

IN THE COURT OF APPEAL OF NIUE

Application No: 11400

IN THE MATTER OF Pt VAOKOTO
Liku District

BETWEEN SIONETASI PULEHETOA ON BEHALF OF
THE LIKU EKALEZIA CHURCH
Appellant

AND Enele S Kaiuha
Respondent

Hearing: 12th March 2019

Court: Coxhead CJ
Reeves J
Armstrong J

Judgment: 13th March 2019

ORAL DECISION OF THE COURT OF APPEAL

Introduction

[1] On 9 March 2016, Isaac J granted an order changing the Leveki Magafaoa in respect of Section 12, Block III Liku District, Part Vaokoto as contained in Plan 120 and registered in Volume 3 Folio 13 of the Niuean Land Register.

[2] An appeal has been filed by Sionetasi Pulehetoa on behalf of the Liku Ekalesia Church challenging that decision. The issue in this case is whether the appeal should be upheld.

Background

[3] The background to this matter is set out in detail in the decision of Coxhead J, as he then was, dated 6 August 2015. There is no need to repeat that background here.

[4] Coxhead J heard two competing applications to appoint Leveki Magafaoa for this land. He found that before the Court could appoint Leveki, he needed to be satisfied that the proposed Leveki were supported by the Magafaoa. He determined that neither application before him established sufficient support from the Magafaoa of Tulagi. As such, Coxhead J dismissed both applications. He also directed the Court staff to call a meeting of the Magafaoa of Tulagi to consider the appointment of Leveki for this land.

[5] Following that decision, the proceeding stagnated. Mrs Kaiuha, frustrated with the lack of progress, called her own meeting of the Magafaoa. The proceeding came back before Reeves J on 26 November 2015. Reeves J found that she could not rely on that meeting, and instead, determined that the earlier directions requiring Court staff to call the meeting must be complied with.

[6] The meeting of the Magafaoa was eventually called by Court staff, and was held on 2 February 2016. At that meeting, the majority of the Magafaoa in attendance supported the appointment of five new Leveki for this land.

[7] The proceeding then came back before Isaac J on 9 March 2016. After hearing from the parties, Isaac J appointed those five Leveki who were supported by the Magafaoa at the 2 February meeting. The appellants now appeal that decision.

The argument for the appellant

[8] The appellant filed a notice of appeal dated 9 May 2016, which appeals the decision of Isaac J on the grounds that:

- (a) The meeting on 2 February 2016 was not properly notified or facilitated by the Court staff;
- (b) The principles of natural justice were not observed at the meeting;
- (c) Signatures of members of the Magafaoa were not obtained at that meeting;
- (d) Minutes from the meeting were not disclosed prior to the Court hearing of 9 March 2016; and
- (e) The Magafaoa did not consider the appellants interests when selecting Leveki at the meeting.

[9] Mr Togatule appeared before us on behalf of the appellants. Surprisingly, he did not advance any of the arguments set out in the Notice of Appeal. Those grounds were effectively abandoned. Instead, Mr Togatule sought an order from this Court confirming the vesting of this land in the Liku Ekalesia Church. His argument can be summarised as follows:

- (a) On 11 September 1970, Williams J granted an order vesting the land in the Church;
- (b) That order was subject to the Church registering as a body corporate;
- (c) The Church has recently completed incorporation as a body corporate; and
- (d) The order granted in 1970 should now be finalised, and the land vested in the Church.

[10] Mr Togatule further argues this is relevant to this appeal, as vesting the land in the Church will affect who the Leveki of the land should be.

Discussion

[11] There are several problems with Mr Togatule's argument.

[12] Firstly, this is an appeal against the decision of Isaac J of 9 March 2016, where he appointed Leveki for this land, based on the meeting of the Magafaoa facilitated by the Court

staff. The vesting of the land in the Church, based on the order of Williams J in 1970, was not an issue that was before Wilson J. Nor was this issue raised in the Notice of Appeal.

[13] This is an appeal Court. Our function is to consider appeals against decisions of the High Court. In doing so, we are guided by the grounds of appeal as set out in the Notice of Appeal. The Court of Appeal does not have general jurisdiction to consider any land matter raised by a litigant appearing before us. This issue was not the subject of the decision under appeal, nor is it a ground of appeal. Accordingly, it cannot be considered by this Court in this appeal.

[14] Even if this issue was properly before us, we do not consider the 1970 order affects Isaac's J decision. The order granted by Williams J on 11 September 1970 was a conditional order. Williams J noted that the order was subject to the registration of the Church as a body corporate. The minutes also record that the order may issue when the Registrar is satisfied that registration has been completed.

[15] Mr Togatule accepts that the final order was never issued by the Registrar. As such, the order vesting the land in the Church was never finalised or completed. Isaac J did not have to take this account and he was free to rely on the meeting of the Magafaoa when appointing Leveki for this land. There was no error in his approach.

[16] If the appellants now seek to finalise that order, they should raise this issue with the Registrar. Where the Registrar is unsure how to address such a request, he or she may seek directions from a High Court Judge.

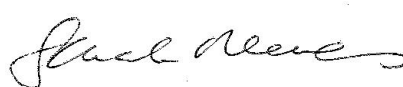
Decision

[17] For these reasons, the appeal is dismissed.

Pronounced at 1:45pm in Whangārei on the 17th day of April 2019.



C T Coxhead
CHIEF JUSTICE



S F Reeves
JUSTICE



M P Armstrong
JUSTICE