

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

APPLICATION NO. 52/87

IN THE MATTER of the land TARAI
12K

BETWEEN T. AKAMOEAU

Applicant

A N D RUTA HOSKING

Objector

This is an application to succeed to land in Taraii 12K and in particular to the person named in the Order on Investigation of Title as "Uriarau". This person is one of nine original owners appointed on investigation of the title on 10 July 1907. The records show that this land was claimed by Nito. This is set out in Minute Book 3/243. The records disclose that the land was disputed between Nito and Taunga. As the Order indicates, the decision of the Court in 1907 was in favour of Nito.

Mr Manarangi has filed detailed submissions in respect of this Application for Succession indicating that his client, the applicant, is successor to the deceased named above of whom he is a direct descendent.

The application is based on Uriarau being Apera Uriarau who is a direct descendent of Uriarau and Teunauna. It is claimed that the Uriarau referred to in the applicant's submissions could not have been a feeding child of those descendants referred to above. It is further submitted in support of the application that Uriarau and Uri to whom I shall refer later are one and the same person.

In support of that last submission, and of significance insofar as the applicant's case is concerned, is that the Orders on Investigation of Title for each of the Sections 12K, 120 and 12T were all made by the Court on 10 July 1907. The Orders in respect of 120 and 12T refer to Uri. The Order in respect of 12K refers to Uriarau. Because of this differentiation in Orders made on the same date the applicant relies strongly on this differentiation between these two and that as a consequence Uriarau and Uri are not one and the same person.

There is one further aspect of significance, and which I shall refer to subsequently. I interpose it here as it is relevant to Mr Manarangi's submissions. In the 12K block which is the subject of this application Uriarau is shown as a male adult. I shall refer to this aspect of the applicant's case shortly.

Mrs Browne has filed detailed submissions claiming that the Uriarau shown as Owner Number 5 in the 12K block is also known as Huriarau and as well also known as Uri. That person, she claims, was the son of Ke. The subsequent geneology in respect of Ke is set out in detail in those submissions.

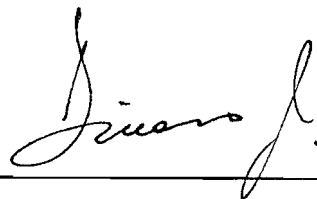
Mrs Browne relies heavily on the significance of the Nito family and that family's relationship to the three sections which form part of the consideration of this application, namely Sections 120, 12T and the present Section 12K. Mrs Browne puts it this way :

"It is significant that all three sections, that is Aremanii Section 120, Ngati Nito Section 12T and Taraii Section 12K, were claimed by Nito. It is significant that in respect of Ngati Nito Section 12T the Court awarded this to the "family". It is quite clear from the title that the Uri in that land was Uri A Ke and that he was of Ngati Nito, that is "family"."

If that submission is correct then there is a difficulty in the description of the Uri or Uriarau in the respective titles. In 120 Uri is shown as a m.a., that is over 21. In Section 12T he is shown as m.9, that is nine years old. In Section 12K Uriarau is shown as m.a. There is therefore a conflict not insofar as the present application refers to Section 12K because that fits in with Mrs Browne's submissions relative to 120. It does not, however, correspond to the position disclosed by the title in Section 12T.

There is, however, substance in the submission made by Mrs Browne relative to the Ngati Nito family and the relationship which is shown in each of the titles. Mr Manarangi has not addressed that significant aspect and which I believe is significant when the Court is required to determine matters which were of common knowledge in 1907, but which now some 85 years later are shrouded in conjecture. The significance of the Ngati Nito connection, however, I believe is a pointer to the significance of the issues raised by Mrs Browne on behalf of the objector. Mr Manarangi has not referred to this aspect of the geneology in his submissions.

In all the circumstances I believe that the objector has raised a significant doubt which has not been satisfied as far as the Court is concerned sufficient to allow the Application for Succession to proceed. The application is therefore dismissed. In so dismissing the application there is of course always the opportunity if the application was so minded of once again lodging an application, provided of course there was substance in the application; there was new evidence to support such an application; and the evidence was such that a re-application would be considered reasonable. If an application was brought that was considered unreasonable then any applicant could be visited with an Order against he or she for costs.



3/6/92

