

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

IN THE MATTER of the land known as **HOUSE SITE
163A, AVARUA**

APPLICATION NO: 558/12 & 28/16

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

AND

IN THE MATTER of Application for an Occupation Right
by **REO TEARIKI PUIA (TE ARIKI
TAPURANGI ALEXANDER
HOLLOWAY PUIA, TE ARIKI
HOLLOWAY PUIA)**

Applicant

APPLICATION NO: 311/16

IN THE MATTER of Section 409(a) of the Cook Islands Act
1915

AND

IN THE MATTER of an Application for Orders Determining
Ownership and Possession by **MOTU TE
ARIKI PUIA**

Applicant

Hearing date: 11, 13, 16 and 20 May 2016
(Heard at Rarotonga)

Appearances: Mrs T Browne, for the Applicant (558/12 and 228/16)
Mr T Moore for the Applicant (311/16)
Mrs T Carr for Hugh Baker (objector)

Decision: 18 October 2018

DECISION OF JUSTICE W W ISAAC AS TO COSTS

Introduction

[1] This is an application for costs following my reserved decision dated 25 August 2017 in which I determined two applications relating to the land at House Site 163A, Avarua.

[2] Requests were made to Mr Moore and Mrs Carr to file a response, but I did not receive a response from either of them.

Background

[3] My reserved decision dealt with two applications before the Court: an application for an occupation right order by Reo Teariki Puia and an application by Motu Teariki Puia to determine ownership and possession of a house, both in regard to House Site 163A, Avarua. The decision also dealt with an objection filed by Hugh Baker.

[4] The applications were heard before the Court on 11, 13, 16 and 20 May 2016. In my reserved decision, I noted that the main issues to be determined were:

- a) The standing of Mr Hugh Baker;
- b) Whether the Court has jurisdiction to grant an occupation right order on 163A Avarua, which was determined by Order on Investigation of Title as an occupation site for Puia and Iotia;
- c) If the Court has jurisdiction, should it grant the occupation order; and
- d) Who has the right to ownership or possession of the house on 163A Avarua?

[5] In my decision of 25 August 2017, I granted an occupation right order to Reo Teariki Puia over an area of 570m² and dismissed Motu Teariki Puia's application for determination of ownership and possession of the house. I also dismissed the application by Mr Hugh Baker as I concluded that his interest in the land was not sufficiently significant to give him standing in regard to the proceedings.

[6] Mrs Browne, counsel for the applicant, filed submissions dated 19 October 2017 seeking costs.

Submissions of Applicant

[7] Counsel for the applicant notes the relevant costs provision as set out in s 92 of the Judicature Act 1980-1981 and repeated in rule 300 of the Code of Civil Procedure. These provisions provide that the Court has the widest discretion to grant such costs awards as it considers just.

[8] Counsel submits that the Court should follow the approach set out in the New Zealand case *Morton v Douglas Homes Ltd* which provides that the purpose of a costs award is to impose on the unsuccessful party an obligation to make a reasonable contribution towards the costs reasonably incurred by the successful party.¹ The Court used a two-stage approach to determine what would constitute a 'reasonable contribution' to costs: firstly, to consider whether the actual costs incurred by counsel were reasonably incurred, and secondly, to consider what level of contribution to those costs is appropriate. The Court considered that the 'two-thirds' rule was a helpful starting point.

[9] Counsel also refers to the 'influencing factors' set out by Justice Grice in *Tini v Cook Islands Investment Corporation* which I followed in *Maina Traders*.²

[10] Counsel submits that the late filing of applications by Mr Moore and Mrs Carr should be reflected in a high contribution by their clients to the applicant's costs. While Mrs Browne's application for an occupation right was initially heard on 11 May 2016, Mr Moore advised the Court that he would be filing an application pursuant to s 409(a) on 13 May, and Mrs Browne was not served with Mrs Carr's client's objection until 20 May. Furthermore, Mrs Browne submits that the arguments raised by Mr Moore and Mrs Carr lacked substance, which was shown by the later dismissal of both of their cases.

[11] Accordingly, Mrs Browne seeks 80% of her costs, to be apportioned between Mr Moore and Mrs Carr's clients as they see fit.

¹ *Morton v Douglas Homes Ltd* [2] (1984) 2 NZLR 620.

² *Tini v Cook Islands Investment Corporation* (2012) CKHC, App 22/2011, 14 March 2012 at [16], as cited in *Maina Traders v Ngaoa Ranginui* (2013) CKHC, App 225/2011, 9 February 2013.

Discussion

[12] The law relating to costs applications is set out in the submissions of Counsel for the applicant. I accept this as the relevant law in relation to costs.

[13] Counsel also sets out what she considers to be the relevant influencing factors in this case. These include the late filing of applications by both Mr Moore and Mrs Carr which lengthened the time required to determine the initial application, and arguments being advanced which lacked substance.

[14] Mrs Browne also argued that I spent significant time determining Mr Baker's application, and this delayed the determination of the occupation right application. Despite the fact that I concluded that Mr Baker did not have standing in relation to these proceedings, he was entitled to file an objection with the Court and I was required to determine it.

[15] It is noted that I did not receive submissions on costs from either Mr Moore or Mrs Carr in response to the submissions on costs filed by Mrs Browne.

[16] The first point to acknowledge is that this application was contested by Mr Moore's and Mrs Carr's clients and the decision went against them. As such, Mrs Browne's client is entitled to costs and I must weigh the influencing factors when determining the amount of costs to be awarded.

[17] It is accepted that late filing and the dismissal of the respondents' cases are a factor to consider. However of more importance in this case is that the case considered an important issue for Cook Islands land law. That is, whether the Court has jurisdiction to grant occupation rights orders in respect to 'taura oire' (house site) lands.

[18] In this application, I found that the Court did have jurisdiction and granted an occupation rights order in favour of Reo Teariki Puia who is listed as an owner in this land for occupation purposes.

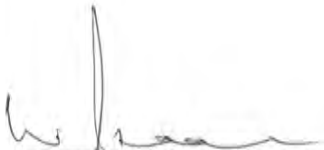
[19] This issue of significant public interest has been long-standing. In my view, the decision has clarified the position of rights in respect to 'taura oira' titles. In doing so, it should bring clarity to Cook Islands land owners with interests in such titles.

[20] Having regard to the public importance of this decision I do not consider that costs should be set at 80% of Counsel's costs as sought by Mrs Browne.

Decision

[21] In all the circumstances, I consider that costs should be set at 50% of Counsel's costs, namely \$2,629.65. These costs should be divided equally between both Mr Moore and Mrs Carr's clients.

Dated at Wellington, New Zealand this 18th day of October 2018.

A handwritten signature in black ink, appearing to read 'W W Isaac', with a horizontal line underneath the signature.

W W Isaac
JUSTICE