

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

IN THE MATTER of the Cook Islands Act
1915, Sections 446-452.

A N D

IN THE MATTER of a Lease dated 31
August 1977 over the
land known as TE PUNA
S50A3A, TE PUNA TAPERE,
TAKITUMU DISTRICT

A N D

IN THE MATTER of an application by
RONALD ARTHUR CLIFT for
an Order that the
applicant has taken
reasonable steps to
comply with Clause 6 of
the lease and that in
the circumstances the
applicant may dispense
with the consent of the
sole landowner who is
deceased.

Mrs Bartlett for the Applicant

Date of Judgment : 24th day of June 1992

JUDGMENT OF DILLON J.

This is an application to the Court for directions, and involves a proposed transfer of a Lease of the above land from Mr Clift to McJimbo Limited the sale price being \$NZ135,000.00.

One of the terms of the lease is as follows :

"6. Subject to paragraph 5 hereof, the Lessee shall not transfer assign sublet or otherwise part with the possession of the land hereby leased or any part thereof without the written consent of the Lessor and if more than one, the majority of Lessors residing on Rarotonga first had and obtained PROVIDED HOWEVER that the Lessors may require the Lessee to give the first option of taking by transfer assignment sublease or otherwise of the property in question to the Lessors or any of them or any of their nominee upon the same terms and conditions as the Lessee is able to transfer assign or sublease to any other person AND the Lessors may withhold the granting of such consent until the

Lessors or any of them have exercised their rights or powers under this clause."

The Lessor of this lease was Rongo Ka who died in Australia on 15 January 1992. There has been no succession to the estate of the deceased. The application for directions is to enable this impasse to be satisfied.

Mrs Bartlett had not been able to make contact with the children of the deceased who are living in Australia and they had not responded to her correspondence. She sought the assistance of the Cook Islands Consular Office in Sydney. Mr Barton has now reported that the family do not wish to exercise the option in Clause 5 to take over the land and consent to the transfer from Mr Clift to McJimbo Ltd.

This Court orders that the provisions of Clause 6 have been complied with and that it is in order for the Leases Approval Committee to now deal with that application.


