

**IN THE HIGH COURT OF
NIUE (LAND DIVISION)**

IN THE MATTER of Part Mati, Hakupu
District

APPLICATIONS Determine Title and
Appoint Leveki Magafaoa

Between: Misimale Tutavaha
Applicant

And: David Mitikele Manukuo
Respondent

DECISION

Introduction:

[1] The applications before the Court are as follows:

- a) Applications No 9432 by Misimale Tutavaha dated 04/10/2006 to determine of title Part Mati, Hakupu district being blocks A, B and C in provisional plan 9432 containing 4,450sq m.
- b) Applications No 9433 by Misimale Tutavaha dated 04/10/2006 to appoint Misimale Tutavaha and Robert Jackson as Leveki magafaoa for the above land.
- c) Applications No 9565 by David Mitikele Manukuo dated 16/10/2006 to determine of title Pt Mati Hakupu block being blocks B and C in provisional plan 9432.
- d) Applications No 9566 by David Mitikele Manukuo dated 16/10/2006 to appoint David Mitikele Manukuo as Leveki Magafaoa for the above land.

[2] These applications came before the Court on 04/10/2007 and at that time orders were made to determine the title for Part A provisional plan 9432 with the common ancestor being Mokatagaloa and Misimale Tutavaha and Robert Jackson were appointed as Leveki.

[3] The applications relating to parts B and C were not ordered because of a dispute between the parties.


[4] When the matter came back before the Court on 11/11/2008 the applicant Misimale Tutavaha advised that he now sought the determinations of title

to the entire portion of this land being part A, B and C provisional plan 9432. David Mitikele Manukuo sought title to parts B and C provisional plan 9432 and not part A

The case for Misimale Tutavaha

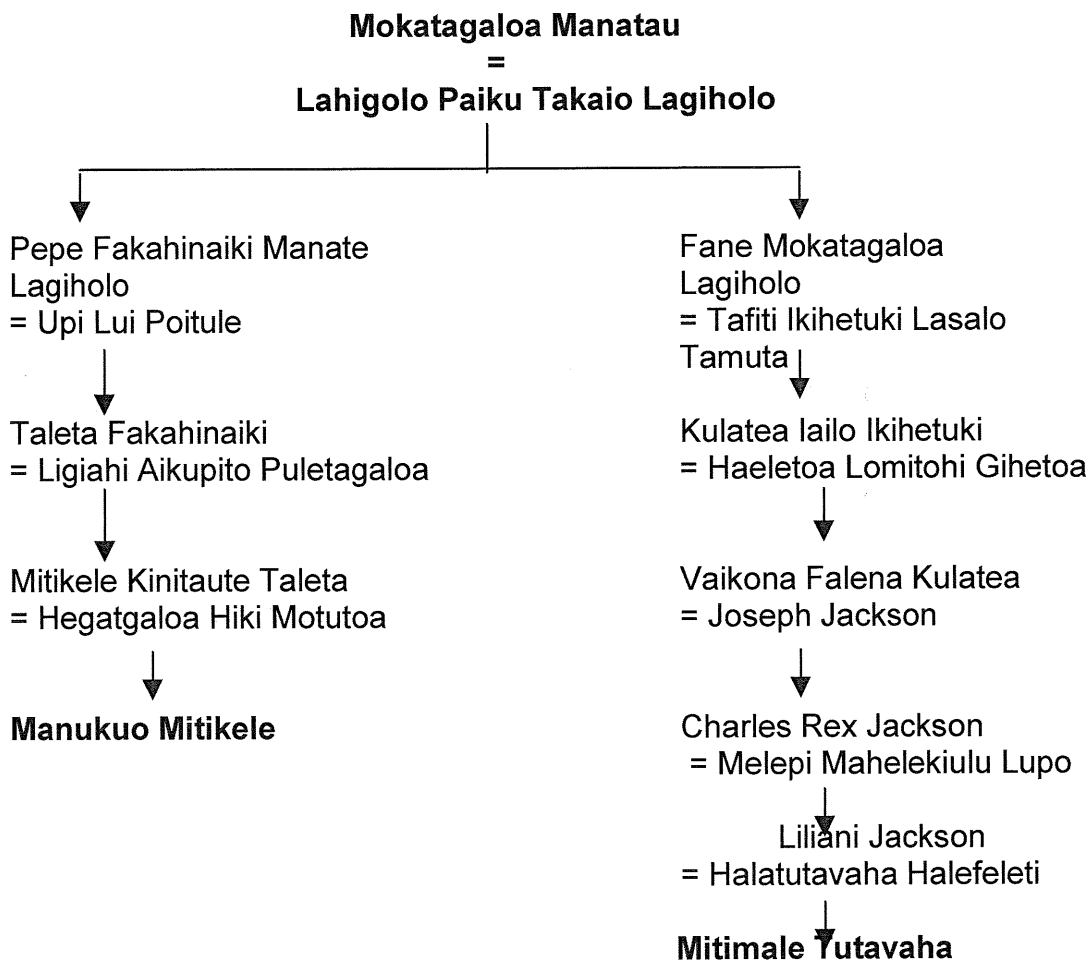
- [5] The Tutavaha case is based on genealogy commencing with Mokatagaloa and from this tupuna Fane Lagiholo, Kulatea Ikihetuki, Vaikona Kulatea, Charles Rex Jackson, and to Misimale Tutavaha.
- [6] This property is in Mr Tutavaha home village. There are 2 graves on the land. One grave is of Makelina Jackson who is Mr Tutavaha great aunty. The other is said to be Kego but Mr Tutavaha disputes this and says it is the grave of Taulagavalu.
- [7] There is also the foundation laid down on this property by Mr Charles Jackson his grandfather. When his grandfather was on this land there was no dispute and the dispute started after he died. His family have not occupied this area in dispute since his aunty Ema in 1960's.
- [8] As far as the Leveki is concerned the magafaoa of Mr Tutavaha support his applications that he and Robert Jackson be appointed as Leveki.

The case for David Mitikele Manukuo

- [9] David Mitikele Manukuo is claiming blocks B and C. His claim is based on his bloodline to his tupuna Kego whom he says is buried on this land. Mr Manukuo produced a genealogy to support this claim.
 - [10] Mr Manukuo says he clears this grave and it has Kego's name on it.
 - [11] He says that this land originally owned by his ancestor Kego was gifted to the Jackson family in 1907. This is confirmed by a letter of Joseph Kulatea Jackson.
 - [12] He also says that he came home to Niue to care for his grand parents, in 1976, and helped them work this land. He returned to New Zealand and then back to Niue and has cleared this land since 1988 without interruptions.
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Discussion

- [13] The relevant law is contained in sections 10,11 and 14 Land Act 1969.
- [14] The Court is required to determine the title according to the customs and usages of the Niuean people. In doing so the Court is required to consider the applicants genealogical link to the land it is also required to take into account evidence of cultivations and occupations and burial places on the land.
- [15] The opposing sides have claimed different common ancestors. Mr Tutavaha claims Mokatagaloa to be the common ancestor of this land. Mr Manukuo claims Kego as his common ancestor.
- [16] In studying the genealogies presented to the court it is clear that both parties originate from the common ancestor Mokatagaloa. This is set out as follows:



- [17] In short the parties are related to each other by blood and the past history of occupation of this land shows that the parties ancestors have both worked on this land at different times through various family arrangements.
- [18] The grave at the front of the property requires consideration. It was stated by Tutavaha that this grave belongs to Taulagavalu who was the son of Moose and not Kego who was Manukuo's great grandfather. With the exception of what was stated by Tutavaha in Court on 11/11/2008 all other evidence on the Court file supports that this was Kego's grave. For example the written statement of Robert Jackson dated 08/09/2008 and the report on the meeting of the parties on 04/10/2007. Both support that this was Kego's grave. Also the Court visited the site on 13/11/2008 and although the letters are not clear there are 4 letters, which are similar to KEGO. There are also the numerals 1887 on the grave and from the genealogy records held by the Justice Department. Kego was born in about 1838 and died in about 1887. There is nothing remotely like Taulagavalu written on this gravestone.
- [19] This being the case I am satisfied this is in all probability Kego's grave and not the grave of Taulagavalu.
- [20] As far as recent occupation is concerned Mr Tutavaha said when his grandfather was on land, there was no dispute. It was only after he died in 1981 that this contest has arisen. He also says that his family have not occupied this land since his aunty Ema Jackson in 1960's.
- [21] David Manukuo came back to this land in 1976 helped his grandfather and grandmother to work this land. He left for a short period and returned in 1988 and has cleared this land since then without interruption. He has no objections to Tutavaha having block A and he will remain on block B and C.
- [22] After considering all the evidence, I find that both parties have genealogical ties to this land.
- [23] I also find that this land by family arrangement has been occupied by both families in past years.
- [24] The Tutavaha Jackson family have had land titled in Block A of approximately 2645 m² by consent of the parties. It seems only fair and reasonable that the other side of the family who have also occupied this land for generations should also receive a portion of it.
- [25] As a result I make the following orders:

- (i) The title is determined for the land contained in provisional plan 9432 Blocks B and C containing approximately 1805 m² with the common ancestor to be Mokatagaloa.
- (ii) That the Leveki magafaoa to be David Mitikele Manukuo

[26] A copy of this decision is to be sent to both parties

Dated this 23rd day of December 2008



Wilson W Isaac (Judge)