IN THE COURT OF APPEAL NIUE (LAND DIVISION)

Application No. 10589

IN THE MATTER OF	Part Niuean Land, Vaimilo/Tufu, Sections 12 Block II, Alofi, now Section 121-123, Alofi District
BETWEEN	MORRIS HEMU TAFATU, MARION MCQUOID, MAIHETOE HEKAU AND RICHARD HIPA ACTING FOR THE MANGAFOA OF MELEOI Appellants
AND	LINAPA KALAVATAGALOA STRICKLAND AND OTHERS ON BEHALF OF THE FOTUGA FAMILY First Respondent
AND	THE EKALESIA NIUE Second Respondent Registrar of the Niue court and Niue high Court and Niuean Land Registrar

Hearing	24 March 2015
Court	Savage CJ, Isaac, and Reeves JJ
Appearances	Philip Allan, for the Appellants Ikipa Tongatule, for the First and Second Respondents
Judgment	26 September 2016

DECISION OF THE COURT OF APPEAL

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Introduction

[1] This appeal concerns the land known as Part Niuean Land, Vaimilo/Tufu, Sections 12 Block II, Alofi, now Sections 121-123, Alofi District, also commonly known as the Alofi Mission land ("the land").

[2] On 22 March 2012 Judge Coxhead in the High Court (Land Division) dismissed an application by Morris Tafatu on behalf of the Meleoi family to change the mangafaoa of the land to Meleoi on the basis that the Court has no power to make such an order.[1]

[3] Morris Tafatu and other family members now appeal the decision of Judge Coxhead.

Background

[4] The land is significant to the people of Niue. It was gifted to the London Missionary Society by deed for church purposes in 1891, and remained under the stewardship of the Alofi Ekalesia ("the Ekalesia") until steps were taken to formally title the land and vest it in the Ekalesia in 1970. It is now the site of the Millennium Hall in Alofi.

[5] Title to the land was created on 1 October 1970 in accordance with orders of the Native Land Court of Niue, which determined the mangafaoa as Fotuga and appointed Peauvale as leveki. The Court also ordered that the land be vested in the Ekalesia for church purposes "subject to the Registrar being satisfied of completion of registration of the church".[2]

[6] In 2005 the Meleoi family filed three applications in relation to the land; an injunction to halt the construction of church buildings, a partition, and an appointment of leveki mangafaoa. All three applications were subsequently withdrawn on 2 June 2005.[3]

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[1] NUHC (Land Division) 17 Land Minute Book 174-189 (22 March 2012).
[2] NLC Alofi 4 Land Minute Book 74-75 (1 October 1970).
[3] NUHC (Land Division) 13 Land Minute Book 78 (2 June 2005).

[7] On 11 October 2005, Chief Judge Hingston made orders changing the mangafaoa of the land to Meleoi and replacing the deceased leveki. The orders were based on an application by Morris Tafatu to confirm a draft agreement between the Ekalesia Niue, successor to the Ekalesia, and the Meleoi family. The Ekalesia had not signed the draft agreement. The orders were made despite objections and despite the Ekalesia seeking an adjournment.[4]

[8] On 3 June 2009 Linapa Kalavatagaloa Strickland applied for a rehearing of the High Court decision on behalf of the Fotuga mangafaoa.

[9] On 26 May 2011 Judge Isaac granted the application for rehearing, finding that the High Court had decided to change the common ancestor of a significant block of land in the absence of "significant and compelling evidence".[5] By failing to hear and test evidence regarding the appropriateness of the common ancestor proposed, the Court had also failed to adhere to the principles of natural justice.[6]

[10] On the grant of the rehearing, the orders made by the High Court in 2005 were thereby annulled, pursuant to s 45(2) of the Niue Amendment Act (No. 2) 1968 ("NAA").

[11] Judge Coxhead then reheard Mr Tafatu's application to change the mangafaoa of the land from Fotuga to Meleoi. Judge Coxhead considered the key issue was whether the Court had jurisdiction to change the 1970 court order determining Fotuga as mangafaoa. The Court concluded there was no such jurisdiction and dismissed the application.

[12] The applicant filed the notice of appeal on 10 May 2012, and the appeal hearing was subsequently held on 22 March 2015.

Lower Court proceedings

[4] NUHC (Land Division) 13 Land Minute Book 106 (11 October 2005).
[5] *Strickland – Part Vaimilo/Tufu* [2011] NUHC (Land Division) 16 Land Minute Book 225 at [35].
[6] At [39].

[13] At the start of the hearing, Judge Coxhead outlined the background to the proceedings and emphasised that the purpose of the hearing was to hear Mr Tafatu's application to change the tupuna mangafaoa from Fotuga to Meleoi.[7]

[14] Despite that caveat, the applicant and other speakers on behalf of the Meleoi family chose to focus their submissions on the 2005 High Court orders, saying that they wanted those orders to remain in place and criticising the process by which the orders had come to be reheard.

[15] Mr Tafatu acknowledged that his father Tafatu Morris had proposed Fotuga as tupuna at the 1970 hearing, but said the family now wished to change tupuna because the younger generation relate to Meleoi, who lived on the land where the Millennium Hall is now sited. After questioning from Judge Coxhead, the applicant acknowledged that, to add Meleoi, the 1970 court orders would need to be changed, but he could not identify any jurisdiction allowing the Court to do so.

[16] Cherie Tafatu submitted that the 2005 court orders should stay in place because they had addressed a long held grievance that Meleoi's interest in the land had been ignored.

[17] Maihetoe Hekau submitted that jurisdiction existed to change the mangafaoa because the Court had done it previously, but she did not refer the Court to any specific cases. She also acknowledged that Tafatu senior, the son of Meleoi, was party to the decision to appoint Fotuga in 1970. However his descendants now wished to re-visit the issue, so it would be "Tafatu only for this piece of land".

[18] Simon Jackson also queried why the 2005 court orders had not been registered, submitting that, had this been completed as it should have been, then the rehearing would not have taken place, and the family would not now have to revisit the 1970 decision.

[19] For the respondents, Mr Sioneholo submitted that the starting point was that the 2005 orders had now been vacated. In 1970 the Court determined the title to the land and Tafatu Morris supported Fotuga as tupuna. The issue is whether the Court could now replace those

[7] Above n 1 at 174-5.

orders. The effect would be to prioritise the Meleoi line of the Fotuga family over the others. Counsel noted that the 1970 court orders were not appealed or reheard.

[20] In dismissing the application Judge Coxhead stated:[8]

> The issue from Mr Morris Tafatu and his family is that they wish to change the common ancestor from Fotuga to Meleoi, or as I've heard today, have Meleoi added to sit alongside of Fotuga as the common ancestor.
>
> I heard submissions as to why Meleoi should be added or replace Fotuga, but for me the real issue relates to this Courts' jurisdiction to change the 1970 determination. That is essentially what is being asked for. This is not an appeal application, which in any case will be out of time. This is not a rehearing of the 1970 decision, which again will be out of time. This is a new application based on an agreement where one party to the agreement have not consented and do not agree with Mr Tafatu.
>
> I agree with Mr Sioneholo that it is difficult to see how the Court can consider the question of changing ownership of land that has been already determined. That decision was not appealed. It is difficult to see how the Court could consider then changing that determination which has been signed and sealed and registered and then most difficult is under what jurisdiction the Court could possibly do this?
>
> I am not aware of any cases that would allow me to change or add to the determined tupuna magafaoa and I have certainly not been presented with any cases. The only possibility and terms of jurisdiction would in my view be Section 54 of the Niue Amendment Act (No 2) 1968. That would require that the 1970 orders were obtained by fraud.
>
> Having heard the evidence and reviewed the file, I did not consider that the 1970 orders were in anyway fraudulently obtained. I find the Court in this case has no jurisdiction to change or add to the common ancestor.
>
> The application is therefore dismissed, and what this means is that the common ancestor remains as Fotuga. That is the decision of the Court.

The Appeal

Appellants' submissions

[21] The Notice of Appeal is dated 9 May 2012. Written submissions were also filed on the day of the appeal hearing. None of the grounds set out relate to the order appealed from or allege any errors by Judge Coxhead in the lower Court. The written submissions are focused entirely on the 2005 High Court orders and criticisms of the process by which those orders came to be reheard.

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[8] Above n 1 at 188-189.

[22] Pursuant to ss 75 and 78 of the NAA those matters are outside the scope of this appeal and this Court is restricted to considering the decision appealed from.

[23] The 2005 High Court orders and subsequent events were considered when the High Court granted the rehearing application. The order for rehearing was a final order which was not appealed. This appeal is not now an opportunity for the appellants to re-litigate those issues. However, for completeness we summarise the grounds of appeal raised by the appellants:

a) The orders made by the High Court in 2005 should have been registered as final orders once the time limits for any rehearing or appeal had elapsed, and the failure to register resulted in unfairness to the appellants;

b) It was unfair to the appellants that it took three years for the application for re-hearing to be brought on in 2009 by the Registrar of the Court ("Registrar"), pursuant to the powers in s 52 of the Land Act 1969 ("the Land Act");

c) Counsel for the respondents before Judge Coxhead, Mr Sioneholo, was Registrar at the relevant time, and therefore had a conflict of interest;

d) The High Court in 2005 had jurisdiction to change the mangafaoa pursuant to ss 34 and 36 of the Land Act.

[24] As to the third issue the appellants submit that Mr Sioneholo was the Registrar during the relevant period following the 2005 orders, and his actions had the appearance of bias against the appellants. The appellants referred to *Metropolitan Properties Co (FCG) Ltd v Lannon* [9] and *R v Commonwealth Conciliation and Arbitration Commission; Ex parte Angliss Group*[10] and argued that it is sufficient that reasonable people may think that the Registrar favoured one side unfairly.

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9 *Metropolitan Properties Company (FGC) Ltd v Lannon and Others* [1969] 1 QB 577 (CA).

10 *R v Commonwealth Conciliation and Arbitration Commission; Ex parte Angliss Group* (1969) 122 CLR 546 (HCA).

[25] In relation to the fourth issue, the appellants submitted that when Chief Judge Hingston made orders to change the mangafaoa, he was exercising a discretion contained within ss 34 and 36 of the Land Act in relation to partition. It was submitted that the Court has established a practice of allowing the change of mangafaoa for land subject to partition. The appellants referred to the application made by Maka Kamupala for the partition of Section 2, Block I, Avatele District (Part Kauhi) as an example of the Court's practice of substituting an existing common ancestor for another, provided the new mangafaoa is a descendant or from within the mangafaoa of the initial common ancestor. [11] However, the appellants only provided the Court with the two land titles from before and after this partition and substitution of common ancestor, for the Court to compare. The Court was not provided with a copy of the actual decision in which those orders were made. From the land titles alone, we can see that the common ancestor was indeed substituted, but we can only draw speculative conclusions about the reasons for this. We are unable to determine the grounds upon which the orders were made and how exactly the Court applied the law.

[26] Mr Allan made several oral submissions in addition to the written submissions. He argued that Judge Coxhead was incorrect to find that the Court had no jurisdiction to change or add to the common ancestor because the Court was entitled to rely on the general jurisdiction provision in the NAA to change the common ancestor.[12] He submitted that the orders of the High Court in 2005 were made on this basis, even though the section was not specifically invoked.

Submissions for the Fotuga family and the Ekalesia

[27] Mr Tongatule for the respondents submitted that the real object of this appeal is to challenge the Court order made on 1 October 1970 and the appellants have not shown any error in Judge Coxhead's decision.

[28] Counsel submitted that the 1 October 1970 Court order clearly demonstrates that the Court ordered:

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[11] MB4 F239, Instrument Number 3488, Plan 537 (LC4 Volume 12 Folio 71, registered on 9 September 1994); and N12/71, Instrument No 5916, Plan 1143 (LC4 Volume 19 Folio 80, registered on 24 June 2003).

[12] Section 47.

a) the mangafaoa was Fotuga;

b) the leveki mangafaoa was Peauvale;

c) the land was to be vested in the Ekalesia for church purposes pursuant to s 26 of the NAA;

d) the vesting of the land was subject to the Registrar being satisfied of the completion of the Ekalesia's registration under s 26 of the NAA; and

e) following satisfaction of the above, an order would be issued.

[29] It was submitted that the registration of the Ekalesia in the Court order of 1 October 1970 refers to a body corporate that would hold and administer the land for church purposes. The Registrar gave no time limit for the Ekalesia's registration to be completed. The respondents submit that this was not at issue in the proceedings before Judge Coxhead and is not an issue for this appeal.

[30] Counsel advised that the Ekalesia have filed an application to register a body corporate, the Alofi Ekalesia Property Board Inc, in order to hold the grant of land to itself. The respondents submit that once the requirements of s 26 of the NAA have been met the Registrar simply needs to register the Ekalesia against the land title.

[31] It was also submitted that a replacement leveki would be unnecessary as the body corporate could take title to the land.

Submissions for the Registrar

[32] Mr Kalauni, the current Registrar, appeared pursuant to s 38 of the NAA and s 3 of the Land Act because the application touched on the accuracy of the Court and Land Register records. His submissions largely responded to the issues which the appellants raised in relation to the 2005 orders and subsequent events leading up to the rehearing application.

[33] The Registrar agreed the High Court has the power to partition Niuean land subject to s 34(1) and (2) of the Land Act. However, the Registrar submits that in this case the partition application was withdrawn. He also noted that the Court could not have used its discretionary powers unless the descendants of the Fotuga family had been consulted with or a public notice issued about the partition application, neither of which occurred in this case.

[34] The Registrar noted that the High Court minute of 2 June 2005 stated that all applications were withdrawn. The Registrar submitted that it was unclear on what basis the Court made the 11 October 2005 orders to change mangafaoa and appoint leveki. The Registrar submitted that the decision not to proceed with registering the orders until the issue was resolved in a clear and transparent manner was correct.

[35] The Registrar submitted that he is responsible for the integrity of the Land Register and for ensuring that correct procedures are strictly followed with respect to matters before the Court. The Registrar submits that Chief Judge Hingston's decision confirming the unsigned draft agreement between the Meleoi family and the Ekalesia was problematic.

[36] The Registrar also noted that s 52(3)(b) of the Land Act means that registration of an order will not necessarily cure any defect or error in any matter before the Court.

[37] The Registrar submitted that no time limitation applies to the Registrar's powers under s 25 of the Land Act 1969 or the Registrar's ability to take any matter to the Court. The Registrar submitted that the appellants' submissions do not refer to the 30 year delay between the Court's decision in 1970 appointing Fotuga as mangafaoa, and the Court's 2005 decision appointing Meleoi as mangafaoa.

[38] The Registrar also noted that the rehearing was a directive from Judge Isaac on application by the Registrar.

[39] The Registrar confirmed Mr Sioneholo counsel for the respondents before Judge Coxhead was the Registrar when this matter was before the Court. However, the Registrar submitted that the appellants have presented no evidence explaining how the supposed conflict of interest influenced the Court's decision.

The Law

General jurisdiction of the Court

[40] Section 47 of the NAA sets out the general jurisdiction of the Land Court as follows:

> **47 Jurisdiction of Land Court**
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> (1) In addition to any jurisdiction specifically conferred upon the Land Court by any enactment other than this section, the Court shall have exclusive jurisdiction:
>
> (a) To hear and determine any application to the Court relating to the ownership, possession, occupation, or utilisation of Niuean land, or to any right, title, estate, or interest in Niuean land or in the proceeds of any alienation thereof:
>
> (b) To determine the relative interests of the owners or the occupiers in any Niuean land:
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> (c) To hear and determine any application for the appointment of a Leveki Mangafaoa in respect of any Niuean land:
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> (d) To hear and determine any claim to recover damages for trespass or any other injury to Niuean land:
>
> (e) To grant an injunction against any person in respect of actual or threatened trespass or other injury to Niuean land:
>
> (f) To grant an injunction prohibiting any person from dealing with or doing any injury to any property which is the subject-matter of any application to the Court:
>
> (g) To create easements in gross over Niuean land:
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> (h) To make any order recording the determination of any matter relating to land or any interest therein, whether provided for in this Act or other enactment:
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> (i) To authorise the survey of any land.
>
> (2) The grant of an easement pursuant to paragraph (g) of subsection (1) of this section may, if the Court thinks fit, be made subject to the payment of compensation in respect thereof, or to any other conditions that the Court may impose.

[41] Section 47 provides jurisdiction for the Court to hear matters relating to ownership, possession, occupation, or utilisation of Niuean land, or to any right, title, estate or interest in Niuean land or in the proceeds of any alienation of it. The Court's jurisdiction under this

section is to hear those matters which relate to title and ownership, once those issues have been determined, and does not extend to either determining or cancelling title.[13]

Effect of orders of the Court

[42] Sections 52 and 54 of the NAA provides that every order of the Court determining or affecting title binds all persons having an interest in that land, and such orders are final unless there is fraud.

Partition

[43] Sections 34 and 36 of the Land Act set out the relevant provisions in relation to partition of Niuean land:

> **34 Jurisdiction to partition Niuean land**
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> (1) The Court shall have exclusive jurisdiction to partition Niuean land.
>
> (2) The jurisdiction to partition shall be discretionary and the Court may refuse to exercise it in any case in which it is of the opinion that partition would be inexpedient in the public interest or in the interests of the Mangafaoa or other persons interested in the land.
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> **36 Discretionary powers of Court**
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> In partitioning any land the Court may exercise the following discretionary powers:
>
> (a) It may where the Leveki Mangafaoa wishes to allocate a portion of the land to a member of the Mangafaoa or the Mangafaoa has become unduly large or in cases of irreconcilable family disputes, partition the land among groups of members of the Mangafaoa in accordance with what appears to the Court to be the general desire of the persons concerned to be just and equitable;
>
> (b) It shall avoid, as far as practicable, the subdivision of any land into areas which because of their smallness or their configuration or for any other reason are unsuitable for separate ownership or occupation;
>
> (c) It may appoint new Leveki Mangafaoa in respect of the pieces of land affected by any partition orders.

[44] Partition under Niuean law results in a subdivision of the physical land and legal title but this does not extend to "destruction of [the] community of ownership".[14] The

13 *Tongahai v Tafatu – Section 3 Block III Alofi District (Part Tapeu)* [2015] NUCA; App. No. 1189/62/6 (27 October 2015) at [68] and [70].

common underlying ownership continues to exist even if a new leveki is appointed for the newly partitioned block. As stated in *Tongahai v Tafatu*: [15]

> The Niuean situation as contemplated by the Land Act must be one where partition does not call for the complete separation of ownership interest with the issuing of a new title, but looks to preserve ownership within the mangafaoa.

Registrar's powers

[45] Pursuant to s 52(1) of the Land Act the Registrar may state any case or reserve any question for consideration by the Court, or apply for directions to the Court:

> **52 Registrar's powers**
>
> (1) The Registrar may in the exercise of his powers under this Act state any case or reserve any question for consideration by the Court, or apply for directions to the Court, and the Court shall thereupon have power to hear and determine the case or question, or give directions accordingly.

Issues

[46] The issue on appeal is whether Judge Coxhead erred in finding that the court does not have jurisdiction to change the Native Land Court's determination in 1970 that Fotuga is the common ancestor for the land.

Approach on appeal

[47] In *Tasmania aka Filimona v Rex*,[16] the Court referred to the accepted approach in general appeals that the appellate court makes its own assessment of underlying legal and factual issues and does not merely defer to the lower Court's assessment. As the issue here concerns a question of jurisdiction and not an exercise of judicial discretion, we need not confine our approach to the matters set out in *Kacem v Basir*.[17]

Discussion

Can the Court cancel a determination of common ancestor?

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14 *Tongahai v Tafatu*, above n 13, at [51].

15 At [52].

16 *Tasmania aka Filimona v Rex – Part Fonuakula Section 1 Block III* [2009] NUCA; App. No. 9116/8/6 (23 April 2009) at [23] and [24].

17 *Kacem v Bashir* [2010] NZSC 112; [2011] 2 NZLR 1.

[48] Neither the Land Act nor the NAA contain any specific statutory power to cancel or change the common ancestor, which determines the mangafaoa.[18] This is unsurprising given the significance of title determination to the Nuiean land tenure system and the likely consequences if such orders could be cancelled. Section 52 underlines this by providing that every order of the Land Court determining or affecting title to Niuean land shall bind all persons having an interest in the land.

[49] The exception is where orders have been obtained by fraud, in which case those orders may be annulled.[19] In such circumstances, cancellation of a mangafaoa's land title would be a very serious matter which would necessitate a fresh investigation of title by the Court, including an approved survey and evidence of the matters set out in s 11 of the Land Act. In the present case, the appellant did not suggest that the 1970 order declaring Fotuga the common ancestor was the result of fraud. Counsel for the appellant also acknowledged that 1970 orders were never appealed or re-heard or set aside by the lower Court.

[50] The only other possibility is where joint common ancestors have been determined and the owners then agree to areas of separate interest, as suggested in *Tasmania aka Filimona v Rex*.[20] This would not involve re-litigation of the mangafaoa, which would stay unchanged. However, this situation also does not apply in the present case.

[51] The appellants submitted that in October 2005, when orders were made changing the mangafaoa, the Court was exercising a discretion contained within ss 34 and 36 of the Land Act in relation to partition. However, the partition application which had previously been before the Court was withdrawn on 2 June 2005, along with two other applications for injunction and change of leveki.[21] The judge could not have been exercising any discretion arising from the partition application as it was no longer before the Court. Furthermore, even if the partition application was extant, it would not necessarily have resulted in a change of the underlying mangafaoa, as this Court concluded in *Tongahai v Tafatu.*[22]

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[18] For example, s 12 of the Land Act 1969 states that the Court shall determine the mangafoa by reference to the common ancestor (it does not state that the Court can cancel or change the common ancestor).

[19] Niue Amendment Act (No 2) 1968, s 54.

[20] *Tasmania aka Filimona*, above n 16, at [41] and [42].

[21] Above n 3.

[22] *Tongahai v Tafatu*, above n 13, at [60].

[52] Counsel for the appellants submitted Judge Coxhead erred because s 47 of the NAA provides jurisdiction to change the common ancestor, even if the Act provides no specific jurisdiction for this. We are assisted by this Court's recent decision in *Tongahai v Tafatu*, which addressed this same issue and stated:[23]

> [68] Section 47 provides jurisdiction for the Land Court to hear matters *relating* to ownership, possession, occupation, or utilisation of Niuean land, or to any right, title, estate or interest in Niuean land or in the proceeds of any alienation of it. That is the Court has jurisdiction to hear matters *relating* to title and ownership – once that title and ownership have been determined.
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> [69] As has been noted counsel for the appellants argued that the opening words of s 47 of the NAA "in addition", make it clear that the general jurisdiction is inclusive rather than exclusive and widens the scope of the Court's jurisdiction. The overall tenor of the submissions was that, where the specific provisions relating to partitions are silent as to the power to rescind, revoke or cancel partition orders, the general jurisdiction can be used to supplement those provisions. This essentially allows for an application to rescind or cancel a partition order to be caught by the term "any application" in s 47 of the NAA. The appellants argued therefore that all that was needed to invoke the jurisdiction of the Court and enable the Court to make the orders sought, was that the application relation to ownership, possession, occupation or utilisation of Niue land. As the present application did relate to those matters, it was therefore argued to be within the scope of the general jurisdiction of the Court.
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> [70] We do not agree. Section 52 of the Land Act and 47 of the NAA, in our view, do not extend to allow the Court to hear matters involving of determination and cancellation of ownership to title. Section 47 focuses on matters relating to title, not determining and cancelling title. If Parliament intended to contemplate such a drastic step as the cancellation of a mangafaoa's title to land obtained through a partition order – then Parliament should have provided specific jurisdiction for this Court to do so. No specific or general jurisdiction exists in the current legislation.

[53] We agree with this Court's conclusion in *Tongahai v Tafatu* that s 47 of the NAA does not confer a general jurisdiction on the Court to determine or cancel title, and we conclude that the Court has no jurisdiction to cancel the determination of a common ancestor unless those orders have been obtained through fraud.

Other matters raised on appeal

[54] For completeness we refer to the appellants' allegations of procedural unfairness following the 2005 orders in their first two grounds of appeal. We are satisfied that Judge Isaac had the opportunity to consider these matters in the 2011 rehearing application. His decision, a final decision of the lower Court, was not appealed and this appeal is not now an

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[23] At [68] – [70] (emphasis added).

opportunity for the appellants to re-litigate those issues. Having said that, we are satisfied that the Registrar acted appropriately and within his powers in bringing the issue to the Court's attention.

[55] The other issue raised was an alleged conflict of interest on the part of counsel for the respondents before Judge Coxhead, Mr Sioneholo, who was previously the Registrar. The appellants say his actions as Registrar had the appearance of bias. How this translates into a conflict of interest in relation to the issue before us is unclear. The current Registrar appeared on his own account before us. We note Niue has only a small pool of experienced counsel available, and the Court will always be alert to potential conflict issues. In this case, Mr Sioneholo's previous involvement was well known and that fact has not influenced the decision-making of this Court in any way.

Decision

[56] We agree with Judge Coxhead's finding that the High Court did not have jurisdiction to cancel or change the determination of the common ancestor of the land. The appeal is dismissed.

[57] Upon production of evidence of registration pursuant to s 26 of the NAA the Registrar is to vest the land in the Ekalesia.

[58] The respondents have 14 days from the date they receive this decision to file submissions as to costs, following which the appellants will have 14 days to respond.

Dated at Wellington on the 26th day of September 2016.

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P J Savage CJ	W W Isaac J	S F Reeves J