

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

APPLICATION NO. 6/2010

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

AND

IN THE MATTER of the land known as **TIKIOKI SECTION
43C2, TAKITUMU**

AND

IN THE MATTER of an Application for Rehearing by **NGAOA
RANGINUI Trustee for Mata Uri**

Applicant

AND

IN THE MATTER of the **APAI TAMAKEU FAMILY**
application to determine the relative interest
of the owners

Respondent

Hearing: 7 September 2012

Counsel: Mr T Moore for the Applicant
Mrs T Browne for the Respondent

Date: 7 September 2012

JUDGMENT OF THE CHIEF JUSTICE

- [1] In the course of reviewing outstanding s 390A applications I reviewed this file. I ascertained that there had been a hearing before Savage J last year on 18 October 2011 at which he directed the Court to send the file back to me for consideration. It seems that this did not occur and the matter did not come to my attention until yesterday.
- [2] I then reviewed the most recent papers on the file including the transcript of the hearing which occurred on 18 October 2011. It occurred to me that the point had now been reached where I might cancel the Order of Smith J made on 21 September 2005. However, I was concerned about doing that unilaterally because almost a year had passed since the hearing before Savage J.
- [3] I have now heard from Mr Moore for the applicant and Mrs Browne for the respondent and I thank them for bringing me up to date with developments.

- [4] I understand that the Okura matter which is related to this application will be before the Land Division in October. It seems to be still the case that the future resolution of this file will follow from resolution of the Okura matter.
- [5] In the meantime it is still necessary for me to cancel the Order made by Smith J on 21 September 2005 and I now do that. I record that the question of relative interests going forward needs to be resolved. I understand from Mr Moore that he has now filed an application as a means to determine that and he has given me the file number which is 510/2011. I imagine that will be determined within the Land Division without any further input from me.
- [6] I have raised the question of costs with Mr Moore and Mrs Browne. I said that my initial view was that costs should lie where they fall. Although Mr Moore had been successful in his application, it was against the background that there was no serious opposition to it. Rather, the time had been spent trying to work out the best procedural means to resolve the disputed issues between the parties.
- [7] Mr Moore quite properly signalled that he did not have instructions on the question of costs and asked me to reserve that for further consideration.
- [8] Mrs Browne pointed out that if the applicant were to seek costs that may be seen as unnecessarily provocative. Certainly, I do not encourage the applicant to seek costs but I can completely understand that Mr Moore wants to act within terms of instructions. Therefore I reserve leave to the parties to file memoranda on the question of costs.
- [9] If Mr Moore does seek costs he is directed to file a memorandum within 7 days with Mrs Browne then to have a further 7 days to reply.

Tom Weston
Chief Justice