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

Application No 462/96

IN THE MATTER	Section 450 of the Cook Islands Act 1915
AND	
IN THE MATTER	of the land known as **AVARUA Section 190A KIIKII, AVARUA**
AND	
IN THE MATTER	of an application by **TUTAI MARETA PARKER** to revoke the succession order made on the 7th October 1918 in respect to the interests of **PAU TAIRI**.

RESERVED DECISION OF THE COURT

This matter was heard by both Dillon and McHugh JJ and reserved for a decision. Consequent upon the sudden and tragic and early demise of both of these learned gentlemen, it has fallen upon me to reach a decision on the papers and minutes of the hearings which were conducted.

This application by Tutai Mareta Parker appears to have its genesis in the judgment of Dillon J delivered on the 31st of January 1996 when the Court dismissed application no 300/93. That application by Tutai Mareta Parker, sought revocation of the succession order made on the 7th October 1918 upon the same grounds which have been repeated by her in this present application.

At first blush it would appear that this current application by Mrs Parker should be dismissed on the grounds that the issues are res judicata. A perusal of Dillon J's decision however would appear to hold out some life-line to Mrs Parker, for in the final paragraph of his judgment, the learned Judge stated:

> "This decision does not preclude Mrs Parker bringing a subsequent application in the event of additional information and evidence being 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".

In support of this present application Mrs Parker has produced selected extracts from minutes of the Court records all of which appear to have been traversed at length in the earlier case. She has gone to some length to set out the history and purported revival of the Rangatira title, Tairi Te Rangi including:

Minutes of meetings held between the 10th September and 2nd December 1980 to elect a holder.

A copy of an extract said to be from the Cook Islands News reporting the investiture of the title. That extract incorporates some family histories stating that Te Paeru Makea went to Tahiti, met a man from Rimatara whom she married and then had three children by him.

The applicant has at all times argued that this Tepaeru or Rangipau and Pau Tairi, one of the original owners in Avarua Section 190A are identical. Whether the history of Tepaeru Makea as recorded in the Cook Islands News at the time of the investiture of Mina Ioane Akapi on the 10th of December 1980 is authentic or not, there is nothing recorded therein to identify Tepaeru with Pau Tairi. Further, the evidence given by Maeva in the presence of Tuanaki and Tuakura on the 24th July 1918 (MB 8/438) "Pau Tairi issue extinct" would appear to be more persuasive as being closer to the event.

Mrs Parker has again placed considerable weight on Pa Upokotini's book on the 16th of ~~Auckland~~ August 1911. If the allegations made therein are correct, one would have been entitled to expect that that evidence would have been made available to the Court during the partition hearings relating to Avarua Section 190A which took place over a lengthy period between the 19th November 1917 to the 7th October 1918. This presumption gains even more strength from the fact that the extract from the book was purported to have been signed by "Pa Ariki Chief Judge and Missionary".

If this is the sum total of new evidence sought to be introduced by the applicant, then it falls considerably short of what this Court would expect and is little more than an elaboration of the evidence rejected by Dillon J.

The question of relevance and acceptance by the Court of new evidence is a matter which has been before the High Courts of New Zealand on a number of occasions particularly in relation to those occasions where leave is sought to introduce new evidence on an appeal hearing. The principles which have been accepted by the High Court in determining the relevance of such evidence would apply equally to this present application which is nothing more than a repetition of Application No. 300/93 but filed in compliance with the apparent leave of the Court if new evidence is available.

The principles to be applied in the admission of further evidence on appeal are given in the headnote of Dragicevich v Martinovich (1969) NZLR 306 CA where it is stated:

> "First it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial: second, the evidence must be such that if given it would probably have an important influence in the results of the case although it need not be decisive: and third, the evidence must be such as is presumably to be believed but it need not be incontrovertible."

If these principles were applied to the purported new evidence produced by Mrs Parker in this current application then it would be seen that:

(a) that the evidence could have been obtained without much effort for production in the first trial;

(b) that the evidence does little to advance Mrs Parker's claim; and

(c) that doubts have been raised as to the veracity of the evidence.

It is the finding of this Court that Mrs Parker has failed to oust the principles of res judicata and the application is therefore dismissed.

This decision was promulgated at Tauranga, New Zealand on the 14th day of December 1999.

Norman F Smith J

Smith J