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

NO: 02/2002

IN THE MATTER OF Section 390A Cook Islands Act 1915

AND

IN THE MATTER OF the land known as Avaavaroa Section 10A Takitimu

AND

BETWEEN Members of the **IRO AND NUMANGA** FAMILIES

APPLICANTS

AND **ROBERT BRUCE GRAHAM**

RESPONDENT

Judgment of Greig CJ
Dated the 16th day of April 2003

1. The application is made to cancel the Order, made on 22 March 1972, on the grounds that in providing in the Occupation Right for a term of 60 years the Court exceeded its jurisdiction, there being no family minute to that effect and on the grounds that an Occupation Right is not an interest in Native Freehold land that is capable of being succeeded to under the provisions as to succession in the Cook Islands Act 1915.

2. The application was referred to Norman Smith J for a report. He heard the application on 11 March 2003 and has now furnished his report. He recommends that the application be dismissed. I have considered his report and the written material before the Court. I accept his report and the recommendation. I state my reasons for this.

3. The order made on 22 March 1972 granted to Albert Henry and Elizabeth Henry equally a right of occupation over part of Avaavaroa Section 10A Takitimu. The conditions of the right were declared as follows:

"Clause1 The land shall be used as a site for a dwelling house for the benefit of the said Albert Royale Henry and Elizabeth Henry and their direct descendants
Clause2: Limited the right of occupation to 60 years"

4. Albert Henry died on 1 January 1981 and Elizabeth Henry died on 19 April 1983. The respondent is a grandchild of the Henrys. He filed in the Court an application to succeed to their interests in the right of occupation on 13 July 2001. There were objections to that application. The hearing of it was adjourned from time to time to allow this application to be filed. It was filed on 25 March 2002. There were further delays in dealing with it.

5. The Judge in making his inquiry and report has had the advantage of hearing evidence given in support of the application for succession submissions in writing and orally. The principal contention in evidence is the claim that the grant in 1972 was for life of the grantees. The evidence in support is hearsay and is not supported by the person who took the minutes of the family meeting in March 1971. The minutes themselves were not produced. There is no support therefor for the claim in this application that there was no family minute for a term of grant. In any event and more to the point the Court has a wide and unfettered discretion to fix the period and the terms and conditions of the grant of an occupation right as it thinks fit (S. 50(1)).

6. There is abundant jurisdiction to make the order as granted and no evidence to limit that by way of family or other decision. There is nothing to suggest any error or mistake of law or fact which falls within section 390A. The application must fail.

7. The second ground raised as to the status of an occupation right as an interest in native freehold land as defined in the Act does not in my opinion raise a matter which affects the grant of the occupation right. Whether or not it is an interest in land is irrelevant to the grant. There is no doubt that the Court may grant an occupation right. Its status for succession and other transactions arises later. It is for the Court to deal with on the application by the respondent for succession to the Henrys' interest in the right. That is the proper proceeding to raise and argue the question.

8. The application is dismissed. I refuse to make an order under section 390A. I reserve the question of costs. The respondent may make application if he wishes.

Laurie Greig CJ