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

APPLICATION NO. MAUKE 4/2019
(5/19)

IN THE MATTER	of Sections 409(d) and 409(e) of the Cook Islands Act 1915 and Rule 132 of the Code of Civil Procedure of the High Court 1981
AND	
IN THE MATTER	of the land known as **MOEIRA 10I, ARAKIROPU, MAUKE**
AND	
IN THE MATTER	of an ex-parte application for an interim injunction
BETWEEN	**PIPIRANGI HEATHER**, teacher, of Rarotonga Applicant
AND	**TEURA VAERUARANGI alias TEURA TUAKANANGARO SNOW and FRANCIS TAORO,** of Mauke Respondents

Counsel: Ms M Henry for applicant
Mr M Scowcroft for respondents

Date of Judgment: 6 June 2019

JUDGMENT OF HUGH WILLIAMS, CJ

[WILL0596.dss]

[1] On 23 May 2019 the applicant applied to this Court for an interim injunction "against the respondents their agents servants and contractors prohibiting them from entering the land known as Moeira Section 10I, Arakiropu, Mauke, and carrying out any construction or earthworks whatsoever over the said land and that they immediately remove all machinery and equipment associated with the initial construction and/or earthworks from the said lands".

[2] The application was brought ex parte on the grounds that the applicant is a landowner over the land her family house was constructed on the land and was demolished by the respondents, the respondents did not obtain the consent or authority of the applicant and a landowners' meeting was not called. It was claimed that the respondents through their agents

have now commenced construction work on the land and disregarded warnings from the landowners and the Police to stop.

[3] The application was supported by an affidavit from the applicant which, summarised, said:

(a) That she was a landowner over the land in question having succeeded to her mother Nooroa Akarare on 18 November 2017 though the succession order was not yet recorded on the Register of Titles. She said her family house was on the land, her feeding father Snow Toamoa Enoka lived in the house until his death in 1999 and after her death the applicant put her cousin and her family into the house though they were removed in 2000.

(b) The daughter of the applicant's grand-aunt, also a landowner, took occupation though not a landowner and tidied the house.

(c) The house was demolished not later than 19 April 2019, a Police complaint was filed but construction continued.

[4] The respondents have also demolished a nearby house on the same block of land.

[5] A copy of the plan on which the application is based is annexed to this judgment marked "A".

[6] On 23 May 2019 Potter, J made an injunction in terms of the ex parte application.

[7] On 28 May 2019 the respondents applied to discharge the injunction saying Teura Tuakanangaro Snow is a landowner on Moeirea Section 10I, Arakiropu, Mauke and holds that land as tenant in common with the applicant and others. In a supporting affidavit, the deponent gave details as to how she became an owner in the land; how the former family house had deteriorated to the point where it could only be used as a storage unit by her daughter; and that at a landowners' meeting for Moeirea 10I on 12 March 2019 all the landowners then on Mauke unanimously approved the house being demolished.

[8] She agreed that on 24 April 2019, after being contacted by the Mauke Police, she signed a letter saying she would refrain from doing any further changes to the house. She did that as the house had by then been demolished.

[9] She said that the landowners' meeting also unanimously agreed to her request to lease Moeirea 10I to her and her children.

[10] A new house is in the process of being built in place of the one demolished with the family currently living at the village hall until construction is complete.

[11] She attached a further plan of Moeirea 10I. It is attached headed "Department of Survey": "X" is the demolished house; "Hse" is the respondent's family home currently under construction; "Te Katoa Store" is the respondent's daughter's shop; and "S" is the respondent's sister's home.

[12] In submissions supporting the discharge application Mr Scowcroft for the respondents made the points that not all relevant facts had been brought to the Court's attention on the ex parte application because the exhibited plan "A" was so unparticularised as to be misleading; that there were other improvements on Moeirea 10I in which the applicant has no interest; that there is no serious case to be tried, the balance of convenience lies in favour of dismissing the injunction and the undertaking for damages required by the rules on injunction applications was not filed.

[13] After timetabling orders were made 29 May 2019, the opportunity was taken in the morning of 31 May 2019 to see counsel for the parties briefly. At that hearing it was indicated that the procedural objections raised by the respondents appeared to have significant weight to the point that the application was deficient; there was a lack of candour on the part of the applicant, especially in producing plan "A" attached to her affidavit; and that, there being no time to hear the matter on a fully defended basis during the week beginning 27 May 2019, the parties should endeavour to agree on a rewording of the injunction reducing its scope.

[14] At the hearing on 31 May 2019 Ms Henry for the applicant produced a further plan of Moeirea 10I supported by an unsworn statement from another landowner disputing that the demolished family house is one to which the first-named respondent and her children have a claim and disputing the validity of the meeting of 12 March 2019. That statement included a

copy of the "Department of Survey" plan, though differently annotated, and seemed to carry the matter little further.

[15] During the day on 31 May 2019 counsel for the parties took further instructions and advised the Court that their clients were unable to agree on any variation of the injunction.

[16] In a memorandum Ms Henry submitted that the question of ownership of the demolished houses is a serious question to be tried in respect of which the applicant reserves her position and that the respondent should be put on notice that they run a risk if they continue with further construction.

[17] Mr Scowcroft submitted that his client should not be required to continue sleeping on the veranda of the village hall in Mauke until the new house is completed which would be enforced on them if the injunction against further construction remains in place and the dispute was unable to be decided for several weeks at least. Any dispute, he submitted, over the family house should be determined on proper applications directed towards that end supported by detailed affidavits.

[18] In view of the parties' inability to resolve their differences and agree on any variation of the injunction, it is necessary to go back to first principles.

[19] As they apply in this case, first, the ex parte application was seriously deficient. Undertakings to meet damages are important in ex parte application because the Court is necessarily dealing with applications which often have serious consequences and it is vital that parties applying for ex parte orders are bound to the Court and opposite parties to meet any damages which may flow from their proceeding in that manner.

[20] Secondly – and flowing from that – it is essential that parties seeking orders on an ex parte basis – that is, without their opponents being aware ,or served, with the application – provide the Court with a full factual background, including matters that may not be favourable to their case. Candour is essential on the part of ex parte applicants and here plan "A" seems clearly to have been misleading. It doubtless misled Potter J.

[21] Further, while it is not difficult to accept that the ongoing construction is of concern to the applicant, there seems to have been an unexplained delay in seeking the injunction. As put to counsel during the hearings on 31 May 2019, it now appears that at the very least the

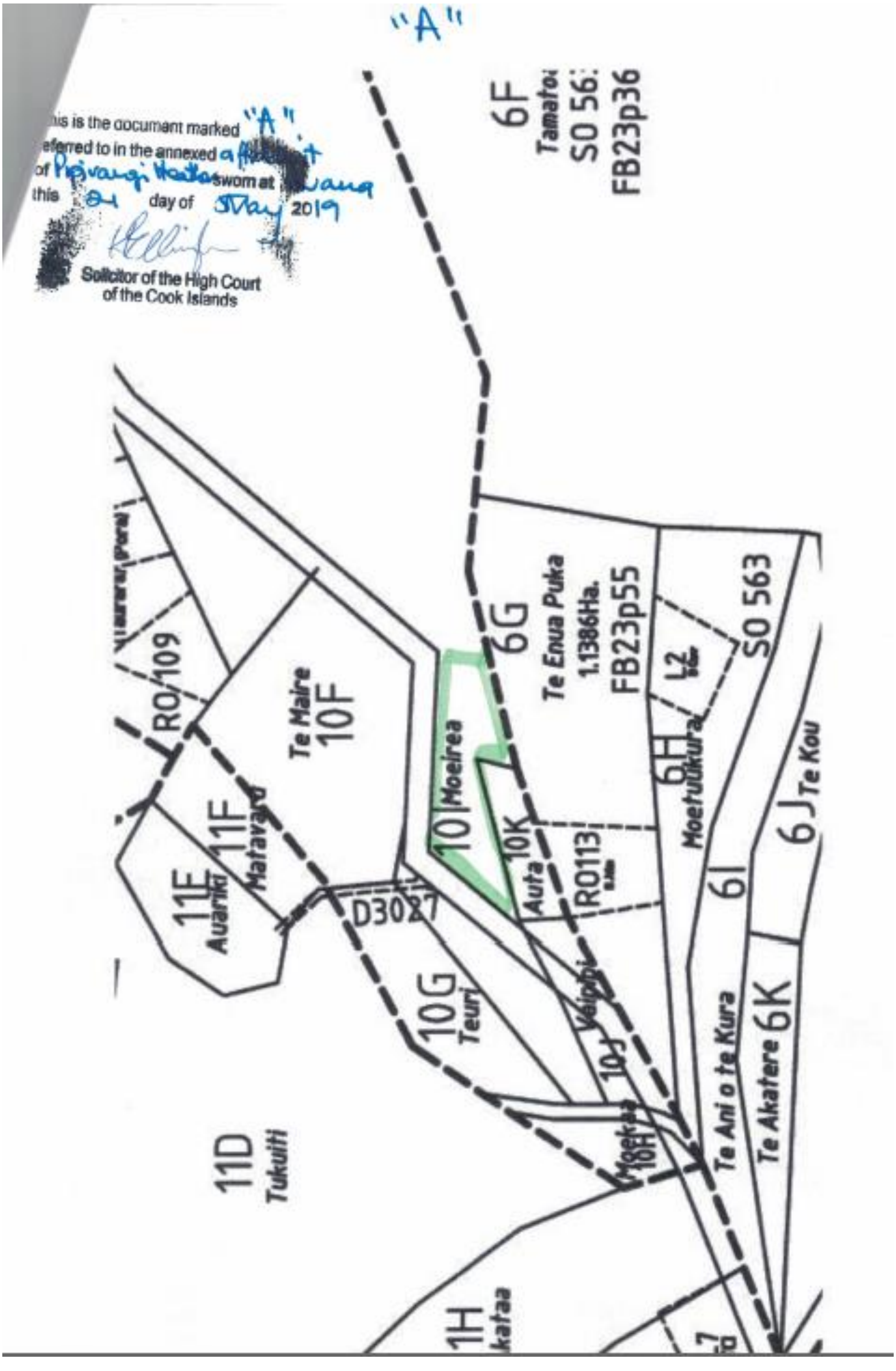
injunction should be varied but given that demolition has already taken place and construction is ongoing, it is for the parties to try to fashion a workable variation with the Court only being involved to adjudicate on the matter on a defended basis if they are unable to compromise.

[22] In light of that, there will be orders:

a) rescinding the injunction of 23 May 2019 in its entirety; and

b) directing that the application for an interim injunction and the application to discharge the same be listed as defended matters in the Panui before Coxhead J in the July 2019 sittings of the Land Division of this Court unless the parties apply to have those issues dealt with previously. If the parties are unable to agree on a timetable for the filing of documents leading up the July 2019 fixture, memoranda may be filed on that topic.

Hugh Williams, CJ


"A"
This is the document marked "A"
referred to in the annexed affidavit
sworn at
this day of 2019
Solicitor of the High Court
of the Cook Islands
6F
Tamatoa
FB23p36
6G
Te Enua Puka
1.1386Ha.
FB23p55
SO 563
Te Maire
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11F
Matavaru
11E
Auariki
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Moeirea
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Auta
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6H
Moetuukura
6I
6J Te Kou
D3027
10G
Teuri
10J
11D
Tukuiti
10H
Te Ani o te Kura
Te Akatere 6K

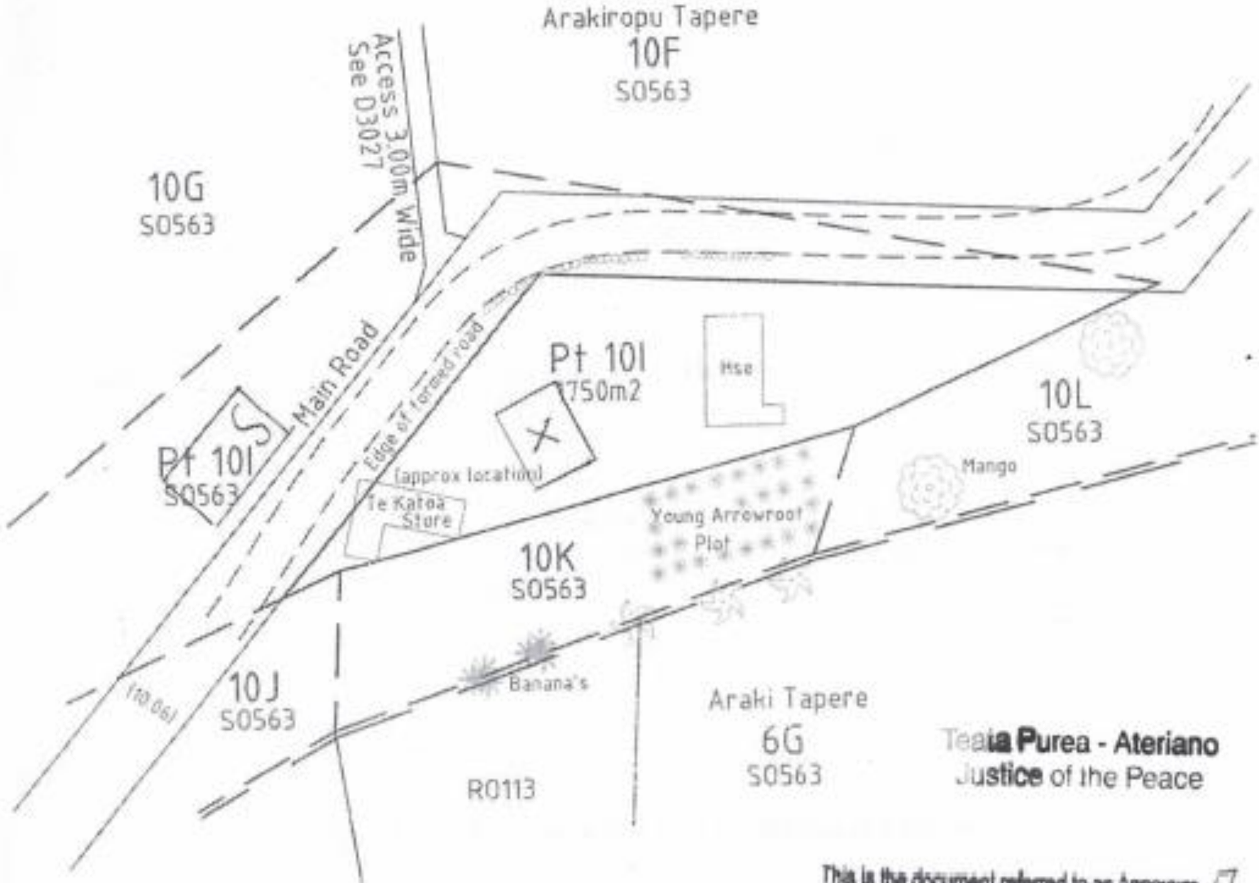
DEPARTMENT OF SURVEY

Scheme Plan No.
A4 –

Land: Moeirea Pt Sec. 10I

Tapere: Arakiropu District: Ngatiarua Island: Mauke

B



Teaia Purea - Ateriano
Justice of the Peace

This is the document referred to as Annexure B
in the affidavit of Teura Tuakanangaro Snow
sworn/affirmed at Mauke on 29 May
before me

~~Solicitor of the High Court of the Cook Islands~~
Justice of the peace

NOTE: Area approx only & subject to survey

Purpose: Prop. O/R

Applicant: Francis Taoro

Surveyed: ..../.../... Schemed: ..../.../...

Drawn: A.J.N 5/5/19 Checked: ..../.../...

Approved: ..../.../...
CHIEF SURVEYOR

Scale: 1:750

DEPARTMENT OF SURVEY Rarotonga, Cook Islands