

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

APPLICATION NO. 1611/22

IN THE MATTER of the Declaratory Judgments Act 1994
AND IN THE MATTER of the land **AROKO PART SECTION 4A
NGATANGIIA, RAROTONGA** (“Land”)
AND IN THE MATTER of an application for a declaration
BETWEEN **PAULA-MARIE FARRAR
Applicant**
AND **TANGIMETUA TEARII VAATAU MAVE
Objector**
AND **RANGIETUROA TEARII VAATAU MAVE
Objector**
AND **MICHAEL MAVE
Objector**

Date: 16 October 2025

JUDGMENT OF JUSTICE M P ARMSTRONG

Introduction

[1] On 31 August 1976, the Court granted an occupation right to Rangi Mave over Aroko Section 4A, in Ngatangiiia. Sadly, this occupation site has become a source of contention and dispute between her descendants.

[2] Rangi’s granddaughter, Paula-Marie Farrar, seeks:

- (a) A declaration cancelling this original occupation right; and
- (b) Confirmation of a new lease over this site to her and her sister.

[3] The application is opposed by her aunty, uncle and some of her cousins. They say that Paula already has a house on the land and the balance should be available for use by the rest of Rangi's descendants.

[4] In this judgment I determine whether to grant the orders sought.

Procedural history

[5] I heard these applications on 9 October 2023 in Rarotonga. After hearing the evidence, I directed counsel to file closing submissions after which I would issue my decision. Counsel promptly filed their submissions within one month of the hearing.

[6] The Registrar referred the hearing transcript and closing submissions to me on 8 March 2024. The Registrar referred a full (electronic) copy of the file to me on 7 August 2025. I apologise to the parties for the delay issuing this decision.

What is this application about?

[7] Rangi Mave obtained her occupation right in 1976. The size of the site is 1,520m². The occupation right is for the benefit of her and her direct descendants. Clause 2 of the order states that the order is for a term of 20 years "and thereafter for so long as Rangi Mave and her direct descendants or any of them shall occupy."

[8] Rangi had 14 children. She and her husband built a coral house on the site in the 1940s. They lived there with at least some of their children. One of Rangi's sons, Tangimetua Mave, says that the coral house was damaged in a hurricane in 1986. In 1987, he demolished the coral house and built a temporary dwelling in a different location but on the same site. He says that he intended to build a permanent dwelling on the same location as the coral house but this did not eventuate. While Tangi lives overseas, he said he returned to the Cook Islands occasionally and would clean the occupation site while he was there.

[9] A family meeting was held on 23 August 2001. Paula's mother, Maria Mave, sought to occupy the land. Other family members who attended the meeting voiced concern that the land should be available for all of Rangi's children.

[10] A further family meeting was held on 13 March 2003. Once again Maria sought support to occupy the land. Other family members supported her being a custodian of the land but not to occupy it to the exclusion of the wider family.

[11] In 2014, one of Rangi's other daughters, Rangi-E-Tu-Roa Mave, sought an occupation right on the land. Her application was heard on 13 October 2014. Savage J held:

I haven't stopped you non-stop talking and I haven't stopped you interrupting, and I haven't stopped the general family acrimony. I'm not here to referee a family squabble. The application for descendants of a deceased lady for accommodation for them. There is no management structure. The family is heavily into dispute. While there is a majority, I decline on my discretion. This will simply create a further forum or dispute. The application is dismissed.

[12] In 2015, Maria, Tangi, Rangi-E-Tu-Roa and their brother Samuel, entered into an agreement concerning the land. They were Rangi's four surviving children (at that time). They agreed that:

- (a) Maria could build on and occupy an area of 426m² on this block;
- (b) The balance of the land would be available for the rest of the family to use;
and
- (c) They would support each other to secure occupation rights over those areas.

[13] Maria built a house on the land in the area that was allocated to her under that agreement. Sadly, Maria has passed away. Paula and her sister Cindy now take turns occupying their mother's house.

[14] A meeting of assembled owners was held on 3 October 2022. At that meeting, 75% of the owners (or their representatives) passed a resolution to:

- (a) Cancel the original occupation right granted to Rangi; and
- (b) Grant a new lease over an area of 1,254m² in favour of Paula and Cindy.

What legal principles apply?

[15] I can make declaratory orders per s 3 of the Declaratory Judgments Act 1994. The jurisdiction to make declaratory orders is discretionary. I can refuse to make a declaration on any grounds I deem sufficient.¹ No formulaic test applies when deciding whether to exercise this discretion. Whether to do so will depend on the circumstances of the case. There may be a case where the Court has grounds to make a declaration but chooses not to as to do so would be unjust or inequitable.

[16] I can confirm a resolution of assembled owners per s 54 of the Land (Facilitation of Dealings) Act 1970. When doing so, s 482 of the Cook Islands Act 1915, concerning confirming an alienation, is relevant.² Section 482 provides, amongst other things, that the Court must be satisfied that the proposed alienation is not contrary to equity or good faith.

Should I cancel the occupation right order?

[17] It is common in the Cook Islands for owners to apply to cancel an old occupation right in favour of a new occupation right or a lease. When doing so, the applicant generally has to demonstrate that:

- (a) The holder of the original occupation right, or where relevant their descendants, consent; or
- (b) A term of the occupation right order has been breached or the order itself has otherwise lapsed.

[18] Once one of those grounds has been established, the Court has to consider whether to exercise its discretion to make the declaration cancelling the order.

[19] In this case, the occupation right order was granted for the benefit of Rangī Mave and her direct descendants. It is clear that some of those descendants oppose the occupation right being cancelled. They have instructed counsel and actively opposed these applications. As such, in order to cancel the order, Paula, as the applicant seeking the

¹ See Declaratory Judgments Act 1994, s 10.

² *Piri v Nicholas* (2021) CA No 4/2019.

declaration, has to demonstrate that the terms of the order have been breached or the order has lapsed.

[20] The order required Rangi to build on the land within five years. The coral house was built before the order was granted. It was demolished in 1987, eleven years after the order was granted. Ms Evans, for the applicant, does not argue that this requirement in the order was breached. Rather, she says that after the order was granted, the land was not sufficiently occupied so as to maintain the order.

[21] In *Apera v Apera*,³ Coxhead J considered whether to make a declaration cancelling an occupation right where the land was not occupied. He found:

[12] In my view a person can still occupy a property if they are away from the property for a lengthy holiday or to work overseas. But in my view lengthy would not extend to 38 years.

[13] Factors which indicate a person occupies a property may include but are not limited to:

- (a) a person residing in the property;
- (b) the residence being the person's primary address;
- (c) the person maintaining the property; or
- (d) a person having control of being able to determine who can and who cannot live on the property.

[14] Mr Moore has asked me to take a wider view of occupy and read it within the Cook Islands context. For this I take it, occupy must be seen in the Cook Islands context where many people leave the Island and return after staying away for some time.

[15] Sometimes they leave the Island for personal reasons, for work opportunities, but within that context they frequently return home for holidays, funerals, meetings or just to see family who continue to reside on the Island.

[22] This decision demonstrates that the Court can take a wide view when considering whether the land has been occupied. This includes taking into account regular practice in the Cook Islands where people will move overseas and return at a later stage. However, prolonged absence will likely result in a finding that the land has not been occupied.

³ *Apera v Apera - Akaoa 6, Arorangi* APP 131/18 & 377/17, 10 July 2018.

[23] The evidence in this case is rather vague about the occupation of the land following the grant of the order. It appears the coral house was still in a useable state up until it was damaged in a hurricane in 1986. Tangi demolished the coral house in 1987 and then built a temporary dwelling. Tangi was living overseas but he returned “occasionally” and would clean the land when he did return. Presumably he also used the temporary dwelling when he returned at least in those early years. Paula and Cindy accept that “their last surviving uncle has cleaned the property very sporadically when he has been on island.” It is not clear, on the evidence from either side, how often this occurred. Returning to the Cook Islands at regular intervals and maintaining the land may well be sufficient to maintain continuous occupation.

[24] The evidence is clear that after the agreement was reached in 2015, Maria built a house on the land. She then occupied the land, and after her death, the land has been occupied by her daughters. Ms Evans argues that:

The land has not been abandoned or forgotten by Maria whose plan to build on it has come to fruition. The land has been abandoned by Maria’s siblings and their children. The persons residing on the property has been Maria’s daughters.

[25] Ms Evans appears to suggest that, as her clients are the ones who have occupied the land, this supports that the original occupation right should be cancelled. I don’t agree. Clause 2 of the order is clear. The occupation right continues for 20 years “and thereafter for so long as Rangi Mave and her direct descendants or any of them shall occupy”. Maria, and her daughters, occupying the land maintains the occupation right on behalf of all beneficiaries named in the order. Their occupation does not convert the occupation right to their sole benefit.

[26] I am not satisfied that the land has not been sufficiently occupied so that the order has lapsed. The evidence suggests that the land was occupied, either permanently or intermittently, up until the coral house was demolished in 1987. After that, Tangi returned to the Cook Islands intermittently and maintained the land. While it is not clear how often that occurred, the applicants accept that it did occur. They have not produced their own evidence to show that this was so infrequent so as not to maintain occupation. More importantly, the land was occupied by Maria and her daughters, permanently, for the last 10 years. Their occupation of the land has secured the occupation right on behalf of the whole family.

[27] I note that at the meeting of assembled owners in 2022, the owners passed a resolution that the occupation right order should be cancelled. This is relevant to whether the Court should exercise its discretion to make such a declaration but it cannot, on its own, provide sufficient grounds for cancellation.

[28] For these reasons, there is no proper basis to cancel the occupation right order.

[29] Even if there were grounds to cancel the order, I am not convinced that I should exercise my discretion to make such a declaration in this case. The occupation of this land caused strong division and conflict within this family for the last 20 years. That conflict was recognised by Savage J in 2014. He refused to exercise his discretion in that case and dismissed the application before him seeking an occupation right order on this land. The agreement reached in 2015 demonstrates that those surviving siblings sought to come together and settle that dispute in good faith. Ms Evans argues that the 2015 agreement cannot be enforced. She may be right, but it still shows that the applicant's mother resolved this issue with her surviving siblings. She built on the land pursuant to the agreement reached. There is nothing to indicate that Maria ever intended to renege on the agreement. It was only after her death that her daughters seek to ignore the compact that their mother reached. I consider it would be contrary to equity and good faith to make a declaration cancelling the occupation right order in these circumstances.

Should I confirm the lease?

[30] As I have not cancelled the occupation right order, I cannot confirm the lease over the same area. The Court cannot grant two conflicting orders. Even where it does, generally the order granted earlier in time prevails.

[31] As I cannot confirm the lease, it is not necessary to consider this issue in full. I do make the following brief comments.

[32] The report from the recording officer shows that the resolution confirming the lease was approved by 75% of the owners. Such strong support is a compelling factor that must be given due weight when deciding whether to confirm the lease. However, that is not the end of the enquiry. The Court also has to consider whether confirming the lease is contrary

to equity and good conscience. As I have set out above, this is a rare case where I consider it would be.

Decision

[33] These applications are dismissed.

[34] If the objectors seek costs then:

- (a) Mr Mason is to file submissions on costs within one month;
- (b) Ms Evans is to file submissions in response within one further month; and
- (c) I will decide costs on the papers.

Dated at 12:00pm (NZT) in Whangārei on this 16th day of October 2025.



M P Armstrong
JUSTICE