

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

Application No. 15/2012

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

AND

IN THE MATTER of the land known as **AKAOA** Section
7 Arorangi

AND

IN THE MATTER of an Application by **ANGELA JONES**
on behalf the successors to
Ngainangaro for a rehearing of a
Succession Order made on 16 April
2012
Applicants

AND

IN THE MATTER of **MARY PETER TAYLOR TINI**
Respondent

JUDGMENT OF THE CHIEF JUSTICE

- [1] The applicant filed this section 390A application on 19 December 2012.
- [2] On 24 January 2013 I issued a Minute directing further steps to be taken. Those steps were subsequently taken. On 8 April 2013 I referred the matter to Isaac J in the April sitting of the Land Division of this Court.
- [3] Isaac J heard the matter on 18 and 19 April 2013 and, on 4 March 2014 reported to me in terms of the attached report.
- [4] By memorandum dated 11 March 2014 Mr Moore invited me to make a complete succession order on the basis that there was general agreement as to the genealogy. I do not believe I have jurisdiction to do that and decline the invitation.

- [5] I now make Orders in terms of paragraph [25] of the Report. That is, the Succession Order of 16 April 2012 is amended to read to "*Mary Peter Taylor Tini limited as to her interest*".
- [6] I reserve the question of costs. If these cannot be agreed I will receive memoranda from the parties.

Dated 14 March 2014 (NZT)

A handwritten signature in black ink, consisting of a large, rounded loop at the top, a wavy line below it, and a vertical line extending downwards from the right side of the wavy line. To the right of the signature are two small, handwritten marks that look like the letters 'L' and 'I'.

Tom Weston
Chief Justice

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App No. 15/2012

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

AND
IN THE MATTER of the land known as AKAOA
Section 7, Arorangi

BETWEEN ANGELA JONES on behalf of
Ngainganaro for a Re-hearing of a
Succession Order made on 16 April
2012

Applicants

AND MARY PETER TAYLOR TINI

Respondent

REPORT TO THE CHIEF JUSTICE

Introduction

[1] This is an application by Angela Jones on behalf of the successors to Ngainganaro (the applicants) for rehearing in terms of s 390A of the Cook Islands Act 1915 (the Act) in respect to a Succession Order made on 16 April 2012 in relation to the land known as Akaoa Section 7, Arorangi.



[2] This Order was made on the application of Mary Peter Taylor Tini (the respondent) by Her Worship Mrs Rima Lizzie David. The effect of the Order was to vest the occupation right of Ngainganaro Tamataia obtained on 28 June 1912 into Mary solely.

[3] The applicants complain against this Order on the following grounds:

- (i) That the Court was aware that the respondent was only one of several persons with succession rights to the occupation right interests of Ngainganaro Tamataia on in the land and the Court made a mistake, error or omission when it granted succession to the occupation right solely to the respondent.
- (ii) That had the Court been aware that the respondent was only one of several persons entitled it would have granted the Succession Order to the occupation right interest of the deceased to the respondent “limited to her interest.”

[4] By minute dated 24 January 2013 the Chief Justice directed the agent for the respondent to file reply submissions by 15 February 2013. Also by minute dated 8 April 2013 the Chief Justice noted that “there seems little doubt that the respondent has siblings. Prima facie, this raises an issue of whether the Succession Order made by the Court on 16 April 2012 was correctly made in that the respondent succeeded solely to her great-grandmother’s interest.”

[5] The Chief Justice then referred the application to me for an inquiry and report.

[6] The application was heard on 18 and 19 April 2013 at which time I heard evidence and submissions for the applicants and for the respondent. Following completion of the transcript the file was sent to me on 13 November 2013.

The applicants’ case

[7] The applicants’ case was presented by Mr Moore with evidence from the applicants, Angela Jones, Tuaine Paul and Ngatupuna Akona.

[8] In summary the evidence of the applicants was that they have equal rights to the succession of the Occupation Rights of the deceased and that that Court made a mistake, error or omission when it vested those interests in the respondent solely.

[9] The applicants referred in detail to the Akapapaanga (genealogy) of Ngainganaro to demonstrate the persons entitled to the respondent's Occupation Right. At the hearing the applicants provided the Court with a bound copy of the Akapapaanga of Ngainganaro which contained:

- (i) The death certificate of Ngainganaro which notes that Ngainganaro had six children. The applicants submit however that Ngainganaro had nine children, two of which were deceased at the time of Ngainganaro's death and so were not included on the death certificate, and one child died at a very early age.
- (ii) The birth certificates of six of Ngainganaro's children, including the respondent's mother Kaenga Papae.
- (iii) The applicants also provided seven birth certificates of the grandchildren of Ngainganaro and seven birth certificates of the great-grandchildren of Ngainganaro.

[10] While the respondent contests some of the Akapapaanga provided by the applicants it is submitted that the documents before the Court make it clear that the respondent is only one of many persons entitled to succeed to the interest of Ngainganaro in the land.

The respondent's case

[11] The case for the respondent was presented by Nooroa Tuoro with evidence from the respondent.

[12] The respondent accepts she is one of many grandchildren of Ngainganaro and all the siblings have a right to succeed to the interests of Ngainganaro.

[13] The respondent applied to succeed to her grandmother's interest through her mother Kaenga's interest in the land. The respondent was not aware that her right to succeed to her grandmother's interest in the land was limited by her mother.

[14] At the hearing the respondent said she had never intended to deny anyone else rights to the land. Further she says she did not apply to succeed to Ngainganaro's interest "solely". The first time she was aware that she had succeeded to the land solely was when she received a copy of the Succession Order.

[15] At the time the respondent applied to succeed to Ngainganaro's Occupation Right the respondent did not believe that she was required to seek permission from anyone but Timomana Ariki, the Atu Enea of the land. This was because no family had occupied the land for at least 20 years and the respondent believed that as a result the land had returned to the Atu Enea. Permission to succeed to the land was given by Timomama Ariki by way of a Notice of Consent dated 10 January 2012.

[16] However during the hearing it was accepted by the respondent that all the children of Ngainganaro have a right to succeed to the interest of Ngainganaro and that the Court made an error.

[17] Notwithstanding the respondent believes she should continue to be the sole owner of the land because she was brought up on the land and has returned to care for it. The respondent would not exclude family members who came to the Cook Islands from visiting the land. The rights of others entitled to succeed to her grandmother's interest can be recognised by their succession to the other lands in which her grandmother has an interest.

Discussion

[18] In terms of s 390A of the Act the Chief Justice has a wide discretion to amend, vary or cancel any order of the Land Court or Land Appellate Court or revoke any decision of those Courts where that order has been made through any mistake, error or omission whether of fact or law however arising.



[19] Therefore the mistake, error or omission in the order complained of may arise either because the Court got it wrong or there was a mistake, error or omission in the evidence given to the Court which lead to the Order complained of.

[20] In exercising this discretion a heavy burden is placed upon the applicants to prove that there was an error in the decision which should be rectified.

[21] In this case I consider the applicants have satisfied that burden of proof with the production of a comprehensive family genealogy.

[22] This genealogy covered all the successors and it is evident from that genealogy that there were eight children of Ngainganaro Vaka aka Ngainganaro Tamataia namely:

- | | |
|--------------------------------------|-----|
| (a) Tere Tei Teinakore | m.d |
| (b) Mana | m.d |
| (c) Kaenga Papae | m.d |
| (d) Rimamaki Papae | m.d |
| (e) Raeputa O Rima | m.d |
| (f) Vaianuanu Ngariki
Etini Papae | f.d |
| (g) Marilyn Ngatamaine
Richard | f.d |
| (h) Ngatupuna | f.a |

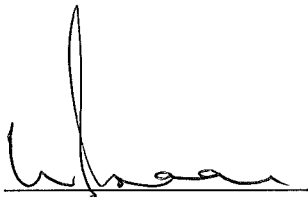
[23] In contrast the respondent was unable to produce to the Court the genealogy that was presented when the Orders were made in her favour. However it is clear that the respondent's genealogy was limited to her family only. It did not cover all the children of the deceased. Also during the hearing the genealogy presented to me by the applicants was accepted by the respondent.

[24] As a result it is clear that an error was made in the presentation of evidence to the Court which lead to an error in the order of the Court.

[25] Accordingly it is my recommendation that you exercise your jurisdiction under s 390A(1) of the Act and amend the Succession Order of 16 April 2012 to read to Mary Peter Taylor Tini limited as to her interest.

[26] A copy of this decision to go to all parties.

Dated at Wellington this 4th day of March 2014.



W W Isaac

JUSTICE