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

PLAINT NO. : 556/95

IN THE MATTER	of the Cook Islands Act 1915
AND	
IN THE MATTER	of the land known as **PART SECTION 31 VAIMUTUURI** in the District of Avarua
AND	
IN THE MATTER	of an application by **RIMAATI TARARO** of New Zealand, Retired for and on behalf of the landowners
	Applicant
AND	**MATANGARO BUCKLEY** of Rarotonga, Housewife
	Respondent

Mr Mason for the Applicant
Mr Mitchell for the Defendant
Date of Judgment: 24 January 1997

JUDGMENT OF DILLON J.

This is an application by the Applicant for an injunction. The Applicant's position may be summarised as follows. She says there was no formed road until she undertook bulldozing work just over a year ago. This established a road. Previously access was only by a track. Prior to the bulldozing work being undertaken the Applicant requested that the Respondent share the 5 m wide area involved, that is 2.5 m from each section, and that the parties share the costs of formation and maintenance of the driveway. The Applicant says the Respondent refused to make any contribution, and instead dug up the accessway which provided access

situated on the Respondent's own section, and now persists in using the accessway on the Applicant's section adjoining, which is being formed at the cost and expense of the Applicant.

In reply, the Respondent has provided a detailed and comprehensive history of Vaimutuuri sections; the genealogy of the Nicholas family; the succession to the various members of that family and the inter-marriage; and a historical summary of occupation of the land from the 1870's. It is clear that the Respondent believes that there was some injustice in the early historical allocation of lands in this area, and that by using the Applicant's roadway on the Applicant's section she can thus pay back some of the injustice which her family has suffered, so she alleges.

That attitude by the Respondent is not to be endorsed or encouraged. If Orders are made that require rectification, and there is jurisdiction for making such an application, then the Respondent should so apply. It is not right, however, to rely on past alleged injustices to go over the Applicant's land on the roadway which she alone has constructed. It is unfortunate the Respondent did not take a more responsible attitude right from the beginning whereby the costs of putting a road in could have been shared and each of the parties could have contributed a modest 2.5 m from each of their sections.

The submissions that have now been filed clearly justify the issue of an interim injunction. The Court defines the injunction as interim only in the meantime as it could very well be that the parties can reach agreement on shifting the right of way to make it a common one, being 2.5 m on either side of the common boundary. The bulldozing expenses could also be shared. If the parties can agree on such an arrangement then there is no reason why the injunction could not then be withdrawn.

In the meantime, however, there will be an interim injunction to see whether agreement can be reached. If no agreement is possible between the parties then the Applicant can apply to make the injunction permanent.

The question of costs is reserved.

Dillon J.