

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

**Application No. 11823**

IN THE MATTER OF      Section 7, Block 1, Part Liku District, Part  
   Ulumago

BETWEEN                    ENELETAMA KAIUHA, AHITAUTAMA CROSS  
   AND NEWLAND POU MALE  
   Applicants

AND                            LOINE PAOTAMA      AND      V      A'AIGA  
   TUKUITOGA  
   Respondents

Judgment:      18 October 2018 (New Zealand time)

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**DECISION OF COXHEAD J**

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## **Introduction**

[1] The applicants, Eneletama Kaiuha, Ahitautama Cross and Newland Poumale apply for an injunction. They ask the Court to stop Loine Paotama and Va'aiga Tukuitoga from commencing any work to upgrade Section 7, Block I, Liku District, Part Ulumago ("the block").

[2] The applicants submit that there should be no work on the block until their applications filed with the Court are completed. Those applications are to change the Leveki Mangafaoa and to add a new ancestor to the block.

## **Current Title**

[3] The current title to this block shows that there was an order determining the Mangafaoa as Tulagi which was entered on 7 October 1970. On the same date, an order appointing Poumale as Leveki Mangafaoa was made.

[4] The title also notes that on 23 April 1987 Sione Poumale was appointed as Leveki Mangafaoa.

[5] On 4 September 1996, an order was made determining the Mangafaoa as Tulagi and Manutagi Tapao. Also, on the same day, orders were registered appointing a new Leveki Mangafaoa as Va'aiga Tukuitoga.

## **Applications filed with the Court**

[6] As noted, the applicants have also filed an application for a change in Leveki Mangafaoa, which appears to be on the basis that one of the current ancestors noted on the title, Manutagi Tapao, should be removed.

[7] One of the applicants, Mrs Kaiuha, has previously sought to change the Leveki Mangafaoa and the common ancestor. I heard her application for a change of Leveki on 9 November 2016. I dismissed her application.

[8] On 21 March 2018, Isaac J heard an application to rehear the matter. The application for rehearing was also dismissed.

[9] As I understand the application, it is made on the following grounds:

- (a) The applicants have filed an application to change the current Leveki of Sione Poumale;
- (b) The applicants strongly believe that Sione Poumale was the Leveki together with the respondent Va'aiga Tukuitoga;
- (c) The applicants have minutes of the hearings on 26 October 1994 and 7 November 1994 where it was determined Va'aiga be a Leveki Mangafaoa;
- (d) Mrs Kaiuha contends that she has further evidence to support her position, despite her 2016 application being dismissed;
- (e) While Mrs Kaiuha recognises that her application on 9 November 2016 was dismissed, she states that she has done further research on the matter. She also recognises that her rehearing application of March 2018 was dismissed. Despite this, she has now filed a new application for a change of Leveki;
- (f) The applicants state they do not want any more work to be done on the block, including the removal of the septic tank, until the application Mrs Kaiuha currently has before the Court is heard and decided.

### **Opposition to the application**

[10] The respondents have filed what I take to be a letter of opposition, although I note the letter in opposition itself asks for an injunction against Mrs Kaiuha.

[11] The respondents oppose the application on the following grounds:

- (a) The land on which the family home is located already has a title with the respondent as Leveki Mangafaoa;

- (b) The family of Sione Tapaotama met in Auckland and agreed for Loine Paotama Pakieto, the adopted daughter of Sione Tapaotama, to come to Niue to renovate and make improvements to the family home;
- (c) The family have planned to return to live there once the renovations have been completed;
- (d) Mrs Kaiuha and her party continue to interfere and trespass on to their land, as well as threatening their daughter and preventing her from making renovations and improvements;
- (e) On 10 September 2018, Mrs Kaiuha trespassed the home of Loine Pakieto's friends. Her intention was to stop Loine from doing any more work on the home in Liku; and
- (f) Due to the family arriving next year, work must continue on their home improvement project.

## The Law

[12] Section 47(1) of the Niue Amendment Act (No 2) 1968 provides:

### **47 Jurisdiction of the Land Court**

(1) In addition to any jurisdiction specifically conferred upon the Land Court by any enactment other than this section, the Land Court shall have exclusive jurisdiction –

...

(e) To grant an injunction against any person in respect of actual or threatened trespass or any other injury to Niuean land;

(f) To grant an injunction prohibiting any person from dealing with or doing any injury to any property which is the subject-matter of any application to the Land Court

...

[13] In *Palalagi v Talafasi*, the essential purpose of an injunction was confirmed as follows:<sup>1</sup>

The object of an interim injunction is to protect the plaintiff from harm occasioned by any breach of rights, that is the subject of current litigation, for which the plaintiff might not be adequately compensated by an award of damages by the court, if successful at

<sup>1</sup> *Palalagi v Talafasi* HC Niue (Land Division) Application 10955/56/6, 30 January 2014 at [9] citing *Roseneath Holdings Ltd v Grieve* [2004] 2 NZLR 168 (CA) at [35].

the trial. Against that object it is necessary to weigh the consequences to defendants of preventing them from acting in ways which the trial may determine are in accordance with their rights. The well established two stage approach to addressing applications for interim injunctions involves first, ascertaining whether there is a serious question to be tried and secondly, considering the balance of convenience if the relief sought is granted.

[14] The principles concerning the grant of an injunction are well-established and settled in law.<sup>2</sup> The applicant must show that:

- (a) There is a serious question to be tried;
- (b) The balance of convenience is in the applicant's favour; and
- (c) The overall justice of the case supports the grant of an injunction.

## **Discussion**

[15] I see little merit in this application. It is difficult to see why the Court should injunct the Leveki Mangafaoa who has allowed the home improvements to commence on the land.

The application fails on the first principle, namely that there is no serious question to be tried as the applicants have failed to satisfy the Court that the respondent should be prevented further from commencing work on the block.

[16] I consider that the applications filed by the applicants, can be heard when they are ready to be heard.

[17] I do note that a similar application has previously been heard and dismissed in 2016, and in 2018, a rehearing application was also dismissed.

[18] The applicant does not provide any good reasons as to why the current Leveki should be stopped from allowing work to continue on the land, other than the fact that the applicant has filed an application to have that Leveki removed.

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<sup>2</sup> *Klissers Farmhouse Bakeries v Harvey Bakeries Ltd* [1985] 2 NZLR 129 (HC).

[19] The parties on the land are not trespassing. They are legally entitled to be on the land. In fact, the legal Leveki has permitted them to be on the land. As noted above, the purpose of an injunction is to protect the applicant from harm occasioned by any breach of rights that is the subject of current litigation.

### **Decision**

[20] Given these matters, the application is dismissed.

Pronounced in Rotorua, New Zealand/Aotearoa on the 18th day of October 2018.

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C T Coxhead  
**JUSTICE**