

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

APPLICATION NO. 495/2018

AND
IN THE MATTER of the land known as **KOROMIRI
ISLAND 3K, NGATANGIIA**

AND
IN THE MATTER of an application for Partition

BETWEEN **HENRY TARIPO** of Rarotonga
Applicant

AND **Issue of PITIMANI, TE PUTIKI
(excluding Ngamata Muru),
TAMATEA, TE ARURU, TUAKANA,
and TE PERU AUNOA** of Rarotonga
Respondents

Hearing date: 27 April and 3 May 2022 (via Zoom)

Appearances: Mr H Taripo the Applicant in person
Mr B Marshall for the Landowners
Mrs T Parker POA in response
Mr B Mason as amicus curiae

Decision: 26 September 2023

DECISION OF THE HONOURABLE JUSTICE WILSON ISAAC

Introduction

[1] The applicant and respondents appeared before me seeking a partition over the land known as Koromiri Island 3K, Ngatangia. The parties have reached a consensus on the partition arrangement, and jointly seek that the partition order be granted.

Background

[2] There are two lines of landowners with interests in Koromiri Island – the descendants of Tamarua Te Katika and of Arapai.

[3] In 2017, I issued a judgment determining the relative interest in Koromiri 3K. I held that the descendants of Tamarua Te Kakita should receive three shares for every one share received by Arapai.¹

[4] On 27 September 2021 a meeting of the landowners of Koromiri 3K was held. At the conclusion of that meeting, a partition arrangement was agreed to. The partition is detailed in a joint memorandum which was submitted to the Court on 20 April 2022.

The partition arrangement

[5] The applicants provided evidence that the meeting of the landowners held on 27 September 2021 was advertised in the *Cook Island News* and was fairly well attended. Henry Taripo presented the partition proposal at the meeting, and after discussion of the proposal, received unanimous support from those present. The consent for the partition was signed by all of the landowners present at the meeting.

[6] The signed consent, together with the minutes of the meeting and complete details of the proposed partition were provided to the Court in the joint memorandum of the parties dated 20 April 2022.

[7] In summary, it was proposed that the land be partitioned as follows:

- (a) The descendants of Tamarua Te Kakita will be placed on the new Koromiri 3K2 block, which is comprised of 5,545m².
- (b) The descendants of Arapai will be placed on the new Koromiri 3K1 block. The Arapai family will further partition their respective interests between their four lines, into sections 3K1A (comprising 735m²) and 3K1B (comprising of 1,110m², divided into three lots of 370m²).

¹ *Te Amaru v The Descendants of Arapai – Koromiri Section 3K, Ngarangiia* (17 August 2017, App 519/11).

Objections

[8] At the hearing held on 27 April and 3 May 2022, Mrs Tutai Mareta Parker appeared and lodged an objection with the partition.

[9] Mrs Parker purported to represent the issue of Iotua Pittman (or Pitimani) line through a power of attorney, and also to have a bloodright to Arapai. Iotua Pittman had a small share in the Koromiri Island land block through the Tamarua Te Kakita line. The power of attorney on behalf of the Pittman family had been granted and recorded with the Court in 1994 and 1998, and was to continue until it was revoked.

[10] Mrs Parker expressed concerns that the partition would mean that not everyone will be able to enjoy the island, as has been the case traditionally.

Applicants' response to Mrs Parker's objections

Mrs Parker's standing

[11] Both the applicant and the objectors (now acting in concert following an agreement as to this partition) challenge the standing of Mrs Parker, and say that Mrs Parker cannot rely on 25 to 30 year-old power(s) of attorney to object to a matter she is not involved with, and without speaking to those she purports to hold power of attorney for.

The Pittman's interests

[12] Even if the power of attorney was still valid, the issue of Iotua Pittman hold a very small percentage of the interest in the Koromiri Island block.

[13] The applicants submit that the Register of Titles shows that Iouta Pittman was succeeded to on 18 March 1975 by 13 people, at least one of which has passed away and was in turn succeeded to by 6 people on 15 November 1994. Therefore, the issue of Iotua Pittman is a minimum of 18 people. For context, there are an estimated 405 landowners in the Tamarua Te Katika line alone, excluding the Arapai line. The Register of Titles records that Iotua succeeded to a 1/14 share of Meameaau. Meameaau succeeded to a 1/2 share of Tamarua Te Katika. Tamarua Te Katika holds 3 of 4 shares in this land (which can be expressed as 75% of

1 share). Even assuming Mrs Parker holds powers of attorney for all 18 successors, Mrs Parker objects on behalf of approximately 2.7% of the shares in this land.

[14] The applicants argue that the opposition by such a minority is should not be enough to outweigh the “overwhelming majority” of owners who support the partition.

[15] Finally, the Pittmans whom Mrs Parker purports to represent live in Tahiti. All of the landowners that live here in Rarotonga consent to this partition.

Public interest

[16] The applicants submit that the rights and ability of the public to enjoy the land will be unaffected by partition, as it will remain public land.

[17] Mr Marshall, counsel for the Tamarua Te Kakaika line elaborated on the landowners’ views on public access:

... the local people and visitors play a big part in caring for the environment and the respect for the motu. So the landowners are grateful to the public and continue to be grateful and we want to indicate and inform the Court that this practise that has been used by the public for decades, this partition will not affect that.

[18] In a letter to the Court, Mama Pupu Lambert stated that the partition agreement “does not mean that they will stop the public from going across to the motu”.

Law

[19] Section 429 of the Cook Islands Act 1915 provides a wide discretion to the Court to determine whether the partition is inexpedient in the public interest or the interest of the owners or other persons interested. It states:

429. Jurisdiction to partition Native land - (1) [The Land Court] shall have exclusive jurisdiction to partition Native freehold land.

(2) Such jurisdiction shall be discretionary, and the Court may refuse to exercise the same in any case in which it is of opinion that partition would be inexpedient in the public interest or in the interests of the owners or other persons interested in the land.



[20] In *Ruaroa & Vaipapa Section 89D*, Justice Dillion stated that the responsibility of how the land should be apportioned should rest with the owners and be made by consent.² The Court should only intervene when one group of owners is unreasonable, unfair, inequitable and unconscionable and deprives common owners of their fair share of occupancy or usage of their inheritance.

[21] In *Beren-Teuiateke*, I granted a partition order. In that case, the owners had reached agreement as to how their land should be partitioned.³ The agreement had taken considerable effort on the part of the owners and their legal advisors.⁴ Accordingly, I observed that it seemed clear following this agreement that the partition was not inexpedient in the interest of the owners, and granted the application.⁵

[22] In terms of public interest, in *Pirake* the Court found per The Cook Islands Act 1915 s 397 that a partition order would have the effect of dispossessing certain owners of their interests in the land.⁶ This was seen as a breach of both the Court's jurisdiction and the public interest and the application was declined.⁷

Discussion

[23] Section 429 of the Cook Islands Act 1915 provides the Court with a wide discretion to determine whether the partition is inexpedient in the public interest or the interest of the owners or interested persons.

[24] As stated in *Ruaroa & Vaipapa Section 89D*, the responsibility of how land should be apportioned rests with the owners.

[25] In this case, the owners by majority have agreed as to how the land should be partitioned and this was agreed to at a meeting of owners on 27 September 2021.

[26] This agreement was confirmed by a joint memorandum of the parties on 20 April 2022.

² *Ruaroa & Vaipapa Section 89D* [1988] CKHC 5.

³ *Beren – Teuiateke 48E, Raukura 48A1, & Avaavaroa 11A, Takitumu* (11 July 2013, App 371/12, 358/12, 347/12).

⁴ At [11].

⁵ At [12].

⁶ *Pirake – Pue Section 130, Lot 7, Avarua* (05 March 2012, App 185/10).

⁷ At [25]-[26].

[27] The one objection was Mrs Parker purportedly representing a minority of owners of the Iotua Pittman line.

[28] I say purportedly because Mrs Parker relies on powers of attorney from 1994 and 1998, without any other corroborative support from the Iotua Pittman line. Further, no non-revocation of the powers of attorney have been filed with the Court.

[29] As there is no corroborative support from members of the Iotua Pittman line to Mrs Parker and as no non-revocation of the powers of attorney were filed, I do not give Mrs Parker's objection much weight. Further, the objection, if valid, is only in respect to a minority of owners.

[30] I therefore find that the majority of owners support this partition and as a result the partition would not be inexpedient in the interests of the owners.

[31] In relation to the public interest, I accept the applicant's submission that the rights and ability of the public to enjoy this land will be unaffected by the partition and in effect the land will remain public land.

[32] I therefore find that the partition will not be inexpedient in the public interest.

Decision

[33] Having regard to the above I am satisfied I can grant the partition orders being sought in terms of the agreement between the parties and I will now do so as follows, with reference to the map marked "D" attached to the joint memorandum of the applicants:

- (a) Koromiri Pt 3K2 - 5,545m² for the line of Tamarua Te Kakita
- (b) Koromiri Pt 3K1A Lot 1 (735m²) for the line of Vaine Te Okotai Arapai
- (c) Koromiri Pt 3K1B Lot 2 (370m²) for the line of Enere
- (d) Koromiri Pt 3K1B Lot 3 (370m²) for the line of Eria Te Okotai Arapai



(e) Koromiri Pt 3K1B Lot 4 (370m²) for the line of Etetera Te Okotai Vainu Arapai

[34] A copy of this decision is to be sent to all parties.

Dated at Gisborne, New Zealand this 26th day of September 2023.

A handwritten signature in black ink, appearing to read 'W W Isaac', written in a cursive style.

W W Isaac
JUSTICE