

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(LAND DIVISION)**

APPLICATION NO. 474/12

IN THE MATTER of Rule 132 and/or 247 and/or 354 of the Code of Civil Procedure of the High Court 1981 and Sections 409(d) and (e) of the Cook Islands Act 1915 and Section 45(2) of the Judicature Act 1980-81

**AND
IN THE MATTER** of an Application for a Permanent Injunction and/or order for Vacant Possession

**AND
IN THE MATTER** of an Application for a Warrant of Execution

BETWEEN **AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED**, a duly incorporated company having its registered office at Rarotonga
(Applicant)

AND **DANIEL NGAMETUA MATAROA** of Rarotonga, Entertainer and **OROPAI MATAROA** of Rarotonga, Occupation Unknown
(Respondents)

Date of Hearing: 19 March 2013

Counsel: Mr C Little for the Applicant
Mr D Mataroa in person for the Respondents - *(left Court before dictation of judgment)*

Judgment: 19 March 2013

JUDGMENT OF HUGH WILLIAMS J

[FTR 12:22:49]

[1] On 26 November 2007 the Respondents in this application, Mr and Mrs Mataroa signed two mortgages of their leasehold property of 501m² in Akaoa Section 66B, Lot 8, Arorangi as described in Survey Office Plan SO 924.

[2] The mortgage was in conventional form including in clause 14 the paths available to the Bank on default to take possession of the mortgaged premises to receive the rental in profits, to distrain on rents then due and, more relevantly, issue an action of ejectment to obtain vacant possession of the mortgaged land.

[3] That application issued on 30 January 2012 was assented to by Justice Isaac on 7 March 2012, when leave was granted under s 646 of the Cook Islands Act 1915 to enforce the security against Mr and Mrs Mataroa.

[4] Since that time the Bank has unsuccessfully been endeavouring to obtain possession of the mortgaged land in the face of adamant opposition by Mr and Mrs Mataroa.

[5] For the purposes of this Judgment it is necessary to note no more than an outline of Mr and Mrs Mataroa's extensive objections. They include:

- a) that they are "*native sovereign proprietors, a flesh and blood man and blessed living Soul serving God alone*". That is a stance taken on a number of occasions by Maori tangata whenua in New Zealand, and has been repeatedly dismissed in the Courts – including the Supreme Court – of that country. As advised to Mr Mataroa in the discussion between bench and bar of this morning, those decisions apply equally to all persons in the Cook Islands, particularly Cook Islanders such as himself and his wife.
- b) Secondly, the assertion was that in some way the mortgage advance was invalid because in making it the Bank was creating money or was providing credit and it may not have available facilities to honour the credit. It is sufficient for present purposes to comment, as Mr Mataroa was advised, that it is orthodox economic theory that banks continually create money and that they do not have to have particular credit available to make advances provided that they have facilities available from which those advances can be made. Undoubtedly they had such in this case. And Mr and Mrs Mataroa had available at least the credit for the \$165,826 advanced under the mortgages.

[6] The most significant issue raised by Mr Mataroa was that a plan of which he had given a copy to the Court was not in fact the mortgaged land. Mr Little advised that when that issue had been raised with him by Mr Mataroa at an earlier date, he had the situation checked carefully by the Bank and was assured that the mortgages related to the land mortgaged and described in the Court documents, but would check again before any writ of possession is executed.

[7] And finally Mr Mataroa made clear – and was adamant about this – that he and his wife would not leave the land voluntarily. He was advised that in that case he and his wife would be evicted and that if they resisted in a physical sense they exposed themselves to the possibility of arrest and prosecution as the Police are likely to be present to ensure no breach of the peace occurred.

[8] There have been delays and earlier hearings concerning this matter. They have been caused almost entirely by Mr Mataroa who had the habit of endorsing documents served on him “receipted on your offer of contract is acknowledged and hereby returned for discharge and closure, I do not wish to contract with you.” Mr Mataroa was advised during the exchanges between bench and bar that it is not a matter of contract nor is parliamentary democracy necessarily a question of representation in the sense that electors must consent to being represented by the members of Parliament elected for the constituency in which they live. They have the right to vote.

[9] It is clear that this matter needs to be moved forward. Mr Little for the Bank, in response to an earlier request from Savage J, filed a memorandum bringing attention to questions as to the Court’s jurisdiction to make the necessary orders in this case. Mr Little drew attention to the Judicature Act 1980-81 Sections 45 to 48.

[10] Mr Little applied for a writ of possession which seems the appropriate execution process in this instance. The issue of a writ of possession is mandated by Section 45, 46 and 48 which read:

45. Writs of sale and possession - (1)

(2) When by any judgment of the High Court any person is ordered to deliver possession of land or chattels, the party to whom such land or chattels are ordered to be delivered may cause a writ of possession to be issued.

46. Effect of writ of possession - A writ of possession shall authorise the officer to whom it is addressed to deliver to any party named in the writ possession of any land or of any chattels specified in the writ, and for that purpose to eject any other person from such land, or to seize and take possession of any such chattels.

48. Issue of writs of sale or possession - Every writ of sale or writ of possession shall be issued by the Registrar of the High Court under the seal of the Court, and shall be addressed to an officer of the Court or to a constable.

[11] It is clear in terms of Section 46 that the Court must authorise and address the writ to an officer for them to eject Mr and Mrs Mataroa from the mortgaged land. The officer to whom the writ is addressed may be either an officer of the Court or a constable.

[12] In this case it would seem to be preferable to direct the writ of possession to the Registrar of this Court, Ms Henry-Anguna, for her to execute the same but in order to guard against the threatened breach of the peace – clearly outlined in their submissions – by the Mataroas in refusing to leave the property it would obviously be sensible for the Registrar to be accompanied by one or more Police officers to ensure her safety, to ensure the proper execution of the writ and guard against any possible breach of the peace or other, more serious, criminal behaviour.

[13] Mr Little seeks costs on behalf of the Bank on an indemnity basis in the sum of \$8,682.00.

[14] It is clear from the history of the matter on the Court files, that Mr Mataroa's opposition to these matters moving forward in any way at all, and certainly his opposition to the making of an order which will result in Mrs Mataroa and himself being evicted from the land, has been adamant right through. It is clear that this falls within the situations in which indemnity costs are justified. The Bank is entitled to recover its solicitor's costs on a solicitor and client basis under the terms of the mortgage. There will therefore be an Order that the Respondents pay the costs of the Bank's solicitors in the sum of \$8,682.00.

[15] There will also be an Order to type the transcript of the exchange in Court this morning and a copy of this Judgment and furnish those to Mr Little who will

serve the Order for the writ of possession and serve all three of those documents on the Respondents. The Bank is not to take steps to execute the writ of possession until seven days after service in order to give Mr and Mrs Mataroa a last opportunity to vacate their home and land without suffering the indignity of being forced off.

A handwritten signature in cursive script, appearing to read "H Williams", written in black ink. The signature is positioned above a thin horizontal line.

Hugh Williams, J