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

Application No. 495/2010

IN THE MATTER:	of Section 450 of the Cook Islands Act 1915
AND IN THE MATTER:	of the land known as **MARAE SECTION 45M, TAKITIMU**
AND IN THE MATTER:	of an application by **MICHAEL RENNIE** to revoke the Succession Order made on 3 July 1968 to interest of IRO m.a. and grant a new succession order

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JUDGMENT OF PJ SAVAGE, J

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[1] This matter concerns an application by Michael Rennie in relation to a succession Order made on the 3rd of July 1968 relating to Iro, said to be a male adult, as his name appears on the land register for Marae section 45M Takitimu in 1908.

[2] Mr Rennie's application was successful. Pursuant to section 45 of the Cook Islands Act 1915 I set aside that Order on the 20th of October 2010. I revoked the Order and required that the matter be heard again de novo.

[3] That section of that Act reads;

*"**Revocation of succession Orders** – A succession Order made in error may be at any time revoked by (the Land Court), but no such revocation shall affect any interest theretofore acquired in good faith and for value by any person claiming through the successor nominated by the Order so revoked."*

[4] The matter came before me on a number of occasions, it had a tortuous progress. The issue of recusal was explored at length as were a number of other issues that were essentially interlocutory in nature. There was also some coming and going in relation to representation.

[5] The matter came before me again on the 2nd of October 2012. The substantive application and an application to strike out were traversed. I made Orders for the timetabling of submissions in writing.

[6] Rather than file submissions the applicant filed what was referred to as

NOTICE OF WITHDRAWAL OF APPLICATIONS 495/10 AND 505/10, DATED 20 NOVEMBER 2012

The reference to 505/10 is to an associated application which is not referred to in this judgment. The body of that notice simply reads,

> *May it please the Court – The applicant gives notice that he withdraws 495/10 and 505/10 that line for signing Counsel for applicant T Manarangi*

This produced a somewhat remarkable position where the applicant to the original application to revoke an Order, appeared to no longer want to take part in the hearing ordered.

[7] There was then an issue of the way this matter ought to proceed.

The Cook Island High Court rules do not appear to offer any guidance to the Court. The High Court rules in New Zealand provide (rule 15.22)

> **15.22 Court may set discontinuance aside**
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> (1) The court may, on the application of a defendant against whom a proceeding is discontinued, make an Order setting the discontinuance aside if it is satisfied that the discontinuance is an abuse of the process of the court.
>
> (2) An application under subclause (1) must be made within 25 working days after discontinuance under rule 15.19.

There was of course no application in this regard and I doubt whether this jurisdiction is available to me in the Cooks.

I have also considered whether the judgment on the revocation application should simply be re-called on what has come to be known as the third category for recall.[1]

There was also the possibility that I have recourse to the inherent jurisdiction. Lord Morris in *Connelly v Director of Public Prosecutions* 1964] 2 NZLR 401 stated:

> *There can be no doubt that a court which is endowed with particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process*

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[1] *Horowhenua County v Nash (No 2)* [1968] NZLR 362 (SC).
The principles in *Horowhenua County v Nash* have been applied by the Supreme Court in *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd,* [2009] NZSC 122 and by the Court of appeal in several cases.
Unison Networks Ltd v Commerce Commission [2007] NZCA 49.
Faloon v CIR (2006) 22 NZTC 19, 832 (HC). See also *Taliano v Lavas* HC Auckland, CIV-2008-404-5609, 22 June 2009.
Y v Foulkes [2014] NZCA 396.

[8] It seemed to me that the proper course to take was to simply abide by the early judgment that there be a hearing de novo. There being only one party now interested it seemed that justice would best be served if I simply heard the matter. I therefore convened a hearing in August 2015, Mr Tylor appeared for the applicant. I was conscious that he was now seeking a succession Order in relation to a papaanga more than a century old. The onus of proof is on him. Nonetheless, I accept the extensive submissions he has filed.

There are no assertions to the contrary before me on this hearing.

[9] I must first observe that in the hearing before me in 2012, that which I revoked the succession Order, was a close run thing. I set aside that judgment for two reasons. The first related to the paucity or brevity of the recording of the evidence given at the hearing in 1968.

The second being that Iro was noted in the register, for the relevant land in 1908, as being a male adult. It is common to all parties that have appeared before me that Iro was in fact an infant at that date.

[10] The two matters upon which I decided the application however must be considered by me in this hearing.

This is now an ex-parte application. The applicant here is an elderly gentleman and in hospital. I have his statement undated, but received by me on the revocation application at a hearing of 10/10/11. I have regard to that statement which reads as follows.

SUMMARY OF STATEMEN BY TEAVA IRO

My name is Teava Iro, I was born 1937, I am now aged 74 years.

I worked as a policeman for most of my life. I joined in 1958, and retired in 1997 after 39 years.

My father's name was Iro Rau, he was also called Iro Teava.

My dad died in 1950 when I was 13 yrs,

My son's name is Teava Iro.

I know of 4 lands where we have an interest from our adoption by Te Ava. He is also known as Ruatea.

1. Marae 45M
2. Vaimaanga S. 6B
3. Tikioki S 47
4. Tikioki S 47A

We are in this together with the other adopted children, that is;

a) Ngapoko

b) Noovai

c) Iro (my father)

I know the land Marae 45M. I used to work on the land before part of it was leased to Joe Caffery in 1970. I used to plant tomatoes and other food crop on it.

I also planted on S 47A, on inland side of ara Metua.

I knew Ngapoko, my fathers sister. She was the one who told me to succeed to my father on this land.

I also remember mama Marearai (Raina Mataiapo, the head of this family) told me to succeed to my father on this land as well as Noo Tetuairo (Mike Rennies grandfather).

Mike Rennie's ancestors and June Baudinets ancestors have always identified the Iro on the title of these lands as being my father.

1. Vaimaanga S 6B, MB 26/246. Ngapokotera Raina is speaking about out interest in this land. She is the mother of Tuti Taringa, the present Raina Mataiapo. She is also June Baudinets grandmother. She says;

"Ruamahu had some adopted children, not registered and they were put into this land.

2	*Ngapoko*	*died no issue and had no bloodright*
4	*Iro*	*died left issue. No blood right*
3	*Nooval*	*died left issue. Had a blood right"*

STOP

2. Tikioki S 47 & 47A. MB 24/274. Ngapokotera Raina is again speaking about our family. She says;

" I object because Iro had no right in these lands. He was put in as a feeding child of Te Ava."

Metua John, who is Mama Marearai, and Raina Mataiapo says at MB 22/371:

" Iro was adopted by Te Ava, son of Ruamau. Noovai was another adopted child of Te Ava."

Nooroa Poupouare, who is Mike Rennie and Andrew Hosking's aunty, says at MB 29/278:

"... Te Ava was the Ruatea who adopted the children referred to. Iro and Ngapoko were not related to Ruatea. Noovai was related."

Metua Maitoe, who is the same person as mama Marearai, and Raina Mataiapo says at MB 29/279:

"Te Ava held the title, occupied the land and put his children in the land being Ngapoko, Noovai and Iro."

A few years ago, the landowners of S 45M met to discuss a request for an occupation right for Tuarau Kairua, and Anna Pierce. Tuarau Kairua is the grandson of Poupouare and cousin to Mike Rennie. Andrew Hosking is his uncle. I agreed to give them the Iro family share to let them have an occupation right because the land is only small.

10/10/11

The statement that I have re-produced was given to me as an exhibit. The signature and noting of date upon it are in my hand. This statement is now un-opposed.

[11] I return to the two matters which I considered in revoking the Order. I consider them de novo and in the context of the submission now made before me.

[12] First as to the paucity of evidence. I now consider there is nothing un-common in this. Notes were of course not taken verbatim and only relevant matters were noted. The minutes were recorded by short hand and would always support the decision in full. On reflection I do not believe that anything turns in this.

Secondly as to the notation "m.a" mistakes of this nature are common. In this case it is not contested that Iro was in fact a child. The likely truth is that this indicates an in-exactitude in recording the evidence or the transcription of the evidence or the copying on to the register. I do not accept now that this creates a doubt upon which I could disallow the application now before me.

[13] Upon the applicants withdrawal a number of issues do now need to be considered in-depth. It is clear that Ruatea is the person who the respondent says he is and that his three adopted children were very deliberately placed in this land. This is a smaller piece of land than other lands dealt with in-conjunction with it. It is only ¾ of an acre.

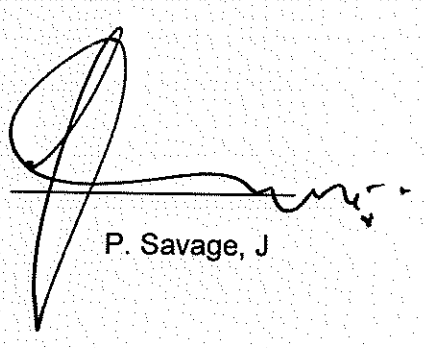
There are of course vexed issues in Polynesian society as to the effect of adoptions. The Cook Islands is no different. I accept that the vesting of this land into Iro and others was a deliberate and public act. The Orders have stood for 40 years and very properly reflected what was considered appropriate in 1968. Those who might have objected at the time did not do so.

Decision

[14] I now make Orders as were made in 1968 and the effect of this decision is to restore the position to that which pertained prior to my Order of the 20th of October 2010.

Costs are reserved. The Respondent is to file and serve submissions within 30 days. The Applicant to respond within a further 30 days and then the file is to be sent to me for consideration on the issue of costs.

Dated at Rarotonga this 5th day of October 2015.



P. Savage, J