

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA

(LAND DIVISION)

Application No. 156/96,157/96

IN THE MATTER of the Code of Civil Procedure
of the High Court

AND

IN THE MATTER of the lands AVAAVAROA 17G
TOTOKOITU 22, TUIKATOTI
24, TOTOKOITU KI UTA 25
TAKITUMU, MANGAMANGA
& TE UTA 17K2, KOPIRI 9C,
VAITU 9K, TE MAMU 10A5,
POROU O TE RANGI 10A10,
MATARIKIRUA 10D2,
VAINGARO ITI 10D4, TE
POROTAKA 101, TARAITOKI
14E, MOTUTAPU 5B,
UKARERENUI 6B2, TE
TUIINGARA 6F, VAEROTA 6Q,
TEIITOA & KAATUTEEI 6S,
MATANGIA & KAITUITUI 6U2,
TE KOE ITI 6U2A,
NGATANGIIA

AND

IN THE MATTER of an Application for
succession to Te Nukanuka
o te Rangi Cowan @ Nuka
(deceased) by Maui Cowan

APPLICANT

Mrs Browne for applicant

Mr Mitchell for objectors

Date of hearing: 26 August 2002

Date of decision: *26 August 2002*

DECISION OF HINGSTON J

It is common ground that the applicant is a natural sister of the objectors and that she was legally adopted out of the family. It is also not disputed that the applicant succeeded to the lands of her adoptive parents.



2.

The issue before the Court is quite simple – should the applicant, having succeeded to her adoptive parents' lands now be entitled to succeed equally with her natural siblings to the lands of her natural mother. The answer to this however is far from simple.

S. 465 and S. 465 of the Cook Islands Act 1915 ("the Act") deal inter alia with the effect of an adoption order on interest in native land but do not clarify the issue before the Court. This matter falls within the ambit of S. 446 of the Act, in essence, the application of Native Custom and failing applicable Native Custom in the same manner as if the deceased was a European.

Both Mrs T Browne and Mr M Mitchell, appearing for the applicant and objectors respectively have attempted to establish that Native Custom is in favour of their clients.

There appears not to have been an authoritative statement by this Court on the question. Litigation in this area has been regarding the rights of the adoptee to lands of the adopting parents.

The Court sympathises with counsel in their efforts to ascertain support for Native Custom that would be determinative on this matter but without dealing in detail with each party's submission, I find that there is insufficient before me to establish a Native Custom on the point at issue. I believe that at this point in time, if it has not been recorded what is to happen in the circumstances before this Court it is unlikely that an authoritative answer will emerge in the future. I mention the added complication of attempting to validate a Native Custom in the context of a European style adoption and European style land succession. Nevertheless I am careful in my finding to confine same to the situation/rights of the applicant before me and her natural siblings.

3.

In a specific sense the direction, to make a decision "as if the deceased was a European" (S. 446 of the Act), does not help the Court because no European would be an owner in Native land. However, in a more general sense, if that provision is taken together with S. 8 of the Judicature Act 1980-81 the Court could apply the "consistent with natural justice and convenience" direction in that provision; "natural justice" I equate with fairness and an equitable solution.

Before me we have an applicant who has inherited apparently substantial lands from her adoptive parents and as evidenced by the extract from MB 7/282 produced by Mr Mitchell saying in relation to succession to her natural mother:

"I abide by what my father suggests, I come into Turangaare with my brothers and sisters but that I stay out of other shares of Nuka."

This statement was made in 1967 and years later the applicant begins further succession to her natural mother (and father).

The objectors say this is not fair, she has land from her adopted parents, and she agreed not to take more, yet is doing this.

In my view it would not be an equitable solution if the adoptee succeeds further to her natural parents. I, therefore apply S. 446 of the Act together with S. 8 of the Judicature Act giving as broad an interpretation as possible to what is before me and find for the objectors, the natural siblings of the applicant. In each case I make order in favour of all the children of the deceased excluding Maui Cowan/Short.


JUDGE