IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT AITUTAKI
(LAND DIVISION)

IN THE MATTER of Section 450 of the Cook Islands Act 1915

A N D

IN THE MATTER of **PAEROA SECTION 22A, AMURI, AITUTAKI**

A N D

IN THE MATTER of an application by **MANAPOI RAERA** to revoke the Succession Order to **TANGATA A DANIELA** made on 18 March 1940 (MB 11/59)

Applicant

Mr P.J. Driscoe for the Applicant
Mr T. Jacob for the Objectors
Date of Judgment : 25 November 1993

JUDGMENT OF DILLON J.

I introduce this Judgment by acknowledging that there has been a lengthy and unfortunate delay in the preparation of this decision. There have been hearings in Aitutuki and Rarotonga; there was initially a delay in the preparation and presentation of submissions following those Court hearings; and then there was the devastating fire which destoryed the Court House; and then these present files had to be reconstructed. The Court can but only apologise to the parties and Counsel for the resultant delays which have occurred.

The Applicant has made his application in respect of two lands, viz Paeroa S.22A and Paeroa S.22B situated on the island of Aitutuki, and seeks cancellation of two Succession Orders made on 18 March 1940 in respect of the Paeroa S.22A Block; and on 28 March 1940 in respect of the Paeroa S.22B Block.

The application for cancellation is based firstly on Section 450 of the Cook Island Act 1915 which states :

> "**S.450. Revocation of succession orders** - A succession order made in error may be at any time revoked by [the Land Court], but no such revocation shall affect any interest theretofore acquired in good faith and for value by any person claiming through the successor nominated by the order so revoked."

and secondly on Section 391 of the Cook Islands Act 1915 which states :

> "**S.391. Annulment of orders obtained by fraud** - [The Land Court] may at any time annul any order obtained by fraud."

The title of Paeroa S.22A may for the purposes of this Judgment be described as follows :

10th October 1921 M.B. 8/102	)	Partition Order vesting the land in Tangata a Daniela solely
18 March 1940 M.B. 11/59	)	Succession Order vesting the interest of Tangata a Daniela in Rima Tataraka solely
10 November 1951 M.B. 14/67	)	Succession Order vesting the interest of Rima Tataraka in 1. Bob Tataraka 2. Iete Makea Tataraka 3. Akaeatangi Tataraka 4. Kirimaki Tataraka equally

The title of Paeroa S.22B may for the purposes of this Judgment be described as follows :

10 October 1921 M.B. 8/102	)	Partition Order vesting the land in Raera solely
28 March 1940 M.B. 11/81	)	Succession Order vesting the interest of Raera in Rima Tataraka solely
10 November 1951 M.B. 14/67	)	Succession Order vesting the interest of Rima Tataraka in 1. Bob Tataraka 2. Iete Makea Tataraka 3. Akaeatangi Tataraka 4. Kirimaki Tataraka equally

The Claim by the Applicant

Comprehensive and very detailed submissions have been prepared and presented by Mr Driscoll. These have been of great assistance to the Court. They indicate a depth of research that to a degree clouds the issues which this Court is required to resolve in accordance with the applications filed and the provisions of the legislation relied on.

For example, the source of the entitlement to this land is traced back to Pangaia and Takaa. It is said that Pangaia had two marriages. The first to Takaa; the second to Tokai. The last descendent of the Pangaia and Tokai union was Tangata Daniela who died without issue.

It is claimed therefore that it can only be those descendents from the Pangaia and Takaa union that can succeed. Those descendents are represented by the applicant acting on behalf of all the descendants.

I pause at this point to identify the titles in relation to the application and the attack on the Court Orders which it is suggested should be cancelled.

The Paeroa S.22 Block was investigated by the Court in 1917 and recorded in M.B. 6/227-228. Present at that Court sitting were Penina, Teakura and John Mokoenga. They all gave evidence. The Court recorded how Mauroi exchanged land; referred to how the family land at Amuri was to go to Mauroi; the land at Vairea was to go to Naomi; and Mauroi, Mau and Ana had all used the land at Amuri.

At the conclusion of all this evidence Penina is recorded as having said :

> "I am satisifed for that to go to Ana."

The Order made in favour of Ana was subsequently superceded and at M.B. 6/269 the Court made an Order in favour of :

1. Ana
2. Tangata-a-Daniela

in equal shares

It was from this Order made in 1917 that Paeroa S.22 was in 1921 divided into :

Paeroa S.22A in favour of Tangata-a-Daniela solely; and into
Paeroa S.22B in favour of Raera solely.

There is of course an explanation needed as to why Ana did not take the interest in Paeroa S.22B. It appears that she had died prior to the original Order in 1917.

By a Succession Order made on 4 August 1917 M.B. 6/187, Raera by family arrangement and agreement succeeded to Ana, solely and thus became the sole owner on Partition to Paeroa S.22B.

It is interesting to observe that these 1917 minutes record the family arrangements that were agreed to. That the different interests were allocated to families or family members in various Blocks on the island. The recording of these family arrangements indicates the importance of family arrangements; and the depth of the discussions which must have preceeded the Court sittings and the consent orders which were formulated. For example on Page 186 it is recorded :

"we have all had a talk including Kavengae and Ongai and we want Raera to succeed.
We want Rima to get Patai absolutely;
Vaitiare to Kavengae and Ongai;
Pakatua for myself;
Te Poro o Rau for Manapouri;
Kopana for Raere;
Ngungu Uru for myself;
Raera is at Rarotonga;
all others agreed"

Those Orders based on the Minute Book references to the evidence given by the families identifies the ownership of Paeroa S.22A by Tangata a Daniela; and of Paeroa S.22B by Raera. Those Orders are not subject to attack by this application. Rather it is the succession by Rima Tataraka. I shall refer to those two Orders later. Meantime I return to the Applicant's case.

The submissions claim that "it is the applicant's case tht the Court's Order in 1940 was wrong in fact and law. The Applicant seeks reinstatement of those with blood connections to the

land, the descendants of Pangaia and Takaa.

As I understand the Applicant's case it is this :

1. Tangata-a-Daniela died without issue. Consequently her interests go back to the source from whence they came, viz Pangaia and Takaa.

2. That while Rima Tataraka was adopted, he had no blood rights; his adoption never matured effectively nor was it recognised sufficiently to justify an entitlement to succession of these interests.

3. That both Succession Orders made in 1940 should therefore be annulled; that Rima Tataraka and the consequential Succession Orders made in 1951 should be deleted from the two titles; and that a new Succession Order should be made in favour of :

   (i) Mareta
   (ii) Penina
   (iii) Manapori equally

I shall now examine the submissions presented by Mr Driscoll in support of the application in more detail and as related to those three propositions.

He submits that Rima Tataraka is not a direct descendant by blood from Pangaia and Takaa which is the source of this land. Further Rima's claim to succession was not agreed to by the blood descendants of Pangaia and Takaa alive in 1917 when the land was investigated. It is submitted that Tangata-a-Daniela and Raere were both descendants of Pangaia - Raera by descent from the first marriage to Takaa; Tangata-a-Daniela by descent from the second marriage to Tokai.

The current ownership of this land by the descendants of Rima Tataraka is by virtue of adoption which has never been recognised by the extended family and certainly not by the Applicant and his relations for whom this application is brought. The law in these circumstances, it is submitted, requires a Court to recognise the importance of the degree and extent of the acceptability of an adoption justifying entitlement to rights of succession.

Especially it is claimed is this so if such succession would be contrary to the rights of those claiming blood rights to a deceased.

I turn now to consider the Applicant Manapouri Raera. Raera is said to have wanted to adopt Manapouri but the natural parents refused their consent. He was therefore never adopted. On the other hand, it is claimed by the objectors that Rima Tataraka was legally adopted by Miimau or Mau and Tataraka. This couple had a natural child Ana and it is this Ana that appears in the original title in 1917 of Paeroa S.22. It is accepted that Ana has blood rights to this land, through Mauroi Aka Tina a child of Pangaia's first marriage. However the Applicant does not accept that Mau adopted Rima. It is claimed that only Tataraka adopted Rima and not Mau who alone had the blood rights to this land.

Following on from those considerations the Applicant then refers to the Order on Investigation made in 1917. It is said, with some justification, that the Court in awarding Paeroa S.22 to Ana and Tangata Daniela recognised their blood rights and accordingly awarded them this land. They further imply that if there was any justification for recognising Rima Tataraka it was in 1917 since Rima was a brother to Ana by adoption. However since neither the Court nor the family recognised or acknowledged Rima by including him at that time in the Order of Investigation that must mean, so it is said, that neither the Court nor the family in 1917 recognised the adoption, or that such adoption had matured to the degree that justified family acceptance and consequential inclusion in the Order of Investigation.

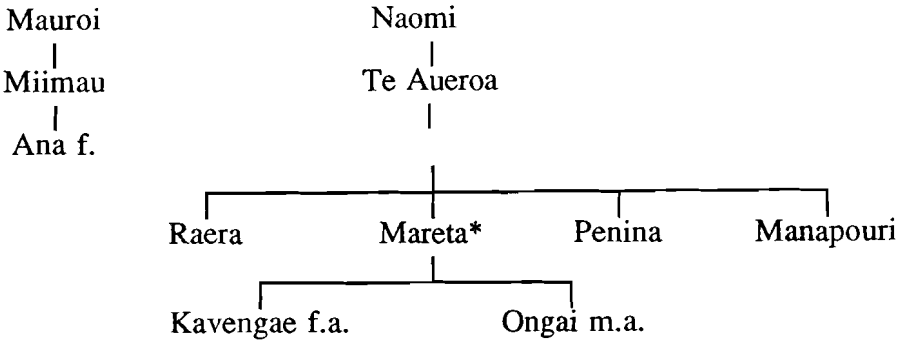
Mr Driscoll acknowledged that while evidence was called both at the Court sitting at Aitutuki as well as the Court sitting at Rarotonga his case relied principally on the evidence as recorded in the various Minute Books upon which he relied and to which he referred. That is a sound submission since this case is all about determining what evidence was given in 1917; in 1921; and in 1940 together with the other Minute Book references that have been referred to.

For those reasons I believe it will not only be useful but also helpful to refer to those minutes and that evidence in order to establish what the witnesses said; what was meant by what they said; and whether the interpretation placed on that evidence and relied on by the respective parties is reasonable and supportable. I shall deal firstly with the evidence in 1917 recorded in M.B. 6/228-229-269 :

"Invest of Paeroa Sect No 22
Punganui

Applct - Mau

Penina (sworn) This land is claimed for Naomi and Mauroi. It came from their father.



All should come in.
I take the line put up by Tiini.
Objectors challenged.
Te Akure - I object.

Te Akure (sworn) - Ana alone should go in. The land came from Maine Te Auroa. I have only seen Mau on the land.

John Mokoenga (sworn)

Pangaie was the owner of the soil.

Taka = Pangiia
Mauroi
Takaraka = Mau f.
Ana f.

Pinaia = Naomi
Tapa = Te Aueroe
Penina and others as given by Penina

Mauroi exchanged some land.

All family land at Amuri shd go to Mauroi and all at Vairea to go to Naomi. This took place in Mauroi's time and has been carried out since. Mauroi, Mau and Ana used land at Amuri.

Under exchange.

Pakatua and Kopana (taro ground) and others go to Naomi at Amuri. Mauroi gets Paeroa and Toreaoro - of Pihiganui.

The boundary shown in plan is correct but it is not a Tapere boundary.

Penina - I am satisfied for that to go to Ana.

Freehold order for Paeroa S.22 Pihiganui to issue in favour of Ana f.a. solely."

That evidence establishes the rights to this land of Ana and Tangata a Daniela equally. Penina gave evidence that all the descendants of Naomi and Mauroi should be included. To this claim Te Akari objected; also John MOkoenga. Of more significance however is the reference to the family arrangement for allocating the lands at Amuri and Vairea. With the rejection of Perina's application for everyone to be included Ana was granted sole rights to the whole of Paeroa S.22.

However later in the Court sitting and following evidence recorded in M.B. 6/268 the Court made the following amending and superseding order :

"Freehold order to issue for Paeroa Sect 22 Punganui (boundaries on as plan and excluding permanent drain reserve in favour of :

Ana f.a.
Tangata a Daniela f.a.

in equal shares."

That then establishes the position in 1917. It is quite correct that Rima is not mentioned in any of the recorded evidence. This land then comes up for further consideration subsequent to the Order of Investigation because Ana, one of the owners, appointed by that Order had died. The evidence on the application to succeed is recorded in M.B. 7/185 as follows :

"Succn to Ana in Paeroa Sect 22, Punganui

Title MB 6/229 and 269.

Perina (sworn) - Ana died in June 1917. Left no children. Left a will - no good as to lands. She adopted a child named Tama but not registered. Aged 4. Regn refused. See ante p. 15. Rima was adopted by Ana's father and should not go in here. See genealogy in p. 228/9 MB 6. Ana had these lands :

Paeroa 22
Pakai
Vaikinare
Pakatua Erani Manu.
Teporoo Rau (purako swamp)

Ropana (taro swamp)
Ngunguunu (swamp)
Our family will succeed to those.

(Manapouri present).

We have all had a talk, including Kavengae and Ongai, and we want Raera to succeed.

We want Rima to get Patai absolutely.
Vaitiare to Kavengae and Ongai;
Pakatua for myself;
Te Poro o Rau for Manapouri;
Kopana for Raere;
Ngungu Uru for myself;
Raera is at Rarotonga;
all others agreed

Adjourned for presence of family. To page 187.

Page 187 :

Saturday August 4th 1917 - Present - the same.

Succn to Ana in Paeroa Sect 22 - from last page.

Present - Kavengae and Orgai who agree to proposed family arrangement.

Te Etu (natural mother) for Rima (adopted by Mau) says she thinks Rima shd get Paeroa.

The Court: His rights should have been mentioned when title invest. The int in Paeroa will go to Raera and Rima's right can be mentd when other lands come up.

Succession order made in favour of Raera f.a."

To summarise the position in 1917 as recorded by these Minute Book references the following position is clearly identifiable :

1. Paeroa S.22 upon Order of Investigation is awarded to Ana and Tangata-a-Daniela equally.

2. Ana is succeeded by Raera.

3. Ana is the daughter of Miimau who comes from Mauroi; Miimau or Mau married Tekaraka; Manroi, Mau and Ana all used the land at Amuri.

4. Rima according to Penina was adopted by Ana's father, i.e. Tekaraka, and Penina in evidence under oath claimed that Rima "... should not go in here. See genealogy p. 228/9 M.B.6.

5. Penina at M.B. 7/186 in evidence said "we want Rima to get Patai absolutely".

6. Te Etu, Rima's natural mother, said that he had been adopted by Mau. Te Etu suggested that Rima should succeed to Ana no doubt on the basis that Rima was Ana's borther by adoption, Ana having a feeding child but not legally adopted.

7. The Court appears to have recognised that Rima had rights of a kind that had never been quantified, but that should be considered in future succession applications to other lands. The Court expressed the view that the claim then in 1917 for succession to Ana was not appropriate - not because there were reasons which precluded such a succession order, but rather because any such application for inclusion should have been made when the title was being earlier investigated.

Following on the two 1917 Orders - the first being the Order on Investigation; and the second being the Succession to Ana, the Court partitioned Paeroa S.22 on 10 October 1921 (M.B. 8/102) and awarded :

Paeroa S.22A to Tangata-a-Daniela solely; and
Paeroa S.22B to Raera solely.

The original Order of Investigation and its conclusions correctly reflect the 1917 Orders.

These lands next came before the Court on 14 February 1940 (M.B. 10/349 to 352); adjourned to 8 March 1940 (M.B. 11/59); and concluded with a reserved Judgment later in March 1940 (M.B. 11/59-60). Present at that Court sitting and giving evidence were the applicant; Rima Tataraki; Pauro; Perina; Viriama; and Te Akauri. The hearing of the evidence extended over two days. The Judgment of the Court is set out as follows :

"Re Tangata-a-Daniel Deceased from Page 35

Appln succession.

N. land Paeroa 22A Punganui Amuri

Judgment

This succession application is somewhat complicated but the facts came out clearly in the end showing that the deceased died leaving a daughter of the same name in Atiu and that this daughter died without issue although she is reported to have left a foster child at present in Raro. The land in question in the freehold order came to the deceased and Ana (f) in equal shares. Ana was the daughter of Tataraka and Mau and they also adopted the claimant Rima. On Ana's death it would seem that Rima should have been considered for succession but he away from the Islands and the facts of his adoption were not fully explained to the Court. Rima was in fact legally adopted by both Tataraka and Mau. This land came down to Ana from Taka (this is agreed to by Penino who at first claimed that the land was from Pangaia. When the Court's attention was drawn to the omission of Rima's claim it recorded the fact that he should be considered when land came up again. The position now is that the deceased has died without leaving living issue entitled to succeed and the land as far as is concerned must go back to the source from which it came, that is Taka. That being so it goes back to the Mau line and the natural persons to take succession is Rima Tataraka, the son of Mau by adoption, and an order will be made accordingly. As regards the foster child leave is reserved for her to apply if she so desires. Succession order in favour of Rima Tataraka solely."

Later in that March 1940 Court sitting an application to succeed to Raera filed by Rima was considered. In giving evidence at that hearing Rima stated among other evidence :

"Raera (f.a.) died some years ago - did not have issue as far as I know - adopted children namely Manapouri who is alive."

The Manapouri referred to by Rima is the Applicant and while a feeding child of Raera was not legally adopted as was Rima. The concluding evidence recorded at this sitting states as follows :

"Rima : I will stand by this adoption.
Pauro : I now ask you to have your name deleted from your family (own parents) land.
By Consent : Succession in favour of Rima Tataraka m.a."

The evidence proceeding the concluding extracts referred to above deal with an objection by Pauro to Rima succeeding to both his natural parents land as well as in this application succeeding to the interests of his adopted parents. The final result as recorded is that Rima

agreed to surrender all his rights to the succession of his natural parents land interests in order to secure the interests in Paeroa S.22B.

The final matter which I must now address is by whom was Rima Tataraka adopted. The Applicant claims it was said in M.B. 7/185-187 by "Penina, on their behalf (who) said that Rima's adoption was on the father's side not on the mother's side from which any claim to Paeroa might come." In other words, since Rima was adopted by Sadaraka the father only and not by Miimau the mother; and since the interests in Paeroa S.22 originate in the mother's line; therefore even if the adoption had matured and so was recognised because of that maturity; because Rima was not adopted by Sadaraka's wife he could not take an interest in this land. The submissions set this proposition out in the following detail :

> "Tapa Manapori, the son of the applicant and Viriama (who has blood links with this land) made a similar claim in the Court at Rarotonga. Thus the applicants do not accept that the adoption order was made in favour of Ana's mother. They claim that it was on Ana's father's side. This claim was made also in 1917 by their forebears. It is submitted that Mao Tataraka is similar in sound and, is in fact one in the same person as Sadaraka who adopted Ropati in 1909. Any claim that Rima is entitled to the land at Paeroa was, as the learned Land Court Judge noted in 1917 (MB 7/187), never mentioned when title to the land was investigated in 1917 and Ana was still alive 9MB 6/228-229 AD 3 + 4). The claim made at that time against that of Penina, claiming for all blood descendants on Ana's mother's side, and supported by Ana's father's family was that "Ana alone should join". At that time Rima and Ropati had both been adopted and Court Orders issued confirming those adoptions."

From all the evidece, and all the submissions, I understand that the Applicant interprets the evidence recorded in the Minute Books referred to as establishing that :

1. Tangata-a-Daniela and Raera both died without surviving issue and their interests must go back to their source as required by law.

2. The source of this land was Pangaia and Takaa.

3. Rima was adopted by Sadaraka only and therefore should not be included as a descendant of that source.

4. Even if Rima was adopted by both Sadaraka and his wife Miimau, the adoption had not matured; and was not acknowledged as such by the family.

5. Consequently Rima was not entitled to rely on his adoption to succeed firstly to Tangata-a-Daniela and secondly to Raera.

The Submissions by the Objectors

Mr Jacob on the other hand relies on the Minute Books and the evidence given on oath. That evidence was recorded at the time and so established more than 50 years ago what was said and done by witnesses; what was agreed to and negotiated by the owners; and what was recorded and decided by the Court.

Mr Driscoll's submissions concentrated on the Court sittings in 1917 and the non-appearance of Rima at that time and as a result his non-inclusion in the Orders made. There is no doubt the Court considered that situation at subsequent sittings and expressed concern (so the Minutes read) that Rima's ommission should be compensated for in future dealings. Just what that means it is difficult to judge from the minutes only. Just why that observation was made is also unclear. Mr Jacobs gives one explanation in his submissions. He says :

> "2.4 Paeroa is in the Amuri District referred to as Punganui lands. Mimau (Mau) Tataraka actually filed the Application for Investigation for Paeroa in accordance with what was customary since Maurois time. But she died before case. Even her natural daughter Ana died before case. Her adopted son Rima was away from Aitutaki during the early Court cases. He was a corporal during the war years and was also a school teacher in Aitutaki, Rarotonga, Mangaia and Aitutaki again. He left after his adoptive mother Mimau died to serve in the war and teaching later. His eldest son Bob was born in Rarotonga on 7 August 1914 (Raro 32/36), Iete in Rarotonga also on 15.2.1922, Tangi in Aitutaki on 23.2.1927 and Kiri in Mangaia on 17.4.1930.
>
> This information is relevant in that his job as a school teacher took him away from Aitutaki, hence having no knowledge of the superseding orders, partition orders going on regarding Paeroa. So 1940 would have been a revocation of Raera but instead, a succession, because of the situation the record was in.
>
> 2.5 The fact remains at law that Mau's line did not die out and Rima's adoption was never disclosed to the Court, until the Rangiatea land case. Nevertheless the Court rectified the injustice by making the Succession Orders complained by Applications 191+192/90."

There is confirmation in some respects to that tendered explanation. Rima appears to have served his country in the army during the 1914-1918 war - at a time when the 1917 Court sitting was held. The minutes confirm he was in Mangaia at the time of another Court sitting.

It appears that as a school teacher he served the Education Department on various outer islands. His own children were born on four different Islands. Rima's absence at the earlier hearings, and the reasons for his non-inclusion; his non-recognition; and his non-participation in the family meetings associated with the various Court sittings may very well be explained by his army service and teacher occupation.

The Legal Implications

I turn now to address those sections of the Cook Islands Act upon which the Applicant relies.

Firstly, the application is based on S.391 which gives this Court authority to annul any Order obtained by fraud. There are two orders that are the subject of enquiry - the succession of Tangata-a-Daniela. The Court in a reserved decision ordered this succession in favour of Rima. There is no fraud established; there has been no fraud alleged. The Court made a finding only. The succession to Raera was a "consent" order. There has been no allegation of fraud.

I find that fraud has not been established.

However S.450 gives the Court jurisdiction to revoke any "succession order made in error". Error has been alleged and records have been referred to which the Applicant is entitled to refer to the Court and to rely upon for the revocation and amendment now sought.

I have considered in detail the submissions presented by Mr Driscoll. I have referred to briefly those submissions prepared and presented by Mr Jacobs. They have both helped materially to identify the claims of the applicant and the counter-claims of the objectors. This more especially because of the length of time that has elapsed since the orders were made more than fifty years ago; and the circumstances of one of the original owners dying without issue; the other dying without issue but with a feeding child that was not registered; and Rima succeeding to both of them when he was adopted into Ana's family. Associated with that scenario is the necessity for the Court to consider the effect of the adoption and its recognition or otherwise not only by those persons adopting Rima but also by the extended family of the adopting parents.

Conclusions

As Mr Driscoll correctly observed, his "case relies on the evidence of the Minute Books". These I have referred to and commented on.

The succession orders made in favour of Rima include -

1. The Judgment was was prefaced by a lengthy Court hearing;

2. The Court relying on the evidence of previous hearings recorded in Minute Book 6/213; 6/227-228; 6/269; 7/185-187.

   These Minute Books were all specifically referred to.

3. In the second succession order made in favour of Rima this was an order which was made by consent. I am sure it would be readily acknowledged the difficulties in challenging an order made by consent;

4. The decisions that are now challenged were made in 1940, more than 50 years ago;

5. It is well recognised that such a lapse of time makes it very difficult, if not impossible, to provide the Court with witnesses who have survived and are able to give evidence in support of or in opposition to an application or an objection to that application;

6. Evidence acceptable to establish that Rima's adoption had not matured to the point of acceptance either by the family of Mau or Tataraka has not been presented to the Court. This adoption was not an issue at the 1917 and 1921 Court sittings - the applicant quite rightly points out that the disputed adoption was an issue because Rima was not considered either at the time of the Order of Investigation or at the application for succession in favour of Raera;

7. There has until now been no appeal against the validity of those orders made in 1940;

8. No objections were filed or considered at the subsequent succession orders to Rima

made in 1951 - more than 40 years ago. I accept immediately that the legislation provides for annulment without any time constraints - so whether it be 40 or 50 years ago since these orders were made such a factor when considering "error" is not material. However I believe that a time factor is an important consideration in assessing whether the standard of proof required to establish the error or the mistake has been identified.

The ownership of this land was established in 1917 and was subsequently updated in 1921 and 1926. The records clearly establish that family meetings discussed family entitlements to various blocks in both the Amuri districts as well as other regions on the island of Aitutaki. Ana and Mau, it was recorded, had occupied this land prior to its investigation. The progression of succession to finally Rima due no doubt to his occupation of the land upon his return to Aitutaki has until now remained unchallenged a period of either 50 or 40 years.

With that background; with the unchallenged evidence that previous Courts have relied upon; and with the consent order that was made requires substantial evidence to establish now at this period in time an error was made by the Court in respect of those two succession orders made in favour of Rima.

The thrust of the application relies principally on the unacceptability of Rima because he was adopted; because the adoption had not matured; and because he did not have blood rights in the land. I am satisfied from the evidence produced that Rima was adopted by Tataraka and Mau. That of course is only one of the factors that the Court is required to take into consideration. Acceptance of adoption by both Tataraka and Mau is not the end of the matter. The applicant relies on those well recognised Court of Appeal judgments which set the standards for acceptability by the extended family to establish the maturity necessary for an adoption to be supported and justify an entitlement to land by the adopted child.

The Minute Books do not record evidence of rejection on the basis that Rima was adopted; nor of refusal to entitlement. The applicant of course challenges Rima's succession and his lack of acceptability and/or entitlement.

However the Court must be presented with reasonably substantial evidence before cancelling Court Orders which have been granted in terms that the Court has already discussed in some detail, especially when the orders that are now challenged were made more than 50 years ago,

and one of them was even made by consent.

I appreciate the difficulties any applicant, not just the present applicant has in assembling evidence 50 years after the event in order to support an allegation that the Court has made an Order in error.

For the reasons that I have stated in some detail I am not satisfied, nor have I been convinced, that the Court did make an Order as alleged. Those Orders I believe were made in accord with family arrangements as to usage and occupation, and the lands were apportioned among the families on that basis. For those reasons the two applications are dismissed.

Dillon J.