

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

**App Nos. 9883/28/6,
9886/28/6, 8423 and 8424**

IN THE MATTER Sections 10, 12 and 14 of the
Land Act 1969

AND

IN THE MATTER Pt Fupao, Tumuovava,
Gutupahua, Valikulu,
Lotovao – Tuapa District

BETWEEN Poni Kapaga

Applicant

AND Sione Pokau Sionetama

Respondent

Hearing: 20 March 2013
26, 27 and 28 May 2014

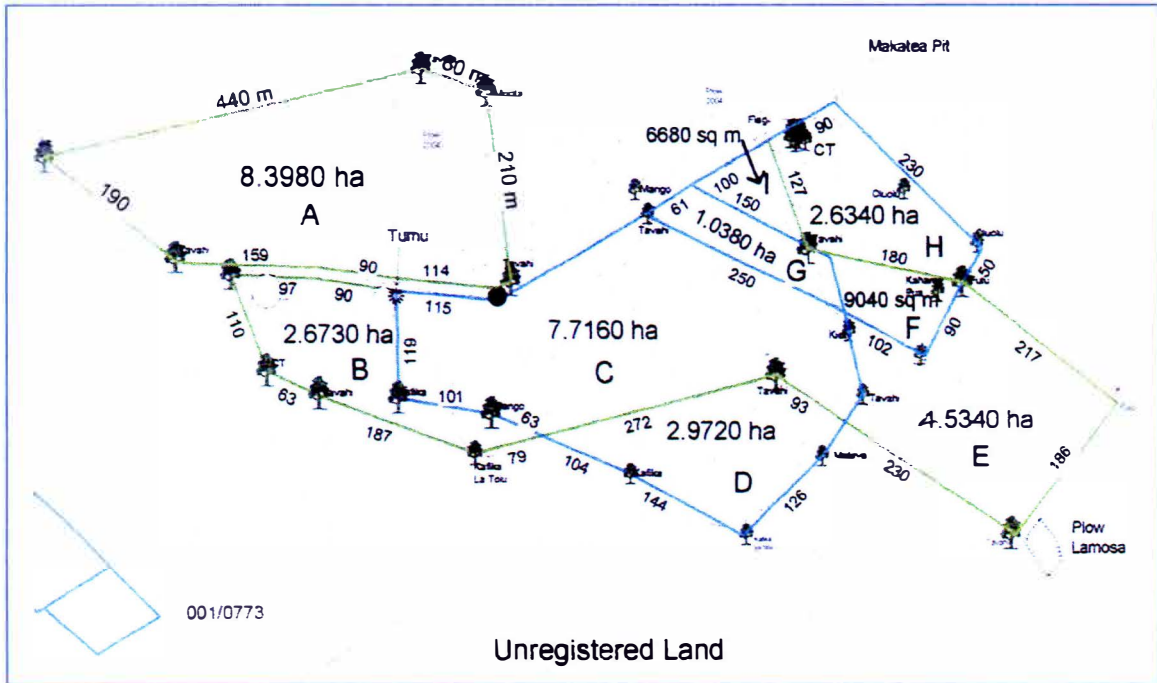
Judgment: 9th March 2016

DECISION OF ISAAC J

Introduction

[1] The applications before the Court have been brought by Poni Kapaga (Kapaga) on behalf of the Kuimaka family and Sione Sionetama (Sionetama) on behalf of the Togiamafiti family.

[2] These applications relate to the determination of title and appointment of Leveki Magafaoa for the land known as blocks C, E, F, G and I (known alternatively as Pts Tumuovava, Gutupahua, Valikulu and Finesiale) as well as the boundaries of blocks A and E. The location of these blocks is shown in the following map adapted from Provisional Plan 7386.



[3] The dispute between Kapaga and Sionetama is generations old. Although steps have been taken on several occasions to title the land, for various reasons this has not been completed. This dispute has resulted in family meetings, multiple surveys of the land, an application and grant of an injunction, as well as the proceedings that are the subject of this hearing.

[4] The current application was originally heard by Judge Savage in this Court in 2009 where it was decided that Kapaga had succeeded in relation to blocks A and B and that the Sionetuato family succeeded in blocks D, H and F. Ownership of the remaining blocks had not been proven as belonging to either party exclusively and there was insufficient evidence presented to allow the Court to investigate title. The resulting decision was later appealed and in 2012 the Court of Appeal agreed there should be a rehearing in respect to blocks C, E, F, G, and I.

[5] The rehearing was initially heard by Judge Smith on 20 March 2013 and subsequently by the Court on 26, 27 and 28 May 2014. The Court heard extensive evidence and submissions and evidence from the parties, their supporters and legal counsel.

[6] Although the applicant, Kapaga, did not explicitly state at this hearing which blocks he claimed, his submissions to the Court of Appeal on 22 June 2012 indicate that he seeks for Kuimaka to be determined as the common ancestor for blocks C, E, F, G and I. The respondent, Sionetama, asks that the Court finds in his favour and issues title to the Togiamafiti family of the lands enclosed within blocks C, F, G, and I as shown on the 2008 survey plan. Sionetama also disputes the location of the boundaries in relation to blocks A and E.

The case for Kapaga on behalf of the Kuimaka family

[7] The case for Kapaga was submitted to the Court by his counsel, Mr Lawry, and by Kapaga himself in evidence in chief and under cross-examination.

[8] Kapaga has submitted that he has used and had knowledge of the lands since he was young and that he knew well who was working there. During the 2013 hearing reference was made to Kapaga's affidavit in which it was stated that he started working the land when he was about 5 years old. Under cross-examination, Kapaga stated that the area where he first cultivated by himself at the age of about 8 was in block G, and that he recalls seeing other families working land which was outside the area currently claimed. This includes the Pokopokotau, Folitauga, Ulumiti, and Tosene families. According to Kapaga, his knowledge about the land in this area (referring to blocks C and G) comes from Poitogia (who Kapaga viewed as a grandfather), from his brothers, and from some members of the extended family.

[9] According to Kapaga, at the family meeting held in 1981 to address a dispute in relation to Pt Tumuovava and Pt Valikulu, Sionetuato accepted that he had been cultivating in an area where he was not entitled to cultivate, he agreed with what was said by Faitala at the meeting, and he promised that after harvesting his crops, he would go back to working in his area and would not return. It is also submitted that the 1983 survey investigation report is consistent with this agreement to move back from the established boundaries. Kapaga argued that since that time, Sionetuato's family has sought to reclaim this land to which Sionetuato had agreed not to return. It was also submitted that, only once most of the Kuimaka family had left Niue, did the Sionetuato family move into the disputed area.

[10] Kapaga has submitted that Sionetuato agreed with the boundaries as shown on the 1983 survey which are replicated by the green line as shown on the coloured version of the 2008 map (reproduced in this decision at paragraph [2]). He states that there was no argument about the survey of blocks B, C, E, F or I and that the only argument in relation to this boundary was regarding the hatched area as shown on the 1983 map. Kapaga submitted that Sionetuato did not challenge the boundary on blocks C, G, I, F and E.

[11] Regarding the orientation and location of the blocks owned by the parties and in response to a question from the Court, Kapaga confirmed that his view was that Pokopokotau's land was to the north of the Loki track and that Kuimaka's land was to the south. Kapaga has stated that he strongly believes that Pt Valikulu commences at block I and continues down to include most of block G and that this area represents the triangle of land that was contested by Sionetuato during the 1983 survey. Kapaga has also stated that the remainder of block G is Gutupahua.

[12] Although Mr Lawry submitted that block A is not properly at issue in these proceedings, Kapaga has made submissions regarding Sionetama's challenge to the location of the block's northern boundary. Under cross-examination, Kapaga explained that in order to move the boundary back to where it should be, during the 2008 survey the northern boundary of block A was moved 200m north from where it was shown on the 1983 sketch map. The reason given for locating the boundary at this point was that in the past, his family had decided to give the land that lay between the tree known as Poko's mango and Pt Fupao, to the Sionetuato family. Kapaga does not accept that Poko's mango marks the middle of the Pokopokotau family's land because neither to his recollection, nor that of his mother or his brother Keni, was Poko mentioned as having worked in areas such as Gutupahua. Instead, he says the distance between the boundary of the Pokopokotau lands and Pt Fupao is about 100m and this is the true northern boundary of block A as indicated on the 2008 map.

[13] In relation to block C/Pt Tumuovava, Kapaga has stated that he knew the people working those lands. According to Kapaga, the whole of block C was worked by the Kuimaka family and Pokopokotau and his siblings never worked there until 1979-1980.

[14] In relation to Pt Valikulu, Kapaga has stated that when he returned to Niue in 1975, he learned from different people that Sionetuato had never worked the lands there. However, he himself had worked in that area at some point. Under cross-examination, Kapaga stated that he has worked on blocks F, G and I at some point, and has identified Block G as Pt Valikulu.

[15] At the hearing on 20 March 2013 Kapaga made submissions about his family's use of the land in the various blocks. He reports that his brother worked on blocks I and G, Fasimata worked on block C near the mango, and that Kuimaka Vatataola worked part way through block C. Iloilo and Fasitogia worked Valikulu. Kapaga also referred to a letter written by Sionetuato in relation to the disputes of the 1980s which states that Sionetuato and Faitala never worked the lands that were the subject of the letter and that Pokopokotau's land is Part Loki.

[16] Kapaga has made submissions about Niuean customs in relation to land ownership in the previous proceedings before the Court of Appeal. During the initial hearing in March 2013, Kapaga submitted that according to Niuean custom, your parents and grandparents will show you what is family land. If a Kuimaka descendant wishes to use the land, priority is determined by custom through the Leveki because they know the genealogy and are able to speak for the family.

[17] In his closing submissions of 28 May 2014, Mr Lawry submitted that his client's position was unchanged from the previous hearing before this Court and before the Court of Appeal. In support of his application for an award of the blocks that are in dispute, Kapaga points to his genealogy and evidence about those who have previously worked on the land. According to Kapaga, his submissions demonstrate that the Sionetuato family has moved away from their previous agreement to leave the land in dispute. Kapaga does not dispute that the Sionetuato family would be entitled to discuss with the magafaoa about using the land, however he objects to the proposition that ownership of any of these blocks originates from Pokopokotau.

[18] Mr Lawry points out that the Kuimaka family has tried to accommodate others. They claim they were forced to preserve some of the Kuimaka lands from a continuing process of encroachment. They say that the suggested compromise is actually the

respondents seeking to go beyond the boundaries of their previous claims. The Kuimaka family says that those from Sionetuato should return to their lands which are huge. Mr Lawry also maintained that neither the issues of the boundary of block A, nor block E are properly included in the current application.

The case for Sionetama on behalf of the Togiamafiti family

[19] According to Sionetama, the mana over these lands comes down the line of his great-grandfather, Pokopokotau Sionetama, to his family today, through their common ancestor, Togiamafiti. It is submitted that since Togiamafiti's time and before, the Sionetama family has continuously occupied and worked these lands and continues to do so today. Sionetama and his family know well the traditional knowledge and boundaries in relation to the land, which has been passed down through the generations.

[20] Sionetama explained that he grew up listening to the old people talk, especially on Sunday afternoons, when they would relax and tell stories of the early days. He recalled that every Monday all the brothers and sisters would congregate at Poko's and that they would share stories. This is how he learned about the family's lands and traditions.

[21] From a very young age Sionetama started going to the bush with his father Pokopokotau (his natural great-grandfather). He has been cultivating or helping to cultivate the land at Loki Bush since he was about 6 years old. Sionetama learned stories about the land, the families, and the land boundaries, from his father and grandfather. Given these stories had been passed down to him in this way, Sionetama's family appointed him to be their spokesperson in this matter.

[22] Sionetama explained that he would go with his grandfather to cultivate their lands and that he was always told that the land belonged to their ancestors, not to them as individuals. Sionetama explained that culturally, they always understand and respect their boundaries and that when they work in this way, there are no problems.

[23] According to Sionetama, when Pokopokotau passed away, many said that "Kua veli e Ovava – a great Ovava tree has fallen". These are big strong trees with many extended roots. He believes that the disputes over the land started soon after Pokopokotau

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died in 1980 and Faitala started to claim the lands in dispute as belonging to the Kuimaka family. Sionetama does not think that these claims through Kuimaka would have been made while Pokopokotau was still alive.

[24] Counsel submitted on Sionetama's behalf that in the years prior to 1980, no problems arose with Sionetuato cultivating here and there and that cross-examination of Kapaga showed that problems began soon after he visited Niue in 1975. It was alleged that Kapaga engaged the support of Faitala to claim his land for himself, as the successor to Faitala. He wanted to claim this land so he put a "fono" over it, objecting to Sionetuato's cultivation.

[25] At the 1981 family meeting, Faitala said that he went to see Pokopokotau three times about the land and had been told that because he had been adopted, he would need to go back to the Kuimaka magafaoa. It was alleged that after Poni Kapaga returned to Niue in 1975, he began supporting Faitala's claims to Sionetama's family lands. Sionetama believes that the claim that Kuimaka was the common ancestor of their lands angered his grandfather Sionetuato and his brothers, and that this caused a big argument in the 1980s. According to Sionetama, his grandfather and his great-uncle, Lakatani, also did not believe that Faitala and Poni Kapaga had worked the lands that were under dispute. Together with the common ancestor argument, this has been the main cause of animosity within the families.

[26] Sionetama acknowledged that other families have rights in these lands and states that he respected their rights as have been explained to him by his elders and that he has learned from his own experiences. He does not believe that his family seeks to claim anything that is not theirs. He does not dispute that the Kuimaka family has rights in these lands. Sionetama hopes to assist in clarifying where the Togiamafiti and Kuimaka families' boundaries are.

Submissions on the survey process

[27] The land has been surveyed on several occasions and Sionetama has raised concerns about the survey process. In 2008 he objected to some of Kapaga's boundaries shown to the surveyor. However, Kapaga said that Sionetama already had his turn to


point out boundaries in 1999. Accordingly, when it was his turn, Sionetama should not have disputed what he was saying. A file note records that Sionetama objected to adding any further marks or boundary lines before the issues with the 1994 and 1999 plans were resolved. Sionetama also considered that because his concerns had been raised, the surveyor should have approached him for input or arranged for them to meet together to resolve any differences about the boundaries.

[28] During the 1999 survey, Sionetama showed the surveyor the boundaries of the Gutupahua and Tumuovava blocks. He stated that at that time, he had been cultivating these blocks for many years. He stated that these are the same blocks in relation to which Kapaga had applied for an injunction to prevent his use of them. Sionetama explained that he knew these boundaries from the knowledge passed down to him from his grandfather and great-grandfather and from his many years working on the land itself.

[29] Sionetama submitted that the 1999 and 2008 surveys present the blocks differently, and that the survey lines do not match the traditional boundaries. This affects blocks C, G and I as shown on the 2008 plan. He noted that the western boundaries of these blocks cut through the Finesiale lands and that Sionetuato tried to explain this in 1983 when the boundaries were first being marked. According to Sionetama, these boundaries were also strongly disputed with Kapaga at that time.

[30] Sionetama accepted that the 1983 sketch map is helpful in some senses, but did not think it was accurate. This is demonstrated by the fact that the sketch map shows that the Loki Bush track follows a straight line when in reality, it bends around. According to Sionetama, the fact that Kapaga had to rely on a copy of the 1983 sketch map in order to identify the customary boundaries for the surveyor in 2008 indicated that he was not familiar with the customary boundaries of the land.

[31] Counsel stated that one of the key issues in dispute is the boundary between Valikulu, Finesiale and Gutupahua. His clients disputed Kapaga's statement that Finesiale is on the other side of the road. Sionetuato had said that it was on both sides of the road, similar to how Tumuovava and Gutupahua extend over both sides of the track.



Loki Bush

[32] Sionetama explained that the heart of the lands that are the subject of the dispute is identified by his great-grandfather's mango tree, known as Poko's mango. Sionetama's family farmed the area around the mango tree and used it as a resting area although it was known as a very tapu place. However, as a young man he was also his grandfather and father told him not to cultivate close to the mango tree. He believed that the reason the mango tree is special is because it marks the centre point of the Loki Bush lands and was the centre of the lands owned by his family.

[33] According to Sionetama, the area identified as Loki Bush encompasses Tumuovava, Gutupahua and Finesiale, but not Valikulu. The names of these blocks within Loki Bush are derived from landscape features within the blocks. During the May 2014 hearings Sionetama explained that Loki Bush is quite a large area and that to the north is Mougakelekele, to the north east Hamea, to the south east Lotovao, to the west Talomili and to the south west Lalokafika. Under cross-examination, Sionetama stated that the entire surveyed area, except for block E, is within Loki.

[34] Counsel also referred to statements previously made by Sionetuato where he acknowledged that his family did not have any rights through their father at Valikulu but that they did have rights in the Loki area. He explained that they have cultivated this wider area for generations without any problems until Kapaga started the trouble in 1980 and that this trouble has continued to the current day.

Submissions in relation to Block A

[35] In relation to the individual blocks, Sionetama accepted that the Kuimaka family has ownership rights in block A/Pt Fupao. His grandfather had told him that several generations prior, his family had given some of their lands to the Kuimaka family to use and cultivate, and this is the land known as Fupao.

[36] However, Sionetama disputed this block's northern boundary as shown on the 2008 survey map, alleging that it has been moved 200m further north than previously shown on the 1983 sketch map. Sionetama believes that, as a result, block A now includes

the burial cave of his family's ancestors, including Fakataikula Togiama fisi. According to Sionetama, the correct place for the northern boundary is the makasea pit because this marker is nearer to the tapu place.

Submissions in relation to Block C

[37] In the 1999 survey of the Tumuovava and Gutupahua lands, facilitated by Sionetama, the area shown as Block I includes the area identified as Block C on the 2008 map. Sionetama noted that the dimensions of the 2008 blocks C and D are almost identical to those of the 1999 block I. According to Sionetama, Kapaga has accepted the boundaries as shown on the 1999 map because he did not dispute that Sionetama had correctly identified them. Sionetama stated that Kapaga was on the land when the survey occurred but chose not to participate. The 1999 plan also shows Sionetama's taro plantations at the south western end of the block. He stated that he cultivated in this same area without any problems until Kapaga's injunction.

[38] In relation to the 1981 meeting and dispute, under cross-examination Sionetama explained that Sionetuato had burnt and was cultivating an area on Tumuovava and had overstepped the boundary between blocks B and C. Sionetuato apologised for having overstepped into the area now known as block B and returned to the land which he usually cultivates which is within Tumuovava, toward the mango tree. The 2008 map shows that the mango tree stands within block C.

Submissions in relation to Block E

[39] Sionetama explained that his family has no problems with block E except for the boundaries, because block E is pt Valikulu. He does not oppose the grant of the land in Block E to the Kuimaka family because he knows that his great-grandmother Hariesa's nephews work these lands, and Hariesa is from the Kuimaka family.

[40] However, Sionetama is aware of a dispute over the ownership of block E between the Lakatani and Kuimaka families. He disputes the boundary of this block as shown on the 2008 map because the Ikitule family has cultivations in this area. Sionetama is concerned that maintaining the 2008 boundary might alienate the Ikitule family's land.

[41] Sionetama submits that the Court should not make a final determination of ownership in relation to block E until the Lakatani family has had the opportunity to be heard, and until the boundaries of that block are redrawn. However, he says that if the proposed boundary of block E were moved south by 50m, that would be acceptable.

Submissions in relation to blocks F, G and I

[42] During the hearings Sionetama made several statements identifying the location of the Gutupahua, Finesiale and Valikulu blocks in the area represented by blocks I, F, and G on the 2008 map. Sionetama has stated that block F is Finesiale. Sionetama also stated that a marked tree, the “Fuki tree”, identifies Valikulu. He explained that the location where Sionetuato, Faitala and Kapaga “strongly bargained”, as recorded in the 1983 survey report, is the boundary between Valikulu and Gutupahua. He also explains that the Futu tree, as shown on the 2008 map, can be used to mark the boundary of Valikulu by extending the line. According to Sionetama, Gutupahua is just over the boundary from G into C and the rest of Tumuovava goes from C right to the boundary of B and that is all land claimed by the Togiamafiti family.

[43] As with block C, Sionetama argues that Kapaga’s 2008 plan, and the earlier 1994 and 1999 plans, are similar. Thus, Kapaga must have accepted his boundaries. However, Sionetama also noted with concern that block F on his 1999 plan has been subsumed into block E on the 2008 plan.

[44] According to Sionetama, Kapaga was on the land when the 1999 survey was undertaken, but did not accompany them in pointing out the boundaries. Kapaga never disputed the correctness of the boundaries he identified as Block I on the 1999 survey plan (these boundaries are now identified as Blocks C and D on the 2008 plan). Sionetama also says that very little difference exists between the boundaries of Block I as shown on the 1999 plan, when compared to C and D on the 2008 plan. The only difference is a line dissecting the lower part of block I, which created block D. Sionetama submitted that this shows that Kapaga accepted Sionetama’s 1999 boundaries in relation to this block.

Closing submissions on behalf of Sionetama

[45] Mr Solomon submitted that the truth of Sionetama's evidence has not been challenged and that his knowledge of the area cannot be successfully brought into question. He was adopted at 6 months old by Pokopokotau, who is the principle ancestor of the area. From that time until he was 11, he absorbed a lot of information from his great-grandfather. Furthermore, throughout most of his life he worked the land with his grandfather, Sionetuato. They worked the land through the C and D blocks, through to the F and G blocks and witnessed the Ikitules and the Lakatanis, who are all members of the Togiamafiti family, working this area too. They worked together without dispute for generations until 1980. From that point onwards, disputes arose because Kapaga, initially with Faitala's support, claimed the land that rightfully belongs to Sionetama's ancestor, Togiamafiti.

[46] It was also submitted that the Court must weigh the credibility of evidence and witnesses. Kapaga's evidence under cross-examination shows that much of his evidence is inconsistent and this undermines the credibility of his evidence. In contrast, Sionetama's evidence stands like the ovava tree itself. Sionetama has established on the balance of probabilities that, beyond reasonable doubt, his knowledge of the area is extensive. He stands with the support of his magafaoa as shown by the presence of family members at the Court and by letters of support. He presents himself in Court as a matter of principle, to restore the mana, integrity and credibility of his tupuna and their rightful claim in this dispute.

[47] Counsel for Sionetama submitted that he is confident that Sionetama would permit the Kuimaka family access to these lands if needed. The only time that access has been denied was when Kapaga tried to deny Sionetuato, Lamosa and Sionetama access when they sought to cultivate areas of their mother's land. Counsel submits that the last 30 years shows a history of obstruction, provocation and dispute. If Kapaga were to be appointed Leveki Magafaoa of the lands belonging to the Sionetama family, they would continue to be denied access.

[48] Counsel further submitted that this dispute has been going on too long and that the matter must be brought to an end. Provision has been made for the Kuimaka families by

providing land at Fupao and parts of the Tumuovava blocks A and B. The Togiamafiti family feels deeply that the only way that mana can be restored is by having title restored in the name of their tupuna, Togiamafiti. Finally, the Togiamafiti families say that if the land is divided, as they say it should be, the Kuimaka and Togiamafiti families would be left with roughly equal shares.

[49] Mr Solomon also notes the letters of support from the Sionetuato, Lakatani and Ikitule families, indicating there is substantive support for Sionetama amongst the families.

The Law

[50] Section 10 of the Land Act 1969 provides:

10 Determination of title

(1) The Court shall determine every title to and every interest in Niuean land according to the customs and usages of the Niuean people, as far as the same can be ascertained.

(2) The Court may refuse to proceed with any application for investigation of title for the determination of the Mangafaoa or relative interests in that land, until it has before it a plan of the survey of the land affected by it.

(3) The Court may at any stage of the proceedings require that all claims relating to such land, whether by the applicant or by any other person, shall be made in writing to the Court within a time to be fixed by the Court, after which time no further claims for inclusion will be admitted, except by the leave of the Court and upon such terms as the Court determines.

[51] Section 12 of the Land Act provides:

12 Ownership determined by ascertaining and declaring Mangafaoa

The Court shall determine the ownership of any land by ascertaining and declaring the Mangafaoa of that land by reference to the common ancestor of it or by any other means which clearly identifies the Mangafaoa.

[52] Section 14 of the Land Act provides:

14 Appointment of Leveki Mangafaoa

(1) When the ownership of any land has been determined any member of that Mangafaoa who has reached the age of 21 years may apply in writing to the Court for an order appointing a Leveki Mangafaoa of that land.

(2) If that application is signed by members who in the Court's opinion constitute a majority of the members of the Mangafaoa 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 Mangafaoa who have attained such age the Court may appoint a suitable person to be Leveki Mangafaoa of that land.

(4) The appointment of a Leveki Mangafaoa shall not be questioned on the grounds that any member of the Mangafaoa 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 Mangafaoa of any land, but if he is not a member of the Mangafaoa he shall not by virtue of such appointment acquire any beneficial rights in the land.

(6) In appointing any Leveki Mangafaoa the Court may expressly limit his powers in such a manner as it sees fit.

Discussion

[53] When determining the entitlement to land, the declaration of a common ancestor, and the appointment of Leveki Magafaoa, the Court has to take into account the genealogical link to the land, evidence of occupation, use and cultivation, burial sites on the land and the support of the magafaoa to the applications.

[54] As stated, these applications before the Court have a long history which has resulted in family meetings, multiple surveys and lengthy court sittings. Although the two parties to this application are from different families and claim different common ancestors for the lands in dispute, they appear to be related by blood and customary adoption.

[55] From the evidence presented to me, Kapaga is descended from Kuimaka through his mother Iloilo. Sionetama is descended from Togiamafiti through his natural mother Kilimoka, However, Sionetama was customarily adopted by his natural great-grandfather, Pokopokotau, as an infant and was raised by him and his wife Hariesa, who is a member of the Kuimaka family and a direct descendant of Kuimaka.

[56] Therefore, the Togiamafiti and Kuimaka families are connected through Hariesa's marriage to Pokopokotau. They are also connected through the customary adoption of Pokopokotau's son, Faitala, into the Kuimaka family. Faitala would later become a Leveki Magafaoa for the Kuimaka family.

[57] Kapaga lived away from Niue between 1959. It appears from the evidence that the disputes to this land intensified on his return and after Pokopokotau's death in 1980.

[58] Kapaga maintained that his knowledge of the lands came from his grandfather Poitogia. However, Faitala, at the 1981 family meeting, declared that Poitogia and Pahetogia had no knowledge of the lands in dispute. Also, it was noted at that time that Faitala had not worked the Valikulu lands. As Faitala's adoptive father was not from the lands in dispute, his knowledge should have come from his older relatives, Pahetogia and Poitogia. As pointed out above, Faitala acknowledged he did not obtain his knowledge from Poitogia or Pahetogia.

[59] As stated by Kapaga himself, knowledge about land is usually passed down from grandfather to father to son, therefore such comments made at a family meeting in close proximity to the initial time of dispute raise concerns as to Kapaga's evidence.

[60] By contrast, the evidence of Sionetama is consistent and strong. There is no question where Sionetama got his information about the lands. It has come from Togiamafiti who, as the Court was told, was the first person to cultivate this land. From Togiamafiti the lands went to Pokopokotau and then down to the Sionetama family. The chain appears to be unbroken, and the strength and consistency of the evidence was unwavering.

[61] This evidence explains that the centre of the Togiamafiti lands is marked by Pokopokotau's mango tree. From this centre the lands as claimed by Sionetama stem. This would also add weight to the evidence that the Fupao block was owned by the Togiamafiti family who gifted it to Kuimaka. It would also fit with Sionetama's decision not to claim block E, which he has identified as being within Valikulu and outside the area centred on Pokopokotau's mango tree.

[62] With this background discussion I will now deal with the specific blocks involved.

Block A

[63] The evidence in relation to the boundary of block A seems clear. The boundary was set and agreed to in 1983. Kapaga changed this boundary without consent in 2008. Also, the boundary's shift northwards now means that block A may include the burial cave of Fakataikula Togiamafiti. This was never contemplated. As a result of this discussion, I find that the boundary of block A should be returned to its position in the 1983 sketch map.

Block C

[64] Kapaga has maintained that this block is Kuimaka land and that the Togiamafiti family never worked the land until 1979-1980.

[65] Sionetama disagrees and says this is Togiamafiti land. The 1999 survey plan records the now block C as block I and Kapaga did not at that time dispute the boundaries to the land as belonging to Togiamafiti.

[66] As set out previously, Kapaga returned to Niue in 1975. His statement that he never saw the Togiamafiti family working the land may be consistent with him not living in Niue.

[67] Also as stated earlier, Kapaga's evidence is uncertain. In 1999 he seemed to accept that the area in block C (then known as block I) was Togiamafiti land. Although the 2008 plan merely changed the name of the block from I to C, Kapaga now says this is Kuimaka land. I do not accept this change in evidence by Kapaga as logical.

[68] Therefore, when this evidence is considered with the location of Pokopokotau's mango tree at the centre of the Togiamafiti lands, I accept the Sionetama evidence and find in his favour with respect to block C.

Block E

[69] There is no dispute that block E can go to the Kuimaka family, although Sionetama is aware of a possible dispute in relation to this block between the Kuimaka, Lakatani and Ikitule families.

[70] That dispute is not before this Court and on the evidence available, block E can be determined in favour of the Kuimaka family.

Blocks F, G and I

[71] Sionetama considers that these lands belong to the Togiamafiti family and that they are part of the Loki Bush lands, which have Poko's mango tree at the centre. This is distinct from block E which he says was not part of Loki Bush and is instead part of the Valikulu lands, to which he has no dispute.

[72] Kapaga's evidence in relation to these lands is inconsistent. He has made broad claims that he has worked in these lands without being precise as to location. He has given no real explanation of why this is Kuimaka's land having regard to his alleged genealogical connection to it. When this is linked to his assertion that his knowledge of these lands came from his grandfather Poitogia, whose knowledge was disputed by Faitala in 1981, this evidence appears flawed.

[73] Therefore, on balance I find in favour of Sionetama in relation to blocks F, G and I.

Summary of Decision

[74] The northern boundary of block A is to be returned to its position as shown on the 1983 sketch map.

[75] I declare that Togiamafiti is the common ancestor for block C and appoint Sione Sionetama as Leveki Magafaoa for this block.

[76] I declare that Kuimaka is the common ancestor for block E and appoint Poni Kapaga as Leveki Magafaoa for this block.

[77] I declare that Togiamafiti is the common ancestor for blocks F, G and I and appoint Sione Sionetama as Leveki Magafaoa for these blocks.

Dated at Niue this 9th day of March 2016.



W W Isaac
JUDGE

Land Minute Book 20 Folio 84