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

[LAND 533/2002]

Application No. 3/2009

IN THE MATTER	of Section 390A of the Cook Islands Act 1915
AND	
IN THE MATTER	of the land known as **TUROA Section 27A Takikumu** (the Land)
AND	
IN THE MATTER	of an application by **ARTHUR BEREN** for a rehearing
	Applicant
AND	of **TEAVA IRO** (For the Family)
	Respondent

JUDGMENT OF THE CHIEF JUSTICE AS TO COSTS

[1] The applicant was successful in his application brought under section 390A, Cook Islands Act. Savage J reported to me following a hearing on 11 October 2011. I upheld his recommendation and subsequently made Orders in favour of the applicant.

[2] By memorandum dated 18 November 2013 the successful applicant sought indemnity costs of $6,353.76 plus disbursements of $3,557, a total of $9,910.76.

[3] The applicant emphasised a number of matters in support of his costs application:

- he criticised the conduct of the respondent in failing to meet Court ordered deadlines and, on the day of the hearing, effectively abandoning his defence;

- he sought full recovery of disbursements (comprising airfares and accommodation) which he said were necessarily incurred because the two persons needed to give evidence at the hearing.

[4] Mrs Browne, by now acting on behalf of the respondent (but not at the time), filed late submissions on 5 February 2014 arguing:

- indemnity costs were not properly justified and that complaints about the respondent's conduct needed to be understood in context;
- some of the costs were not reasonably incurred;
- the airfares should not be allowed in that landowners who reside overseas must be prepared to pay their airfares to travel to Rarotonga to attend Court.

[5] Overall, she submitted that instead of penalising the respondent for agreeing to set aside the partition order he should instead be commended for abandoning his defence (although she then also submits that Mr Tangiiti – acting for the respondent – claims that he did not fully understand the consequences of agreeing to have the partition order set aside).

[6] I think there is much in Mr Moore's criticisms of the conduct of the respondent and his advisers. This conduct, however, does not meet the high hurdle necessary to justify indemnity costs. Having said that, it does justify an award of costs in excess of the more usual two-thirds rule. I believe that costs in the sum of $4,500 would properly represent the costs that the respondent should pay to the applicant in this case.

[7] I do not accept that, in the case of airfares, there is some inevitable rule that witnesses out-of-country should be denied reimbursement of airfares. Nevertheless, the cost of airfares is very high and there does need to be some proportionality in awarding disbursements in which the large majority is an airfare or fares as is the case here.

[8] I also need to assess disbursements in the context of costs which I believe to be appropriate. Again, this is a proportionality assessment. In the present case, I believe that I should allow disbursements to the extent of $2,500 in addition to the sum of $4,500 allowed for costs. This makes a total payment by the respondent to the applicant of $7,000. By Cook Islands' standards

this is a high sum. In my opinion, though, it represents an adequate balance between the interests of the parties in the circumstances of this case.

[9] For the reasons set out above I award costs in favour of the applicant of $4,500 together with a contribution towards disbursements of $2,500, a total of $7,000.

Dated 17 February 2014 (NZT)

Tom Weston
Chief Justice