

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

IN THE MATTER of: Pt FALEAPUNA MAKEFU

BETWEEN Tulelehemaama S. Tongia

AND: Charlie Tohovaka

APPLICATION FOR AN INJUNCTION

DECISION

BACKGROUND

[1] An application for an injunction dated 16/06/2011 has been filed by Mrs Tulelehemaama Tongia of Makefu to stop Charlie Tohovaka from planting PT Faleapuna Makefu until the title is determined.

[2] The grounds for this application are that the land belong to her family and it has been occupied by them for generations and that Charlie Tohovaka has no right to this land.

[3] Mr Tohovaka has responded by letter dated 27/06/2011 that he admitted the land was ploughed by mistake and that the land belonged to the Togatama family represented by Mr Pene Togatama.

[4] Mr Tohovaka also stated that Mrs Tongia had spoken to Pene Togatama and he had told her she had no authority in relation to this land.

[5] Mr Togatama has also spoken directly to the Secretary for Justice and has confirmed that the land in question belongs to his family. He has spoken to Mrs Tongia and told her, she has no authority over the land and does not want to stop Mr Tohovaka using the land.

[6] Mrs Tongia has now filed an application to title the land on 28 June 2011.

DISCUSSION

[7] Before an application to grant an injunction preventing the use of land is granted the applicant must demonstrate that she has a right to the land that should be protected and the balance of convenience rests with her.

[8] The rights to this land are clearly at issue. Mrs Tongia may not have exclusive rights or she may have no rights to the land. Mr Togatama may have equal or better rights than Mrs Tongia. Mrs Tongia seeks to prevent Mr Tohovaka using the land, Mr Togatama supports his use of the land.

[10] However, the position as to who has the right to this land is too unclear to determine at this point although it is clear that both parties to this application have deferred to Mr Pene Togatama for discussion and guidance as to the use of the land. Therefore I am not in a position to determine that Mrs Tongia has exclusive rights to this land to support her application for the injunction.

[11] Also it is clear that the balance of convenience does not rest with the applicant. Mrs Tongia can still proceed with her application to title the land and Mr Tohovaka's use of the land will not affect this application.

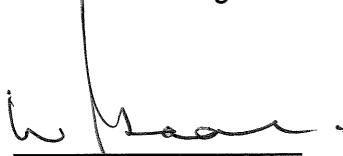
[12] As a result of this discussion I cannot grant the injunction because of the uncertainties of the title position.

[13] The application is therefore dismissed.

[14] The Registrar is to set the application to title the land down for the November Court with notice to all parties.

[15] A copy of this decision is to be sent to the applicant, the respondent and Mr Togatama.

Dated at Wellington this 12th day of July 2011.



W W Isaac
Judge