

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

Application No. 312/96

IN THE MATTER of Section 40 of the Cook Islands
Act 1915

AND

IN THE MATTER of the land known as **TE AU O-**
TE TOKOA SECTION IIA
MATAVERA

AND

IN THE MATTER of an application by **UA**
TAMARUA to revoke the
Succession Order made on 28
March 1912 to the interests of
TAMARUA NUI and the
Succession Order made on 6
October 1947 to **TIOFI**
TAMARUA

Mrs Browne for the Applicant
Mrs Akaiti Ama in person to object
Date of Judgment: 16 January 1997

JUDGMENT OF DILLON J.

This is an application to revoke two Succession Orders made on 28 March 1912 and 6 October 1947 respectively. The application alleges that those two Succession Orders were made in error and that primarily the land is title land belonging to the holder for the time being of Matalepo title of Tamarua Nui. In the alternative, and if it is found that the land is not in fact title land, then it is claimed that the land should be succeeded to by the four children of Tamarua Nui and not just by the descendants of the one child, namely Tiofi Tamarua.

There is no challenge to the Order on Investigation of Title made on 9 July 1907 (MB 3/234) when this land was vested in Tamarua Nui solely. There was no evidence at that time that Tamarua Nui held this land by virtue of his Mataiapo title. It was only some five years later that Tioti Tamarua, on succession to Tamarua Nui, stated in part in evidence - "this is Mataiapo land". The Court made a Succession Order in favour of Tioti Tamarua solely, but once again the Court made no reference to or record of the land being title land.

This question of whether the land was or was not title land has already been fully argued by this Court on 28 June 1966 (MB 27/102). That application to revoke the Succession Order dated 28 March 1912 in favour of Tioti Tamarua was dismissed.

Now, ninety years later, this Court is again being asked to declare this land title land. There is no justification for making such a declaration and that application is refused.

However the application is addressed in the alternative, and asks that the Succession Order dated 28 March 1912 be revoked and that instead of only one child of Tamarua Nui succeeding to his interests in these lands, that his four children succeed equally; namely

1. Tapurau m.d.
2. Mata Tuiatua f.d.
3. Konini f.d.
4. Tioti m.d.

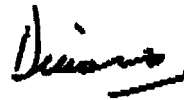
In the minutes of the Court sitting held on 28 June 1966 already referred to, the following Order was made by the Court at Page 102, as follows :

"Court. This land has not previously been referred to as "title" land but only as Mataiapo land. The Court cannot place a restriction on the title by Succession Order. Although Tamarua Nui's marae is said to be on this land, it is unlikely that it was all title land - even if any of it were such (approx. 9 1/2 acres). Succession went to Tioti Tamarua in accordance with the wishes of the family and of the deceased as expressed in his Will. It was only one of a number of lands dealt with in a similar way on that occasion."

When the Court heard this matter on 20 September 1996 Mrs Ama gave background history to her family and to her subsequent appointment as the current Mataiapo. At the conclusion of the hearing she was asked if she could give a list of the lands owned by Tamarua Nui to support her suggestion that her father succeeded solely in accordance with the wishes of Tamarua Nui and the expressions in his Will. Mrs Ama has not supplied that list which she had agreed to do. It is clear that the Court in 1966, in making reference to the wishes of the family and the deceased's Will, had information which is not before this Court. On the basis of what Mrs Ama has said in her objection to this application, and in view of what the Court in 1966 has stated as being the reason for the dismissal of a similar application, it does seem appropriate that further investigation should be undertaken; firstly as to the contents of the Will, and secondly as to whether there was in fact an allocation of various blocks to individual children rather than including the four children in all the titles.

While the question of whether this is title land or not has been disposed of, the question of whether the four children should succeed to the interests of Tamarua Nui will stand adjourned, to be decided at the next Court sitting with further information provided by both Mrs Browne and Mrs Ama.

The Registrar will arrange a fixture convenient to the parties.



Dillon J.