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

Application No. 1/97

IN THE MATTER of Section 390A of the Cook Islands Act 1915.

AND

IN THE MATTER of Te Avaavaroa Section 14K Ngatangiia.

AND

IN THE MATTER of an application to cancel an order granting right of occupation to DANIEL CRUMMER made on 19 June 1995.

BETWEEN TEARIKI MAOATE of Rarotonga, Landowner

Applicant

AND DANIEL CRUMMER of Rarotonga, Landowner.

Respondent

Date of Judgment: 27. 4. 98

JUDGMENT OF QUILLIAM C.J.

On 13 February 1997 an application under s. 390A of the Cook Islands Act 1915 was filed by the applicant for caneellation of an occupation right granted to the respondent on 19 June 1995 by Dillon J. That application was eventually referred to me and I directed an inquiry by the Land Court. That inquiry was conducted by McHugh J who has provided me with a full and carefully researched Report of the history of the matter and with his recommendations. That Report will remain on the Court file and I set out now no more than a brief summary of the matter.

Three branches of the family of Vaata succeeded equally to an area of land comprising 230 ars being Te Avaavaroa Section 14K, Ngatangiia. These branches were the Rangiteina, Terepai and Upoko. The present dispute is between two members

of the Rangiteina branch and concerns the right of occupation of part of that branch's land known as the Beach section containing 1860 sq.m.

On 19 June 1995 the Court dealt with several applications in respect of that Beach section. Principally it determined a matter of partition with which the Court is not now concerned, but also dealt with an application by the respondent for an occupation right and granted that application. Subsequently the applicant commenced to build a house on the section. The respondent applied for and was granted an interim injunction restraining the applicant from entering on that land without the permission of other members of the family. A further injunction was later obtained by the respondent to restrain the applicant from interfering with the respondent's occupation right section. It should be noted at this stage that the Court recorded the applicant's response to this to be that he refused to get off the land and that he would not obey any Court orders in respect of it and was quite prepared to be put in prison. The applicant was then ordered to remove his building and any trees or shrubs he had planted. The applicant then filed the present application.

A determination of the application depends upon whether the grant of the occupation right to the respondent on 19 June 1995 had ever been the subject of an effective consent by the owners. In his Report McHugh J has meticulously traced the history of the matter as it appears on the Court file and has concluded that there never was such consent. I have carried out a similar examination of the file and am satisfied that McHugh J's view of the matter is correct. I do not propose to set out the details as they appear on the file, nor to make the Report available as a part of this Judgment.

At the hearing on 19 June 1995 the Court was primarily concerned with an application for partition of the land and the application for the occupation right was dealt with briefly at the end of the hearing. It seems to have been assumed that appropriate consent had been given and that the application was of a routine nature. On full examination now I have no doubt that the occupation right was granted in error.

It follows that there must be an order revoking the grant of an occupation right to the respondent on 19 June 1995, but the matter ought not to be left simply on that basis.

While it may be that, when the applicant started building on the land, he was not aware of the occupation order, he had not himself sought consent of the other owners, nor applied for an occupation right. When he was asked at one of the hearings why he had not done so his response was that his family did not believe in occupation rights. This disturbing attitude, together with his stated intention to defy the Court, means that the matter cannot be left on the basis

of simply revoking the respondent's occupation right. While the respondent did not have the consent he thought he had, there is no suggestion that he acted other than in good faith. It is appropriate that I should set out McHugh J's comments about what should happen now:

> "On an area basis only, which does not allow for differing values of the three sections due to location or the nature of the terrain, the respondent is entitled to 970 sq.m. - almost a quarter acre and sufficient for a house site. The section on the beach section and which was ordered to him but now has a partially completed house on it erected by the present applicant may be suitable for division into 2 sites of 930 sq.m. each. As an alternative, a site on the middle section may be preferred. This Court believes that there is compelling need for an urgent meeting of the total family with overseas family to be represented by power of attorney. At this meeting the applicant as Rangitira should show concern for all, including the respondent, and adopt a constructive conciliatory approach which will be agreeable to all. The Court has no need to remind this family that if Daniela Crummer is blocked from an occupation right somewhere on 14K, he has probably sufficient shares to seek partition. The meeting should also decide the future of the container/house. The meeting should be jointly convened by the applicant and the respondent and independently chaired."
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> I am in full agreement with these comments.

There is in existence the interim injunction granted on 31 October 1996, and also the further injunction of 1 February 1997. I am not prepared to rescind those injunctions during the period of three months from the date of delivery of this Judgment unless a meeting such as that suggested by McHugh J has been held. The question of rescission can be considered again after such a meeting, or at the expiration of three months.

In view of the circumstances as already set out there will be no order as to costs.