

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

IN THE MATTER of an Application
under Sections 390A
and 450 of the Cook
Islands Act 1915

A N D

IN THE MATTER of TUAREANUI SECTION
40

BETWEEN T.A. MANARANGI

Applicant

A N D

MAKEA NUI TEREMOANA
ARIKI

Respondent

Mr Manarangi for the Applicant
Mr Mitchell for the Respondent

Date of Judgment *3rd* day of *June* 1992

REPORT TO THE CHIEF JUSTICE

The applicant in these proceedings seeks an Order under Section 390A and the Chief Justice has referred this application for a report before making any final recommendation in accordance with the provisions of that legislation.

The facts may be stated briefly as follows :

On 3 June 1903 an Order on Investigation of Title in respect of Tuareanui Section 40 vested this land in Makea Takau f.a. solely. This was the Foundation Order of the title which is the subject of this investigation. It is to be noted that the vesting order made on 3 June 1903 was to Makea Takau in her personal capacity and not in her capacity as a title holder.

Subsequent to that 1903 Order, four Succession Orders have been made in respect of this land and by the successors to the original owner Makea Takau. These Succession Orders were made on 7 March 1912; on 20 October 1926; on 26 July 1944; and finally on 14 March 1966. Those four Succession Orders vested the interest of the original holder and the successors by way of a Succession Order which described the successor as Ariki and that such successors held interest in this land by virtue of the office of Ariki.

The final Succession Order made on 14 March 1966 vested the interest in this land in Makea Nui Teremoana Ariki, the respondent in these proceedings.

The question for determination is whether the respondent holds interest in this land by virtue of her office as Ariki, or whether in accordance with the original Order made on 3 June 1903 the respondent's interest in this land should be held otherwise than as title land.

The purpose of the application is therefore to amend or vary pursuant to Section 390A the four Succession Orders subsequent to that original Order made on 3 June 1903 in order to give effect to the Order made on that date. In the alternative, application is made pursuant to Section 450 of the Cook Islands Act for those four subsequent Succession Orders to be revoked on the basis that they are in error and not in conformity with the original Order made on 3 June 1903.

Mr Manarangi, in detailed submissions attached to the application, refers in particular to Court of Appeal decisions which are detailed in paragraph 7.5 of his submissions and also in 8.1 of the same submissions.

Not only does Mr Manarangi rely on the alteration of the original Succession Order and the determination therein of how the title should be held, but other aspects also are considered in the detailed submissions that he has made. In particular he refers to the fact that the respondent does not hold land in the district in which this land is situated. In support of this submission Mr Manarangi refers to the Court of Appeal decision on the Tuareanui Section 40 appeal heard on 19 August 1950 and reported in AMB 2/58. This land is referred to in that judgment as follows :

"It does appear all the same that there is the important question still to be settled whether this is title land or Makea family land."

Further in the judgment when referring to the variation in the Succession Orders from that of the original Vesting Order, the Appeal Court stated as follows :

"This appears to be a mistake. If the land was awarded absolutely there could be no such limitation imposed later. This fault requires correction and particularly as it is repeated in many titles in Rarotonga."

In addition to relying on that judgment, Mr Manarangi also relies on the judgment reported in AMB 1/391 dealing with Arakuo Makea Section 34, Section 35 and Section 38. In that judgment it is stated as follows :

"Reliance is placed on a statement in a judgment of the Native Land Court (8/377) that an Ariki cannot hold land attached to his title in the district of another Ariki. We agree with that and point out that the land under consideration was not awarded as Ariki title land."

It is these considerations and others upon which Mr Manarangi relies in order to seek the assistance of the Court in cancelling the four Succession Orders successive to the original 3 June 1903 Order upon which he relies.

Mr Mitchell has filed very brief submissions suggesting by way of answer to these Appeal decisions upon which Mr Manarangi relies, that the formal consent of the Queen's Representative has not been obtained to undertake this investigation, and that until such time this application should not proceed. The procedure has always been that there is no point in seeking approval from the Queen's Representative to an application which has upon investigation no basis. If the Chief Justice considered that upon investigation there was merit in considering such an application and seeking the formal approval of the Queen's Representative, then procedurally that would be the most appropriate method of dealing with these applications, while at the same time conforming to the necessity of obtaining the necessary approval from the Queen's Representative before any final determinations.

Unfortunately the Court does not have the benefit of Mr Mitchell's representations concerning the substantive matters raised by Mr Manarangi which, as a consequence, stand alone. The respondent therefore has not taken the opportunity of answering the legal issues raised by Mr Manarangi. These issues not unnaturally are important; they have been considered in previous Appeal Court decisions; and clearly the issues should be addressed and a definitive decision delivered clarifying these important issues.

In order to give effect to the application that has been made, while at the same time providing an opportunity for the respondent to consider the issues which she has not done on the present pleadings, I would recommend to the Chief Justice that consideration be given to granting the application; that the Succession Orders made on 7 March 1912; 20 October 1926; 26 July 1944; and 14 March 1966 be cancelled; but that fresh applications be lodged so that the question of replacement orders to those to be cancelled can be the subject of a contested hearing in order to determine whether similar orders should be made to those already made; or whether replacement orders should be made according to who are the rightful successors of Makea Takau personally and not by virtue of the office of Ariki.

I would therefore recommend accordingly.

There are two applications - the one dealing with Section 40 and the other dealing with Section 35. The facts and circumstances of them both are the same and this report is intended to deal with both these applications.

Simon J.
