

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

APPLICATION NO. 67/99

IN THE MATTER of Sections 391 and 423  
of the Cook Islands Act  
1915

AND

IN THE MATTER of the land known as  
KAROARIKI SEC.  
38, AREORA, ATIU

AND

IN THE MATTER of an application by  
RANDOLPH KENNETH  
GEORGE for and on  
behalf of the issues of  
TE UKI TUANGAI  
SIMPSON to annul the  
Freehold Order made by  
this Court at Atiu on  
2nd September 1919 and  
to determine the rightful  
owners of the aforesaid  
land.

**Applicant**

Parties: R K George  
Mr M Mitchell  
Successors  
Mrs T Browne

This is an application brought under Sec 391 and 423 of the Cook Islands Act 1915 seeking the revocation of a freehold order made on the 2<sup>nd</sup> September 1919 upon the grounds of fraud, and the making of new succession orders.

This matter was before the Court on 20th August 1970 when Commissioner Doyle dismissed the application stating "that fraud in this case has not been proved sufficiently ...."

On the 21<sup>st</sup> January 1997 Justice Dillon after hearing a further claim upon the same grounds dismissed the application for lack of adequate evidence.

2.

Mr R K George filed a fresh application on the 12<sup>th</sup> October 1999 and produced what he regarded as fresh evidence diligently gathered by him from archives and from official records in Tahiti.

The matter was heard on the 12<sup>th</sup> March 2001 when the decision was reserved.

**DECISION**

On the 2<sup>nd</sup> September 1919 the Court heard a claim by Tati to the land Karoariki Section 38 Areora, Atiu. The application was opposed by Toki and the record of the hearing is certified in Minute Book 1 folio 22 et seq. In substance, Tati claimed title by occupation and through Tuatea from whom he claimed descent. He produced a genealogy as follows:

Tuatea m = Mata Uri

Kirikiriau = Rua Raumata

Issue

Maui

Maroa = aka Merata

No issue

Tito Akerongo P

Ors decd Tati

Toki claimed to have occupied part of the land and said he was from the elder line. To this, Tati responded by confirming that Toki was from the elder family and gave a further genealogy.

Okirua = Aketaire

Teaputa

Ukerau

Tuatea

And that Toki descended from Ukerau. Toki then quoted his genealogy.

Kirikiria = Ruamata

Te Uki Tuangai                      Maui                      Mamaa

Te Tu                                      No issue

Toki

At folio 24 Tati is recorded as saying that he did not know "Te Uki Tuangai" in the above genealogy. This statement prompted a query by Commissioner Doyle who recorded that "this name appears at least three times in the genealogy of the parties involved and was the name of the grandmother of Tuatea from when Tati claimed. This may indicate some element of dishonesty but by itself, without proven facts is only a facet of the case."

This Court agrees with the learned Commissioner since the statement could just as readily be taken as a "diversion" on the part of Tati.

The question for this Court to answer is, who was Tati? Was he the person appearing in the papers produced from Tahiti submitted to the Court by Mr George, and named "Taati," or was he the "Tati" referred to by Mrs Browne and referred to later herein?

Counsel for the applicant produced various papers relating to "Taati" or "Tati" from Tahiti including the following:-

- (i) Extract from the Registrars of Birth deposited at the Registrar's Office at Papeete, Tahiti showing

"birth of a male child, born on the 26<sup>th</sup> of the month of December 1870, at 12 o'clock, father unknown, and mother Hutia Teriirua aged 26, seamstress, residing at Teakaroa and not legitimately married. We gave the name of Taati a Hutia to the child brought before us."

There was a correction made to the Register on the 1<sup>st</sup> September 1880 when "Tari a Tarano, Deputy of Teakaroa, aged 28 who declared himself willing to recognise as his son the child abovementioned as of father unknown and where mother Hutia a Teriirua with whom he was married since the birth of the child..."

"The child should therefore in future bear the name of Taati a Tarano..."

- (ii) Evidence of employment by Taati in the Registry office at Papeete (Docs 2 attachment 4).
  - (iii) Evidence of Taati having committed forgery at the Registry Office in Papeete in 1892 (Doc. 2 Attachment 3).
  - (iv) Evidence that Tati left Tahiti on the Rarotongan schooner "City of Arorangi" on the 17<sup>th</sup> January 1893 bound for Rarotonga. (Doc 4 Attachment 1).
  - (v) Copy of a letter from the Resident Agent Atiu to the Resident Commissioner in Rarotonga dated 9 September 1911 confirming that a Taati a Tari was part of a Company "Atiu Boys Company" operating a Wholesale Trading Store and export business in Atiu. (Doc 3 Attachment 2).
  - (vi) Naturalisation papers for Taati a Tari including
    - (a) Application for naturalisation dated 30th May 1911 in respect to Taati a Tari storekeepers assistant Atiu who had been resident in Atiu for 13 years.
    - (b) Oath of Allegiance by Taati a Tari dated 23<sup>rd</sup> October 1912.
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(c) Letters of Naturalisation dated 12<sup>th</sup> March 1913 in respect to Taati a Tari.

(d) Letter dated 20<sup>th</sup> June 1910 from Taati Aravi to Resident Agent of Atiu stating:

“I was born at Tahiti on 25<sup>th</sup> December 1870 and am now married to a Native woman of Atiu, and by my wife I have five children. I was married on the 1<sup>st</sup> July 1899.”

(Doc. 3 Attachment 3,4, & 5).

(e) Warrant of Arrest dated 13<sup>th</sup> February 1893 in respect of “Taati a Tari born at (French Polynesia in Oceania) the legitimate son of Tari a Otare and of lately employed at the Registry Office at Papeete, domiciled and residing at Papeete, and today at large” on charges of fraud. (Appendix 4 on affidavit filed by the applicant).

(f) Extract from the Treaty between France and Great Britain for the Extradition of malefactors. (Appendix 9(b) to affidavit).

(g) Certified copy of entry of death of “Makedonia” (said to be an alias of Taati) showing date of death 18<sup>th</sup> July 1937 aged “about 80 years” Father Piatamanu, mother Akerongo, widow Nio Veo and leaving surviving 1 male and two female issues. (Doc. 3 Attachment 7). The applicant queries the copy of the entry of death produced by counsel for the respondents which is identical in all respects to that produced by him with the exception that the age is shown precisely as “80 years”.

It is the contention of the applicants that "Tati" the claimant in the land Karoariki Section 38 Areora, Atiu at the investigation of title on 1<sup>st</sup> September 1919 and recorded at Minute Book 1 Folio 22 et seq is identical with the Taati who was born in Tahiti. Since he was not a Cook Islander (except by Naturalisation) he had no right to claim the land and therefor the order in his favour was obtained by fraud and should be set aside.

By way of further submission, counsel for the applicant submitted that the experience obtained by Taati during his time working in the Registry at Papeete would have enabled him to gain the knowledge of genealogy and occupation sufficient to enable him to perpetrate the fraud.

Counsel for the respondent in written submissions referred to the application filed by Numa George (an uncle of the applicant) in 1970 seeking to set the order aside on the grounds of fraud. That application was dismissed.

She referred too to an application by this present applicant filed in 1996 upon the same grounds and that application was dismissed by Justice Dillon in a written judgment dated 21st January 1997.

Counsel agreed that Taati a Tari was not the same person as Tati a Ara alias Tati a Rangapo alias Makedonia. Taati a Tari was married to Varaere Tati a daughter of Tati. Tati was married to Nio Veo Vaeruarangi and they had three children:

1.     Varaire     fa
2.     Rongopo     fa
3.     Aukino     ma died without issue.

In support of this, counsel produced a copy of MB 1 folio 319 in which the genealogy is recorded.

Tati alias Tati a Ara or Tati Rangopo or Makedonia died in Atiu on 18<sup>th</sup> July 1937 aged 80 years. That would mean that he was born in 1857 as opposed to Taati a

Tarano born in Tahiti on the 26<sup>th</sup> December 1870. Counsel therefor submits that the person named Makedonia who died on 18<sup>th</sup> July 1937 aged 80 years was not Taati a Tari.

Varaire, Tati's daughter and wife of Taati a Tari died on 8<sup>th</sup> September 1932 as is evidenced by the copy of the entry of death produced. That certificate records that her father was Tati, her mother Nioveo and that she was married to Taati. She was survived by three children. That information is borne out in MB 1 folio 319 referred to above.

Counsel also produced a copy of the entry of death of Te Atuaariki who died on the 5<sup>th</sup> May 1970. That certificate shows that the father of the deceased was Ta-oa Taati, her mother Varaire Taati, and that the maiden name of the mother was Tati.

Mrs Browne concluded her submissions by stating that the evidence available from genealogies and records of births and deaths would have made it apparent that the Taati a Tari referred to by the applicant was not the same person as Tati.

During the resumed hearing on the 12<sup>th</sup> March 2001 counsel for the respondents produced a letter dated 25.8.99 from the Church of Jesus Christ of the Latter Day Saints at Avarua. The District President stated that from micro film records from the church (also produced but largely illegible) the "censors 25<sup>th</sup> August 1906 – Micro film # 1084929 kept at the History Centre of the Church of Avarua records the existence of:

Taati a male aged 36 years born in Tahiti and lived in the village of Tengatangi in Atiu and worked as a baker.

Tati a male aged 50 years old lived in the village of Ngatiarua in Atiu and his occupation was a carpenter.

The Court notes that this would put their respective birth dates as 1870 and 1856.

The Court has taken the opportunity of perusing the succession order in respect to the interest of Tati in Karoariki 38 Areora and Te Tua O Maroa 28 Areora and recorded at Minute Book 1 folio 319 23.1.1950. There, Tati is recorded as being married to Nio Veo Varuarangi and they had three children as recorded in the submission of counsel for the defendant.

The applicant, in support of his claim produced inter alia Doc. 3 Attachment 5 being a letter dated 20<sup>th</sup> June 1910 from Taati Aravi to the Resident Agent in Atiu in which Taati stated "I have five children." It is conceivable that two of them may have died subsequently, but if this was the case it would have been expected that they would have been recorded in the genealogy.

That Taati a Tati from Tahiti was arrested in Papeete on fraud charges is without dispute. However whether Taati from Tahiti and Tati the applicant on the proceedings in the Court in 1919 are identical is most unlikely.

The evidence available from the Church of the existence of the two in Atiu in 1926, the evidence available from the genealogies as verified by the various entries of birth and death would appear to establish conclusively that the two were not identical but that the Tati who claimed the land in 1919 was, if not at that time, then certainly later, the father in law of Taati.

This Court is satisfied that Tati the claimant for the land in 1919 was not the Taati from Tahiti as claimed by the applicant.

The Court is further satisfied that the Tati in whom the land was vested was entitled thereto not only through occupation but through descent from Tuatea.

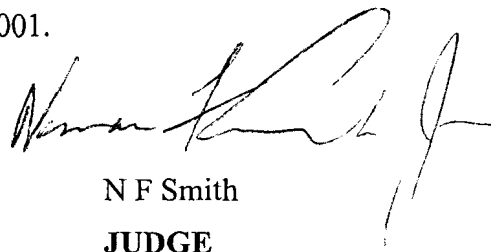
The applicant has failed to prove that the order was obtained through fraud. The application is dismissed.



9.

The question of costs is reserved and there is leave for counsel to file and exchange memoranda in that regard.

Dated at Rarotonga this 15<sup>th</sup> day of March 2001.

A handwritten signature in black ink, appearing to read 'N F Smith', written in a cursive style.

N F Smith

**JUDGE**