

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

APPLICATION. NO. 1013/2022

IN THE MATTER of Section 409(d) of the Cook Islands Act 1915
and Rule 68(8)(a), Rule 126, Rule 132 of the
Code of Civil Procedure of the High Court 1981

AND

IN THE MATTER of an application for an interim injunction on the
land known as **ARETERE 79, AVARUA**

BETWEEN **EDITH MIHI ANGENE** of Avatiu, Rarotonga

Applicant

AND **CLAUDINE DAUVOIS**

Respondent

Hearing: 26 August 2022

Counsel: Mr T Nicholas for Applicant
Mr S Smith for Respondent

Date: 31 August 2022

JUDGMENT OF GRICE J
(Application for Ex Parte Interim Application Reasons)

[1] The applicant has filed an urgent ex parte application for an injunction to prevent Ms Claudine Dauvois from carrying out the burial of her husband on land known as Aretere 79, Avarua.

[2] Ms Dauvois has made arrangements to bury her husband, who died recently, on the land where she and her husband have lived for 47 years. Mr Dauvois died on Saturday, 20 August 2022.

[3] On Wednesday 24 August 2022, the digging of the grave on the property was commenced. They say:

"The applicant and her siblings do not consent to the respondent burying her husband on the land because:

- a) She is not a landowner.
- b) She is not a natural daughter of their father, as she claims.
- c) The said parcel of land is not in her name.
- d) The issue of her paternity is currently before the Court.
- e) She has other places to bury her husband."

[4] I directed the application and supporting documentation be served on Ms Dauvois and dealt with as a Pickwick application. The matter came before me on 26 August 2022. Mr Smith had been urgently briefed by Ms Dauvois. I heard from both counsel and Ms Dauvois was present.

[5] Following the hearing I made an order granting an interim injunction preventing the defendant and/or their agents, servants, or contractors from digging a grave on the land known as Aretere 79, Avarua, and the burial of the respondent's husband on this land until further order of the Court, subject to the applicant filing an undertaking as to damages. Reasons were to follow.

[6] The essence of the dispute between the applicant, Ms Angene, and Ms Dauvois relates to the right to occupy the land which, in turn, is based on whether Ms Dauvois can establish that she is a direct descendent of Pora Angene (Kani Pora Ariki Oi Paepae). It is not contested that Pora Angene is the father of Edith, Yvonne, and Vincent Angene. Edith Angene makes the application, but I am advised by counsel it is with the support of both Yvonne and Vincent.

[7] At present those children have succeeded and are registered as the direct descendants and successors of Pora Angene. Edith, Yvonne and Vincent say they have the occupation rights of the relevant land through Pora Angene. He had an occupation order dated 2 November 1979 from the Land Court of the Cook Islands. That land order provided that Pora Angene could use the site "for a dwelling house for the benefit of the said Pora Angene

and direct descendants".¹ The right of occupation was to be for the term of 20 years and thereafter for so long as Pora Angene and his direct descendants or any of them occupied the site. The dwelling house on the land could be leased to any other person with the consent of the Court.

[8] It is common ground that Ms Dauvois and her husband have lived on the property for 47 years. Her occupation predating the 1979 occupation order in favour of Pora Angene. The applicant says the respondent occupies the house through his occupation right.

[9] Through her counsel, Ms Dauvois said that she and her husband had built the house and had done so with the consent of Pora Angene.

[10] Ms Dauvois (nee Angene) has made various applications to the High Court (Land Division) including for revocation of a succession order² on the basis that the succession order in favour of the three siblings is incorrect and should include Ms Dauvois (Claudine Te Tumu Angene).³

The application for succession

[11] According to the Land Decision Sheet handed up by counsel the succession application by Ms Dauvois was adjourned on 14 July 2022 on the following terms:

"ADJ to allow documents to be translated by independent translation + to allow objections time to file evidence. Coxhead J."

Therefore, the succession application by Ms Dauvois has not been determined and will be contested by the applicant and her siblings.

[12] The matters are further complicated by the fact that Ms Dauvois and her husband built the house on the property subject to the occupation order in favour of Pora Angene with his agreement. There is no documentation in relation to that agreement nor the terms of it.

¹ Order of the Land Court of the Cook Islands dated 2 November 1979 in the matter of the land known as Aretere Section 79, Avarua, and in the matter of an application by Pora Angene for an order granting right of occupation.

² Section 450 Cook Islands Act 1915.

³ The two applications are filed in the High Court (Land Division) under Nos. 469/21 and 469/22.

[13] Pora Angene wrote a letter in Cook Islands Maori which, according to counsel, refers to Ms Dauvois as the "feeding child" not his natural child. He left a Will dated 1 March 2004 leaving any leasehold interests and estate in land in the Cook Islands to Edith, Yvonne, and Vincent. Mr Smith indicated that the validity of those documents would be contested by Ms Dauvois in various ways. In any event, he submitted that a right of occupation could not be left by a Will but, rather, depended on who were the direct descendants and whether there was continuous occupation.

[14] The position at present is that the applicant and her siblings have an extant succession order. According to the 1979 occupation order Pora Angene and his direct descendants have the right to occupy.

[15] This has been an ongoing contested matter and Ms Dauvois was aware of that. The applicant refused her consent to enable the burial to take place on 23 August 2022. Despite this the grave was dug.

[16] The parties, with the assistance of counsel, attempted to reach a resolution in the matter. Ms Dauvois indicated that she would agree to undertake to disinter her husband if she were unsuccessful in the land application. However, agreement was unable to be reached.

[17] Therefore, in view of the circumstances, I determined the interim injunction should issue until further order of the Court. Given the short timeframe of the matter the pleadings are not complete and I discussed with counsel a timetable, which was agreed, to enable the matter to be put properly before the Court for a determination in due course.

[18] Therefore, in summary, the applicants have a serious case to argue. They have been determined as the successors of Pora Angene who had the benefit of the occupation order. As his direct descendants they therefore have a claim to the occupation order in terms of the 1979 occupation order. Ms Dauvois has made a claim but that is yet to be determined.

[19] The claim has not yet been properly pleaded but digging a grave would be an interference with their rights as the occupiers and base a cause of action. On the material before me it is difficult to assess the merits of the case; other than the present rights, on the face of the documents, appear to be with the applicant and her siblings. There is material

which may support Ms Dauvois' claim, including documents relating to paternity, but they are yet to be officially translated.

[20] Turning to whether damages would be an adequate remedy. If Ms Dauvois' husband is buried on the site and she is unsuccessful in her claims it is likely that he will need to be disinterred given the present attitude of the applicant and her siblings. The matter is due to be dealt with by the Court in October 2022, just over a month away. Ms Dauvois knew of the contested position when she made arrangements for the burial, and that she did not have the consent of the applicant. That weighs against her in this application.

[21] The applicant has filed an undertaking as to damages.

[22] If Ms Dauvois is successful in her application to the Land Court she may be entitled to damages for the cost of reinterring Mr Dauvois on the site, if that is what she wishes.

[23] Given the urgency of the application and the information I have before me, the ex parte interim orders are made in order to maintain the status quo until the matter can be heard properly as follows:

"Order granting an interim injunction preventing the defendant and/or their agents, servants, or contractors from digging a grave on the land known as Aretere 79, Avarua, and the burial of the respondent's husband on this land until further order of the Court, subject to the applicant filing an undertaking as to damages."

[24] The Registrar will liaise with the Land Court to determine a suitable time to hear the application. A further teleconference should be convened to consider the timetable in view of the fact that the substantive land applications are due to be heard in October 2022, according to counsel. It may be appropriate to have the matters heard together.

[25] Accordingly, I make the following timetable directions, with the consent of counsel:

- a) The applicants are to file a statement of claim and notice of application for injunction (final) **on or before 3 days from the date of this Judgment.**
- b) The respondent will file any notice of opposition, statement of defence, and supporting affidavit **within a further 14 days.**

- c) Any affidavit in response is to be filed and served by the applicant **within a further 7 days**.
- d) Any reply by the respondent is to be filed and served **within a further 7 days**.

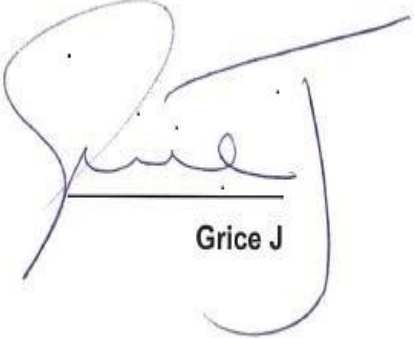
[26] Counsel are to file detailed submissions as follows:

- a) The applicant to file and serve submissions **at least 10 days before the date set for hearing**.
- b) The respondent is to file and serve submissions **at least 5 days before the date set for hearing**.

[27] The matter together with this Judgment is to be referred to the Land Court Justice dealing with the land matters for consideration.

[28] Leave is reserved to either party to apply for any further directions on 3 days' notice. In addition, leave is reserved to set aside the ex parte order on 14 days' notice.

[29] Costs are reserved.



Grice J