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

APPLICATION NO: 108/22

UNDER	Section 409(b) of the Cook Islands Act 1915
IN THE MATTER OF	Akapuao Section 42E, Takitumu
BETWEEN	MIIMETUA JOSEPH MAREARAI **Applicant**
AND	GEORGE FREDERICK HOSKING **Respondent**

Hearings: 13 July 2022

Appearances: T Carr for Applicant
R Holmes for Respondents

Judgment: 20 December 2022 (NZT)

JUDGMENT OF JUSTICE C T COXHEAD

Copies to:
T Carr, Titikaveka, Rarotonga
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Introduction

[1] This matter concerns an application to determine the relative interests of the owners of Akapuao Section 42E (the land). The applicant seeks that the land be determined in equal shares between the successors of the original owners.

[2] The respondent/objector George Hoskings, Raina Matai'apo, seeks that the interests be determined according to Cook Island custom which, in his submission, favours those who are living on the land over owners who are absent.

Background

[3] The land was partitioned in 2006 and is a derivative of the parent title created in 1905. There were originally thirteen owners in the land; the ten children of Te Rima Raina, and three rangatira. The three rangatira lines have ended and their interests in the land have reverted back to the Raina family. One of these is Taau, the son of Taunga (an original owner), whose interests have been previously determined by the Court to have reverted to the Raina family.

[4] Of the ten children of Raina, two died without issue; Ngapoko Raina and Ngatai Raina. The remaining eight owners who had issue are:

1. Maitoe Raina
2. Tanu Raina
3. Teone Raina
4. Te Ariki Raina
5. Enoka Raina
6. Aiteina Raina
7. Rebecca Raina
8. Ngapoko Te Ra

[5] The applicant descends from Maitoe Raina (number 1 above), while the respondent descends from Ngapoko Te Ra (number 8 above).

[6] Together with a determination of relative interest, the applicant seeks a declaration that the interests of the original owners who died without issue have ceased; being Ngapoko

Raina, Ngatai Raina and Taau. In addition, there are some corrections sought to the Partition Order made in 2006.

[7] It is noted the Court has on a number of occasions had to confirm that the ten children of Te Rima Raina are as noted at paragraph [4] above. The respondent and Mrs Baudinet have made a number of applications to the Court claiming that Maitoe, Tanu, Teone, Te Ariki and Enoka were not the children of Te Rima Raina. Those applications were unsuccessful.

[8] It is settled that those noted on the title are all co-owners. While I note that the respondent does dispute some of those noted as owners, this application does not require me to decide that issue. The Court accepts the title as being correct.

Procedural History

[9] The application was filed on 31 March 2022 with submissions and documents in support.

[10] The Notice Disputing Claim was filed on 27 April 2022, with submissions filed on 20 June 2022. Further submissions were filed on 22 June 2022.

[11] The Memorandum to Judge by Applicant was filed on 12 July 2022. Supplementary Submissions by Objector were filed on 13 July 2022.

[12] I heard the matter in Rarotonga on 13 July 2022 with Mr Holmes attending by Zoom and Mrs Carr in person.

[13] I reserved my decision.

[14] I received the transcript for this matter on 11 November 2022 and was then able to complete this decision.

Issue

[15] The issue before me is whether in determining relative interests for Akapuao 42E, this should be done on an equal basis to the eight lines descending from Raina.

The Law

[16] Section 409(a) and (b) of the Cook Islands Act 1915 provides that the Court can determine the interest in any land:[1]

> **409. Miscellaneous jurisdiction of Land Court** - In addition to the jurisdiction elsewhere conferred upon [the Land Court] by this Act, that Court shall have jurisdiction-
>
> (a) To hear and determine as between Natives [or the descendants of Natives] any claim to the ownership or possession of Native freehold land, or to any right, title, estate, or interest in such land or in the proceeds of any alienation thereof:
>
> (b) To determine the relative interests of the owners in common of Native freehold land, whether any of those owners are Natives or Europeans:

Applicant's Submissions

[17] The applicant seeks that the relative interests be determined in equal shares from the eight lines descending from Raina.

[18] With the 2006 Partition Order now sealed and the Raina family being awarded their shares, the applicant submits that it is appropriate that the Court now determines the relative interests amongst the owners of whom all but one are direct descendants of Te Rima Raina.

[19] The applicant submits that with regard to another parcel of land owned by the Raina family, Vaimaanga Section 3,[2] the Court made orders upon partition, separating out the rangatira interests, with the balance of the land being awarded to Raina's surviving descendants in eight shares.[3] The relative interests were not determined on succession.

[20] This approach was reinforced in the succession to Arapaii, where the rangatira portion reverted back to the surviving descendants of Raina in eight shares.[4] This succession decision related to Vaimaanga Section 3 and Akapuao 42.

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1 Cook Islands Act 1915, s 409(a) and (b).
2 MB 26/46-49.
3 MB 26/221.
4 MB 26/220.

[21] Applicant counsel submits that the objectors have unsuccessfully tried to oust several of Te Rima Raina's children and descendants from ownership of Raina lands.[5] In countering these attacks, the applicant has been unable to progress her partition application (191/14).

[22] The applicant seeks relative interests be determined equally between the eight lines to facilitate her application for partition. The applicant and her brother are dual successors to Maitoe Raina and would accordingly be entitled to a one-eighth share in the land between them (one-sixteenth each) if interests are determined equally to the eight lines.

Respondent's submissions

[23] The objector submits that ancient custom should be considered when considering this application and to give effect to this, the Court should:

(a) Give precedence to primary members of the descent group who have occupied and planted the land, in order that they can continue to occupy and plant as has been done for generations;

(b) Recognise and preserve the areas traditionally or presently occupied by particular owners ahead of absentee owners; and

(c) Uphold past agreements as to occupation areas.

[24] The objector notes that the applicant requests the interests be divided into eight equal shares with each family group to receive in total one share, as a precursor to her application to partition the land.

[25] Counsel for the objector submits that under the traditional system, the relative interests of co-owners were determined according to the amount of land they required, rather than on an equal share basis. The Court should consider which members of the Raina family occupied or planted the land as at 11 October 1915 (the date of the commencement of the Act) and the relevant ancient custom and usage of the Natives of the Cook Islands.

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5 Section 390A Application 7/16.

[26] The objector submits that only the descendants of Ngapoko Te Ra have continuously lived on and planted the land. The other seven lines have not done so. He submits that Maitoe Raina stopped living on the land in the 1950s and neither the applicant nor her brother Teokotai Joseph Marearai have lived on or planted the land.

[27] The objector also disputes that Maitoe Raina is the son of Te Rima Raina.[6] As I have already noted above, this application does not require me to decide that issue. The Court accepts the title as being correct.

[28] Counsel for the objector agrees that orders declaring their interest in the land at an end should be made in respect of the two children of Raina who died without issue, Ngapoko Raina and Ngatai Raina and in respect of Taau.

Corrections under the Judicature Act to 2006 Partition Order

[29] The applicant seeks that several corrections are made to the 2006 Partition Order, and counsel for the respondent agrees that these should be made. These corrections are detailed in Ms Carr's submissions of 30 March 2022, at paragraphs 54 to 63. Those errors are:

(a) The 2006 partition order was made by Smith J, and not Mr Justice John Douglas Dillon, who had been deceased some years prior to 2006.

(b) On 14 November 1994, as per Succession Order record at RB10/38, Teokotai Joseph Marearai (ma) and Meiimetua Joseph Marearai (fa) succeeded to the interests of Metua a Maitoe, daughter of Maitoe Raina. Despite this, they have both been left off the 2006 Partition Order. An amendment is sought to have the two above-named persons replace Metua a Maitoe, who appears as No. 1 on the 2006 Partition Order.

(c) On 27 May 2002, 16 persons succeeded to Mata James Maclister, however when transferring the names to the 2006 Partition Order, two of the successors were left off. Namely George George and Paroro Teuruaa George.

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6 This was the subject of a s 390A application.

(d) On 23 September 1991, 14 persons succeeded to Rongomate Metuariki. None of those 14 persons were transferred to the New Land under the 2006 Partition Order. These 14 persons will need to replace Rongomate Metuariki in the 2006 Partition Order.

(e) On 4 June 1992, six persons succeeded to Ratia Metuariki. None of the six were transferred to the new title and they should replace Ratia Metuariki in the 2006 Partition Order.

[30] As noted, Mr Holmes has indicated that the respondent consents to the corrections sought by Mrs Carr in paragraphs 54 to 63 of her submissions of 30 March 2022

[31] The applicant has provided Annexure "A" to their submissions, which they say reflects the correct 2006 Partition Order and includes 179 names instead of 162. The applicant seeks a relative interests determination based upon those listed under Annexure "A".

Discussion

[32] In determining relative interests, the Court is not apportioning areas of land. The Court is being asked to determine what share each co-owner holds in the land in relation to the other co-owners.

[33] Mr Holmes' submissions are on the basis that areas where people have lived, planted and continue to occupy and plant, and areas for which there may have been some past agreement as to occupation, should be designated for specific people and in particular the respondents.

[34] In essence, the respondent's submission is that only the descendants of Ngapoko Te Ra have continuously lived on and planted the land. Therefore the whole of Akapuao 42E should be granted to the respondent's line, with all other Raina lines receiving zero.

[35] If this application was seeking title to a certain area, or partition of a certain area, then those submissions would be very relevant.

[36] I agree with Mr Holmes that in terms of relative interests, there is no presumption of equality of shares, in that each party in the matter commences in the determination of relative interests on the same footing. I also agree with Mr Holmes that the Court should look to determine an interest in customary land according to the ancient custom and usage of Cook Island Māori. This is required pursuant to s 42 of the Cook Islands Act.

[37] The current situation is that the children of Raina and their descendants are all co-owners and their interests are not confined or fixed to any portion of the land and, in fact, as co-owners their rights lie over the entire land block.

[38] In *Nicholas v Peyroux*, Savage J held that:[7]

> Courts tasked with determining ownership and relative interests in Polynesian lands have traditionally had regard to the source of the land, the blood links involved, and familial relationships between the parties and occupation as at the relative date and in real terms.

[39] He went on to note that:[8]

> The interest of a co-owner is not confined or fixed in any portion of the land. The co-owner's rights lie over the entire land.

[40] This approach was affirmed in *Te Amaru v Descendants of Arapai* and *Uirangi Mataiapo v Teaia Mataiapo*.[9]

[41] In *Te Amaru*, Isaac J noted that:[10]

> as the authorities demonstrate, when it comes to determining relative interests under s 409(b) of that Act there is no presumption that co-owners hold the land in equal shares. Each party's quest for the definition of relative interests starts on the same footing and the Court's jurisdiction to determine relative interests must be exercised according to ancient custom and usage, as per s 422 of the Cook Islands Act 1915.

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7 *Nicholas v Peyroux Nicholas v Peyroux — Raemaru 14A Ngatangiia*, 6 July 2009 at [11].

8 At [5].

9 *Te Amaru v Descendants of Arapai – Koromiri Section 3K, Ngatangiia*, App. 519/11, 17 August 2017, Isaac J; *Uirangi Mataiapo v Teaia Mataiapo – Nukupure 3C, Ngatangiia*, App. 416/12, 20 December 2018, Savage J.

10 *Te Amaru v Descendants of Arapai* above n 9 at [25].

[42] Isaac J noted regarding Savage J's ratio in *Peyroux* that "the Court [placing] emphasis on the 'blood links involved' is consistent with the principle that land tenure in the Cook Islands is based on blood connection to the land."[11]

[43] In my view, the Court is not being asked to apportion the land or determine who should have title or occupancy for which area of the land block. Those matters would be considered in a partition or occupation order application. In any case, there is a lack of evidence before the Court to make any determination as to parties' potential areas of occupation with any certainty.

[44] The Court is being asked to determine the relative share interests, not the land area interests, of the eight lines descending from Raina.

[45] The starting point is that all those noted on the title are owners. Therefore the starting point for the determination of relative interests must be the 2006 Partition Order and the genealogical relationships between those owners.

[46] Given that Te Rima Raina clearly had title to this land, he named his ten children as the owners of the land, to the exclusion of himself. Those currently on the title get their "claim" to this land through Te Rima Raina's original claim. It is through the owners' blood links and genealogy to Te Rima Raina that they are on the title as owners in this land.

[47] This application is not about determining what area of land each owner owns. The interest as quantified in "shares" not in "land area" is clearly a western concept, foreign to how the land was apportioned in traditional times. Although that is the case, it is still a requirement that the Court, in defining relative interests of owners, must do so according to ancient custom and usage.

[48] As Mr Holmes notes at paragraph 97 of his Supplementary Submissions dated 12 July 2022, when it comes to making determinations of relative interest, it was not possible for this to be done in accordance with Native custom, as this concept was completely inconsistent with Māori Customary Law.

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11 At [26] citing *Peyroux*, above n 7.

[49] I think this is partly correct, in terms of determining relative share interests. That surely must have been something foreign to customary ways of land allocation and entitlement. When determining relative interests in terms of area of land or apportioning of land, then clearly the concepts that Mr Holmes has outlined as to determining rights to land are applicable.

[50] However, in this case, the title and who owns the land has been previously determined.

Previous determinations

[51] This family have had their share interests determined previously by the Court in respect of Vaimaanga Section 3, which is another parcel of land owned by the Raina family.[12] Vaimaanga Section 3 was partitioned, separating out the rangatira interests, with the balance of the land being awarded to Raina's surviving descendants in eight shares.[13]

[52] This approach was reinforced in the succession to Arapaii, where the rangatira portion reverted back to the surviving descendants of Raina in eight shares.[14] This succession decision related to both Vaimaanga Section 3 and Akapuao 42.

[53] Ms Carr cited Chief Justice Donne's judgment of 24 September 1976 in relation to the Partition Order for Akapuao 42:[15]

> In defining the relative interests of the owners of Akapuao Section 42, I propose to do so by reference to defined areas rather than shares. This will require more accurate delineations [of occupation areas] than those which I have been able to describe above. Consequently, I think the proper course to follow is for me to direct a survey to be carried out forthwith of the respective areas named by me...[after rangatira portions are separated out] the Raina family comprising Numbers 1-10 (inclusive) shall be held to own the remainder of Akapuao Section 42.
>
> The Application for Partition which is before the Court must await finalization of the Application. Obviously, it should follow that the areas be partitioned.
>
> This present application shall consequently stand adjourned pending the survey as ordered being carried out...

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12 MB 26/46-49.
13 MB 26/221.
14 MB 26/220.
15 *Ngapare v Taringa – Akapuao Section 42* [1976] per Donne CJ. MB 58.

[54] In determining the relative interests among the remaining 176 owners, Chief Judge Morgan had already determined in 1965 that there are eight issue of Raina who hold a 1/8 share each of Raina land.[16] Chief Judge Donne found in 1976 that the parent land is Raina land and it belongs to the Raina family.[17]

[55] There is no reason to depart from the findings of the previous Chief Judges' determination of the relative interests of the Raina family.

[56] To determine relative interests on a one-eighth basis between Te Rima Raina's eight children would be consistent with the relative interests of Vaimaanga Section 3A, the other land owned wholly by the Raina family.

Decision

Interests to cease

[57] Mrs Carr's request at paragraph 70 of her submissions of 30 March 2022, that an order should be made that the interests of Ngapoko Raina (fa), Ngatai Raina (ma) and Taau (ma) all ceased on their death. Mr Holmes consents to such orders being made. I confirm that the interests in Akapuao Section 42E, Takitumu of Ngapoko Raina (fa), Ngatai Raina (ma) and Taau (ma) all ceased on their death.

Corrections to Partition Order of 2006

[58] The applicant seeks that several corrections be made to the 2006 Partition Order. Counsel for the respondent agrees that these corrections should be made. I agree with those corrections that Mrs Carr has noted in submissions of 30 March 2022, at paragraphs 54 – 63. Those errors are to be corrected. The applicant has provided Annexure "A" to their submissions, which they say reflects the correct 2006 Partition Order and includes 179 names instead of 162.

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16 MB 26/218-220

17 *Ngapare v Taringa – Akapuao Section 42* [1976] per Donne CJ. MB 58

Relative Interests

[59] Taking all matters into consideration, I am of the view that the eight persons Maitoe Raina, Tanu Raina, Teone Raina, Te Ariki Raina, Enoka Raina, Aiteina Raina, Rebecca Raina and Ngapoko Te Ra, being children of Te Rima Raina and having been declared owners of this land each hold a relative interest in terms of a one-eighth (1/8) share each.

Dated at 2:00pm in Rotorua, Aotearoa New Zealand, on the 20th day of December 2022.

C T Coxhead
JUSTICE