

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

APPLICATION NO. 56/2005

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
RANGITAPU SEC 92N2
ARORANGI

AND
IN THE MATTER of an application by
TEREMOANA TAIQ of
Rarotonga, Businessman
Applicant

Mr N George for applicant

Mrs T Browne for Respondent

Date of Hearing: 9 September 2005

Date of Decision: 9 September 2005

DECISION OF SMITH J

On the 11th March 2005 this Court made a Partition Order in respect to the above land.

Mr George filed an application for a rehearing of the application under the provisions of Rule 221 of the Code of Civil Procedure.

Rule 221 provides, inter alia,

"The Court shall in every proceeding have the power to order a rehearing to be had upon such terms as it thinks reasonable, and in the meantime to stay proceedings."

In considering this matter, consideration must also be given Rule 222, which states;

"Any order authorized by this Part may be made upon and subject to such terms and conditions as the Court thinks fit."

In that regard, the explicit jurisdiction of this Court is clearly of importance.

This Court is a creature of statute and draws its jurisdiction from the Cook Islands Act 1915 and its amendments and subsidiary legislation.

Of point in this present matter is the special jurisdiction afforded the Chief Justice by Section 390A of the Act.

This affords the Chief Justice a quasi appeal jurisdiction with no limitation as to time for filing.

However limitations have been imposed particularly by Section 390A(10)/15 which precludes orders made upon investigation of title, and partition orders, other than upon questions of relative interests defined thereunder.

Mrs Browne produced to the Court a decision by Chief Justice Greig dated 20th June 2005 in respect of an application seeking a re-hearing of a Partition Order. (Application 76/2005).

There the learned Chief Justice distinguished the "consequential amendments" referred to in 390A(10)/15 and 390A (7)/15.

There is no clear mandate for the Chief Justice exercising jurisdiction under this section to conduct a full and comprehensive rehearing of a Partition application.

The Chief Justice in paragraph 9 of his decision referred to the provisions of Rule 221 of the Code of Civil Procedure and stated: "This rule could not of course override the provisions of Section 390A and give a right of hearing when it is prohibited."

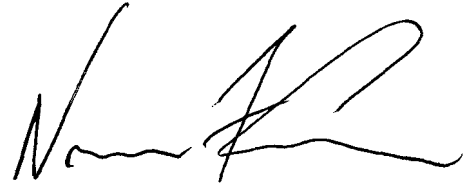
This Court accepts the decision of the Chief Justice in that regard.

Finally, in referring to Rule 222 it is accepted that the words "any order authorized by this Part" (the emphasis is added) clearly limits the Courts jurisdiction in rehearing to those matters within the Act where jurisdiction exists.

Section 390A(10) of the Act excludes the Court from making Partition orders following rehearing of an existing Partition Order.

For the above reasons this Court is satisfied that it has no jurisdiction to accommodate the Applicant's prayer for a rehearing.

The application is dismissed.



N F Smith

JUDGE