

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

**Application No: 323/2017**

**UNDER** Section 3 of the Declaratory Judgments Act 1994

**IN THE MATTER** of the land known as PAPA'AROA SECTION 36A, TAKITUMU

**BETWEEN** GEORGE FREDERICK HOSKING  
**Applicant**

**AND** MIIMETUA MAREARAI  
**Respondent**

Hearing date: On the papers

Decision: 10 May 2021

---

**DECISION OF JUSTICE C T COXHEAD AS TO COSTS**

---

**Introduction**

[1] On 21 July 2017, the applicant, George Frederick Hosking, applied for a declaration that his ancestor, Terima Raina, was an owner in Papa`aroa Section 36A, located in Takitumu.

[2] Miimetua Marearai filed an objection on 24 April 2019 submitting the applicant had no standing as he was not an owner of the land. The reason for the delay in filing the notice of objection was that the applicant did not serve Ms Marearai or the agent for some 18 months after the claim was filed.

[3] The matter came before Isaac J on 30 April 2019. A further memorandum was filed by Mr Moore on 4 July 2019 where it was reemphasised the applicant has no standing and the application ought to be dismissed and the question of costs reserved. The matter then came before me on 8 July 2019 where Mr Holmes for the applicant sought leave to withdraw the application, which I granted on the basis that costs were reserved.

[4] This decision concerns an application for costs filed by Mr Moore on 7 December 2020. The agent's bill of costs totals \$1,613.75. Mr Moore wrote to the applicant on 18 November 2019 offering to settle the question of costs at \$800.00, but did not receive a reply.

## **Submissions**

### *Respondent*

[5] In the application for costs, dated 7 December 2020, Mr Moore notes the applicant was on notice from 24 April 2019 that he was without standing. Despite this, the applicant proceeded with his application before Isaac J, only admitting in July 2019 through counsel Mr Holmes that there was no basis for his application.

[6] Mr Moore refers to the Code of Civil Procedure of the High Court 1981, Part XVII, which generally provides that the party against whom the proceedings are discontinued is, unless the Court orders otherwise, entitled to costs. Mr Moore submits the Court normally treats a withdrawal in the same manner as discontinuance on the question of costs.<sup>1</sup> Even where the merits of the case are not clear, the party who withdraws should pay the reasonably incurred costs of the other party, with a starting point of 66% in ordinary cases.

[7] Mr Moore submits that full indemnity costs are appropriate as the application was misconceived and should never have been filed as the applicant lacked standing and did not inform Ms Marearai of the application for some 18 months. The agent's bill as at 22 July 2019 was \$1,313.75. Adding \$300.00 for costs submissions, the agents bill now totals \$1,613.75 which Mr Moore submits was reasonably incurred. Mr Moore also notes the applicant refused to enter into discussions as to settlement on costs.

### *Applicant*

[8] June Margaret Baudinet filed an affidavit on 10 March 2021. Mrs Baudinet traverses various legal arguments relating to the substantive matter and submits Mr Moore was incorrect in stating Terima Raina was never an owner in the land. She asks the Court to grant an additional order to allow more time for investigation.

---

<sup>1</sup> Citing *Wicket's Stores Limited T/A Cavendish Carpets v Courtney Developments Limited* HC Auckland CIV 2007-404-006890, 29 August 2008 and *DDL Investments Limited v McDonagh* HC Auckland CIV-2010-404-3964, 15 December 2011.

[9] No response has been received from Mr Hosking on this issue of costs.

*Submissions in reply*

[10] Mr Moore submitted a further memorandum as to costs on 30 March 2021.

[11] Mr Moore submits he was not aware of Mrs Baudinet's affidavit being filed for nearly three weeks. He said she is not a party to proceedings and her submissions seek to relitigate the substantive proceedings that was withdrawn in 2019.

[12] Mr Moore notes Mr Hosking already has costs awarded against him of \$7000 from a judgment of Chief Judge Williams in regards to an unsuccessful s 390A application which he has made no payment towards.

[13] Mr Moore submits this behaviour by Mr Hosking and Mrs Baudinet illustrates they are unwilling to let go of the matter, warranting an award at 100% indemnity costs.

**Law**

[14] The Court can award costs under s 384 of the Cook Islands Act 1915, which provides:

In any proceeding [the Land Court] may make such order as it thinks fit as to the payment of the costs thereof, or of any proceedings or matters incidental or preliminary thereto, by or to any person who is a party to that proceeding, whether the persons by and to whom the costs are made payable are parties in the same or different interests.

[15] As per s 92 of the Judicature Act 1980-81, costs are at the jurisdiction of the Court:

Subject to this Act and to the provisions of the Crimes Act 1969, the High Court shall have the power to make such order as it thinks just for the payment of the costs of any proceedings by or to any party thereto. Such costs shall be in the discretion of the Court, and may, if the Court thinks fit, be ordered to be charged upon or paid out of any fund or estate before the Court.

[16] The key principle is that costs usually follow the event, with a general starting point being a contribution towards 66% of costs incurred by the successful party.<sup>2</sup>

---

<sup>2</sup> *Tuake v Ngate – Akoa 65, Arorangi* (2014) at [29] citing *Glaister v Amalgamated Diaries Ltd* CA99/03, 1 March 2004 at [9] and [14].

[17] In *Maina Traders v Ngaoa Ranginui* the Court set out factors which may influence an award of costs:<sup>3</sup>

- a) The length of the hearing (the longer the hearing, the more it is worth, but waste of time should be penalised);
- b) The amount of money involved (the greater the amount, the greater the responsibility, and the fee warranted);
- c) The importance of the issues, in a monetary or a non-monetary sense, to either the parties or generally (the greater the importance, the greater the demand for skill and care, and a commensurate fee);
- d) The legal and factual complexity (the more intricate and difficult the case, the greater the fee);
- e) The amount of time required for effective preparation;
- f) Whether argument(s) lacking substance (but not necessarily frivolous or vexatious) was/were advanced;
- g) Abuse of the process of the Court;
- h) Any failure to comply with the rules, or an order or direction of the Court (to the extent such non-compliance has impeded progress);
- i) Unreasonable or obdurate refusal to settle, so far as known to the Court;
- j) Unrealistic attitudes, or inadequate payments into Court;
- k) Technical or unmeritorious points;
- l) The degree of success achieved by the parties (a party may succeed on only one of a number of causes of action, or succeed but for significantly reduced relief. Success only in part frequently is recognised by significant reduction in costs awarded);
- m) Whether the hearing was lengthened or shortened by the conduct of either party.

---

<sup>3</sup> *Maina Traders v Ngaoa Ranginui* (2013) CKHC, App 225/2011, 9 February 2013 as cited in *Tavioni v Cook Islands Christian Church Inc* [2018] CKLC 2; Application 196.2014 (26 September 2018) at [19].

[18] In *Bates v Mateara*, I considered the issue as to whether costs can be awarded to a party represented by a land agent, as in the Cook Islands, both land agents and solicitors appear as representatives in land proceedings.<sup>4</sup> Considering the context of land proceedings and the authorities before me, I found:<sup>5</sup>

[31] If our starting point is that an award of costs is to reimburse a successful party for having to appear in Court then whether they were represented by an agent or a solicitor should make no difference. It is about the burden on the successful party in bringing or defending a matter, and not the qualifications of their authorised representative.

[...]

[34] To be able to award punitive costs against an agent in the same manner as a solicitor implies an equality in their treatment within the Cook Islands context. To refuse to award costs to a party represented, in the Land Division of the High Court, by a land agent would then create an unreasonable injustice. The Land Agents Registration Act 2009 appears to be about improving access to justice by providing people with the option of engaging a land agent when bringing a matter to the Land Division of the High Court. I find a refusal to award costs to a party because they chose to employ a land agent would risk nullifying that benefit.

[19] Given the purpose for an award of costs is to make a reasonable contribution towards the legal costs of the successful party, I found that this should be extended to include the costs of a land agent who has been authorised by legislation to represent a party in the Land Division of the High Court.<sup>6</sup>

## **Discussion**

[20] While Mr George Hosking's may have held strong concerns and reasons for lodging the application it clearly had little merit or chance of success.

[21] Unfortunately, in filing the application it has meant the respondent has incurred expense in having to deal with the application. Even though the application did not proceed and was withdrawn, Mr Moore's client has incurred costs.

[22] Mr Hosking is no stranger to the issue of costs having been awarded costs against him from a judgment of Chief Judge Williams in regards to an unsuccessful s 390A application.

---

<sup>4</sup> *Bates v Mateara* [2019] CKLC3; Application 19 of 2018 (8 August 2019) at [28]-[35].

<sup>5</sup> At [31] and [34].

<sup>6</sup> At [35].

[23] In my view the respondent is entitled to a reasonable contribution towards their costs incurred.

**Decision**

[24] I find that an award of costs of \$800.00 is appropriate in the circumstances.

[25] A copy of this decision is to be distributed to R Holmes, T Moore, the Applicant and Respondent.

Dated at Rotorua, Aotearoa/New Zealand this 10<sup>th</sup> day of May 2021.

---

C T Coxhead  
**JUSTICE**