

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

Application No. 176/02

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

AND
IN THE MATTER of the land known as
ARETUKI SECTION 99B2
ARUTANGA, AITUTAKI

AND
IN THE MATTER of an application by
TEATAMIRA MAKIRERE to
revoke the Succession Order
made by this Court on 21
July 1960 of TE EI ARIANA
and MOKERE in favour of
KIIKORO KAOKI
Applicant

Mrs Nga Makirere for applicant

Ms Numia Nooroa – objector

Date of hearing: 12 September 2005

Date of decision: 20 September 2005

DECISION OF SMITH J

This is an application for revocation of a Succession Order in respect of the interests of Te Ei Ariana and made on 21st July 1960 in favour of Kiikoro Kaoki.

The application does not seek a replacement Succession Order.

At MB 16/50 on 31st May 1960 and 16/178 on 21st July 1980 the Court heard evidence relating to succession to the interests of Te Ei Ariana received from his adoptive father Ariana on 10th August 1954. At the hearing on the 10th August (MB 15/70) the Court recorded:

"this is not ancestral land of Ariana. Ariana died without issue. His brothers and sisters have no claim."

Upon hearing that Te Ei Ariana claimed to have been informally adopted by Ariana Succession Orders were made in favour of Te Ei Ariana.

On the 31st May 1960 Tere Kainuku gave evidence that Te Ei had died on 17th March 1960, no issue. He went on to say that in olden days people were given house sites to be near the church. This section was given to Kii.

Tere Kainuku further claimed that Mokere came from Kii's first wife, Ariana from the second. (MB 12/156).

Mokere and Ariana's family shared the house until it fell down. Atirai and Tere Kainuku's children shared what habitable part of the house remained. He stated further that they had pulled the house down and were re-building. He sought succession in favour of his son Teinakore and his wife the permanent occupiers of the land.

There had been no discussion with Kii's descendants.

The Court adjourned the hearing for a family meeting.

The matter came back before the Court on the 21st July 1960 and Kainuku appeared again saying that the family of Ariana agree that Teinakore, a grandson of Atirai should share the land.

Tuakana Tokai objected saying the deceased Te Ei Ariana was her husband, who had no issue but Tuakana Tokai wished her own daughter, Peta, who was related to the land through her father Jim Moerua (MB 12/156), to succeed. He

is the same person as Mataki. She further claimed that Te Ei and she had adopted Peta informally.

The Court then repeated its previous statement (MB 15/70) that this was not ancestral land of Ariana's. The house site was owned by Ariana and Mokere equally.

On the death of Ariana it reverted to Mokere, then by agreement to Te Ei Ariana. Now that Te Ei Ariana is deceased, the land reverts to Mokere.

The Court then went on to hear the application for succession from Mokere. Kiikoro Kaoki gave evidence that Mokere left issue as shown in MB 9/263. He stated the family had agreed he should succeed solely. Te Kuratautaukiapo Mokere confirmed and there being no objections, the order was made.

Clearly, having found that the land had reverted to Mokere the Court must then look to his issue as successors.

The applicant claims that as the Court at MB 15/70 on the 10th August 1954 said to Te Ei:

"you would be entitled to little more than the ruin of a house"

then

"when the homestead was no longer standing Mokere's and Te Ei's rights ceased and the land should have returned to the real land owners, and to me since they vested their whole interests in the land to me."

In this regard, the applicant is placing too much emphasis on the above statement by the Court, and insufficient emphasis on the sentencing following:

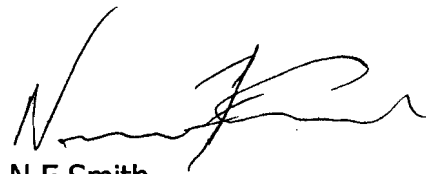
"Succession Order in favour of Te Ei Ariana m.a."

That Succession order vested not only the house, but the interest in the land in Te Ei Ariana solely, and irrespective of the subsequent demolition of the house the land still belonged to Te Ei Ariana.

Upon his death the Court found in favour of Mokere and then his issue as successors.

This Court can find no error in the claim of succession made by the Court culminating in ownership by Kiikoro Kaoki.

This application is dismissed.



N F Smith

JUDGE