

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

**App No. 11337**

**IN THE MATTER** of PART MOUGAHEU, at  
Makefu District.

**BETWEEN** Tione Atali Lolani

**Applicants**

**AND** Maryanne Palemia Talagi

**Respondents**

Judgment: 12 February 2016

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**DECISION JUSTICE W W ISAAC**

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[1] An application for an injunction was filed by Tione Atali Lolani (Tione) of Makefu dated 19 November 2015 seeking orders that:

- (i) Maryanne Talagi (Maryanne) cease all work on Part Mougauhe at Makefu immediately; and
- (ii) Her title as leveki magafaoa be removed.

[2] The grounds relied upon for this application are that Maryanne is working and planting outside the land granted to her and as her actions show no respect for the magafaoa she should be removed as the leveki magafaoa.

[3] In response Maryanne states that Mougauhe is extended magafaoa land. Both she and Tione are descendants of the common ancestor Tautelemanogi and all the descendants of Tautelemanogi are entitled to use of this land. Also the land is large and can accommodate the descendants of Tautelemanogi and further Tione is not the only person entitled and if his injunction is successful it will exclude other magafaoa members from this land.

*Discussion*

[4] The principles relating to the grant of an injunctions was set out in *Klissers Farm House Bakeries Ltd v Harvest Bakeries Ltd (1985) 2 NZLR 129*. The applicant must show;

- (i) There is a serious question to be tried;
- (ii) The balance of convenience is in the applicants favour.
- (iii) The overall justice of the case supports the grant of the injunction.

[5] In this case the land in question is not yet titled and no leveki magafaoa has been appointed to it.

[6] In other words no one person has the control and authority over the land.

[7] The land is magafaoa land and is available for use by the descendants of the common ancestor to this land who is acknowledged by both parties to be Tautelemanogi.

[8] It would appear that both Tione and Maryanne are descendants of Tautelemanogi and until the land is titled they have the same rights in respect to this land.

[9] They should therefore work together to resolve their differences and determine for practical purposes which part of the land will be worked by Tione and which part by Maryanne.

[10] Also in respect to the application to remove Maryanne as the leveki magafaoa, it should be noted that she is not the leveki magafaoa for the land subject of this application.

[11] Having regard to the above discussion I do not consider there is a serious case to be tried and the balance of convenience is against the grant of this injunction.

[12] As a result the application of Tione fails and the application is dismissed.



[13] A copy of this decision is to be sent to all parties.

Dated at Wellington on this 12<sup>th</sup> day of February 2016.



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W W Isaac  
**JUDGE**