

IN THE HIGH COURT OF NIUE

APPLICATION NO. 11964

IN THE MATTER OF the land known as Section 6, Block III, Mutalau
District

BETWEEN SAPATI TUIMANOI LAIFONE
Appellant

AND HANA TAUEKIPAOA AND NORMA
PALANA
Respondents

Hearing On the papers

Judgment: 14 May 2020 (New Zealand Time)

DECISION OF CHIEF JUSTICE C T COXHEAD

Introduction

[1] A notice of appeal for this matter was received by the Court on 24 October 2019.

[2] On 29 November 2019 I issued directions with regard to the notice of appeal that included:

[3] At paragraph [13] of the Notice of Appeal the Appellant request that pending an outcome of the Appeal Hearing an injunction be granted preventing the respondents or any of their family or their agents from entering into, occupying, removing or otherwise damaging the land pending final determination of the Appeal filed by the Appellant.

[4] It maybe that the Appellant is seeking a stay of proceedings rather than an injunction. In any case whether it is an injunction or stay of proceedings the appellant needs to provide further information as to why the Court should grant an injunction or stay of the proceedings.

[3] I therefore directed that: the appellant was to file further submissions (and evidence if required) as to why the Court should grant an injunction; and the respondent was given the opportunity to file a response.

[4] The Court received submissions from the appellant's counsel on 10 March 2020. A response was filed by counsel for the respondents on 9 April 2020. These submissions were forwarded to me on 5 May 2020.

Preliminary Matter

[5] Which Court should deal with this application? While this was filed as an appeal the application for an injunction, which was part of the notice of appeal, should be dealt with in the High Court. The High Court deals with interim injunctions pending the hearing of the substantive matter by the Court of Appeal. If the appellants are not satisfied with the outcome, they can appeal to the Court of Appeal.

Submissions of the Appellant

[6] It is not clear to me whether the appellant seeks an injunction or stay of proceedings. I will deal with this matter as an injunction, given that the submissions seem to be seeking this remedy as opposed to a stay.

[7] The appellant seeks:

- a. The removal of leveki mangafaoa to the land block in question.
- b. The appointment of M Puheke to be the leveki mangafaoa.
- c. The removal of two septic tanks from the land at cost to the respondents.
- d. An injunction to prevent any further use of the driveway now upon the land and/or its removal by the respondents; and
- e. An injunction not to pursue any further development upon the land.

[8] It is submitted that the respondents' intention is to build a dwelling on this land, for which they have secured a loan, and that this will be detrimental to the long-term interest of the appellant and the appellant's family. It is also submitted that there is a need for an injunction to prevent this encroachment upon the land.

[9] The pursuit of this matter by the appellant is to preserve and protect her interests in this land, as well as those of her children.

[10] The appellant has appealed the decision of Justice Reeves in *Laihone v Tauekipaoa*.¹ From my reading of the decision, the appellant's grounds for seeking this injunction to stop all matters pending the outcome of the appeal, are similar to the grounds that they sought in the original injunction application before Justice Reeves.

[11] The appellant has not filed any evidence in affidavit form to support the submissions that have been made.

¹ [2019] NUHC 8; Application 11507, 11515, 11543, 11647 (10 September 2019).

Submissions of the Respondents

[12] The respondents' submissions are that all activities previously undertaken on the land have been legal and within the rights of the leveki mangafaoa, who were duly appointed by the Court on 30 March 1997 and 30 April 2010. Those appointments were not challenged by way of re-hearing or appeal within the statutory time frames.

[13] Previous activities have largely been the maintenance and upkeep of the land in respect of mowing and weeding to prevent overgrowth, removal of left-over debris from past cyclone damage to prevent breeding of mice and invasive species, and to adhere to common sense in public health and safety. These were actions within the authority of the respondents, as the appointed leveki, to make decisions regarding the land.

[14] They argued that to impose an injunction on this land may impact lawful activities necessary for its upkeep and would serve no positive outcome.

[15] The respondents have referred to cases *Palalagi v Talafasi – Part Toloagamotu, Section 7, Block I, Hikutavake District*² and *Jacobsen v Vase*³ which refer to the obligations of leveki. Both cases were cited by Justice Reeves in her 2019 decision.

[16] Further, the respondents say there is no serious question to be tried as the appointment of leveki mangafaoa was longstanding, and the recent decision of Judge Reeves to refuse their removal confirms this.

Discussion

[17] As noted above I will deal with this matter as an injunction, given that the appellant has not provided any guidance as to whether this application is for an injunction or stay of proceedings, and that there is no reference to the relevant law of stay of proceedings or in fact the relevant law of injunction in their submissions. The appellant however has mentioned twice in their submissions that they seek an injunction.

[18] The appellant has failed to file any evidence supporting their submissions.

² [2014] NUHC 2 (30 January 2014).

³ [2012] NUHC (20 March 2012).

[19] Justice Reeves' decision of 10 September 2019 confirmed the leveki and did not remove them. Therefore, they are currently the legal leveki mangafaoa for the land in question. The appellant seeks to prevent the leveki mangafaoa, who have been properly appointed, from carrying out what they are legally allowed to.

[20] I also note that Justice Reeves dealt with an application for an interim injunction to stop the respondents carrying out further works on the land to erect a dwelling house. That is the same basis upon which the appellant is seeking this injunction.

[21] The appellant sought an injunction before Justice Reeves and that was declined. They have now appealed Justice Reeves decision, upon the same grounds, and seek another injunction until the appeal is determined.

[22] Justice Reeves' decision is helpful in that it set out some of the background to this matter. The decision also refers to the relevant law in terms of interim injunctions.

[23] The principles relating to injunctions are well settled. They require an assessment of: whether there is a serious question to be tried; whether the balance of convenience is in the appellant's favour; and whether the overall justice of the case supports the granting of an injunction.⁴

Decision

[24] Having considered the appellant's brief submissions it is clear to me that there is no serious question to be tried. The application for an injunction pending hearing of the appeal is declined.

Dated at Rotorua Aotearoa/New Zealand on this 14th day of May 2020 (New Zealand Time).

C T Coxhead

⁴ *Klisser Farmhouse Bakeries v Harvey Bakeries Ltd* [1985] 2 NZLR 129 cites in *Talagi v Puletama* [2016] NUHC 1 (20 January 2016).

CHIEF JUSTICE