

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

IN THE MATTER of an Occupation Right
granted to **IRAI WILKIN**
on 4 December 1991

Mrs Browne for Mrs Wilkin and her son, Dean Joseph Wilkin
Mr T.W. Bates acting personally as an Objector

Date of Decision: 9th August 1996 13.

DECISION OF DILLON J.

Mrs Wilkin was granted an Occupation Right on 4 December 1991; this Occupation Right being restricted to planting purposes only. She now makes application to transfer this Occupation Right to her son, Dean Joseph Wilkin, and to convert that Occupation Right into residential use to enable Mr Wilkin to build a home on the section.

Mr Wilkin has filed an affidavit setting out his personal circumstances and confirming that he wishes to build a home for himself on this quarter acre section, estimated to cost NZ\$70,000, and that this house will be built within the next five or seven years. Although Mr Wilkin lives in America at the present time, he intends to reside on Rarotonga where both his mother and father now reside.

In support of the application by Mrs Wilkin, she has filed a consent which contains the signatures of ninety people, including His Excellency The Queen's Representative. I have no evidence as to whether all the signatories are in fact owners, or acting on behalf of absent owners. There was no objections to the signatories that were submitted in support of the application. Two of the signatories were sisters of Mr Bates, who is the only objector.

By means of the conference call, Mr Bates set out the reasons for his objection. In the objection that he filed Mr Bates confirmed that he opposed the transfer of the Occupation Right, even for agricultural purposes, and in addition objected to the change now proposed from agricultural occupation to a house site occupation. He claimed to be the Chairman of Ngati Pera's Investigation Committee, although it is significant that included in the list of people who have signed there are signatories which would appear to belong to the Pera family. It is therefore difficult to identify exactly the composition of the Investigation Committee that Mr Bates refers to. Mrs Wilkin did not know of this Investigation Committee.

In the course of the conference call dealing with this matter, Mr Bates confirmed that he is occupying an area of 5 acres (approximately) on what he described as uninvestigated land, and on which he advised the Court that his son had built a house on part of this developed land. He indicated that his son was not a land owner, but that he, that is Mr Bates, intended to apply for an Occupation Right of the land. Mr Bates also confirmed that he has an Occupation Right on this land. Likewise Mrs Wilkin confirmed that she had an Occupation Right upon which she had built a house where she and her husband were presently living.

Given those circumstances, and the large number of signatures signifying acceptance of consent of Mrs Wilkin's proposals, it is difficult to understand Mr Bates' objection in the face of what appears to be a large measure of consent from a large number of people who have signified their consent by signing the acknowledgment. Mr Bates did not challenge any of the signatures.

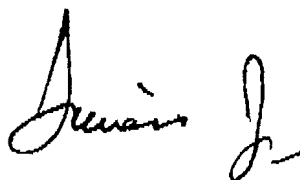
In the face of that overwhelming measure of approval and consent the objection by Mr Bates is disallowed; the Occupation Right originally granted to Mrs Wilkin on 4 December 1991 is amended to include a usage as a house site occupation; and the transfer to her son is hereby approved.

The Deputy Registrar has indicated that Mr Bates did not wish to make any further submissions subsequent to the affidavits by Mr and Mrs Wilkin being shown to him in accordance with a preliminary direction which the Court made following the conference call hearing. Mr Bates did advise the Deputy Registrar that in the event of his objection not being

allowed he would then apply for an Interim Injunction to prevent any dealings on this land. Mr Bates should be advised by the Deputy Registrar that while he may file injunctions if he so wishes, the policy of the Court is that an injunction will not be granted as between owners in the same block of land. For that reason it would be desirable for Mr Bates to seek legal advice.

Mrs Browne has suggested that the circumstances of this case would warrant that Mr Bates pay for the cost of the conference call. Presumably this was on the basis that Mr Bates' objection had no merit. That may well be the perception of Mrs Wilkin and Mrs Browne.

However, my perception is that the conference call requested by Mrs Wilkin, in the circumstances, seemed to be quite unnecessary. Dates have been fixed for the next Land Court sitting in Rarotonga. Mr Wilkin has said that he is not going to do anything with the land for another five to seven years. One may well ask why a conference call was necessary at all in view of the fact of Mr Wilkin's expressed inactivity for the next five years. This matter could very well have been dealt with by the Court at its next sitting, and the costs of the conference call would not have then been incurred. In view of the fact that Mrs Wilkin wished this matter dealt with urgently by way of a conference call, it seems to me that she should pay for it and there would be no justification for Mr Bates to contribute to the cost. For that reason Mrs Browne's application to have Mr Bates pay the costs of the conference call is refused.



Dillon J.