

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

APPLICATION NO. 731/16

IN THE MATTER of Section 50 of the Cook Islands
Amendment Act 1946

AND
IN THE MATTER of the land known as **ARETOA 13B,
MATAVERA**

AND
IN THE MATTER of an Application for Occupation Right
by **JAMES MITCHELL RIDDELL**

Applicant

Date: 22 May 2017
Appearance: Mrs T Browne for the Applicant
Mr W Framhein for the Objectors

DECISION OF THE HONOURABLE JUSTICE WILSON ISAAC

Introduction

[1] This is an application for an occupation right order by James Mitchell Riddell pursuant to s 50 of the Cook Islands Amendment Act 1946 in respect to Aretoa Section 13B, Matavera.

[2] Tekeu Framhein and Tamaine Atera opposed the application.

[3] The application was heard on 19 May 2017 with Mrs Tina Browne presenting submissions in support and Georgina Samuel Riddell giving evidence in support of the application.

[4] Mr William Framhein appeared for the objectors and called Ngamata Mararoa to give support opposing the application.

The Issue

[5] The issue to be determined is whether the Court should exercise its discretion in terms of s 50 of the Cook Islands Amendment Act 1946 to grant or dismiss the application for the occupation right order by James Riddell.

Applicant's Case

[6] For the Applicant Georgina Samuel stated that at a meeting of assembled owners on 2 November 2016 the majority of owners supported the application. However when the matter went to Court, Mr Framhein objected on the basis that the owners were not aware of a Court order made on 17 July 1957 whereby the share or interests of Tuku and Tamarua is that portion of land containing 3 roods, 9 perches.

[7] A further meeting was called on 13 March 2017 and Mr Framhein explained the 1957 Agreement, but the majority of owners still supported the application.

[8] In relation to the 1957 order it was submitted this did not prevent the occupation right being granted to Mr Riddell.

[9] Mrs Browne further submitted that in terms of s 50 any native whether an owner or not may apply for an occupation right order and the owners can still determine that person receive an occupation right order.

[10] Further it was submitted that the occupation right will not affect or diminish the objectors shareholding in this land.

The Objector's Case

[11] For the objector, Ngamata Maroroa gave evidence that Tekeu Framhein did not support the application and neither did the owners listed at Ngametua Te Ariki, Rairuka Te Ariki, Nooroa Te Ariki Ngatepaeru Te Ariki and Teremoana Te Ariki.

[12] Mr William Framhein submitted that the relative interests of the landowners had not been defined by the Order on Investigation of Title in 1907 and if it had each owner would have received 1250m².

[13] He also maintained that the order of 17 July 1957 established that the share or interests of Tukeu and Tamuera is within the portion of land defined in that order containing 3 roods, 9 perches.

[14] The applicant James Riddell is a direct descendant of Tamuera and it was submitted that his occupation should be confined to that portion of land.

[15] Mr Framhein also maintained that the number of objectors was sizable and that the Court had a discretion not to grant the application. He referred to applications by Akaiti Eitiare and Samuel Samuel (34/11) and Kuramaeva Edward (35/11) where notwithstanding the occupation rights were supported by the majority of owners the Court dismissed the applications.

[16] Mr Framhein seeks a dismissal of the application or an adjournment to enable the applicant to obtain the consent of a landowner who will forfeit or reduce his interest in the land for the applicant. He also maintained that the Court could make an order in favour of the applicant on the understanding the objectors interests in the land would not be reduced or diminished.

Discussion

[17] Section 50 of the Cook Islands Amendment Act 1946 provides as follows:

“(1) In any case where the Native Land Court is satisfied that it is the wish of the majority of the owners of any Native land that that land or any part thereof should be occupied by any person or persons (being Natives or descendants of Natives), the Court may make an order accordingly granting the right of occupation of the land or part thereof to that person or those persons for such period and upon such terms and conditions as the Court thinks fit.

(2) Any person occupying any land under any such order of the Court shall, subject to the terms of the order, be deemed to be the owner of the land under Native custom.

(3) No order shall be made by the Court under this section without the consent of the person or persons to whom the right of occupation is granted.”



[18] In terms of this section the Court must be satisfied that the majority of owners support the application however there is still a discretion given to the Court to grant or dismiss the application. The section also provides that the owners can decide to grant an occupation right to any native without being an owner in the land.

[19] In this case the Deputy Registrar has certified that 213 out of 329 owners support this application. That amounts to approximately 65% of the owners. The Deputy Registrar was not called to be questioned on her certificate and I accept the certificate as a true assessment of owner support.

[20] Also it is clear that the owners had the full details of the 1957 Agreement explained to them at the second meeting and they still by majority decided to give an occupation right to the applicant.

[21] Ngamata Maroroa for the objectors identified owners who did not support the application who may have been included as supporting. As stated by counsel for the Applicant even with these owners removed from support the majority of owners still favoured the occupation right.

[22] Section 50 also provides that an occupation right can go to any native. That is, you do not have to be an owner or a descendant of an owner in the land in question.

[23] Alternatively, you may have been the member of a family who partitioned out your shares from the parent block and your family now have no interest in the parent block. S 50 does not prevent you from still applying for an occupation right and being granted that occupation right as long as you are a native and the owners by majority support your application.

[24] The situation here is not that of partition. There was an agreement made in 1957 that Tuku and Tamuera's interests in this land be contained in 3 roods, 9 perches. There was no partition and Tuku and Tamuera retained their interest in the parent block. This Agreement made in 1957 does not prevent the applicant applying for an occupation right and being granted an occupation right if that is the wish of the majority.

[25] It was also argued that this Court should follow the decisions in Akaiti Eitiare and Samuel Samuel (34/11) and Kuramaeva Edward (35/11) where notwithstanding support of the majority of owners the Court dismissed the applications. In those cases the Court dismissed the applications as the applicants already possessed occupation right orders in their favour. The Court did not consider they should have two occupation right orders.

[26] That situation does not exist in this case as the applicant James Riddell is not the holder of another prior occupation right.

[27] It should also be noted that Mr Framhein conceded that an occupation right order could be made in favour of the applicant on the understanding that the objectors interests in Te Aretoa 13B would not be reduced or diminished.

[28] An occupation right order made in favour of one owner does not reduce or diminish the interests in the land of the other owners. They retain exactly the same interest in the land after the occupation right order is made.

[29] When all the above circumstances are taken into account I cannot see any valid reason not to grant the application.

[30] I therefore make the following order:

- 1) That an occupation right order be granted in favour of James Mitchell Riddell and his direct descendants for an area of land containing 1100m² on land known as Aretoa Section 13B, Matavera, for the purpose of a house site. This order is conditional upon the applicant commencing the building of a home within 5 years and finishing within 7 years. Should the applicant not have complied with these time limits he may apply for a 3 year extension.

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



Wilson Isaac, J