

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

Application Nos 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
11A, 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 **TIOTI**
TAMARUA

Mrs Browne for the Applicant
Mrs Akaiti Ama in person to object
Date of Judgment: 8 June 1998

JUDGMENT OF DILLON J.

On 16 January 1997 this Court issued a Judgment which concluded :

"This question of whether the land was or was not title land has already been fully argued by this Court of 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 leave was given at that time to both the Applicant and the Objector to file further submissions as to whether the four children of Tamarua Nui should have succeeded to their deceased brother or just the one, namely Tioti.

Very comprehensive and detailed submissions by both parties have now been filed. They are both interesting and very helpful to the Court in the difficult task of determining the merits of the opposing claims and the justification of granting or refusing the application now sought.

The Court has already decided that this is not title land. It is unnecessary to repeat the reasons why the Court arrived at that decision. This Judgment is simply concerned with the succession to Tamarua Nui - should he have been succeeded to by his brother Tioti solely; or should he have been succeeded to by his two brothers and two sisters.

The Court records relative to this land disclose the following sequence of decisions from when the land was first investigated.

1. 9 July 1907 - "This is claimed for Tamarua Nui. Te Aia - I object - if it crosses the Arametua - it does not. Order in favour of Tamarua Nui."

There is no indication from this record that this was title land.

2. 28 March 1912 - "Tioti - This is Mataiapo land. I ask for an order to me. (Deceased expressed same wish.) No objections. Order accordingly."

The Court did not make the Order on the basis that the land was title land. The comparison later of this Order with the Order made in respect of the Pukutapu Section 4 Takitunu is significant.

3. 6 October 1947 - "Aenga (applicant). Same deceased in each case. He died in 1930 or 1931 and left issue - no objection - succession orders in favour of (the 8 successors named)."

Again neither the Court nor the Applicant referred to the land being title land.

It is relevant to refer back to the Succession Order made on 28 March 1912 in favour of Tioti brother of the deceased. The objector submits that the allocation of various lands was according to a family arrangement rather than have all the brothers and sisters included in all the Blocks to which the family were entitled. She put it this way:

- “7. The list of lands that go with the TAMARUA NUI title shows that the lands were allocated out to individual children according the wishes of the deceased. I therefore humbly ask this Court that the successions remain as they are in the Register of Titles.
8. I claim that this land TE AU O TE TOKOA SECTION 11A at Matavera was vested in TIOTI TAMARUA solely, in accordance not only with the wishes of his deceased brother but in accordance with the wishes of their brothers and sisters who were still living. It was at this same time that TIOTI TAMARUA was awarded the Mataiapo title of TAMARUA NUI.
9. TIOTI TAMARUA was awarded the TAMARUA NUI title to replace his older brother PA TERUAROA, who was the previous holder of the title. This was in accordance with the wishes of the deceased and their family. There were no objections.
10. Distribution of clan lands is one of the responsibilities of a Mataiapo. TIOTI TAMARUA undertook this task to simplify succession and to reduce the possibility of conflict within his clan.”

There is no doubt, as Mrs Browne submits, that upon succession on 28 March 1912 Tioti is recorded as having said - “This is Mataiapo land.” The Court, however, did not record in the Succession Order either that it was Mataiapo land or title land.

In this respect it is pertinent to consider the Court record of Pukutapu Section 4 Takitumu.

“No. 77 Pukutapu 4 Takitumu Tamarua Hui deceased

Tioti Tamarua to succeed (sworn).

Date of death unknown (11 June 1910). Deed without issue. I have been elected Mataiapo in his stead (duly notified and gazetted). I am younger brother of deceased. Deceased left a will (produced - presumably does not pass any landed interests in Rarotonga). We have settled the succession among themselves. I ask that I be successor in this case.

No objections. Pa Ariki states this is right.”

The Court has not been supplied with a copy of the subsequent Court minutes. Mrs Akaiti Ama refers to these in her submissions which are now quoted on the basis that Mrs Browne has not challenged them.

“On 7/6/1939 M/B 12/366 Title Book Succession Order (S&S 17/11/1939) vesting the interest of Tioti Tamarua m.a. in:

1. Are Tamarua m.a.

by virtue of his office or Title of Tamarua Nui.

On 3/2/1948 M/B 18/151 Title Book Succession Order (S&S 22/3/1949) vesting the interest of Are Tamarua m.a. in the following person:

1. Ua Tamarua m.a.

by virtue of his office or Title of Tamarua Nui Mataiapo.”

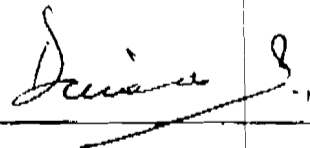
The clarity of the Succession to this land “by virtue of his office or Title of Tamarua Nui” is clearly absent from the orders made on succession to the Tena-o-te-Tokoa 11A land.

In addition a similar challenge was launched by Mr Charlie Cowan as far back as 1966 and rejected by the Court at the time for the reasons recorded. That challenge was rejected and the application dismissed for the following reasons :

“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.”

While this Court did not have the advantage of sighting the will because it appears to have been lost or mislaid, nevertheless there is no new evidence which has been adduced to support the application to revoke the Succession Order made on 28 March 1912 and the Succession Order made on 6 October 1947.

The application is therefore dismissed. The question of costs is reserved.



Dillon J.