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

Appln No 300/93

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

AND

IN THE MATTER of the land known as **AVARUA SECTION 190A1 AND 190A2**

AND

IN THE MATTER of an application by **TUTAI MARETA PARKER**

Mr Lynch for the Applicant
Mrs Browne for Objectors
Date of Judgment: 31 January 1996

JUDGMENT OF DILLON J.

Mrs Tutai Mareta Parker, hereinafter called the Applicant, filed an application seeking the revocation of a Succession Order that was made on 7 October 1918 which vested the interest of Pau Tairi as from 7 October 1918 in Maeva as to one quarter; Tuokura as to one quarter; and Tuamaki as to one half. The basis of the application is that the Succession Order referred to above was erroneously made on the evidence that was submitted that Pau Tairi died without issue. The substance of the Applicant's claim is that Pau Tairi in fact had three children, and that she, the Applicant, is a descendant from one of those children.

This matter came before the Court on 13 December 1994 and the evidence that was submitted by the Applicant on that occasion has been transcribed and carefully considered prior to the issue of this judgment. At that hearing in 1994 a Mrs Ena Young opposed the application. Because of the complexities of the issues raised by the application, the Court recommended, in a series of memoranda, that among other issues Mrs Young should seek assistance of Counsel

in order to ensure that both sides of the issues raised by this application could be carefully investigated. As a result, Mrs Browne has now been instructed to appear to object to the application and both she and Mr Lynch have submitted comprehensive and detailed submissions which have been of material assistance to the Court in arriving at a final determination of the complex issues that have been raised.

THE APPLICANT'S CASE

The Applicant, in a detailed and fully supported affidavit, relates the historical background which she believes justifies the application which she has made. She refers to the deceased who was born in Rarotonga travelling to Taihiti and there marrying a Rimatara man named Matauramea A Iotua, and as a result of that union three children were born.

The source of that information is a minute book called Pa Upokotini. The Applicant relies very heavily on this minute book which provides a most interesting and fascinating historical background of early life in both Rarotonga and Taihiti. It refers to the early Missioner, Reverend Williams, and this historical background relates events, as referred to in various extracts, in 1849 and again in 1874. The original book is apparently all in French and translations have been provided and annexed to the Applicant's affidavit. While the Court is prepared to concede that this information is both fascinating as well as interesting, it must be considered in the light of contrary information recorded in a number of minute books in this Court. As a result, this Court has to proceed with caution and in effect undertake a balancing act as to what evidence to accept and what to reject in the light of the conflicts which will in due course be identified, but particularly in relation to the challenge to the Court order now in 1995 and 1996 - an Order that was made as far back as 1918 which until now has never been challenged, and which according to Mrs Browne has in fact been endorsed at several Court hearings over the years.

Another difficulty confronting the Applicant is the death certificate of Rangipau A Makea attached to her affidavit. That deceased was shown as aged 99 years at the date of her death on 12 September 1909. The deceased was shown as the daughter of Tairi A Makea and of Mata A Taarua. However an inconsistency immediately arises and the Applicant's genealogy

relies on Vaitaha as the mother of Pau Tairi and not Mata A Taarua as shown in the death certificate. Unfortunately this contradiction has not been explained.

THE OBJECTORS' CASE

Mrs Browne founded her detailed submissions on the following summary which it will be useful to refer to :

> "The Succession Order was made after genealogical evidence was given by Maeva. Present in Court were Tuamaki and Maeva. Tinirau, representing Makea, was also present. He was the son of Rangi Makea. The parties accepted that the title Tairi Te Rangi was a title under Makea Ariki. At page 451 Tinirau stated that the name Tairi Te Rangi represented Makea and agreed to it being struck out. This evidence was given in 1918 and it has remained unchallenged for 76 years. As will be shown later in these submissions a genealogy given by the Applicant's mother claiming relationship to Pau Tairi was rejected by the Court."

Mrs Browne then refers to Minute Book 4/332; Minute Book 8/438 and refers to the evidence that "Tairi Te Rangi represents Makea for a life interest now extinct. All parties agree that this was so."; Minute Book 12/185 which sets out the evidence of Makea Tinirau Ariki confirming that Pau Tairi died without issue; Minute Book 12/236; Minute Book 21/187; Minute Book 26/30 and Minute Book 12/236, both of which refer to genealogies given by Rau A Vivi who is the mother of the Applicant, however this genealogy given by the Applicant's mother, in being rejected by the Court, was stated to be unconvincing; and finally Minute Book 28/123-127.

The latter minute book sets out the position regarding the succession of Emma Moetaua to Tuokura Maeva. Emma Moetaua is now the sole owner of both of these blocks. That judgment states in part :

> "Although there are minor differences in the genealogies given by Maeva and Makea, they both lead to the same result, namely that the natural descendents of Tairi Te Rangi have died out. This is not disputed and the Court accepts it as being correct."

Mrs Browne relies on that Appeal Court decision and, with justification, says that this Court is bound by that decision and by those findings. That may not be necessarily so if new evidence

is available which was not available in 1968 at the time of that Appeal Court decision. What must be recognised, however, is the Court at that time stated as part of its findings :

> "Furthermore the genealogies are incomplete and it is impossible today to find any person who could give a complete genealogy from Pini."

While there was that difficulty in 1968, the question arises as to whether the Applicant now in 1996 is able to provide more detailed genealogies than were available at that time. The fact that the genealogy now produced is the same as that produced by the Applicant's mother which was rejected, is a difficulty which the Applicant has to try and overcome in order to establish the error which it is alleged occurred as far back as 1918.

Apart from the Minute Books referred to above and relied upon by Mrs Browne in her submissions, she challenges the minute book called Pa Upokotini. She identifies and challenges certain evidence that she believes clearly demonstrates that the extracts are inaccurate. For example, she identifies the recording of a meeting held on 16 August 1911 when certain people were present. Mrs Browne identifies some of those present at that meeting and challenges the record as follows - she says that Pa Upokotini in fact died on 24 February 1906; that Charles Pittman and Aaron Vuzacott (who were missionaries) had left Rarotonga by about 1857; and Goodwin died in 1892. On the basis of that record Mrs Browne said that this Minute Book cannot be relied upon and that its authenticity ought to be disregarded.

THE TITLE

Prior to partition, the block was known as Avarua Section 190A. By virtue of an Order on Investigation of Title made on 12 March 1908, this land was vested in five owners. One of them was Makea who was struck out in 1912, the interest being described as a life interest. With the passage of time there is now only one owner, Emma Moetaua, who is now deceased.

As already detailed when considering the submissions filed by Mrs Browne, these two sections have been before the Court on a great many occasions between the original Order of

Investigation in 1908 and the present time. Included in those Court hearings is the Appellate Court hearing which Mrs Browne claims is binding on this Court.

It is true that the Appellate Court was principally concerned with the succession of Emma Moetaua and her entitlement as an adopted child. That decision has become a cornerstone in many subsequent cases dealing with the adoption of children. However the point made by Mrs Browne is that in the course of those proceedings the Appellate Court did consider the question of Tairi's line and categorically stated that this line had died out. To ressurrect the line now on the geneaology supplied by the Applicant, relying as it does on the questionable minute book of Pa Upokotini and the genealogy of the Applicant's mother which has already been rejected by an earlier Court, this Court must have clearly supported evidence in order to counter the evidence of so many previous witnesses and the findings, conclusions and judgments of so many previous Court hearings. I am satisfied that the Applicant has not provided the evidence necessary to challenge those previous Court judgments and the long line of witnesses whose evidence has been relied upon by the Court when making those judgments. In addition, this Court is bound to recognise the findings of the Appellate Court, the evidence that it relied upon and the findings that it made. Accordingly the application is dismissed.

Costs are reserved.

This decision does not preclude Mrs Parker bringing a subsequent application in the event of additional information and evidence becoming available at a future date. On the evidence that she has placed before the Court, no Order as sought can be justified. New information in the future may, however, change that.

DILLON J.