

**IN THE HIGH COURT OF THE COOK ISLANDS      APPLICATION NO: 513/14  
HELD AT RAROTONGA  
(LAND DIVISION)**

**IN THE MATTER** of Section 409B of the Cook Islands Act  
1915 (as inserted by Section 2 of the  
Cook Islands Amendment Act 1978-79)

**AND**

**IN THE MATTER** of the land MATARANGI SECTION  
83H1 ARORANGI

**AND**

**IN THE MATTER** of an application to Determine Market  
Rental by Travis Moore for **JULIA  
TUAKE**

Applicant

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**DECISION OF THE HONOURABLE JUSTICE MR WILSON ISAAC**

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**INTRODUCTION**

[1] This is an application in terms of s 409B of the Cook Islands Act 1915, by Julia Tuake to determine the market rental of a Deed of Lease dated 19 January 1995 (the lease) now vested in Manea Nui Plantation Limited (the Lessee).

[2] The lease is in respect to 1.6160 hectares described as Matarangi Part Section 83H1, Aroa Tapere, Arorangi for a term of 60 years from 1 August 1994.

[3] The lease provides for rent reviews every 5 years as follows:

- b) For and during each succeeding period of five (5) years of the said term annual rentals as shall be agreed upon by the Lessors and the Lessee or failing agreement at such rentals as shall be fixed by arbitration in accordance with the Arbitration Act 1908 such rentals to be based upon the current market rentals for comparable unimproved land of a similar value of the said land in its unimproved condition

and the terms conditions and provisions of the Deed but to be not less than the annual rental payable for the preceding five (5) years **PROVIDED HOWEVER** that such reviews shall take into account whether the Lessee are related to the landowners or are landowners.

[4] Also in terms of the lease, the Lessee may use the land for residential purposes, commercial purposes and or agricultural purposes and purposes ancillary to those uses.

[5] I heard the application on 4 May 2015 at which time I was asked to determine the rental for this land as at 1 August 2014 in terms of the rent review formula set out in paragraph (3) above.

#### **CASE FOR THE APPLICANT**

[6] The case for the applicant was presented by Mr Moore with evidence from Mr Tizard. The case was based on the valuation report of Mr Tizard dated 14 April 2015.

[7] In this report he confirms that the review of rental is to be based upon then current market rentals for comparable unimproved land of a similar value to the land in its unimproved condition.

[8] Mr Tizard has used five properties as comparisons which in evidence he stated were provided to him by Mr Moore.

[9] He also stated that he looked at the highest and best use for the particular land he was valuing when assessing his valuation.

[10] Mr Tizard in referring to other leases presented to him in cross-examination by Mrs Browne confirmed that the more information he received the better for making an assessment as to rental, but he would need to study these particular leases in more detail and consider the factors surrounding the leases to be satisfied they were genuine rentals.

[11] Mr Tizard also accepted in cross-examination that three properties used by Mr Eggleton for the respondent, namely C, Enuavai section 90 II Lot 16 Arorangi, E, Vaimaanga section 5B Takitumu and F, Opposite the Rarotongan, were relevant.

[12] However in essence the comparables used by Mr Tizard which he used to arrive at his recommended rental as set out below:

<i>Property</i>	<i>Land Area (m2)</i>	<i>Year</i>	<i>Rental/m2</i>	<i>Adjustments %</i>			<i>Indicative Rental</i>
				<i>Time</i>	<i>Area</i>	<i>Location</i>	
a)	3,600	2006	\$1.17	+3	-30	-10	\$0.97
b)	1,027	2012	\$1.21	+8	-40	+15	\$0.90
c)	7,331	2007	\$2.73	+28	-15	-40	\$1.78
d)	16,996	2008	\$1.19	+24	-	-40	\$0.88
e)	9,978	2014	\$2.00	-	-10	-40	\$1.08

[13] Based on this table Mr Tizard recommends a rental at \$0.94 per square metres or \$15,190 per annum.

#### **CASE FOR THE RESPONDENT**

[14] The case for the respondent was presented by Counsel Mrs Browne with evidence from Mr Eggleton.

[15] Mr Eggleton filed a report dated 25 April 2015 in which he referred to comparable land rentals adjacent to or close by the subject property.

[16] Mr Eggleton's comparisons are set out in the table that follows:

RENT REVIEW: MANEA NUI PLANTATIONS: MATARANGI SECT 83H							
	Property Name	Land Title	Area	Rent Review	Rent Value	Rent per sqm	Comment
A	South Coast	Te Paapaka Pt Sec 12	1493	2009	700	0.47	56 mtrs inland from main road
B	South Coast Road Frontage Section	Te Paapaka Pt Sec 12	2377	2008	750	0.32	Inland 34 mtr from to Main Rd
C	Arorangi Section	Enuavai section 9001 - Lot 16	922	2014	553	0.60	Inland same elevation and size
D	Air New Zealand Manager Residence	Aretuna Pt Sec 94A2A	4000	2002	1000	0.25	Main Road frontage Betela
				2012	4000	1.00	300% increase offer by lessor to lessee & accepted to be confirmed
E	Takitumu	Vaimaanga Sect 5B	1032	2008	1240	1.20	50 mtrs inland flat with sea views
F	Opposite Rarotongan		3600	2006	4212	1.17	Main Road Frontage
G	Said Property	Matarangi Sect 83H	16160	1994	1		Landowner rental
				1999	4000	0.25	
				2004	4800	0.30	20% increase
				2009	5600	0.35	25% increase
				2014	6464	0.40	15% increase

[17] Based on these comparisons Mr Eggleton's suggested rental for 1 August 2014 is \$0.40 per square metre or \$6,464 per annum.

[18] In the course of giving his evidence Mr Eggleton was of the view that properties close to the subject property were better comparisons. He also stated that from his knowledge of this property it had never been used as a tourist property but it has been used to grow fruits for the tourists who visit Rarotonga. He also questioned Mr Tizard's report asking what was the relevance of comparisons from Muri which was as far away from the subject property as you could get, when there were suitable comparisons in close proximity in Arorangi.

[19] Mr Eggleton also did not have available to him the leases presented by Mrs Browne on 4 May 2015 when he completed his report but confirmed all information was important.

### DISCUSSION

[20] Section 409B of the Cook Islands Act 1915 provides the Court with jurisdiction to determine and fix the current market rental of this land. In making this determination, the lease provisions make it clear that this is to be done based "upon then current market rentals for comparable unimproved land of a similar value to the said land in its unimproved condition."

[21] First I should record that it is disconcerting that two experienced valuers called by the respective parties can arrive at recommended rentals which are so different. Mr Tizard recommending an annual rental as at 1 August 2014 of \$15,190 per annum and Mr Eggleton \$6,464 per annum.

[22] It would seem the main reason for the difference being that most of Mr Tizard's comparisons were taken from the beachfront properties in Muri at the higher end of the tourism accommodation market and while Mr Eggleton's comparisons were in or around Arorangi close to the subject property and not tourism accommodation properties.

[23] The lease property we are dealing with is in Arorangi and although it has sea views it is not beachfront. It may have tourism accommodation potential but it is not used as such and the evidence suggests it never has. It is a residential property which produces exotic fruit for the tourism market.



[24] Reference to the right comparisons is therefore vital to determine the appropriate current market rental for this property and notwithstanding the difference between the recommendations, both expert witnesses agreed that comparisons in a similar or the same location and same type of property were highly relevant to fixing the appropriate current market rental.

[25] I emphasized this point in the Punamaia case 332/2012 and therefore agree with the sentiments expressed by Mr Eggleton in Court when he questioned why would you use comparisons from Muri when there were suitable comparisons close by in Arorangi.

[26] Put simply I consider it important to compare like with like.

[27] I will therefore use three of the comparisons referred by Mr Eggleton namely property C, E and F in his table at paragraph 15. I note that Mr Tizard used properties "E" and "F" in his comparisons.

[28] I also note that the lease documents produced to Court by Mrs Browne in the immediately vicinity of the subject property which although not used by the expert witnesses may provide an indication to the Court of rentals of similar properties in Arorangi.

[29] It is also comforting to note the comments of an expert witness in similar proceedings when he said that valuation is not an exact science. The differences set out above illustrate this point.

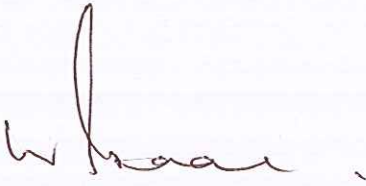
[30] So when arriving at what I consider to be a fair market rental for this property, I have compared the workings and deductions of the witnesses C,E and F. I have also looked at the rentals referred to the Court by Mrs Browne. Having regard to these comparisons I consider a fair market rental for this property to be in the vicinity of 58 cents per square metre.

[31] Therefore as a result I find the current or market rental for this property as at 1 August 2014 should be \$9,372.00.



[32] A copy of this determination is to go to all parties.

Dated at Rarotonga this 8<sup>th</sup> day of May 2015:



A handwritten signature in black ink, appearing to read 'Wilson Isaac, J.', is written above a horizontal line.

**Wilson Isaac, J**