally authorised to do a new survey of the land because it had not received a draft or sealed Partition Order from the Landowners. However, a new survey was prepared following the receipt of Mrs Browne's 1991 letter and placed in the Survey Department's records. This is evident because the plans were updated to include reference to 107J-M (which did not exist prior to the partition). However, the lot called 107H was missed out (despite having also been referred to in Mrs Browne's letter). In the absence of an explanation as to how this update of the Survey Department's records happened, one can only reasonably presume that the Survey Department did in fact complete a survey (albeit an incorrect one)."

[19] Having made this finding of negligence, the Judge then rejected the Crown's argument there was any contributory negligence by the other parties. Because this finding is also challenged by the Crown, we set out the Judge's reasons in full:

"[61] The evidence submitted about Tai's and the Landowners' purported knowledge of the mistake is also not convincing. In its written submissions, the Department posits the applicant's and the first respondent's contributory negligence by arguing that both those parties ought to have known the land had been partitioned and that:

... they ought to have known because there are public records held at the Land Division of the High Court which would show that the land had been partitioned and *there was a letter dated 12 June 1991 from the Respondents solicitor with proposal plans at the offices of the Third Party indicating that the partition order had been made and how the land was to be partitioned*...(emphasis added).

I not only reject this argument, but I also take it as an inadvertent admission by the Survey Department that the letter in its possession, detailing the partition order and how the land had been partitioned, was evidence enough, for whoever might see it, of how the land should have been surveyed. Following this logic, I point out that the letter's audience was the Survey Department, not the other parties, and it is the Survey Department's responsibility, not that of the other parties, to maintain the integrity of land records. One is left to wonder what the purpose of a Survey Department might be, if parties are simply expected to inform themselves about pieces of land based on correspondence in the Survey Department's possession, rather than the records themselves.

[62] Furthermore, undoubtedly the parties knew that Pokoinu 107 had been partitioned. However, I cannot see how it follows that they therefore should have known that the plans updated to include those partitions had labelled those partitioned sections incorrectly. Similarly, the fact that the occupation rights to Tai and her sister were advertised in the panui does not support the Survey Department's case either because the announcements referred to occupation rights over 107J-M; assuming that any of the Landowners did see these announcements, there would have been no way of knowing that the land was actually 107H.

[63] In relation to the parties' conduct in the lead-up to the grant of the Occupation Right and subsequent events prior to 2007, based on the oral evidence presented at hearing I have no reason to believe that either Tai, Ms Raymond, or Henry Brown, were aware at the relevant times of the mistakes in the survey plans, or that they wilfully closed their eyes to mistakes. All parties, the private surveyors included, were entitled to rely on the Survey Department plans and to presume they were correct. It would rather defeat the point of a Survey Department existing if members of the public were expected to treat the surveys and plans it held and disseminated with some suspicion."

[20] Finally, the Judge decided the issue of quantum of compensation should be determined later.[15]

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[15] At [64] - [67]

The Crown's appeal

[21] As already noted, the Crown appeals against the High Court compensation order on the grounds set out in paragraph [4] above.

[22] We note that leave was granted to the Crown by this Court to file amended grounds of appeal in respect of the ground that the High Court had no jurisdiction to make the compensation order because the PLA does not bind the Crown.[16] In granting leave, the Court made it clear there might be adverse cost consequences for the Crown if the Court found this new ground of appeal lacked merit.

[23] We also note that the natural justice ground of appeal was raised for the first time in the Crown's written submissions.

[24] We now address each of the Crown's grounds of appeal.

The Land Division of the High Court lacked jurisdiction to make the order

[25] The Crown submits that the Land Division of the High Court did not have jurisdiction to make the compensation decision because:

a) The High Court is established under Article 47 of the Cook Islands Constitution with three divisions.

b) The Land Division has only the jurisdiction expressly conferred on it by enactment: Article 48(2) of the Constitution.

c) The Land Division's jurisdiction is limited to land and land interests: ss 386 and 390A-416 of the Cook Islands Act 1915 and the Code of Civil Procedure of the High Court 1981 Pt XXXIII.

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[16] Minute of the Court dated 5 May 2017.

d) The claim for compensation should have proceeded in the Civil Division not the Land Division.

[26] As the Solicitor-General acknowledged, the short answer to this submission is that under Article 47 of the Constitution a judge of the High Court is able to exercise the jurisdiction and powers of a judge of any division. This means that Savage J, as a duly appointed Judge of the High Court, was entitled to exercise the jurisdiction of both the Land Division and the Civil Division. The fact that he was sitting in the Land Division when he made the occupation order in favour of Tai under s 129A of the PLA did not prevent him from making the compensation order in the Civil Division. To conclude otherwise would be an artificial approach to the jurisdiction of a High Court judge under Article 47.

[27] We therefore reject this ground of appeal.

The High Court had no jurisdiction to make the compensation order because the PLA does not bind the Crown

[28] The Crown submits that the High Court had no jurisdiction to make the compensation order under s 129A of the PLA, which was the only jurisdiction pleaded in the Land Division, because the PLA does not bind the Crown.

[29] We agree with the Solicitor-General that there was no jurisdiction in this case to make an order for compensation against the Crown under s 129A. The power of the High Court to make an order for compensation under s 129A(2)(c) of the PLA is limited to the persons entitled to claim relief under the section and those affected by any relief granted under the section. The power does not extend to orders against third parties such as the Crown.

[30] But the absence of jurisdiction under s 129A of the PLA is not the end of this ground of appeal. As the Solicitor-General acknowledged, under the Crown Proceedings Act 1950 the Crown is liable in tort if it has vicarious liability for a person who commits a tort and, if that person is treated as the Ministry (of Justice) that administers the Survey Department, a claim may survive.

[31] During argument before us, the Solicitor-General also accepted there was no reason why the High Court did not have jurisdiction under the Crown Proceedings Act to find the Crown liable in tort for negligence by the Survey Department in respect of the incorrect survey plans.

[32] The fact that the claim for compensation was not brought expressly under the Crown Proceedings Act did not deprive the High Court of jurisdiction. Nor did the fact that the Landowners had not filed a separate application for compensation for negligence against the Crown.

[33] These procedural omissions did not deprive the High Court of jurisdiction when there is little doubt that the parties proceeded on the basis that a claim for compensation against the Crown based on the allegation of negligence by the Survey Department was in substance squarely before the High Court.

[34] The claim for compensation against the Crown was expressly pleaded in Tai's fresh application of 21 October 2011 and was fully argued in the High Court. The Crown was clearly on notice and prepared to defend the claim in the High Court. These arguments now raised for the Crown were not raised in the High Court.

[35] We therefore reject this ground of appeal.

The High Court's finding of negligence was wrong

[36] The Crown submits the High Court's finding of negligence by the Survey Department was wrong. The Solicitor-General pointed to "the problematic title records, and the conduct of the two directly involved parties, two other surveyors, and the blithe spirit demonstrated by both owners and their families, in fact of the significant building project initiated and completed (2004 to 2006) before objection was communicated in 2007."

[37] This submission for the Crown faces the following significant difficulties:

a) The High Court Judge adopted the well-established approach to the issue of negligence based on *Anns v Merton Borough Council.*[17]

b) As recorded in the High Court judgment,[18] the Crown had conceded the Survey Department owed a duty of care to those seeking its information to keep its records up to date and accurate. On appeal the Solicitor-General did not seek to resile from this concession.

c) The High Court made a finding of fact that the survey plans provided by the Survey Department to Tai (through her agent) were incorrect in that they erroneously included part of 107H within the 107J-M survey. The evidence before the Court made this finding inevitable. It was not seriously challenged by the Solicitor-General on appeal.

d) The Survey Department was in breach of its duty of care.

e) The High Court made a finding of fact that Tai (and her sister) had relied on the incorrect survey plans when their agent obtained the consent of her family to them and Tai applying for occupation rights over 107J-M proceeded to build her home entirely on 107H, land which she did not own.

f) As the High Court found, it was entirely foreseeable that the Survey Department's breach of its duty of care could result in land being misidentified as occurred.

g) The Survey Department's breach of its duty of care in this case caused Tai to build on the wrong land by mistake and the Landowners to suffer loss as a consequence.

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[17] *Anns v Merton Borough Council* [1977] 2 All ER 492 (HC) at 498.

[18] Above n 2 at [58].

h) The conduct of the other parties is relevant to the issue of contributory negligence and not to the issue of negligence by the Survey Department.

[38] We therefore reject this ground of appeal.

The High Court's finding that there was no contributory negligence was wrong

[39] The Crown submits the High Court's finding that the Survey Department was solely at fault and there was no contributory negligence by others was wrong because it was not supported by the evidence. The Solicitor-General pointed to evidence relating to:

a) The involvement of Tai's own surveyor who apparently did not locate the land registration ledger for the property which would have reflected the 1991 partition order;

b) The responsibility of the Landowners to produce the partition order to the Survey Department;

c) The absence of any adequate explanation for how the building project proceeded without objection for over a year; and

d) The involvement of Tai's agent.

[40] The Solicitor-General also submitted that the need to measure the Crown's level of culpability in the context of the material causes of the loss was particularly sensitive in circumstances where there is no contributory negligence legislation in the Cook Islands. Following the hearing, however, the Solicitor-General filed a memorandum dated 16 June 2017 acknowledging that under the Cook Islands Law Reform Act 1936 contribution among tortfeasors was available.

[41] The submission for the Crown based on the evidence faces a number of significant difficulties. First and foremost, Savage J's finding that none of Tai,

her agent or Henry Brown was contributorily negligent was based principally on the oral evidence presented at the hearing. On the basis of this evidence the Judge concluded:[19]

> "I have no reason to believe that either Tai, Ms Raymond, or Henry Brown, were aware at the relevant times of the mistakes in the survey plans, or that they wilfully closed their eyes to mistakes."

[42] An examination of the relevant evidence at the hearings shows that these credibility findings were open to the Judge. Indeed it appears that Crown counsel, when cross-examining Tai, Ms Raymond and Henry Brown, did not put the allegations of contributory negligence to them. While Tai's surveyor, Mr Tiro, and Henry Brown's nephew, Mark Brown, were cross-examined on these allegations, it was incumbent on the Crown to put them to the parties themselves. Furthermore, Savage J rejected the allegations based on the evidence of Mark Brown.[20] As Mrs Browne pointed out, a careful examination of Mark Brown's evidence supported the Judge's findings.

[43] Second, it is well established that an appeal court will not lightly revisit credibility findings of this kind made by a judge who had the significant advantage of having seen and heard the witnesses.[21] The Solicitor-General has not persuaded us that there is any good reason to revisit the credibility findings made by Savage J in this case.

[44] Third, the specific items of evidence relied on by the Solicitor-General are all tangential to the allegations of contributory negligence:

a) As the Crown submitted in the High Court,[22] Tai's surveyor owed her a duty of care to ensure his plan's accuracy. An allegation of contributory

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[19] Above n 2 at [63].
[20] At [52]-[53] and [63].
[21] *Austin, Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141 at [5] and [13].
[22] At [51].

negligence against her surveyor would have required his joinder as a party to the proceedings.

b) As Savage J found,[23] the Landowners were not responsible for failing to follow up with the sealing of the partition order. The evidence clearly established that the Survey Department was on notice of the order and consequently the need to update its records accurately.

c) The building projected proceeded without objection for over a year because the parties had relied on the incorrect survey plan.

d) The evidence of Tai's agent, Ms Raymond, was accepted by the Judge.

[45] We therefore reject this ground of appeal.

There was a breach of the rules of natural justice

[46] The Crown submits that there was a breach of the rules of natural justice as a result of the statements made by Hingston J during the hearing on 18 March 2008 that the Survey Department had been negligent and should be liable for compensation. The Solicitor-General submitted that these statements, which were made in the absence of the Crown, indicated the High Court had pre-determined the issue of liability for compensation before hearing from the Crown.

[47] The problem for the Crown with this submission is that once the Crown was joined as a third party and as a respondent to the proceeding it was given every opportunity to present its case in full and to answer the statements made by Hingston J at the hearing in 2008. As we have already mentioned at [11] above, the then Chief Justice's minute of 23 December 2008 included a direction for witnesses who had already given their evidence before Hingston J to attend again for cross-examination by Crown counsel. The Crown was

[23] At [59].

represented at the subsequent hearings before Savage J in 2010 and 2011. Further evidence was called at those hearings and witnesses were cross-examined.

[48] It is far-fetched to suggest that Savage J had pre-determined the case against the Crown because of the statements by Hingston J. It is clear from the record of the hearings before Savage J and a careful reading of his judgment that he approached the compensation issue with an open mind and considered all of the relevant arguments raised by the Crown in the High Court. The Solicitor-General was unable to point to any evidence to support the allegation of pre-determination.

[49] Furthermore, now that the Crown has exercised its right of appeal to this Court and has had an opportunity to challenge the High Court compensation decision on all grounds it wishes to, the allegation of pre-determination based on the statements by Hingston J has no merit.

[50] We therefore reject this ground of appeal.

There were serious difficulties involved in determining the quantum of compensation

[51] The Crown submits there are likely to be a range of serious difficulties involved in determining the quantum of compensation payable by the Crown to the Landowners for negligence. The Solicitor-General referred to various valuation and other related issues.

[52] In our view it is premature for this Court to express any view on these issues until the High Court has had an opportunity to consider them. They are likely to involve expert evidence from valuers. It will of course be open to the Crown to raise the difficulties it has identified and for the High Court to decide whether they should affect the issue of quantum. If the Crown is dissatisfied with the outcome, it may then appeal to this Court in respect of those issues in light of any expert valuation evidence.

[53] We therefore reject this ground of appeal.

Costs

[54] As all the Crown's grounds of appeal have been unsuccessful, including the Crown's new grounds, there is no reason why costs should not follow the event.

Result

[55] For the reasons we have given in this judgment, we have decided:

a) The appeal by the Attorney-General against the interim High Court compensation decision should be dismissed.

b) The High Court interim directions relating to determination of quantum of compensation should remain in place.

c) The Attorney-General should pay the sum of $3,000 in costs to each of the First and Second Respondents, together with disbursements as fixed by the Registrar.

d) Costs in the High Court should be determined by that Court in light of this judgment.

Williams P
(Presiding)

Barker JA

White JA