

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

**App No. 11832, 11833,  
11868, 11869, 11888, 11934, 11935,  
11936, 11937**

**UNDER** Sections 10, 12 and 14 of the  
Land Act 1969

**IN THE MATTER OF** Part Manunu, Mutalau

**BETWEEN** PETER MILANI  
**First Applicant**

**AND** SIAKIFILOUA SIAKIFILO  
**Second Applicant**

**AND** IAN EPSY LAIFONE  
PUHEKE and BIRT JESSOP  
**Third Applicants**

Hearing: 12 March 2019

Judgment: 20 October 2020

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**DECISION OF JUSTICE W W ISAAC**

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**Introduction**

[1] This decision concerns several competing applications for determination of title and appointment of leveki for the land known as Part Manunu, Mutalau.

[2] Peter Milani originally applied to title Part Manunu and appoint leveki in November 2018. Siakifiloua Siakifilo opposed this and filed his own applications for determination of title and appointment of leveki in January 2019. A hearing was held on 12 March 2019, in which Ian Epsy Laifone Puheke on behalf of the Pasitooa magafaoa objected to the applications. In September 2019, Ian Epsy Laifone Puheke and Birt Jessop also filed applications to determine title and appoint leveki for Part Manunu.

[3] The total area of Part Manunu, based on Provisional Plan 11868 and dated 12 November 2019, is 6503m<sup>2</sup>.

[4] The procedural history and number of submissions received make it clear there is disagreement within the magafaoa as to who the common ancestor should be, and who is entitled to look after and reside on the land.

### **The applications**

[5] It is useful to set out the details of each application that has been received relating to this block:

- (a) Application no. 11832 received on 7 November 2018 by Peter Milani for determination of title with Emi Paapu as the common ancestor.
- (b) Application 11833 received on 7 November 2018 by Peter Milani to appoint Gina Talafasi and Makaseau Ioane as leveki magafaoa. The latter is intended to be a temporary appointment.
- (c) Application 11868 received on 23 January 2019 by Siakifiloua Siakifilo for determination of title with Hulata Koukouhetogia Metusela as the common ancestor.
- (d) Application 11869 received on 23 January 2019 by Siakifiloua Siakifilo to appoint himself as leveki magafaoa.
- (e) Applications 11934 and 11936 received on 5 September 2019 by Ian Epsy Laifone Puheke for determination of title with Togia Laifone Fakalagotoa as the common ancestor.
- (f) Applications 11935 and 11937 received on 5 September 2019 by Ian Epsy Laifone Puheke and Birt Jessop to appoint themselves as leveki magafaoa.

[6] Applications 11934 and 11936, and 11935 and 11937 appear to be the same applications, though two different application numbers were given. Application 11888

appears to be a notice of intention to appear and oppose by Ian Epsy Laifone Puheke dated 6 March 2019. It is unclear why this was given a new application number.

[7] In regards to the area sought by each applicant, Provisional Plan 11868 shows the land is comprised of three blocks. Block A is approximately 712m<sup>2</sup> and situated at the north end of Part Manunu close to the Mutalau main road. There is also an area of “no-mans land” 279m<sup>2</sup> in size situated to the east of Block A. Blocks B and C comprise 5513m<sup>2</sup> and are situated south of Block A. The land to the West of Block A, which the Pasitua house is on also appears to be part of Block C. Siakifiloua Siakifilo is claiming Blocks A and B, including the strip of “no-mans land”, Peter Milani is claiming blocks A, B and C, and Puheke and Jessop are claiming Block B, according to the Provisional Plan.

[8] There is a discrepancy in the area for Block A between the Provisional Plan and in the party submissions of 12m<sup>2</sup>. To avoid any confusion, I consider the area of Block A to be 700m<sup>2</sup>, as this was what Siakifiloua Siakifilo claimed in his application.

## **Background**

[9] Various family meetings have been held, as called by the different parties as new applications have been filed.

[10] A family meeting was held on 31 October 2018 by Peter Milani where he explained his intended applications and suggested Emi Paapu as the common ancestor and Makaseau Ioane as the leveki for Part Manunu. There were discussions about how Ile is not the correct common ancestor, as he “married the land”, and married Hulata, so the land should belong to her, though the consensus was that they all came from Ile and Hulata and are all one family. However, the meeting finished with apparent agreement that Peter Milani would partition off Matakaitoa and Ikinofu’s land and title the proposed land area from the rear of Fortyone’s house back to the boundary, being approximately half a hectare, under Emi Paapu. The consent form was signed by several members of the magafaoa. It does not appear that the second and third applicants attended.

[11] The first Land Investigation Report is dated 5 February 2019, prior to Ian Epsy Laifone Puheke and Birt Jessop filing their applications. During the investigation, the

boundaries were discussed and it was noted Peter Milani's father had a small house at the back of the hurricane house of Fatavalu, but the land had been cleared. Makaseau Ioane was able to show the boundaries of it. There appeared to be a consensus from those attending that Hulata is the rightful common ancestor, as this would leave it open to all descendants who wished to build, such as Peter Milani. In regards to his application, those attending only agreed to give him a small piece of land to build a house on, but expressed they did not want him conducting business on the land.

[12] A family meeting was held on 25 February 2019 by Siakifiloua Siakifilo. He explained his application and there seemed to be agreement from those attending that Hulata should be the common ancestor and Mr Siakifilo and Ms Sisitama Makatogia should be leveki over the 700m<sup>2</sup> he is claiming.

[13] A hearing was held before me on 12 March 2019 to address the objection received by Ian Puheke on behalf of the Pasitua magafaoa.<sup>1</sup> Siakifiloua Siakifilo said the common ancestor he has put forward, Hulata, is his great great grandmother. Birt Jessop said they do not object to the area Siakifiloua Siakifilo is claiming. Makaseau Ioane, on behalf of Peter Milani, said the land once belonged to the common ancestor Hulata, but Peter Milani has agreement from the magafaoa that his father should be the common ancestor. Makaseau Ioane requested that the case be adjourned to allow the Pasitua magafaoa to file their own applications for determination of title and to appoint leveki and for the boundaries to be worked out. The matter was adjourned and I emphasised that it is important to title the parent block before looking at specific areas. I also requested the parties consider the ownership of the strip of land which is currently "no-mans land".

[14] The second Land Investigation Report on file is dated 18 March 2019. Ian Epsy Laifone Puheke and Siakifiloua Siakifilo pointed out boundaries, with the latter saying the line should be extended to "the little dog leg further towards the house of Alioka", which was agreed to by the former. Ian Puheke proposed the common ancestor ought to be Togia Laifone Fakalagotoa and claimed her entitlement through the ancestor Pasitua. There was supposed to be an attempt at reaching a compromise between the applicants, but neither Peter Milani nor his representative attended. The Report concluded that the boundary lines shown by Peter Milani originally should remain and it should be up to the

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<sup>1</sup> Land Minute Book 20, Folio 248.

Judge to determine. The accompanying Provisional Plan 11868 was only signed by Ian Puheke.

[15] Another family meeting was held on 11 July 2019 to address concerns that had been raised in the March hearing. Siakifiloua Siakifilo discussed the issue that had been raised about the small strip of land adjoining the land he intended to title which was thought to be “no-mans land”. Those in attendance agreed it should be joined to Siakifiloua Siakifilo’s section. The other applicants were invited but did not attend.

[16] A further family meeting was held on 3 September 2019, attended by Siakifiloua Siakifilo, Ian Epsy Puheke, Birt Jessop and other members of the magafaoa. Makaseau Ioane was invited but did not attend. Those in attendance appeared to agree that while Peter Milani is part of the family, he has never occupied the land and did not ask the magafaoa before surveying it. It was noted that the majority of the land apparently belongs to the Puheke and Jessop magafaoa.

[17] There was another family meeting held on 9 September 2019, in Auckland, by Peter Milani, in which he again went over the details of his application. He also clarified he is only claiming 5000m<sup>2</sup>, the boundary being a line three meters back from the existing blue dwelling.

[18] There is another Provisional Plan 11934 on record, dated 13 November 2019, signed only by Ian Puheke.

[19] Genealogy produced by the Department of Justice, Lands and Survey dated February 2019 shows one of Hulata and Ile’s children is Taputagaloa Matali Ile. Emi Paapu Koukouhetogia Milani, Peter Milani’s father, was one of Taputagaloa Matali Ile’s children. Another of his children, Matakaitoa Togiafakatolu Lopeti Milani, is the father of Obedient Omaoma, Siakifiloua Siakifilo’s mother. Therefore, Peter Milani and Siakifiloua Siakifilo are first cousins once removed. Ian Epsy Puheke and Birt Jessop are grandchildren of Togia Laifone Fakalagotoa. The relationship between Hulata and Togia is not clear.

[20] Another hearing was scheduled for November 2019, but Makaseau Ioane applied for an adjournment on 18 November, as he was overseas. Siakifiloua Siakifilo and Ian Epsy Puheke objected to the adjournment. Ian Puheke expressed her disappointment that Makaseau had failed to show up to earlier family meetings, and requested that Peter Milani's application be dismissed. She also noted her support for Siakifiloua's application. It appears this adjournment was granted, and there was a call for further submissions so the matter could be decided on the papers.

[21] A final family meeting was held on 27 November 2019 organised by the Department of Justice, Lands and Survey. Siakifiloua Siakifilo, Ian Epsy Puheke and Birt Jessop attended but Makaseau Ioane did not. Siakifiloua Siakifilo said that there was support from the magafaoa that the strip of "no-mans land" should be added to the area he is claiming, as agreed in an earlier family meeting held on 11 July 2019.

### **Submissions of parties**

#### *Peter Milani's applications*

[22] Peter Milani is seeking to title 5000m<sup>2</sup> (as confirmed in a family meeting on 9 September 2019) of Part Manunu under Emi Paapu (his father) with his daughter Gina Talafasi, and his second cousin Makaseau Ioane as leveki magafaoa.

[23] Makaseau Ioane has been acting as Peter Milani's representative for this matter, as Peter Milani currently resides in New Zealand. Makaseau Ioane's appointment as leveki is intended to be temporary until Peter Milani or Gina Talafasi can permanently reside on the land. In his application, Mr Milani said his daughter wishes to build on the land.

[24] In the family meeting on 31 October 2018 and written submissions to the Court dated 7 November 2018, Peter Milani said his claim to the land is based off his mother Ogohemafola Milani and father Emi Paapu who lived on the land before moving to New Zealand in 1958. Peter Milani was born in New Zealand and travelled to Niue for the first time when he was 59. He said it is common knowledge in the Manunu community that his father built "the house on the rocks". He and his daughter Gina want to acknowledge his fathers place of birth and live in Niue.

[25] In a letter received from Makaseau Ioane on behalf of Peter Milani dated 1 January 2020, he said he thought Siakifiloua Siakifilo and his father and aunties had attended another meeting on 31 October 2019 (though the minutes of this are not on the court record) in which they had consented to Peter Milani surveying and titling all the land, provided he partition the dwelling places of Matakaitoa and Ikinofu. He said Siakifiloua's aunties had spoke at the meeting that although they lived on the land, their father had told them it was not theirs, so Peter Milani thought he had the full support of the magafaoa. Makaseau Ioane submitted that the brothers, Matakaitoa and Ikinofu, were the original occupants of the land, and their nephew Paapu also had a house on the land.

[26] In further submissions received on 13 January 2020, Peter Milani said he has followed all court and customary procedures and has met all the requirements, whereas Birt Jessop lodged his objection last minute, just before the March 2019 hearing. He also said that at the family meeting on 9 September 2019, he had one hundred per cent support from the magafaoa who attended, either in writing or verbally. As noted above, he also clarified he is only claiming 5000m<sup>2</sup>.

[27] There are various letters and submissions that have been received in support, and in opposition of, Peter Milani's applications.

[28] There is a letter on file dated 7 November 2018 from Makaseau Ioane in support of the applications by Peter Milani. Another letter was received from Makaseau on 7 March 2019 in which he said the lands adjoining Manunu were all titled except the portion belonging to Pasitua on the opposite side of the Vaomotua track. He objected to Ian Epsy Puheke's objection, saying it was unfair she was objecting to all the boundaries rather than being specific.

[29] There is a letter on file from Ogohemafola, Peter Milani's mother, dated 11 November 2018 stating she lived "in the house on the rocks" with her husband, and they lived and worked on the land while they were in Niue. In further submissions received 13 January she recounts a conversation with Pasiulima and says she was supportive of Peter Milani's land claims and boundaries. She recounted that Pasiulima thought the agreement was Birt's mother could look after the land but not take it over, though the Pasitua house is now rundown.

[30] Peter Milani said he has letters from Siaikefutama Fusilika Siakefo, Emi Paapu's adopted son in support of his claim. He said he regards him as a brother.

[31] Fortyone Hafeiki provided evidence at the October 2018 family meeting that the Milani family was the first family of Manunu, and while she has looked after the land, she knows they should give it back to the family it belongs too. Based on what her father told her as a child, she understood that the house belongs to Ikinofu, Emi Paapu's uncle, and the house behind that belonged to Emi Paapu. She also said Giatoa's land should be left alone as he has children who might want to develop it one day. Peter Milani said he would leave Fortyone's house alone aside from doing it up, as he understand the emotional connection, but still wants to title the whole area.

[32] Lalomanogi Togiakona spoke in support of Peter Milani's applications at the October family meeting, but said only for the area that belonged to his father. She said the house built by Siskefu was for the family and she considers it home. Lalomanogi is the daughter of Sisitagalua and granddaughter of Taputagalua.

[33] At the family meeting in October 2018, Tutaue Siakifilo, who is the father of the second applicant, said while he has lived on the land and taken care of it, he supported Peter Milani's application.

[34] Ian Epsy Puheke wrote a letter on 7 March 2019 objecting to Peter Milani's applications, specifically the boundaries of the land. She and Birt Jessop are concerned that Peter Milani's father, Paapu, was born at Liha, and that part of the land he wants to title belongs to them. They believe he is not considering the other families involved.

[35] Siakifiloua Siakifilo also opposes Peter Milani's applications. He submitted that Peter Milani was not born in Niue and has never lived on the land.

#### *Siakifiloua Siakifilo's applications*

[36] Siakifiloua Siakifilo seeks to title 700m<sup>2</sup> of the land and appoint himself as leveki on the basis that his parents and siblings lived in the Manunu house from the 1960s to 2000s, and his father has continued to look after the house.



[37] Following his original application, Siakifiloua Siakifilo also seeks to include the strip of “no-mans land” in the area he is claiming, which is 279m<sup>2</sup>, making the total area 979m<sup>2</sup>. He also wants to include his nephew, Steward Siakifilo, a police constable in Niue, as a leveki as he has helped his father care for the land.

[38] In submissions dated 12 December 2019, Siakifiloua Sikifilo submitted his mother, Piti Siakifilo, is the great-grandchild of the common ancestor Hulata, making him a blood descendant of the land. He submitted his grandfather built the house and he and his twin sister were born there. He and his parents have lived in the house and worked on the land since the 1960s, including his brother living there from 1987 with his wife and children. From 2003, despite ceasing living there, the family and his father in particular have continued to look after the home. When his mother died in 2011, she was buried on the land.

[39] Siakifiloua Siakifilo submitted that he is the only one (speaking of Peter Milani and Ian Epsy Puheke) that has lived on the land and cared for it, and is the only one with knowledge about the boundaries of the land. In response to the family meeting held on 25 February 2019 where the magafaoa agreed he and Sisitama Makatogia should be leveki, he submitted she nor extended family have never lived in the Manunu home nor cared for the land.

[40] From the genealogy provided, it appears Siakifiloua’s mother and Peter Milani are cousins.

[41] Siakifiloua Siakifilo submitted that he has followed all instructions and attended all court meetings, while Makaseau Ioane has chosen not to attend.

[42] There are letters of consent and support from his four siblings, Sandra Siakifilo, Lynnette Tohovaka, Ligi Malama Siakifilo and Warren Siakifilo and his father Tutaue Siakifilo. The letters all discuss how they consider Manunu their home having lived there for many years, and how they do not remember any other extended family helping to care for the land during this time. Ligi Malama Siakifilo said she believed the house belonged to her mother, having been given it by her father, Fatavalu.

[43] A document of consent by Ian Epsy Puheke and Birt Jessop dated 21 November 2019 supports Siakifiloua Siakifilo's applications, saying the house behind Ikinofu's land was built by Siakifiloua's grandfather Fatavalu and his brother was the last person to live there.

[44] Peter Milani has submitted, on 13 January 2020, that the house and land area which Siakifiloua Siakifilo is claiming was occupied prior to their family by his uncle, Lopesi Milani, his wife Malamahekula and their children (which included Siakifiloua's mother Obedient). He said Lopesi Milani constantly reminded his children that the home and land was not theirs and they were only custodians. He also said he is intending to partition the dwelling claimed by Siakifiloua as it is actually registered to Faiselagi Milani Haffeki. He said once Ikinofu's land has been partitioned, Siakifiloua and the rest of the magafaoa can negotiate occupation of the house.

[45] In opposition, there is a letter from Eleanor Roselyn June Ikinofu received on 15 January 2020, on behalf of the children and grandchildren of Peter Togiatoa Ikinofu, submitting the house Siakifiloua Siakifilo is claiming actually belongs to her grandfather. She submitted that the house was built on the original foundation of her grandfather, Koukouhetogia Ikinofu's, house, which was destroyed by hurricanes in the late 1950s and early 1960s. Peter Togiatoa Ikinofu, Eleanor's father, was the only biological child of Koukouhetogia and his wife Iuni Mokalino Ikinofu. He had an adopted sibling, Sisitagaloa Makatogia. When Koukouhetogia Ikinofu passed away, his wife and Eleanor's aunty, Fukesifa Leni Ikinofu, moved to New Zealand.

[46] Eleanor Ikinofu said she is supportive of the letter written by Fukesifa Leni Ikinofu Afakasi, who was the daughter of Koukouhetogia Ikinofu's adopted daughter. In this letter, Fukesifa Afakasi submitted the home Siakifiloua Siakifilo refers to as his family home is built on her grandfather's land and on the original foundation of the former Ikinofu home. She said her mother, Sisitagaloa Makatogia, allowed Siakifiloua Siakifilo's grandfather to build the house on the foundations as part of the hurricane homes project as a replacement for their former home. However, she said the land and foundation still belong to Koukouhetogia Ikinofu and his descendants want it recognised. The letter is accompanied by signatures of Koukouhetogia's descendants, though there is no formal application on record for titling under their name.

[47] There is also a letter of objection on file dated 16 January 2020 from the descendants of Koukouhetogia Ikinofu, being Eleanor Roselyn June Ikinofu, Atheana Taone Ikinofu, Tylah Taonelo Ikinofu-Bovaird and Nadia Karen Hope Ikinofu. They objected to Siakifiloua Siakifilo's applications on the basis that they were not consulted and were only made aware of his application recently. As with Eleanor Ikinofu's submission, they state permission was only given to Fatavalu Milani to build a house on the foundation because they were in need, and while the house belongs to him, the original foundation and land belongs to Koukouhetogia Ikinofu. Additionally, they submitted the home has now been unoccupied for several years and is in a state of disrepair.

*Ian Epsy Laifone Puheke and Birt Jessop's applications*

[48] Ian Epsy Laifone Puheke and Birt Jessop are seeking to title and appoint themselves as leveki over all of Part Manunu aside from the 979m<sup>2</sup> claimed by Siakifiloua Siakifilo as they are concerned about "strangers" encroaching on their family lands, as set out in their applications.

[49] In a submission dated 19 December 2019, Birt Jessop submitted that the land belongs to his Uncle, Pasitua. His mother, Helesa was the caretaker of his Uncle's residence and the working land next to it, where Toni Kalauni Junior currently keeps his pigs under the mango tree. To the west, he submitted, is the boundary shared with the Makaola Hukui residence. He said he is surprised Peter Milani, who does not reside in Niue, and who he has never seen on the land, is attempting to lay claim to it. He asked that the Court dismiss the Milani applications and grant title to the Pasitua Laifone as magafaoa with himself and Ian Epsy Puheke as leveki.

[50] There is a letter on file dated 19 December 2019 from "the descendants of Togia Laifone" in consent of and support of Ian Epsy Puheke and Birt Jessop's applications, agreeing the lands belong to Togia Laifone and the two applicants should be leveki.

**Law**

[51] The Court has the power to determine title to land pursuant to the provisions set out in Part 2 of the Land Act 1969 (“the Act”). Section 10 provides:

**10 Determination of title**

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.

[...]

[52] In determining title to land and declaration of the common ancestor, the Court must consider the genealogical link to the land, occupation, use and cultivation of the land, burial sites on the land, and whether the applications have the support of the manafaoa, among other matters.<sup>2</sup> Additionally, in determining ownership of land, s 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.

[53] Following determination of title of the land, leveki manafaoa can be appointed under s 14:

**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 the 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 manner as it sees fit.

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<sup>2</sup> *Kalauni v Talagi* [2018] NUHC 4; Land Division 11516 (4 September 2018) at [34].

[54] Notably, s 14(5) provides that a leveki does not have to be part of the mangafaoa, but they must reside in Niue and be suitably familiar with the mangafaoa and the history of the land.<sup>3</sup>

## **Discussion**

[55] The Court can consider a number of matters in determining title to land including use and occupation, cultivation and burial sites. This aligns with customs and usages of Niuean people.

[56] While it is clear all applicants have a genealogical link to the land and are able to point to varying family meetings as support from the magafaoa, it is only the second and third applicants who have provided strong evidence as to ongoing occupation, use and cultivation of the land. That is who can demonstrate an interest in this land according to the customs and usages of Niuean people.

[57] Siakifiloua Siakifilo and his family have lived on the land since the 1960s until the early 2000s and have continued to maintain it to this day. When his mother passed away, she was buried on the land. Ian Epsy Puheke and Birt Jessop also provided evidence that their family members, including Birt's mother Helesa, worked on the land and looked after it. In contrast, Peter Milani's parents moved to New Zealand in 1958, and he has never lived on the land. He only travelled to Niue for the first time when he was 59 and while his daughter resides in Niue she has never lived on Part Manunu.

[58] There has also been agreement between the second and third applicants as to their respective titling and boundaries which accords with their customary use of this land. The situation for the first applicant is quite different and he is attempting to title the whole block in his father's name, which would exclude a majority of the members of the magafaoa and be contrary to the past use and occupation of the land.

[59] Therefore, based on the customary use and occupation of the land, I grant the applications of Siakifiloua Siakifilo and Ian Epsy Puheke and Birt Jessop.

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<sup>3</sup> *Kalauni v Talagi* [2018] NUHC 4; Land Division 11516 (4 September 2018) at [37].

## **Decision**

[60] I determine that the area of 979m<sup>2</sup> as shown in the Provisional Plan be titled in the name of Hulata Koukouhetogia Metusela, with Siakifiloua Siakifilo appointed as leveki magafaoa. The remainder of Part Manunu is to be titled in the name of Togia Laifone Fakalagotoa with Ian Epsy Puheke and Birt Jessop appointed as leveki magafaoa.

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

Dated at Gisborne this 20 day of October 2020.

**W W ISAAC**  
**JUSTICE**