

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

No. 124/93

**IN THE MATTER** of Section 421 of the Cook Islands Act 1915 and Rules 341-347 of the Code of Avil Procedure of the High Court 1981

**A N D**

**IN THE MATTER** of the uninvestigated Land known as **TE-II-A-MAUI** in the Tapere of Pokoinu, Arorangi District, Rarotonga

**A N D**

**IN THE MATTER** of an application for Investigation of Title by **TEINA RIRI NGAPOKO TUTU-ARIKI JONASSEN (NEE TAUEI)** of Rarotonga, Retired

Mr Holmes for the Applicant

Date of Hearing : 20 June 1993

Date of Judgment : 14 September 1993

**JUDGMENT OF DILLON J.**

The applicant applies for the following Orders :

- "(a) An investigation pursuant to Section 421 of the Cook Islands Act 1915 of the title to the following customary land **TE-II-A-MAUI** and as shown on the planned attached hereto;

- (b) An Order pursuant to Section 423 of the Cook Islands Act 1915 defining the area so dealt with, naming the persons found entitled thereto, and specifying their relative interests in the land."

The basis of the application is that relying on ancient custom and usage Mr Jonassen and those he represents are entitled to be named as owners of the uninvestigated land known as Te-II-A-Maui situated in the Arorangi District of Rarotonga.

Mr Jonassen was the only witness. He stated in evidence that this land had been occupied by his ancestors, the Makea Arera family. He distinguished this family from the Makea Arera Rangatira which was a family quite different from his own. He claimed that his family of the Makea Arera Ariki could trace their ancestry back to pre-christian times.

In support of his claim to title to this uninvestigated land Mr Jonassen produced two most comprehensive genealogies (Exhibits 1 and 2); and a detailed calculation as to the entitlement and shares of the members of the family that he represented and what shares they should receive in this land if the Orders sought were granted by this Court (Exhibit 3).

Dealing with the first genealogy. This has as its source Tauei Konitanitai (Constantine) Tinomana Napa who was born on 26 October 1880 and died on 6 June 1927. He had 13 children.

The second genealogy relates to Ngati Arera and has as its source Arera Ariki te Mua and descends through six generations to Mennite Mary Anne or Mene Mereana Ariki Piltz who was born in 1879 and married Tauei Tinomana Napa already referred to above in the first genealogy.

There was no challenge to those two genealogies. In fact there was no objection at all to the application. That factor alone, however, does not entitle the applicant to the Orders now sought.

The land, the subject of this application, is part of or adjoins the Pokoinu 107 Block which

was investigated in 1905 - 1907. Many separate titles were issued based on the evidence presented to the Court at that time and from time to time since. In this context Mr Jonassen referred to his researches of the "Savage" dictionary and its reference to Makea Arera, the only son of the Arera family who it was stated was included in the Pokoinu 107 Block when that title was originally investigated.

However Mr Jonassen conceded that despite the reference in "Savage"; and the extensive researches he had carried out, the Tavei family from which he and his line descends do not have any interest in the Pokoinu 107 Block and were not included as owners on the original investigation of that title.

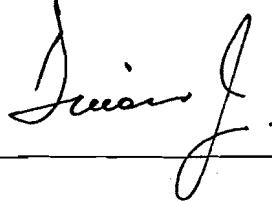
Mr Holmes countered that non-inclusion in the original Order of Investigation in this way. He said that if the Court, upon investigation of the land in 1905, had been presented with the genealogy that is now available to this Court then the Tavei family would have been included in the Title.

The position quite clearly is the Court in 1905 was not presented with the present genealogy. No doubt, there could be many very valid reasons why no claim was made at the time. One such reason could be that there was in fact no entitlement. However the Court must not speculate on such matters. Likewise it is not open to the applicant to speculate that if his genealogy had been presented to the Court in 1905 the family he represents would have been automatically included in the Order of Investigation. There were other factors the Court took into account in the 1905 - 1907 years of investigating Titles on Rarotonga.

It is clear that this uninvestigated land on the boundaries of Pokoinu 107 Block have a relativity factor of primary consideration. Mr Jonassen recognises this factor by supporting his application with a claim to entitlement of the original Pokoinu 107 land. That claim has no substance - not as to the genealogies that he has presented which have been unchallenged - but rather to the belief that he and those for whom he acts should have been included in the Order of Investigation. That Order cannot be challenged. Now, however, he attempts to challenge it in an oblique way by claiming an entitlement not supported by the original order

of Investigation as the basis for title to this uninvestigated land. His application rests solely on that premise, and is without foundation.

The application is dismissed.

A handwritten signature in cursive script, appearing to read "J. J. J.", is written above a horizontal line.

Judge