

IN THE HIGH COURT OF THE COOK ISLANDS
AT RAROTONGA
[LAND DIVISION] J.P. APPEAL 7/2003

IN THE MATTER of section 76 of the Judicature
Act 1980/81

AND

IN THE MATTER of the land known as ARERENGA
SECTION 1 ARORANGI.

BETWEEN MOEARO and ELIZABETH
 TETUPUARIKI PONGA
 Appellants.

AND

PATETEPA NGAATA
Respondent.

The appellants were the applicants for confirmation of the resolution of assembled owners passed at a meeting held on the 4th November 2003.

The application came before the Court on the 3rd December 2003 presided over by a Justice of the Peace. The Court adjourned the application sine die with a direction that Counsel convene a meeting between the applicants and the applicant in application 591/2003 [presumed to be a competing application] and the present respondent.

Section 76 of the Judicature Act 1980/81 deals with the right of appeal from a decision of a Justice of the Peace.

Subsection 1 of that section provides :

"Except as expressly provided in any enactment, where on the determination of any proceedings, civil or criminal, by a Justice sitting alone or by Justices sitting together any party thereto is not satisfied with the decision therein, he may appeal from that decision to a Judge."

The appellants in this matter have appealed against the adjournment ordered by the Court upon the grounds:

- 1 That the appeal is of right.
- 2 That the decision of the court was against the decision of the majority of the owners.
- 3 That further information is to be adduced on the hearing of the appeal.

It is a recognised principle in law that appeals lie, except in some specific statutory approved instances which do not apply here, only from a final decision of the Court. A "final decision" has long been accepted as a decision, which effectively puts the subject litigation at an end.

Section 76 [1] of the Judicature Act 1980/81 refers to "the determination" and to "the decision".

Collins English Dictionary defines those terms as follows :

"Determination." "The act, or an instance of making a decision. The act or an instance of ending an argument by the opinion of an authority. The decision reached by a Court of Justice on a disputed matter".

"Decision". "A judgement, conclusion, or resolution reached or given: a verdict."

Clearly by adjourning the application the Learned Justice has not determined the respective rights of the parties, or put the proceedings at an end.

The granting of an adjournment does not constitute a "decision", or "determination" as required in section 76 of the above Act.

The Maori Land Appellate Court was called upon to consider an appeal on these precise facts in *re Rakautatahi TBZATB and Apatu* [1968] 30 Gisborne ACMB 122.

There the Appellate Court held:

"The Court had not made a final decision granting or refusing confirmation but had adjourned the application. Accordingly an appeal did not lie."

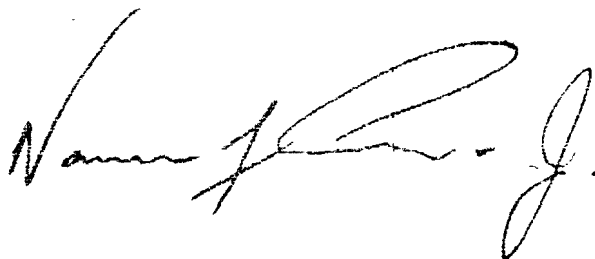
This Court is not bound by the decisions of the Maori Land Appellate Court, never the less the decisions of that Court can be persuasive.

In this instance the decision is referred to as an illustration of the fact that appeals lie only from a final decision of the Court.

Because the granting of an adjournment is not a "determination," nor "decision" within the meaning of section 76 of the above Act, No appeal lies from that direction.

This application for leave to appeal is dismissed.

Dated at Tauranga in New Zealand this 12th day of December 2003

A handwritten signature in black ink, appearing to be 'Nancy J. J.', written in a cursive style.