

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

**2022 – 00030  
2022 – 00031  
2022 – 00105  
2022 – 00106**

**UNDER** Sections 10 And 14, Niue Land Act 1969

**IN THE MATTER OF** Part Matagu, Tuapa

**BETWEEN** TAPU JUDITH TALIMA PIHIGIA  
Applicant

**AND** PULETOAKI FAITALA  
Cross-Applicant/Respondent

Hearing: 6 October 2022

Appearances: T Pihigia for the Applicant  
M Ainu'u for the Cross-Applicant/Respondent

Judgment date: 3 December 2024

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**JUDGMENT OF JUSTICE S F REEVES**

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## Introduction

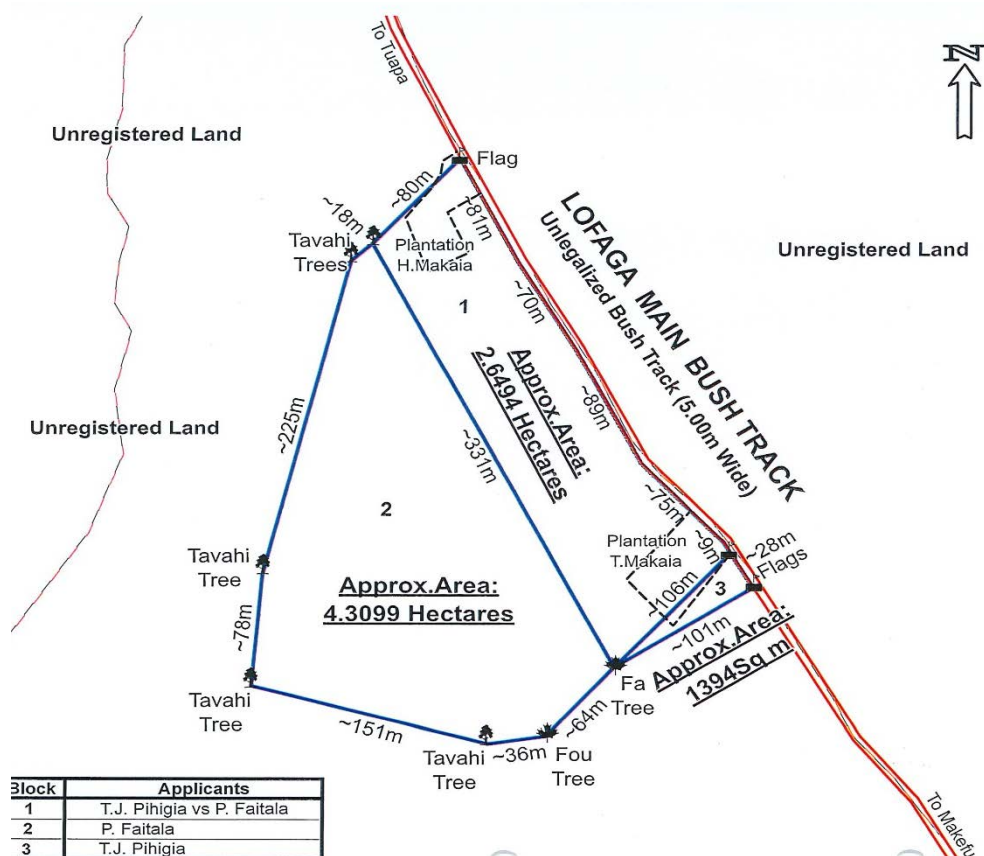
[1] There are two applications before the Court to determine title and appoint leveki mangafaoa to Part Matagu.

[2] The applications are as follows:

(a) Tapu Judith Talima Pihigia, also known as Tapuaki Judith Talima Pihigia (Mrs Pihigia), filed her application on 2 March 2022, to determine the common ancestor as Matakieto Palagi and Tapu Judith Talima Pihigia as leveki mangafaoa.<sup>1</sup>

(b) Puletoaki Faitala (Mr Faitala), filed his application on 24 August 2022, to determine the common ancestor as Lagigie Huluti Fouiki and appoint Puletoaki Faitala as leveki magafaoa.

[3] The provisional plan before the Court is contained in the land investigation report dated 23 August 2022.<sup>2</sup>



<sup>1</sup> Mrs Pihigia amended her application on 16 May 2024.

<sup>2</sup> Provisional Plan No. 2022-00030.

## **Background**

[4] Matagu is located in Uhomotu, Tuapa, and for many decades families with connections to the land have tended to or used parts of the land for planting and harvesting. Mr Faitala contends that such work was done peacefully for many years without dispute.

[5] The area now in dispute is Block 1, Matagu (the land) which is the eastern part of the land and is approximately 2.6494 ha. Mrs Pihigia does not contest Mr Faitala's claim over Block "2" of the land (the western part of the land, approximately 4.3099 ha), nor does Mr Faitala contest Mrs Pihigia's claim to Block "3" (the south-eastern part of the land, approximately 1394 m<sup>2</sup>).

[6] Although the parties are both related to Matakieto Palagi the common ancestor proposed by Mrs Pihigia, they dispute the identity of the common ancestor for the land. Mr Faitala says instead that the common ancestor for Matagu is Lagigie Huluti Fouiki.

[7] In her closing submissions dated 16 May 2024, Mrs Pihigia amended her application for common ancestor from her great grandfather Matakieto to her mother, Elena Motumanogi Talima.

## **Procedural History**

### *Injunction*

[8] The issue arose in February 2022, when Mr Faitala gave a small portion of Block 1 to Talaia Vilikoka (also known as Talaia Makaia), a cousin of the Lagigie mangafaoa, to work and plough for a plantation.

[9] Mrs Pihigia applied for an interim injunction on 10 February 2022 to stop Talaia Makaia from working on this portion of Block 1. On 22 February 2022, the Land Commissioners granted an injunction stating:

- I. No ploughing again ... [allowed] on the land Matagu until the families have ... [titled] the land.
- II. Parties have to file applications to survey this land Matagu.
- III. Even though we have heard from Hinemoa Makaia, that the ancestors did not want to title the land.

IV. Our decision is based on the laws that the Niue lands is bound to, to title land and have a decision, sign and register.

[10] On 1 March 2022 Mrs Pihigia filed a notice appealing the Commissioners' injunction decision and on 28 March 2022, the Commissioners confirmed to Chief Justice Coxhead that no further development was to happen on any part of the land until the parties both apply to determine title of their respective areas.

[11] Chief Justice Coxhead heard the injunction appeal on 26 July 2022 and directed that there be no planting or further development on the land until the issue of title was settled by the Court. Parties were directed to file applications for the land title investigation ahead of the October 2022 court sitting.

[12] The applications for determination of title and appointment of leveki mangafaoa came before me on 6 October 2022. I heard the parties' evidence and adjourned the hearing after Mr Pihigia, husband of the applicant and her advocate in this matter, indicated that he wanted to give evidence as a witness at the end of the hearing, something which was procedurally unusual.

[13] On 20 October 2022 I declined leave for Mr Pihigia to give evidence in this matter. The matter was adjourned for the transcript to be finalised. I did not receive the transcript until April 2024, and on 2 April 2024 I issued directions for the filing of final written submissions.

[14] Written submissions were received from Mrs Pihigia on 16 May 2024 and from Mr Faitala on 21 May 2024. I consider both parties have had the opportunity to put their respective cases to the Court.

## **The Applications**

### *Mrs Pihigia's case*

[15] Mrs Pihigia states that she is the only child of the late Elena Motumanogi and Folituki Talima, and that her great-grandfather, Matakieto, was the tupuna for the land parcel. He was a Namukulu man who came down to Tuapa and married Simaima Tapuakimoka. Mrs Pihigia has filed documents setting out this genealogy.

[16] Mrs Pihigia contends that she and her parents worked on this piece of land for many decades until Mrs Pihigia and her husband, Togiavalu Pihigia, left for Australia in 1994. The Pihigia family then returned to Niue in 2000 and continued to work on the land until Mrs Pihigia's parents passed away in the early 2000s.

[17] Mrs Pihigia stated their most recent plantation in 2018 to 2019 was on Block "1" of the land. She alleges that it was at this time that Talaia Makaia encroached onto parts of the Talima land with his planting. Mrs Pihigia says that her mother Elena told her it was Matakieto who brought the ancestors of Talaia to work on the land at Matagu. She says that it was her late mother's wish that the Makaia mangafaoa not use the Talima land anymore, hence the injunction application.

[18] Mrs Pihigia states she does not have an issue with the other families working on different parts of the land. But she says she never saw or heard of the Faitala family working on the disputed area. The issue arose because the Makaia's crossed over into the area her family have most recently been working on. The Makaia's were acting like owners on the land, and they have dragged the Faitala family into the dispute to bolster their claim.

[19] Mrs Pihigia submits this matter should not have been disputed because the Talima and Faitala families both descend from Matakieto, as is shown in the genealogy documents filed with the Court. Mrs Pihigia descends from the Valepo line, and Mr Faitala from the Misipelo line.

[20] Mrs Pihigia acknowledged that she went to discuss the issue with Mr Faitala prior to filing the injunction application and agreed she would not proceed. Subsequently she changed her mind because of the importance of the land to the Talima family.

[21] In support of her application, Mrs Pihigia's has filed minutes of a meeting of the Talima mangafaoa held on 5 March 2022 to consider the appointment of Mrs Pihigia as leveki mangafaoa. Included is consent to the appointment as leveki mangafaoa, as well as the signatures of Talima and Pihigia family members consenting to the determination of title and appointment of Mrs Pihigia as leveki mangafaoa. Some of the names of family members are illegible, but the following names were legible and agreed to Mrs Pihigia's appointment in March 2022:

- (a) Cruzeindra Pihigia Vibose
- (b) Mereoni Pihigia
- (c) Karis Ma Nogi Pihigia
- (d) Jeff Boswell Folituki Talima
- (e) Ausdrey Solini Talima
- (f) Elenalini Asekona (nee Talima)
- (g) Lamona Talima
- (h) Folly Boswell Talima
- (i) Brenda Talima
- (j) Liam Talima Pihigia

[22] Also filed in support of Mrs Pihigia's application is a written statement from Jeff Boswell Folituki Talima, Mrs Pihigia's brother dated 3 March 2022.<sup>3</sup> He states it was their mother Elena who brought the Makaia family to work on Matagu, and that he recalls the Faitala family and other families working on a different part of Matagu from the area in dispute.

*Mr Faitala's case*

[23] Mr Faitala states that the tupuna for the land at Matagu, Tuapa Uhomotu is his grandfather Lagigie Huluti Fouiki. Mr Faitala's father, Faitala Lagigie (John), and his sister Mrs Salote Hiku were adopted by Lagigie Fouiki, as he did not have his own children. Lagigie Fouiki was related by blood to Mr Faitala's father.

[24] The genealogy was given by Mr Faitala in his application filed on 24 August 2022. It traces his connection to the land back through seven generations to Palalagi Ikinifo and his marriage to Sialenifo who was the daughter of Ikihoatoa, a prominent member of Matagu. Lagigie Huluti Fouiki was the great-great-great grandson of Palalagi and Sialenifo. This evidence was also confirmed in the genealogy documents that were filed and in the letter of 12 August 2022 from the Fatuaua Magafaoa Trust.

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<sup>3</sup> Received by the Court on 5 October 2022.

[25] Mr Faitala accepts that his ancestor, Misipelo, came from Matakieto but does not accept that Matakieto was the common ancestor for the land parcel. Rather, the true common ancestor of the land at Matagu is Lagigie Huluti Fouiki.

[26] Mr Faitala submits that he and his family worked on the land in his youth and adulthood. He says his family have always worked peacefully on the land with the other families and have stuck to their own area. Matagu was distributed by his tupuna Lagigie, and boundaries given to each mangafaoa to palao and harvest. The original families who continue to work on Matagu are; Lagigie, Talima, Tamuta Haikafa (Makafolifoli), Leotoga, and Kapenikuki.

[27] Mr Faitala confirms that the Makaia family work on the land with the consent of the Lagigie family and have done since the time of his grandfather for more than 60 years. He contends that it was during his own family's absence from Niue that the boundary lines were broken, and the Talima family have encroached onto Lagigie land. He also alleges that Mrs Pihigia's late parents had their plantations at Fumaile, further north than the area under contention.

[28] In relation to Mrs Pihigia's claim that his family have never worked on the land, he says this is incorrect. She came to discuss the issue with him prior to filing the injunction, and they agreed to call a meeting of all the families who work on the land to resolve the issues. Subsequently, she reneged on this agreement by filing for the injunction.

[29] Mr Faitala submits that the majority of other families who work in the land parcel support his claim. Members of the families have written letters to the Court opposing the Pihigia claim, given evidence in Court and participated in several meetings held. Minutes of meetings have been provided to the Court recording opposition to the Pihigia application. He also says that the signatories to Mrs Pihigia's application do not work on the land parcel and do not know the boundaries or the history of the land.

[30] Mr Faitala filed significant amounts of information for the Court in support of this application as well as in opposition to the related injunction and appeal. The written statements and affidavits by himself and family members include:

- Statement by Mr Faitala dated 8 March 2022, naming other families who work on Matagu, a map of the block with family areas marked, letters of support from other families, statement of Palalagitoa Faitala confirming boundaries, landmarks, and history of Matagu.
- Affidavit of Lagigie Fatamaka Futamakatama dated 22 February 2022.
- Statement of Rev. Pahetogia Faitala dated 4 March 2022.
- Letters of Fatuaua Magafaoa Trust dated 19 February 2022 confirming support given at meeting of magafaoa of same date and 12 August 2022.
- Minutes of meeting of Fatuaua Magafaoa dated 14 August 2022, with statements by Hinemoa and Talaia Makaia that their family has worked on the land for 63 years with consent by Lagigie.
- Written statement by Rev Pahetogia Faitala dated 24 August 2022.

[31] The evidence that has been provided by Mr Faitala set out boundaries, landmarks, relationships with other families and and historical events on Matagu to demonstrate his family's customary connection to the land. In particular the letter from Rev Pahetogia Faitala dated 24 August 2022, gives a detailed account of the role of the Lagigie, Faitala and Salote families as 'kelemutu he kelekele' or true earth worms and custodians of Matagu and Tegitegi. This includes information about the history of Matagu and Tegitegi such as a 'ta tika' field on Matagu, location of burial caves, location of a 'soil ship' at Tegitegi, and the site of an ancient battlefield.

[32] Mr Faitala attached consents for him to be appointed leveki mangafaoa as decided in both a meeting held via Zoom on 7 August 2022 and a meeting held on 14 August 2022 at Matagu. The following members of the Fatuaua Magafaoa Trust gave signed consents on 13 August 2022 for the appointment of Mr Faitala as leveki mangafaoa:

- (a) Rev. Sione Lagigie Faitaka
- (b) Rev. Pahetogia Faitala
- (c) Pastor Iki Hotoa
- (d) Sione Fatamaka



- (e) Makalo Masi
- (f) Wally Fasi
- (g) Rev. Fiera Ikitoelagi Faitala
- (h) Tiloa Fakaata Mitipelo-Nouē
- (i) Violet Fifineiki Faitala
- (j) Palalagitoa Manetoa
- (k) Beverly Evagelia Manetoa
- (l) Jack Manetoa
- (m) Andrew Faitala
- (n) Jayne Faitala-Vatau
- (o) Olyvia Fatu
- (p) Leauga Fatu
- (q) Simon Faitala
- (r) Donald Faitala
- (s) Famili Mitimeti-Faitala

[33] Mr Faitala was represented by Mona Faitala AINU'U at the hearing in October 2022. Ms AINU'U submitted that Mr Faitala and the Faitala mangafaoa did not want to apply to determine title of the land or appoint Mr Faitala as leveki mangafaoa but had been put in the position of having to do so because of Mrs Pihigia's application.

[34] Ms AINU'U submitted that the application could not be limited to the rectangle of land in the southern part of Block "1" that is at issue between Mrs Pihigia and Talaia, as Mr Faitala's position is that Blocks "1" and "2" belong as a whole to the Lagigia family.

## **Discussion**

### *Determination of title*

[35] The first issue to determine is to determine title by declaring a common ancestor of the mangafaoa of the land.

[36] I must take into account section 10 of the Land Act 1969 and determine title in accordance with Niue customs and usages.<sup>4</sup> Section 12 further states that ownership is to be determined by ascertaining and declaring the mangafaoa of that land by reference to the common ancestor.<sup>5</sup>

[37] Section 11 of the Land Act sets out the matters which the Court may take into account when determining title. These include genealogical connection to the land, the names and locations of any cultivation, villages, burial places and other places of historical significance and any other proof of occupation.

[38] Section 11 provides that I may take into account written evidence of customary connection and usage by ‘any person having an interest in any application’. I also consider it just and convenient pursuant to s 43 Niue Amendment Act 1968 to take into account evidence given by both parties in the earlier injunction application and give it such weight as I consider appropriate.

[39] The parties have set out conflicting evidence about which family has authority over Matagu. However, when weighing up the evidence put before the Court, I conclude that Mr Faitala has set out a far stronger case concerning the Lagigie family’s connection with and authority over the land at Matagu. The genealogy given shows Lagigie’s connection to the land going back five generations to Palalagi, and then down to Lagigie’s descendants through his legally adopted son, Faitala Lagigie, Mr Faitala’s father. There is also evidence that in accordance with Niuean custom, Lagigie passed on his authority and knowledge to his adopted son.

[40] Mr Faitala has provided corroborating statements from other family members setting out information concerning names, boundaries, and locations of cultivations, including details of where the various families worked, burial caves, and other historical information about Matagu. There is evidence from Talaia Makaia and Hinemoa Makaia that they have had permission from the Lagigie family for more than 60 years to work on Block 1. Finally, there is evidence of support from other families also working on Matagu.

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<sup>4</sup> Land Act 1969, s 10(1)

<sup>5</sup> Land Act 1969, s 12

[41] By contrast, the evidence provided by Mrs Pihigia was lacking the same detail and knowledge, largely consisting of assertions that the Talima family are the rightful owners of the land. The only corroboration offered was the statement of Mrs Pihigia's brother. Also, her application does not have support amongst other families working on Matagu. On balance, I accept the evidence of Mr Faitala that Mrs Pihigia and her family have gradually over time broken the known boundary lines and encroached onto the Lagigie land.

[42] I therefore conclude that Lagigie Hulusi Fouiki is the common ancestor for Part Matagu, Blocks 1 & 2.

[43] Mr Faitala does not dispute Mrs Pihigia's claim to Part Matagu, Block 3, and I therefore conclude that Elena Motumanogi Talima is the common ancestor of this land in terms of Mrs Pihigia's amended application of 16 May 2024.

#### *Leveki Mangafaoa*

[44] In considering the appointments of leveki magafaoa, 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 was 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.

[45] In terms of the appointment of leveki magafaoa for Blocks 1 and 2 Part Matagu I note Mr Faitala's evidence that the families who work on Matagu had worked in their different areas peacefully for many years, and that the Faitala magafaoa had been reluctant to determine title or appoint Mr Faitala as leveki but had been forced to through the actions of Mrs Pihigia.

[46] That being said, I am satisfied that Mr Puletoaki Faitala is a suitable person to be appointed in terms of section 14, and that he has the support of the magafaoa. He is therefore appointed as leveki magafaoa of Blocks 1 and 2, Part Matagu.

[47] I am also satisfied that in terms of section 14, Tapu Judith Talima Pihigia should be appointed as leveki magafaoa of Block 3, Part Matagu.

Dated at Wellington, Aotearoa/New Zealand on this 3<sup>rd</sup> day of December 2024.

A handwritten signature in cursive script, appearing to read 'S F Reeves'.

S F REEVES

**JUSTICE**