

IN THE HIGH COURT  
OF NIUE  
(LAND DIVISION)

Application No. 11212

**IN THE MATTER OF:** Applications for change of  
Leveki Magafaoa in relation  
to SECTION 12, BLOCK III,  
LIKU DISTRICT PART  
VAOKOTO as shown on  
PLAN 120, VOLUME 3  
FOLIO 13

**BETWEEN:** ENELETAMA KAIUHA  
**First Applicant**

**AND:** REVEREND ARTHUR  
PIHIGIA,  
THE HON POKOTOA  
SIPELI,  
LOGOPATI SEUMANU,  
LAFETU SIPELI,  
SIONETASI PULEHETOA,  
TAVITA LUI AND  
MOUA SALATIELU on  
behalf of LIKU EKALEZIA  
CHURCH  
**Second Applicant**

**Judgment:** 6 August 2015 ( 1:10 pm New Zealand time)

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**DECISION OF COXHEAD J**

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**Introduction**

[1] This decision concerns two competing applications to appoint 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, containing 15 perches (the water bore site). The applications are as follows:

- a) By Eneletama Kaiuha (Enele) to determine the Leveki Magafaoa for Tupuna Tulagi; and



- b) By Reverend Arthur Pihigia, the Hon Pokotoa Sipeli, Logopati Seumanu, Lafetu Sipeli, Sionetasi Pulehetoa, Tavita Lui and Moua Salatielu on behalf of Liku Ekalesia Church to determine the Leveki Magafaoa as Reverend Arthur Pihigia, Lafetu Sipeli, Tavita Lui, Sionetasi Pulehetoa, and the Hon Pokotoa Sipeli.

## Background

- [2] Title for this parcel of land was determined on 11 September 1970. Tulagi was declared the Magafaoa of the land and Pita Tanaki was appointed as Leveki Magafaoa. In 1992 the Leveki Magafaoa was changed to Sipeli Timote and Reverend Ikitaelagi.
- [3] The minutes of the hearings held on 10 September 1970 disclose that this parcel of land known as the bore site supplies water for the whole village. Pastor Pita Tanaki was nominated to be the Leveki Magafaoa. Eneletama Kaiuha objected to the application and the matter was adjourned and recalled the following day. At that hearing Sipeli Timote gave evidence that the descendants of Tulagi agreed that the land be held under Church ownership and stated that the ancestors had given the land and all surrounding areas to Pulekula, Pastor at Liku. He stated that the bore and water reservoir were put on the land with the permission of the Church.
- [4] The Court subsequently made an order vesting the land in Liku Ekalesia Niue for communal water purposes subject to completion of registration of the Church as boundary cooperate.
- [5] In 1992 a further application was made to change the Leveki Magafaoa. Sione Poumale objected to the application on the basis that he was a rightful descendent of Tulagi and claimed that as such he should be appointed the Leveki Magafaoa.
- [6] Sipeli gave evidence that this piece of land was not the land claimed by Sione Poumale and further states that his ancestors had given this land to the Church. He stated that the elders had determined that when the bore was prepared it should be placed on the Church's part to ensure no one could claim it afterwards. The Court determined that Sipeli and Rev Ikitaelagi, nominated by the church of Liku, be appointed as Leveki Magafaoa.



### **Submissions of the first applicant**

- [7] The applicant, Eneletama Kaiuha, submits that at a meeting held on 23 February 2015 she was appointed as a Leveki Magafaoa of Tulagi along with four others – Tony Edwards Kose, Sifa Pulehetoa, Reverend Aifolia Poumale and Pao Palahetogia.
- [8] The applicant says that the evidence given by Sipeli Simose at the hearings held in 1970 was false. She refutes the proposition that Pulekula (then pastor of Liku and surrounding areas) was given the land by agreement of the owners. She also denies that the bore and reservoir takes were put on the land with the permission of the Church.
- [9] The applicant submits that in actual fact the land where the bore site is situated was in bush land known as Futu, rather than on the Church's land. She is concerned that the income derived from the bore is going directly to the Church rather than the descendants of Tulagi.
- [10] The applicant additionally points out that currently none of the Leveki Magafaoa are descendants of Tulagi.

### **Submissions of the second applicant**

- [11] As mentioned above, the Liku Ekalesia Church seeks to appoint a number of Leveki Magafaoa for the land. In support of their application they say that the deacons of the Church held a meeting on 3 August 2014 and agreed on the nominated persons to be the new Leveki Magafaoa.
- [12] The applicant Eneletama Kaiuha attended that meeting.
- [13] The minutes record that the summary of the outcomes of the meeting were:
- a) The Tupuna Tulagi will remain as Tupuna for the church land;
  - b) The family of Tulagi and representatives for Ekalesia Liku agree that the Ekalesia will care for the church land and all assets on that land; and



- c) There is agreement by everyone at the meeting that the water pump site located at Futu will remain under the care of the Ekalesia Liku and that all proceeds derived from the water pump site will also go to Ekalesia Liku.

### **The law**

- [14] Section 14 of the Land Act 1969 sets out the requirements for the appointment of a Leveki Magafaoa as follows:

#### **14 Appointment of Leveki Magafaoa**

- (1) When the ownership of any land has been determined any member of that Magafaoa who was reached the age of 21 years may apply in writing to the Court for an order appointing a Leveki Magafaoa of that land.
- (2) If the application is signed by members who in the Court's opinion constitute a majority of the members of the Magafaoa whether resident in Niue or elsewhere the Court shall issue an order appointing the person named in the application as the Leveki Mangafaoa of that land.
- (3) If no such application is received within a reasonable time, or applications are each signed by members who, though having attained the age of 21 years, constitute less than a majority of the Magafaoa who have attained such age the Court may appoint a suitable person to be Leveki Magafaoa of that land.
- (4) The appointment of a Leveki Magafaoa shall not be questioned on the grounds that any member of the Magafaoa was absent from Niue, but the Court may consider any representation made in writing by any member so absent.
- (5) Any person who is domiciled in Niue, and whom the Court is satisfied is reasonably familiar with the genealogy of the family and the history and locations of Mangafaoa land, may be appointed as a Leveki Magafaoa of any land, but if he is not a member of the Magafaoa he shall not by virtue of such appointment acquire any beneficial rights in the land.
- (6) In appointing any Leveki Magafaoa the Court may expressly limit his powers in such manner as it sees fit.

### **Decision**

- [15] The current Leveki Magafaoa who were appointed in 5 August 1992, Sipeli and Reverend Ikitoelagi, were nominated by the Liku Ekalesia Church.
- [16] The Court is in a situation where it has two applications for the appointment of Leveki Magafaoa for the same block.

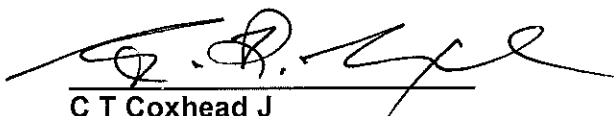


- [17] The first application from Mrs Eneletama Kaiuha relies on a meeting held on 23 February 2015 where that meeting agreed to appoint Leveki for Tupuna Tulagi, who is the common ancestor for this block of land. Those elected were:
- a) Tony Edwards Kose
  - b) Rev Alifolia Poumale
  - c) Pao Palahetogia
  - d) Sifa Pulehetoa
- [18] It also appears from reading the minutes that the applicant Eneletama Kaiuha was also put forward to be a Leveki.
- [19] The second application by the Liku Ekalesia Church relies on a meeting on 3 August 2014 where they agreed on the following people in the church to be the new Leveki. They are:
- a) Reverend Arthur Pihigia
  - b) Lavetu Sipeli
  - c) Tavita Lui
  - d) Sionetasi Pulehetoa
  - e) Hon Tokotoa Sipeli
- [20] Section 14(2) of the Act requires that if the application is signed by members who in the Court's opinion constitute a majority of the members of the Mangafaoa the Court shall issue an order appointing the persons named in the application as the Leveki Mangafaoa.
- [21] I therefore need to be satisfied that the members who have signed the application constitute a majority of the members of the Magafaoa, whether resident in Niue or elsewhere.
- [22] Neither application appears to me to be signed by members who constitute the majority of the members of the Magafaoa. Based on the minutes of the meetings and the evidence before the Court it is difficult to conclude that the majority of the Tulagi Magafaoa supports either application.



- [23] That does not stop the Court from appointing Leveki because s 14(3) of the Land Act allows the Court to appoint a Leveki Magafaoa if applications are each signed by members who constitute less than a majority of the Magafaoa.
- [24] However, even in such cases I am of the view that the Court must be satisfied that Magafaoa support the Leveki appointments.
- [25] Neither of the applications before me provides the Court with a clear indication of who the Magafaoa of Tulagi (who is the common ancestor for this land block) endorse to be appointed.
- [26] From the evidence before the Court it appears that the Magafaoa Tulagi originally supported those named in the second application of the Liku Ekalesia Church.
- [27] However, now the Magafaoa Tulagi appear to support those named in the application of Eneletama Kaiuha.
- [28] Neither of the applications is satisfactory. The Court needs a clear indication of who the Magafaoa of Tulagi want to be the Leveki of this land block.
- [29] I therefore dismiss both applications. In dismissing both applications I direct that the Court is to call a meeting of the Magafaoa of Tulagi for the purpose of appointing Leveki Magafaoa of this land block being Section 12 Block III Liku District, Part Vaokoto contained in Plan 120 and registered in Volume 3 Folio 13 of the Niuean Land Register, containing 15 perches (the water bore site).
- [30] The meeting should be properly notified and will be facilitated by Court staff.
- [31] I do note that a Leveki Magafaoa does not have to be of the Magafaoa – they simply need to satisfy the requirements of s 14(5) whereby any person who is domiciled in Niue and whom the Court is satisfied is reasonably familiar with the genealogy of the family and history and locations of Magafaoa land, may be appointed as Leveki Magafaoa of any land.

Dated at Rotorua, New Zealand this 6<sup>th</sup> day of August 2015

  
C T Coxhead J