

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

**Application No. 540/06**

**IN THE MATTER** of Section 409(f) of the  
Cook Islands Act 1915

**AND**

**IN THE MATTER** of the Kainuku Ariki Title

**AND**

**IN THE MATTER** of an application by  
**KAPIRI TE RANGI TERE**  
Applicant

**Parties:** Kapiri O Te Rangi Tere  
Applicant  
Mrs T Browne appearing

Maru Ben  
Respondent  
Mr N George appearing

**Date of hearing:** 24.08.06

**Date of decision:** 5.9.06

**DECISION OF SMITH J**

This is the reserved decision of the Court.

Kapiri O Te Rangi Tere has made application to the Court under Section 409(f) of the Cook Islands Act 1915 for an order determining that she is a proper person to hold the office of Kainuku Ariki.

Evidence was given that a meeting of the Teputiki and Parapu family lines was held on the 26<sup>th</sup> September 2005 at which meeting the majority present supported Kapiri O Te Rangi Tere taking the Kainuku Ariki title. Minutes produced.

At a meeting on the 17<sup>th</sup> February 2006, eight of the nine Rangatiras of the Kainuku tribe met along with Manavaroa Mataiapo and confirmed the appointment of Kapiri.

The applicant then proceeded to hold an investiture ceremony.

Maru Ben who claimed to have been invested with the Kainuku Ariki title on the 27<sup>th</sup> September 2003 objected to the application.

The grounds for objection as submitted by Mr George, counsel for the objector were as follows:-

1. That all title holders of the Kainuku Ariki title in the past 175 Years (i.e. since Christianity was brought to the Cook Islands) come from the descendants of the third wife Tangiia a Manavaroa - it is time the title is transferred to a descendant of the first wife, Ngamau a Tinomana.
2. The Rangatiras who approved the appointment of the Applicant to the title are not part of the Kopu Ariki but members of the tribe, and the Kopu Ariki representing the first and second wives were not consulted and did not give their support or approval.
3. The applicant did not receive majority support from the Kopu Ariki of Ngati Kainuku.
4. The various family meetings held on different dates are misleading and should not be treated as representing the views, opinions and approval of the Kopu Ariki of Ngati Kainuku.
5. The Applicant was not blessed by the Karakia of Ngati Kainuku Ariki by the Land Court registered taunga of Kainuku Ariki Papa Tangaroa Teamaru of Ngati Kainuku.



6. Any other grounds which may be stated at the main hearing of these proceedings.

It is pertinent at this stage to record the function of the Court in these matters.

The jurisdiction of the Court is contained in Section 409(f) of the Cook Islands Act 1915 which states:-

“The Court shall have jurisdiction –  
To hear and determine any question as to the right of any person to hold office as an Ariki or other Native chief of any island.”

Mrs Browne has referred the Court to a number of authorities establishing that the Court has no jurisdiction to appoint title holders but may declare “for the guidance and assistance of the people what it believes to be the custom governing such appointment.” She went on to show that if the applicant had not been properly elected according to custom the Court could only declare that there had been no election and a fresh election would then be necessary.

This is not in dispute and both parties accept that the issues to be determined by the Court comprise:-

1. Eligibility – is the applicant eligible for appointment having regard to genealogical relationships to the title?
2. The right to elect – that is who are the persons entitled to elect a title holder, and have these people, the Kopu Ariki been involved?
3. Constitution of the Kopu Ariki as mentioned above.
4. Suitability – is the applicant of good character and capable

of carrying out the duties attached to the title?

5. Investiture – has the applicant been properly invested with the title?

There was clearly no agreement between the parties as to the applicant's genealogy or suitability. The objector has however challenged the composition of the Kopu Ariki; the question of whether a proper election and investiture were held.

With regard to the latter matter, counsel for the objector raised a query whether the investiture could be properly carried out in the absence of the Tribal Taunga, Pera Tangaroa, who gave evidence that he had refused to deliver the karakia.

On the question of who can vote, it was acknowledged that Kainuku Tamoko, who held the title at the time christianity arrived had several wives, probably seven, but over the years only three appear to have been regarded as the main source of the Kainuku tribe. Ngamau a Tinomana from whom the objector descends, Puta-e-rere na Pa Ariki commonly referred to as the second wife, and the third wife Tangiia Manavaroa from whom the Applicant descends.

Mr George argues that the descendants of all three wives are entitled to vote on any appointment to the title and they form the Kopu Ariki.

In support of this, Mr George referred to a decision of Greig CJ of 2 July 2004 relating to the Pa Ariki Title.

In particular Mr George referred to page 7 of the decision where the learned Chief Justice namely: "... the kopu ariki includes the Rangaitras of Pa and the direct descendants of the three issues of Pa Taputapuatea."



This was submitted by counsel as justification for the claim that in his current Kainuku Ariki claim, the kopu ariki comprises the descendants of the three wives of Kainuku Tamoko.

Because only the descendants of the third wife Tangiia Manavaroa were invited to the meeting on the 26<sup>th</sup> September 2005 when the family majority supported the nomination of Kapiri, the applicant, there was no valid election by the true kopu ariki and the matter should be referred back for a fresh election.

Mrs Browne for the applicant has distinguished the decision of Greig CJ referred to above in so far as the Pa Ariki title over the years was moved amongst the issue of the three wives, that is not the case here.

Counsel has also referred the Court to a document executed by the Rangatira of Kainuku on the 19<sup>th</sup> November 1980 and headed: "Ancient Custom for the Election of Kainuku Ariki."

This document begins with a declaration:-

"We hereby declare in the meeting of the Ariki family of Kainuku held on this day, 19<sup>th</sup> November 1980, what is written below, is the true ancient custom that we know of, that we accept and that we now confirm, that we and our descendants would follow in the future, when electing a person to hold the Ariki title of Kainuku."

Clearly, this declaration is a statement of the ancient customs relating to the Kainuku Ariki title and is intended to bind all subsequent elections. It is a very compelling document.



The procedures recorded show that every member of the Ariki family has a right to nominate and recommend to the Ui Rangatira "whom he wants to be the Ariki..."

Thus there is no suggestion that acquisition of the title is limited to the descendants of any one of the three wives. Nomination can come from any branch.

The crux of the matter is however that, "the confirmation of who is to be the one to be installed as Ariki is the responsibility of the Ui Rangatira of Kainuku, for they are the representatives of the Rangatira families within the Ariki family and they are the ones who install the Ariki."

In all, there are 9 Rangatiras of Kainuku representing the various branches of the family and 8 of these attended a meeting on the 2<sup>nd</sup> February 2006 of which the majority confirmed the applicant herself, Kapiri, to hold the Kainuku title.

Two of the Rangatiras attending the meeting represented the family of the objector.

With respect to the counsel for the objector, this Court accepts that the appointment of Kapiri as Ariki was made in accordance with custom.

She was nominated by the family, confirmed by the Ui Rangatira representing all the descendants of Kainuku Tamoko, and who comprise the Kopu Ariki, and she was properly invested with the title.

In so far as the claim that it is time for the title to move away from the successors to the third wife, the document referred to above




and the customs for electing Kainuku Ariki make it clear that any family can submit a nomination to the Ui Rangatira for appointment to the title.

The procedure followed by the applicant Kapiri Te Rangi Tere was in accordance with the recorded custom and accords the custom as understood by the Court.

She was nominated by the family, appointed by the Kopu Ariki, the Ui Rangatira, representative of all descendants from the three wives and the investiture was properly carried out.

The Court determines in terms of Section 409f/15 that Kapiri Te Rangi Tere is a rightful person to hold the title Kainuku Ariki.

Costs are served.



**JUDGE**