

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

APPLICATION: 932/2024

UNDER Sections 409(c) and 409(e) of the Cook Islands Act 1915 and Rules 35, 354(1) and 355 of the Code of Civil Procedure of the High Court 1981

IN THE MATTER of the lands known as MAUNGAROA 102,
AND ARORANGI

IN THE MATTER of an application for Orders for Accounting, Recovery of Land, Recovery of Income, Mesne Profits and a Permanent Injunction

BETWEEN TINOMANA ARIKI of Rarotonga
Applicant

AND TE UIRA PIRANGI of Rarotonga
First Respondent

AND HIGHLAND PARADISE LIMITED
Second Respondent

Hearing: 17 July 2024

Appearances: T Moore for Applicant
T Browne for Rangatira of Maungaroa 102, Arorangi

Judgment Date: 16 June 2025 (NZT)

JUDGMENT OF COXHEAD J

Introduction

[1] This decision concerns an application filed by Tinomana Ariki regarding Maungaroa 102, Arorangi (the Land). The applicant seeks orders for accounting, recovery of land, recovery of income, mesne profits and a permanent injunction.

[2] This application is opposed by a number of the Rangatira, who are not currently parties to this application, but who are clearly owners in the Land. They argue that Tinomana Ariki, while being noted on the title as “Tinomana Ariki (trustee)”, does not have sufficient interest in, or is not sufficiently affected by, the matters raised in these proceedings to have standing as an applicant.

[3] The sole issue I must consider in this decision is whether Tinomana Ariki has standing to bring these proceedings.

Background

[4] An Order of Investigation of Title (the OIT) was made on 8 October 1913 vesting the Land as follows:

(a) Tinomana Ariki as trustee for the following Rangatiras:

- | | | |
|-------|------------|-----------------------------|
| (i) | Tangiiiau | Descendant of Tinomana Pai |
| (ii) | Tuki | Descendant of Tinomana Pai |
| (iii) | Keu | Descendant of Tinomana Pai |
| (iv) | Te Reinga | Descendant of Tinomana Pai |
| (v) | Tapitokura | Descendant of Enuā Rurutini |
| (vi) | Io | Descendant of Enuā Rurutini |

(vii) Tamaiva Descendant of Enea Rurutin

(viii) Taarua A small right as Kiato

[5] Mrs Browne acts for a number of those who are now Rangatiras for Maungaroa Section 102, Arorangi.

[6] On 29 April 1937, Tinomana [John] Pirangi succeeded to Tinomana Pirangi as trustee.

[7] On 25 August 1943, an application filed by Kati Heather was dismissed. Kati attempted to clarify Tinomana's rights as an owner by deleting the Rangatiras interests and having Tinomana Ariki recognised as the sole owner of the Land.

[8] On 25 August 1943, the Court confirmed a lease granted to Turi Kareroa. The 'Native alienating' the Land was listed as Tinomana Pirangi Ariki, as trustee for the Rangatiras. The minute of the Court states that the Rangatiras agreed to share rent equally, including one share to Taarua and one share to Tinomana because he is trustee to the Rangatiras.

[9] A succession order made on 3 November 1944, vested the interests of Tapitokura, one of the listed Rangatira who had no further bloodline, in the remaining six Rangatiras and Taarua, who received a small interest as Kiato. Discussions at that time stated that when a bloodline died out, interests reverted back to the source from which they came.

[10] On 2 December 1983, the Court confirmed a resolution of owners granting a lease to Raymond Pirangi. At a meeting of assembled owners, six of the Rangatiras and Taarua agreed to grant the lease to Raymond Pirangi. At a prior informal meeting, where there were discussions regarding the lease, Tinomana Napa, the Tinomana Ariki at the time, was present.

[11] On 13 April 2016, an Order of Succession was sealed listing Tinomana Tokerau Ariki as having interests "solely by virtue of her title as Tinomana Ariki" with an attached schedule of lands that included Maungaroa Section 102, Arorangi.

Rangatiras' Submissions

[12] Counsel for the Rangatiras, Tina Browne, raised the issue of whether Tinomana Ariki has standing to make this application.

[13] Mrs Browne states that her clients are listed on the OIT as the landowners and Tinomana Ariki is only a 'trustee' for the Rangatiras. Therefore, Mrs Browne submits that Tinomana Ariki has no right to make decisions on their behalf.

[14] At the hearing, Mrs Browne stated that the meaning of 'trustee' in the Cook Islands is different to what is understood in Aotearoa New Zealand.

[15] Mrs Browne asserts that Tinomana's interest in the land is akin to an overlord. She compares the idea of trustee with the concept of atu enua and the status of atu enua being closer to having a right next to the residential owners.

[16] The Rangatiras oppose the application as the landowners of the Land. Mrs Browne submits that Tinomana did not consult the Rangatiras before filing the application and that they do not support what she is doing.

[17] Mrs Browne submitted that there was certainly some recognised interest of Tinomana Ariki in the land in 1903 or 1905. By 1943, with the lease to Turi Kareroa, and certainly by 1944, with the succession to Tapitokura, she says that the recognition of Tinomana Ariki no longer existed.

[18] In summary, the Rangatiras submitted that Tinomana Ariki has no standing and therefore this application should be dismissed.

Applicant's Submissions

[19] Counsel for the applicant, Travis Moore, submitted that Tinomana Ariki has standing for the following reasons:

- (a) A number of examples from minute book 6 show that the Rangatiras themselves recognised that Tinomana had some interest in the Land.

- (b) The succession order made on 26 April 1937 where Tinomana [John] Pirangi succeeded to Tinomana Pirangi as trustee simply affirms that the Land is vested in Tinomana and accordingly they have standing.
- (c) The OIT was to Tinomana solely. He further states that it was intended that the interest be provided to Tinomana for his lifetime.
- (d) Tinomana was the lessor of the 1943 lease and in turn alienated the Land for 30 or more years. He states that if Tinomana was able to alienate the Land he must have a substantial interest in the Land.
- (e) Tinomana has a monetary interest in the Land. The one share of rent that is being provided to Tinomana was agreed to by the Rangatiras.
- (f) Any submission that a native with power to alienate the Land otherwise has no standing in respect of the Land must fail.

Law

[20] The issue of standing has previously been heard in this Court and follows the law from New Zealand Courts. In *Puia v Puia* Isaac J stated:¹

[23] The concept of standing is well-settled in the law; that a party must have a sufficient interest in or be sufficiently affected by the proceedings in order to have a right to be heard in court.

[24] The applications in this case are for an occupation right order, and orders determining the ownership of a house situated on the land. Mr Baker must have a sufficient interest in these orders to have standing in relation to these proceedings.

[25] As the situation currently stands, the occupiers of the land are descendants of the original grantees of the occupation right order. Later in this decision I find that the rights of these descendants are that of landowners. Mr Baker's rights are remote. He is not the Ariki whose rights arise when the descendants die out. Mr Baker's rights are more distant to those of the Ariki. Mr Baker therefore has no interest or rights in the occupation of the land at present, and there is no indication of any such interest or rights arising in the future.

[26] The only right the Ariki has is to collect payment from the occupiers. Mr Baker is not the Ariki and so this right as a member of the Kopu Ariki does not arise and is not affected by these proceedings.

¹ *Puia v Puia – Section 163A, Avarua* [2017] CKLC 4; Application No 588/12 & 228/16, (25 August 2017) at [23].

[27] It should also be noted that there was no evidence presented from the Kopu Ariki to support the actions of Mr Baker, and although his membership to the Kopu Ariki was not challenged, he stood alone in these proceedings.

[28] In summary and following the law from the New Zealand courts, Mr Baker's rights, if existent at all, can only be considered "speculative or insignificant" and are not likely to be materially affected by the proceedings at hand. Mr Baker therefore does not fall within the category of people who have a right to be heard, and in my view the principles of natural justice will not be contravened by denying him standing in this case.

[21] The matter of the Tinomana Ariki's interest in land was discussed in *Ariki v Wolfgramm*, where Tinomana Ariki attempted to partition their interests in the Maraera Section 90E block.² In that case, the title listed Tinomana Tokerau as having an interest in the land "solely as atu enua". The Court found that it was the understanding of the other owners that Tinomana Ariki held an interest by virtue of the Ariki title, however they would not seek to occupy the land using that interest.

[22] When understanding the role of the Tinomana Ariki as trustee it is important to understand the history and traditions of the tribes:³

There are three separate tribal divisions on the island of Rarotonga, the result of three separate migrations. There is the tribe of Takitumu ruled over by Pa Ariki and Kainuku Ariki; the tribe of Arorangi ruled over by Tinomana Ariki; and the tribe of Te-Au-O-Tonga ruled over in ancient days by the Makea Ariki, but since the beginning of the nineteenth century divided into three chieftainships, the Makea Nui, Makea Karika, and Makea Vakatini

...

Next in rank to the Arikis are the Mataiapos of whom there are two grades, the senior grade being called the Mataiapo Tutara. These are independent sub-chiefs. who apparently have a right to transfer their allegiance from one Ariki to another. Originally the Mataiapos were the captains or leaders who sailed with the Ariki in his migration in separate canoes.

...

The next in the hierarchy of rank are the Rangitiras which are generally: scion of the families of the Arikis but may be persons who are not of the royal family but have been given that rank for special services. In addition there is the rank of Mataiapo Komono which are scions of the families of the Mataiapo Tutara. Next below these come the Kiato, the descendants of the free men who accompanied the Ariki and Mataiapo originally as warriors and members of their crews. Below these again come the Unga, the lowest grade representing servants and slaves. The Ariki lands are vested in the Ariki, his position being that of a trustee for the members of the family.

(footnotes omitted)

² *Ariki v Wolfgramm* [2020] CKLC 11; Application No 560/18 (3 April 2020).

³ *Re Makea Nui Tinirau Ariki Appeal* (19 June 1941) NZSC (Ostler J), as cited in *In re MacQuarie* [1995] CKLC 8; Application 502.94, 138.95 (18 September 1995)..

[23] In *Baudinet v Macquarie* an issue arose as to whether an insert in a minute book correctly recorded the ownership interests granted to Makea Takau in 1903.⁴ That decision cites several reports and statements by Chief Judge Gudgeon. Chief Judge Gudgeon reportedly made a written statement:

that it might be inexpedient to grant what we know as freehold title to any landowner applicants because it was custom that the senior member of the family (Mataiapo first born of the first born) was the natural guardian and trustee of the family lands and so great was the respect of the people for this old custom that it was well nigh impossible to make those most deeply interested (the people) come forward and claim inclusion in a list of names ...

[24] In his report to the Minister for the Islands for the year ending 31 March 1904, he stated that:

It may, indeed, be said that a life interest was the highest title ever recognised by the Maori of Polynesia. An Ariki might divide among his children the land he had actually held or cultivated by his servants or slaves, but he had no power to devise the tribal lands in the occupation of others, nor could he appoint his successor. It was the privilege of the elders of the tribe to appoint the Ariki and that man would continue the distribution of the tribal lands in accordance with Native custom.

[25] In his Report for the year ended 31 March 1906, he reported that:

In every instance in which an Ariki has been the claimant I have deemed it advisable that a life interest should be awarded, that having been the old tenure. An Ariki was nothing more than a trustee for the tribe or family, and the so-called Ariki lands really belonged to the younger branch of the Ariki family.

Discussion

[26] It appears that the original appointment of Tinomana Ariki as trustee was to grapple with how Tinomana's status at a customary level and within the customary legal system could be recognised in the legal land system later adopted by the Cook Islands. This is not uncommon in the Pacific.

[27] In Aotearoa New Zealand, Māori did not individually 'own' land but are kaitiaki (caretakers) of the land. Issues arose where those persons who Māori expected to act as kaitiaki, were recognised by the British legal system as full owners. Once land was vested in those persons, they proceeded to be recognised and act as individual owners with all rights including the right to sell the land.

⁴ *Baudinet v Macquarie* [2012] UKPC 35 at 14-15.

[28] In this situation, the land was clearly not vested solely in Tinomana Ariki, giving Tinomana Ariki all rights of ownership. In fact, it is entirely the opposite. Tinomana Ariki was recognised as having an Ariki status in terms of the Land but the Court order clearly recognised that ownership lies with the Rangatiras and their descendants.

[29] All customs develop and change. That certainly appears to be the situation here, where in the past the Tinomana Ariki did act as a trustee and has had involvement with the owners in terms of matters concerning the land but now plays a lesser role. It appears now that the owners are very independent of Tinomana Ariki and do not need a trustee to act on their behalf.

[30] Mrs Browne submitted that there was certainly some recognised interest of Tinomana Ariki in the land in 1903 or 1905. By 1943, with the lease to Turi Kareroa, and certainly by 1944, with the succession to Tapitokura, she says that the interest of Tinomana Ariki was no longer recognised.

[31] The rights of Tinomana Ariki in relation to the Land may have been more extensive in the past. However, there is no evidence before me which suggests the interest of Tinomana Ariki extends to deriving benefit from the land other than as agreed by the Rangatira who had at one time agreed that Tinomana Ariki would receive some of their rent.

[32] I have examined the nature of any interest that Tinomana Ariki had in the Land by looking at how Tinomana Ariki and Rangatiras have tended to engage about the Land. I now discuss whether being listed as a trustee means Tinomana has standing.

[33] The relationship of Tinomana Ariki to the owners has proceeded on a customary basis. Over time the customary nature of the relationship has changed.

[34] The general idea of a trust is:⁵

An equitable obligation, binding a person (who is called a trustee) to deal with property over which he has control (which is called the trust property) for the benefit of persons (who are called the beneficiaries or cestuis que trust) of whom he may himself be one, and any one of whom may enforce the obligation.

⁵ A Underhill and D J Hayton , *Underhill & Hayton: The Law Relating to Trusts and Trustees* (15th ed), London, Butterworths, 1995, p 3. See also W G Hart , “What is a trust?” (1899) 15 LQR 294.

[35] In other words, trustees are appointed to manage property or assets for the benefit of others. Trustees have legal obligations to act in the best interests of the beneficiaries, ensuring the trust is managed properly and in accordance with the trust deed. In this situation it is clear that Tinomana does not have control over the land for the benefit of the owners. Further, it appears that Tinomana Ariki seeks to act contrary to the interests of the Rangatiras, whom do not support the indented proceedings.

[36] The concept of standing is well-settled in the law. A party must have a sufficient interest in or be sufficiently affected by the proceedings in order to have a right to be heard in court.

[37] I have found that Tinomana's rights in relation to the Land are remote. Tinomana does not have an interest or rights in the land that are sufficient to give standing, where Tinomana is not acting on behalf of the Rangatiras.

[38] If Tinomana were to be successful with the application, all benefits would surely go to the Rangatiras as owners. It is difficult then to see how Tinomana could claim to benefit from the Land as a trustee. Tinomana's rights can only be considered "speculative or insignificant" and are not likely to be materially affected by the proceedings at hand.

Decision

[39] I agree with the Rangatiras that Tinomana Ariki has no standing and therefore this application should be dismissed.

Dated at Rotorua in Aotearoa New Zealand on the 16th day of June 2025.

A handwritten signature in black ink, appearing to read 'C T Coxhead', written in a cursive style.

C T Coxhead
JUSTICE