IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(LAND DIVISION) **APPLICATION NO. 2/2017**

IN THE MATTER	of Section 390A of the Cook Islands Act 1915
AND	
IN THE MATTER	of the land known as **RANGIATUA SECTION 103C2, AVARUA**
AND	
IN THE MATTER	of an application to rehear the Partition Order made on 7 March 1990 dividing Rangiatua Section 103C2B into Rangiatua Section 103C2B1 and Rangiatua Section 103C2B2, Avarua
BETWEEN	**EDWIN PITTMAN** of Rarotonga, landowner Applicant
AND	**THE LANDOWNERS OF RANGIATUA SECTION 103C2B2, AVARUA** First Respondent
AND	**THE REGISTRAR OF THE HIGH COURT OF THE COOK ISLANDS** Second Respondent

Counsel: Mrs T Browne for Applicant
Mr T Moore, agent for First Respondents
Ms C Evans, Deputy Solicitor-General, for Second Respondent

Date of Judgment: 12 July 2018

JUDGMENT OF HUGH WILLIAMS, CJ

[WILL0453.dss]

[1] On 10 March 2017 the applicant, Mr Edwin Pittman, applied to the Land Division of this Court for an order pursuant to s 390A of the Cook Islands Act 1915 amending a partition order made on 3 July 1990 partitioning Rangiatua Section 103C2B into Rangiatua 103C2B1 and Rangiatua 103C2B2, Avarua, on the grounds the order was made in error in that it mistakenly included an area of 7250m^2 more or less which had previously been included in a partition order made on 21 March 1984 when Rangiatua 103C2A was vested in Mr Pittman and his siblings. The amendment sought was said to be a necessary consequence of the 21 March 1984 partition order but the Registrar declined to give effect to that order so it remains unsealed.

[2] The application was supported by submissions from Mrs Browne, counsel for the applicant, elaborating on the background and saying:

> "Amending the [3 July 1990] order to exclude the area of 7250m^2 is a consequential amendment given that the area was part of the first order as Rangiatua 103C2B2 [and] is inconsistent with the first order in that it included the area that was part of the first order, namely the area of approximately 7250m^2."

[3] Mrs Browne made the point that the Deputy Registrar had declined to seal the first order and that, in an attempt to resolve the matter, counsel filed a memorandum for Savage J's consideration but that the judge declined to make an order suggesting instead that this application be filed.

[4] There appearing to be consent, the Court, in a minute dated 1 August 2017, directed that, within one month of the minute, Ms Evans, counsel for the Crown, was to file a memorandum indicating the second respondent's attitude to the application. That was followed by a second minute, this one dated 13 October 2017, repeating the direction for the Crown to indicate its attitude to the application within one month of the second minute.

[5] However, unbeknown the present Chief Justice at that stage, counsel for the Crown had filed a minute dated 7 September 2017 acknowledging the error and saying that the "error is fully the responsibility of the Registrar" and suggesting an order under s 390A might be issued in a form on which counsel agreed. By memorandum dated 4 October 2017, counsel for the applicant and the second respondent advised that costs had been agreed and on the same day filed a draft order correcting the error.

[6] Also unknown to the Chief Justice at that stage was that Mr Moore, agent for the first respondents, had filed a memorandum on 8 September 2017 complaining that neither he nor his clients had been served with the s 390A application and saying Crown counsel had advised the Deputy Registrar to communicate directly with the first respondents, not to communicate via the agent. That memorandum was drawn to the Chief Justice's attention on 11 February 2018 in a further memorandum accepting that the application did not disadvantage the first respondents and advising that accordingly they had no objection – apart from a factual error in the draft order – to the making of the orders sought.

[7] Further again , on 14 September 2010 (filed in this matter on 4 October 2017 and first brought the Chief Justice's attention on 14 February 2018) Tukurangi Hosking Junior, holding a power of attorney for Teremoana Sally Papera Hosking, lodged an objection to this application on the ground that the land had been partitioned and each family involved allocated their share.

[8] Ms Evans sought – and was granted – leave to respond to Mr Moore's memoranda and Mr Hosking's notice of objection. By memorandum dated 1 March 2018 she said that despite not having been served with notice that any of the first respondents disputed the application the Crown took steps to ensure the landowners identified on the register of title were informed of the Crown's intention to consent to the order correcting the partition order of 7 March 1990, including advising the landowners of the date of hearing and their right to seek separate advice. A sample of the Court's letter to landowners dated 7 August 2017 was attached. She made the point that because no notice of dispute by any of the first respondents had been served, Mr Moore was not recorded as a party to the proceedings.

[9] On 4 October 2017 the matter was called before Savage J and was dealt with by the joint memorandum of counsel consenting to the application. Mr Moore was present and handed up his 8 September 2017 memorandum, but the Judge did not deal with it.

[10] As to the Hosking notice, Ms Evans said the Crown only received a copy of it following the Court's direction of 15 February 2018 and that Ms Hosking was not identified as an affected landowner.

[11] In the light of all of that:

a) The Court notes that Mr Moore's clients were not a party to the proceeding initially and were not entitled to service as no Notice of Dispute had been filed on their behalf but that, in any event, the first respondents now consent to the making of the order in Mr Pittman's favour;

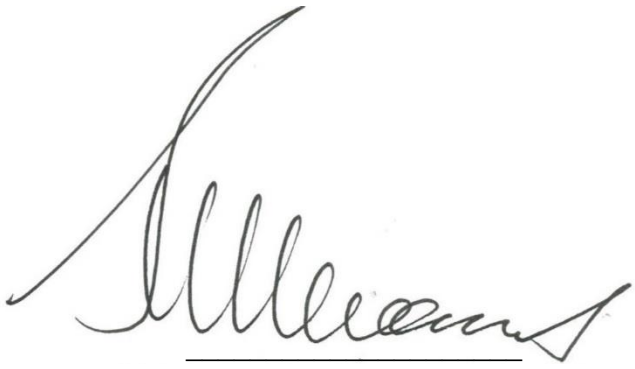
b) Mr Moore's application for costs is dismissed on the basis that land agents are not entitled to costs;

c) The Hosking notice of 14 September 2010 is dismissed for want of prosecution. No question of costs arises.

d) That there will be orders in terms of the draft order filed on 4 October 2017 in the form filed without amendment. The order will not be amended to include reference to Mr Moore's memoranda as they do not bear on the nub of the matter.

[12] Since the application – filed on 10 March 2017 – sought to amend a partition order made on 3 July 1990, that is to say more than five years previously, the Chief Justice had jurisdiction under s 390A of the Cook Islands Act 1915 to refer the matter to the Land Division of the High Court for enquiry and report. However, in view of the fact that the error was acknowledged and the necessary action consented to, that step was considered unnecessary and instead the matter was remitted to the Queens Representative to consent or not consent to the orders to be made.

[13] The Queens Representative consented to the proposed orders on 29 May 2018 and the above orders are confirmed accordingly.



Hugh Williams, CJ