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

Application No. 19/96

IN THE MATTER of Section 430 of the Cook Islands Act 1915 and Rule 348 of the Code of Civil Procedure 1981

AND

IN THE MATTER of the land known as **TE POROTAKA SECTION 101, NGATANGIIA**

AND

IN THE MATTER of an application by **MATA NIA**

Applicant

Mrs Browne for the Applicant
Mr R. Putua in person to object
Date of Judgment: /6 January 1997

JUDGMENT OF DILLON J.

This Application for Partition is based on minutes of a meeting held on 3 October 1995. However the basis of the application is the agreement that was reached by the family as far back as 1956.

Mr Putua's objection is really based on the Applicant, Mata Nia, seeking a partition which will provide an area of land far in excess of her entitlement. Mr Putua's objection is quite simple. He says that some families have not received any land from this area and it is for that reason that he is objecting to the application. Detailed evidence has been given and the recording of

this evidence has now been made available to me. Those minutes record that in reply to the Court enquiring about entitlement, it was pointed out that the Putua family are equal owners with Mata Nia and have one section each, but that as a result of this present application Mata Nia is going to finish up with eight sections. In reply to that observation by the Court, Mrs Browne conceded that she did not argue with that statement of the position. She did go on to point out, however, that there were previous decisions of the Court disallowing the Putua family an entitlement, and for that the Court relied on the 1956 agreement. As Mrs Browne put it, the present application is simply to formalise the agreement that had been made in 1956.

The Court is far from satisfied that even by combining her interest in this block, the Applicant and her family would only be entitled to three sections and not the eight sections which the application embraces.

On the face of it the application is unfair. It is appreciated that there was an agreement in 1956 upon which the application is based. No reasons have been given why the Applicant should be over-allocated land in which she herself is entitled to one section, and now, if this application is granted, will be entitled to eight sections. That seems most unreasonable, and for the Court to approve of such an arrangement further evidence would be required to justify such an over-allocation on a partition. However, if Mata Nia can provide evidence that she is surrendering substantial interests in other blocks where the same owners are involved, then those would be proper considerations for the Court to consider. However no such evidence is before the Court. There may be other reasons which have not been alluded to since the parties have relied principally on an old family agreement. However there is such a vast difference between entitlement and what is now claimed that the Court does, of necessity, require additional substantive evidence to support such an application. That evidence is not available at the present time on the papers presented and the evidence tendered. The Court cannot, in these circumstances, make an order and the application will be adjourned until the next Court sitting. If no or insufficient evidence is available at that time the application will be dismissed.