

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

APPLICATION NOS. 85/05,291/05

IN THE MATTER of Sections 429 and 430 of the  
Cook Islands Act 1915 and Rule  
348 of the Code of Civil  
Procedure 1981

AND  
IN THE MATTER of the land known as  
PUAKIVI SECTION 88C1C,  
ARORANGI

AND  
IN THE MATTER of an application by TU MARIA  
METUAKORE NEE DANIEL  
WICHMAN for the issue of  
UTARIKI  
**Applicant**

AND  
IN THE MATTER of an application by TUMUPU  
TUMUPU alias ITIAO MATAIAPO  
For TEAU family.  
**Applicant**

Ms Mary Anne Pirake for applicant in 85/05  
and to oppose 291/05  
Mrs T Browne for applicants in 291/05 and  
to oppose 85/05.

Date of hearing: 5 September 2005

Date of decision: 6 September 2005

**DECISION OF SMITH J**

Both applications were heard together on 5<sup>th</sup> September 2005 and were  
adjourned part heard to enable the parties to meet and negotiate a settlement.

Upon resumption it was found that although some matters appeared capable of settlement no final resolution was reached. The main point of contention was the site of the Laundromat on the area on the seaward side comprising 3850 square metres. The issue of Utariki wish the area to be retained for all the existing owners in their shares, whilst the Teau family wish it included in the area they seek and in return offer the Utariki family the area lying below the Laundromat and shown as comprising 3200 square metres. Thus reducing the area claimed for themselves but increasing the area to be awarded to the Utariki family in compensation for the possible inequality in value if the original plan was followed.

The Court has looked at both plans submitted in support of the respective applications.

That of the Utariki family seeks to obtain the Laundromat site on the seaward side of the main road and an area shown as comprising 6350 square metres lying in the inland side between the main road and another portion of the subject land shown as Pt 88C1C2 comprising 2094 square metres.

A partition in this manner would result in the Utariki family being located in contiguous areas separated only by the main road.

On the other hand however, the Teau family would be left with disparate sections, two between the Laundromat site and the mean high water mark, one lying to the south of the Laundromat site, and the balance some distance inland.

Apart from the fact that the Teau family blocks would be isolated from each other, a not insubstantial area would be required to provide access from the main road seawards and also some distance inland. The plan proposed by the

Teau family would have that family's area all within the area bounded to the east by the main road and to the west by the mean high water mark.

The Utariki family would have all the land in the landward side together with the 3200 square metres area lying south of the Laundromat and abutting the main road which would provide access thereto.

Section 433 of the Cook Islands Act 1915 directs the Court to exercise its jurisdiction, when making Partition orders, in such a manner as to avoid the subdivision of land into areas which because of their smallness in configuration, or for any other reason, (the emphasis has been added) are unsuitable for separate ownerships or occupation.

This Court is satisfied that it is in the interests of the owners to have their interests located together and in a manner causing the least taking of land for access.

The Utariki family already have occupation of the 6350 square metres area on the inland side, and this largely dictates where their interests should be located.

The existence of the improvements on the Laundromat site creates an imbalance in value between the inland and seaward reverences. This Court is satisfied however that the granting of the 3200 square metres of unoccupied land on the seaward side and lying south of the Laundromat to the Utariki family increasing the total area vested in them would more than compensate for that imbalance.

Having heard the evidence and submissions and having inspected the site, albeit without the parties, this Court is now satisfied that the amended partition proposal submitted by the Teau family would best benefit all parties. Because of existing occupation rights and leases it is proposed to retain the separate

applications shown on the plans rather than to combine them to encompass the respective family holdings.

There is an order partitioning Puakivi Section 88C1C as follows:

1. Part 88C1C2 comprising 2700 square metres  
Part 88C1C2 comprising 2356 square metres  
Part 88C1C2 comprising 3850 square metres  
as shown on the plan produced in application 291/05 to vest in the Teau family in their shares.
  
2. Partition shown as Part 88C1C1 and Part 88C1C2 comprising together 3200 square metres  
Part 88C1C1 comprising 5086 square metres  
Part 88C1C1 comprising 3380 square metres  
the latter two areas being subject to survey but to comprise the whole of the land lying on the inland side of the main road, to vest in the Utariki family in their shares.

The applications are to be as approved by the Chief Surveyor.

Both parties are to provide to the Registrar the necessary order with the names of the owners and their relative shares.

Application Number 85/05 by the Utariki family is dismissed.

No order is made as to costs.



N F Smith  
**JUDGE**