

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

**Application No. 428/94**

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

**AND**

**IN THE MATTER** of the lands known as **AREVAI**  
**SECTION 129A NO. 1**  
**AVARUA; TURINA SECTION**  
**129E. AVARUA; NOANOA**  
**SECTION 129G. AVARUA;**  
**RATUMARUA SECTION**  
**129J. AVARUA; TE VAIKURA**  
**SECTION 129L. AVARUA**

**AND**

**IN THE MATTER** of an application by **RIMA**  
**LIZZIE TEOKOTAI** to revoke  
the Succession Order made on 4th  
May 1965 to the interests of  
**ANGENE RUA**

**Applicant**

Mrs Browne for the Applicant  
Mr Lynch for the Objectors

Date of Hearing : 1 December 1994  
Date of Judgment : /7<sup>th</sup> February 1995

**JUDGMENT OF DILLON J.**

On 4 May 1965 the Court made a Succession Order to the interests of Angene Rua vesting his interests in the following persons, namely Angene m.a.; Maara Angene f.a.; and Davita Angene m.a. equally. The purpose of the present application is to revoke that Succession Order and to substitute a new Succession Order including a fourth child, Teokotai, alleged to be the first child of Angene Rua.

The genealogical position may be summarised as follows :

1. It is alleged that Angene Rua had a relationship with Verapani or Tuainekore and produced Teokotai. The applicant, Mrs David, is one of the issue of Teokotai's subsequent marriage.
2. Angene Rua married his first wife Metuakore, also known as Maggie Brown, and there were three children to that union whose names have been set out above.
3. Angene Rua married a second time to Ngateina Toru. There was no issue to this marriage.

The short question then is whether the three children who were named in the Succession Order made on 4 May 1965 should succeed to the interests of Angene Rua equally, or should those three children and Teokotai succeed equally.

Mrs David gave detailed and comprehensive evidence in support of her application and the reason why the application is made, following on a visit by her to Atiu in February 1979. In the course of the proceedings there was some criticism of the fifteen year delay in bringing these proceedings. However I do not believe that the criticism is justified. It cannot with any certainty be stated that the application has been made with unseemly haste. Rather the opposite is in fact the case and despite the efforts of the applicant to ensure that the application for revocation should proceed with everybody's agreement, the resultant delay has occurred and for that reason cannot be criticised. In the course of the evidence led by Mrs David, she explained how she first found out in 1979 who her grandfather was and the steps that she took from that time to acquaint the principal objector, Maara Angene, who had lived in New Zealand for some 37 years. Originally Maara Angene appointed Mrs David her Power of Attorney; she requested that Mrs David complete succession applications in her own land interests, and Mrs David did in fact complete that for her; consultation took place between the applicant and the objector in New Zealand; and subsequently an affidavit was prepared and executed supporting the application. That affidavit and the Power of Attorney have been withdrawn, it being alleged by Mrs Williams, a further objector, as follows :

- "(a) The previous Power of Attorney and affidavit were signed without the contents being explained to her or understood by her.

- (b) No bible was presented to Maara Angene when swearing the affidavit.
- (c) The affidavit was signed in an unduly fast manner and witnessed by Mrs Teea Goodwin, who claimed she had a taxi waiting outside of the residence of Maara Angene in Mangere, Auckland, New Zealand, which required Mrs Angene to sign the affidavit quickly without any opportunity being given to her to understand the affidavit and its contents."

Maara Angene gave evidence at the hearing as also did Mrs Williams, a grand-daughter. I am satisfied that Maara Angene was well aware of the contents of the affidavit which simply confirmed previous conversations that had taken place in New Zealand between her and Mrs David, and a note which Mrs David had taken down relating to the genealogy. These discussions and the relationship between Maara Angene and Mrs David appeared cordial, and Maara confirmed that on a visit to Mrs David at Mangere she brought certain gifts with her.

However I don't think it is necessary for me to consider further this particular question as it really has no relevance to the point in issue, namely - was Teokotai the son of Angene Rua? The only relevance in my opinion is the weight to be given to the objections and the innuendoes that Mrs David was taking an unfair advantage of Maara Angene for her own personal benefit. I reject that allegation in its totality and in fact Maara Angene, in her evidence, clearly modified the allegation or implication of personal betterment on the part of the applicant. Having disposed of the question of the Power of Attorney and the relationships prior to the Power of Attorney in favour of Mrs David being cancelled, I shall now turn to the real issue of the application.

### THE OBJECTIONS

Maara Angene and her grand-daughter, Mrs Williams, gave evidence setting out their reasons for their objection based principally on the fact that they had no knowledge that Teokotai of Angene's first relationship with Tuainekore. In support of that generalised objection, they point to the fact of the certificates where one would expect verification of paternity. In none of the certificates, that is the baptismal certificate, the marriage certificate or death certificate, is Angene Rua shown as the father of Teokotai. One would certainly have expected verification of paternity in at least one of those documents. However that is not the case so that such a submission is a valid objection which any application would have to overcome. In the submissions that have been filed by Mr Lynch it is denied that Angene Rua was married to Tuainekore. In support of that objection no marriage certificate has been produced. That is correct.

Insofar as the claim that Teokotai was the son of an alleged relationship between Angene and Tuainekore, that claim is denied. It is also denied that Teokotai was a step-brother of Maara. Teokotai was never treated as a "brother" of Maara.

The objectors, both in the submissions and in evidence, stated categorically that they had never been told by their forbearers that Teokotai was Angene's son. They point not only to the LMS baptismal records, but the marriage certificate and the death certificate. The objections on the face of those submissions appear formidable.

### THE CERTIFICATES

As already indicated, one would expect some confirmation or acknowledgement in the Births, Deaths and Marriages registers. That, however, is not the case. In the LMS baptismal record, Teokotai is shown as having been born on 23 October to Teainekore. No father is shown. In the majority of entries on that particular page of that register both mother and father are shown. Thus there is confirmation that Teokotai's mother is Tuainekore but there is no confirmation as to who his father is.

When Teokotai married on 10 May 1941 the marriage certificate shows his name as Teokotai Kautai. The parents of the bride and bridegroom are not disclosed. Evidence has been given that Teokotai was brought up by Mr and Mrs Kautai, hence the reason for his name on the marriage certificate.

Finally the death certificate records that Teokotai Kautai died on 31 March 1970 aged 55 years. In the certificate his father's name is shown as Kautai, which of course is the name of the foster father who brought him up.

Consequently none of those three certificates are of assistance in establishing Teokotai as the son of Angene Rua.

### CASE FOR THE APPLICANT

Apart from the detailed evidence supplied by Mrs David, eight affidavits were produced in support of the applicant's case. These affidavits were from various members of the Angene

family. It will be convenient to set out a brief summary of each of those affidavits by referring to the submissions filed by Mrs Brown and her description of the affidavits designated from (a) to 11.

- (a) Declaration of Ana Tutai Pora dated 24 February 1993. (Attached herewith and marked "B"). She is 65 years old. Her father and the late Angene Rua were brothers. She confirms that Angene Rua was Teokotai's father.
  - (b) Affidavit of Teau Paratainga dated 2 March 1994. (Attached herewith and marked "C"). She was 69 years old. She was Angene Rua's niece from the Atiu side of the family. She confirms that Angene Rua was Teokotai's father. She further stated that in February 1970 they (Angene Rua's family) had an umukai for Rima David to acknowledge their acceptance of Teokotai as being the son of Angene Rua and therefore part of the family.
  - (c) Affidavit by George Angene dated 3 March 1994. (Attached herewith and marked "D"). George Angene is a grandchild of Angene Rua from his wife Maggie Brown. He is 34 years old. He states that from his enquiries amongst the older people of Tupapa he has been informed that Angene Rua was Teokotai's father. It seemed to be common knowledge in that district. He has also spoken to his aunty, Akatu Tamoe, who confirmed that the Atiu side of the family had accepted Teokotai as part of the family. He also recalled visiting Rima David's home in his young days.
7. Affidavit of Ngavaevae o Tiraapu Teariki Tamaroia dated 4 March 1994. (Attached herewith and marked "E"). She is 90 years old. She confirmed that Angene Rua was Teokotai's father.
  8. Affidavit of Kato Pora dated 22 March 1994. (Attached herewith and marked "F"). She is 65 years old. Her late husband Nio Pora was a nephew of Angene Rua. She confirmed that Angene Rua was the father of Teokotai. She also confirmed that the Atiu side of the family have acknowledged (through an umukai) that Rima David was a member of the family.
  9. Affidavit of Ina Toa dated 22 March 1994. (Attached herewith and marked "G"). He is 78 years old. He confirmed the acceptance of Teokotai as a child of Angene Rua.
  10. Affidavit of Tungane Teokotai dated 26 April 1994. (Attached herewith and marked "H"). She is 72 years old. She is the widow of Teokotai.
  11. Affidavit of George Taraare dated 16 June 1994. (Attached herewith and marked "I"). He is 65 years old. The late Teokotai was his half brother. He confirmed that Angene Rua was Teokotai's father. He indicated his reluctance to swear an affidavit because he did not wish to prejudice his families claim that Angene Rua should not be in Ngati Taraare's lands. His affidavit also explains the birth, marriage and death certificates of the late Teokotai."

At the date of the hearing, Teau Paratainga had passed away on 3 June 1994. Also Ngavaevae o Tiraapu Teariki Tamaroia passed away on 3 August 1994. She was 90 years old at the time when she made the affidavit on 4 March 1994.

In considering the weight to be given to the evidence adduced by affidavit, a Court must give recognition to the statements made under oath and which, in this particular case, have not been challenged. The objectors were aware of the affidavit evidence that was filed in support of the application and took no steps to challenge those deponents, or to request that they be called as witnesses so that the evidence that they had sworn to could be challenged under cross-examination. Some of the deponents were residing on Rarotonga; most were in Atiu. There is no doubt that they were all members of the extended family and expressed intimate and personal knowledge confirming the evidence which they declared on oath which upheld the evidence presented by Mrs David that Teokotai was in fact the son of Angene Rua. I believe the Court has to accept that affidavit evidence which has not been challenged in any way whatsoever by the objectors. Instead Maara Angene, when questioned under cross-examination about each of the deponents, stated quite simply that each and every one of them were lying. If I give but just one example from Page 24 of the Notes of Evidence. Under cross-examination by Mrs Browne, Maara Angene said as follows :

"Q: Have you read the affidavit of Ngavaevae, the 90 year old, and you say she is lying. Can you tell me please the lie that she is saying. Where is she lying. What has she said that is wrong.

A: I have not seen her but what she says is lies. I have not seen her.

Q: Have you seen what she says?

A: No."

I take from that that Maara Angene is objecting to what the deponent has sworn to, even though Maara has not read the affidavit. That is a most unusual allegation.

Then further on in the cross-examination Maara Angene states as follows :

"Q: Have you seen what George Taraare has said? Have you read his affidavit?

A: Yes.

Q: Do you agree with what he said?

A: I don't know what to say ... yes I accept what he says."

Now that confirmation of George Taraare's affidavit, who was the half brother to Teokotai, confirms that Angene Rua was Teokotai's father which, by her answer, Maara accepts.

### CONCLUSION

I have set out in summary form the principal details and evidence that has been submitted for the Court to consider and for the Court to determine whether Angene Rua was the father of Teokotai as claimed by the applicant, or whether Angene Rua was not the father of Teokotai as claimed by the objectors. I have already indicated that the objectors have a very strong argument when there is no confirmation of Teokotai's father being Angene Rua from the birth certificate and the death certificate. The marriage certificate is a non-event since parents are not included. However I accept it is very significant that Angene Rua is not shown as father of Teokotai on either the birth records or the death certificate.

On the other hand there is the evidence of Mrs David which gives really nothing more than what has happened over the last fifteen years since she was told in Atiu in 1979 that her grandfather was the son of Angene Rua. At an umukai she was accepted into that family. Since then eight relatives in the Angene family have come forward and sworn on oath that Angene Rua is the father of Teokotai. It is true of course that Maara Angene originally confirmed that herself in the original affidavit. However that has subsequently been withdrawn, which is Maara Angene's right. It appears that that action was taken after she made contact with her grand-daughter, Mrs Williams, in Rarotonga.

The fact that those eight affidavits have been accepted by the objectors to the extent that they were not challenged means that they provide unchallenged support for the application that has been made. The fact that they are all from members of the Angene family; they are all made by people who know intimately Angene Rua and Teokotai, and the fact that as previously stated that evidence has not been challenged in any way, satisfies the Court that Teokotai was in fact the son of Angene Rua and as such would be entitled to succeed to the interests in land, the subject of the Succession Orders.

Accordingly there will be an Order pursuant to Section 450 of the Cook Islands Act 1915 revoking the Succession Order made by the Court on 4 May 1965 to the interests of Angene Rua.

There will also be a further order granting succession to the said Angene Rua in favour of the following persons and their respective shares, namely :

1.	Rima Lizzie	Teokotai	f.a.	1/32
2.	Kautai	Teokotai	m.a.	1/32
3.	Tuainekore	Teokotai	m.a.	1/32
4.	Metuakore	Teokotai	f.a.	1/32
5.	Tangitungane	Teokotai	m.a.	1/32
6.	Eiau	Teokotai	f.a.	1/32
7.	Tutere	Teokotai	f.a.	1/32
8.	Moeroa	Teokotai	f.a.	1/32
9.	Alex	Angene	m.a.	1/24
10.	Mata	Angene	f.a.	1/24
11.	Ta Brown	Angene	m.a.	1/24
12.	George	Angene	m.a.	1/24
13.	Lucy	Angene	f.a.	1/24
14.	Norman	Angene	m.a.	1/24
15.	Maara	Angene Rua	f.a.	1/4
16.	Kirimoke	David Angene	f.a.	1/12
17.	Ioana	David Angene	f.a.	1/12
18.	Kopurei	David Angene	f.a.	1/12

*Dillon J.*

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Dillon J.