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

APPLICATION NO.209/93

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

AND

IN THE MATTER of the land known as WAIUNA SEC 11A, TE TUKUNGA in the island of Mauke

AND

IN THE MATTER of the Partition Order made by the Court on 3 October 1984

AND

IN THE MATTER of an application by the landowner TURAKIARE TE AUARIKI AITU of Rarotonga, Minister of Religion.

Mr Little for Plaintiff
Mrs Browne for Respondent
Mrs Kura Guinea in person
Date of hearing: 12 May 2004
Date of decision: 12 May 2004

JUDGMENT OF GREIG CJ

This is an unfortunate case that has taken a long time to come to finality. It's about the partition of Waiuna 11A. It was first partitioned in 1984 with a line down the middle of it but even at that stage some of the people thought that that Partition Order was not fair and so they sought to have it varied. The way this was done was by an application under 390A of the Cook Islands Act 1915.

That section does not allow a re-hearing under it in respect of variation of Partition, nonetheless the application was referred to the Land Court for inquiry and hearing.

That hearing did not take place until November 1993 and it was before Justice Dillon. The upshot of the hearing was that the families agreed to a variation of the original 1984 Order, and a diagram showing the variation was produced and was signed by Kura Guinea who appears before me today, Maraetapu Turaki and Vainetutai Tamaiva Nicholls.

Justice Dillon expressed his appreciation to the parties for their agreement and their consent but he felt and said that he could not make an Order that day because as an application under 390A it had to go back to the Chief Justice. But it is quite clear that he accepted that the matter was done by consent and all that needed to complete it was that the Chief Justice at the time should alter the boundaries under the Partition Order and under provisions in the Cook Islands Act.

Unfortunately this recommendation that was spoken and recorded in the Court was never carried through in writing to the Chief Justice at the time. It was not until this year that a question arose and it was discovered that no order had ever been made. Because of the time lapse and because there are now proceedings pending which may or may not be valid depending on the date upon which the variation of the Partition Order is made, I felt it was important to hear the parties and allow them to say what needed to be said.

I have now heard the parties and I accept that time has passed and things have happened in between 1986 and 2004, but the fact is that agreement was reached in 1986. It was accepted by the parties, at least those who signed the document on behalf of the families generally and it was accepted by the Court,

by Justice Dillon. The families have gone on from then on that basis and it's only because no formal Order had ever been signed or sealed that this question now arises. Clearly the justice of the matter requires that the consent, the agreement should be acknowledged and should be made law as of the date it was made.

The Order that I make will be made under the Cook Islands Act but not under Section 390A and I make an Order by consent varying the Partition Order as shown and agreed on the plan A2/54 which is in the file and signed by the parties I referred to. That will take effect from 29 November 1993, the date of the agreement and the consent before the Court.

CHIEF JUSTICE