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

Application No. 14/2012

IN THE MATTER	of Section 390A of the Cook Islands Act 1915
AND	
IN THE MATTER	of an Application for Rehearing
AND	
IN THE MATTER	of the lands known as **ARERENGA SECTION 6, ARORANGI, ARAPAURANUI SECTION 87C, ARORANGI** and **VAITU AND PUATIKI SECTION 84A1B, ARORANGI** ("the Lands")
AND	
IN THE MATTER	of an application for amendment of Succession Orders
BY	**PATERSON PAITI JUNIOR** for and on behalf of the issue of **VAINETUTAI TE ARIKI PAITI (A.K.A PATERSON PAITI) (DECEASED)**
	Applicant

JUDGMENT OF THE CHIEF JUSTICE

[1] By way of Minute (No. 2) of the Chief Justice dated 25 January 2013 I referred this matter to the Land Division of the Court for a Report.

[2] In my Minute I indicated some reservation as to whether I had jurisdiction in the circumstances and specifically asked the Reporting Judge to address those concerns in any Report.

[3] I have now received a Report from Isaac J following a hearing conducted on 15 and then 19 April 2013. I am very grateful to the Judge whose expertise in this area is undoubted. While, of course, the question of jurisdiction is a matter for me to assess, the opinion of Isaac J who, in New Zealand, sits as the Chief Judge of the Maori Land Court, is entitled to great respect.

[4] Isaac J is of the opinion that the application is within jurisdiction and that orders should be made in terms of [28] of his Report.

[5] I have carefully considered his Report and I agree with its conclusions. Accordingly, I make orders sought in terms of paragraph [28] which I now set out:

> *"That there be a succession order vesting the interest of VAINETUTAI TE ARIKI PAITI aka PATERSON PAITI (md) as from the 18 October 2008 in the following persons:*
>
> | | | | |
> |---|---|---|---|
> | *1* | *David Paterson Paiti* | *m.a* | |
> | *2* | *Maria Louise Shakespeare Paiti* | *f.a* | |
> | *3* | *Lucy Anne Paiti* | *f.a* | |
> | *4* | *Paterson Paiti* | *m.a* | |
> | *5* | *Mary Paiti* | *f.a* | |
> | *6* | *Louise Pricilla Paiti* | *f.a* | |
> | *7* | *Andrew Ka Paiti* | *m.a* | |
> | *8* | *Angela Paiti* | *f.a* | |
> | *9* | *William Joshua Paiti* | *m.a* | |
> | *10* | *Phillip Charles Paiti* | *m.a* | |
> | *11* | *Belinda Paiti* | *f.a* | |
> | *12* | *Amy Jacinta Paiti* | *f.a* | |
> | *13* | *Benjamin Emmanuel Paiti* | *m.a* | *in equal shares"* |

[6] The Report is attached as an Appendix to, and forms part of, this Judgment.

Dated 30 April 2013 (NZT)

Weston CJ

APPENDIX

REPORT BY JUSTICE WILSON ISAAC

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

APPLICATION NO. 14/2012

IN THE MATTER	of Section 390A of the Cook Islands Act 1915
AND	
IN THE MATTER	of an application for Rehearing
AND	
IN THE MATTER	of the lands known as **ARERENGA 6, ARAPAURANUI 87C, VAITU and PUATIKI 84A1B, ARORANGI**
AND	
IN THE MATTER	of an application for amendment of Succession Orders by **PATERSON PAITI JUNIOR** for and on behalf of the issue of **VAINETUTAI TE ARIKI PAITI (AKA PATERSON PAITI (deceased)** **Applicant**

Hearing date/s: 15 & 19 April 2013

Counsel: Mr M Scowcroft for the applicant

Date: 26 April 2013

REPORT AND RECOMMENDATION TO THE CHIEF JUSTICE BY JUSTICE WILSON ISAAC

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[1] This application by Paterson Paiti Junior on behalf of the issue of Vainetutai Te Ariki Paiti aka Paterson Paiti (the deceased) for a rehearing in terms of s 390A of the Cook Islands Act 1915.

[2] The applicant maintains that the Succession Order made by the Court of 17 November 2008 in respect to Vainetutai Te Ariki Paiti aka Paterson Paiti (the deceased) was incorrect upon the following grounds:

(i) At the time of the hearing on 17 November 2008 it was rumoured that the deceased may have had further children than the 13 known children.

(ii) After exhaustive enquiries it was discovered there were no other children to the deceased and therefore the 13 children were entitled to succeed equally and limited as to their interests.

[3] By memorandum of counsel dated 26 November 2012, counsel advised the Chief Justice that there was no opposition to the application and sought orders in terms of the application and the affidavits in support of the applicant and Louise Pricilla Harrison.

[4] By Minute (No.1) of the Chief Justice dated 17 December 2012, the Chief Justice stated that the s 390A jurisdiction is exercisable where there is "any mistake error or omission" or where the Court has done something undone which it did not actually intend to do. The Chief Justice stated that the Orders were not made by mistake but were deliberately made on the basis that they were limited as to interests. He therefore concluded that he did not believe s 390A is available to the applicant but invited counsel further file submissions in response.

[5] On 23 January 2013 Mr Little filed a memorandum to the Chief Justice detailing his submissions in support of the application.

[6] By Minute (No.2) dated 25 January 2013 the Chief Justice confirmed his original reservations as to jurisdiction as set out in his Minute of 17 December 2012, however invited a report from the Land Division to address these concerns.

[7] On 15 and 19 April 2013 I heard the submissions of counsel for the applicant and a landowner, Mrs Ngapare Cecil Samatua who opposed the application.

Case for the Applicant

[8] Mr Scowcroft as counsel for the applicant relied on the earlier written submissions of Mr Little dated 23 January 2013 as presented to the Chief Justice.

[9] Counsel also submitted that the issue for determination was the specific interpretation of s 390A(1) whether the facts of this case have the necessary quality of mistake as required by s 390A(1).

[10] The parts of the section 390A(1) relied on by counsel were as follows:

> "Where through any mistake ... of fact ... however arising and whether of the party applying to amend or not, the Land Court ... by its order has in effect done ... something which it would not but for the mistake ... have done ... the Chief Justice may, upon the application in writing of any person alleging that he is affected by the mistake ... make such order in the matter for the purpose of remedying the same or the effect of the same ... and for any such purpose may, if he deems it necessary or expedient, amend ... any order made by the Land Court."

[11] It was submitted that the intention of the witness or the Court is not relevant as the Court always intends to make the orders it makes. The relevant point is that it was assumed Vainetutai Te Ariki Paiti had more than 13 children but their identity was not known when the Court made the order. As a consequence the Court made the order limited as to their shares so that if other children did surface they could be included in the succession.

[12] After extensive research it has been found that the deceased only had 13 children and to correct the mistake the Court is asked to amend the succession order to reflect the actual factual position. To do so would deny the children of the deceased the true entitlement to the land and any proceeds of alienation from that land.

Case for the Objector

[13] When the application was called on 15 April 2013, Mrs Ngapare Samatua stated she objected. I asked her to set out her objections in writing and invited her to present these to the Court on 19 April 2013.

[14] Mrs Samatua's position is that on the Order of Investigation of Title there were 2 owners, Tautu and Paiti. She is connected to Tautu and has no knowledge of Paiti and understands Paiti has no blood right to her or to Tautu.

[15] Mrs Samatua stated that if the applicant can prove a connection then she has no further objections.

Discussion

[16] The jurisdiction of the Chief Justice to amend vary or cancel an order of the Court is set out in s 390A(i) of the Cook Islands Act 1915. This section provides as follows:

390A Amendment of orders after title ascertained

(1) Where through any mistake, error, or omission whether of fact or of law however arising, and whether of the party applying to amend or not, the Land Court or the Land Appellate Court by its order has in effect done or left undone something which it did not actually intend to do or leave undone, or something which it would not but for that mistake, error, or omission have done or left undone, or where the Land Court or the Land Appellate Court has decided any point of law erroneously, the Chief Justice may, upon the application in writing of any person alleging that he is affected by the mistake, error, omission, or erroneous decision in point of law, make such order in the matter for the purpose of remedying the same or the effect of the same respectively as the nature of the case may require; and for any such purpose may, if he deems it necessary or expedient, amend, vary, or cancel any order made by the Land Court or the Land Appellate Court, or revoke any decision or intended decision of either of those Courts.

[17] At paragraph 10 above counsel for the applicant focussed on those portions of the section dealing with a mistake by the applicant or the Court. However s 390A is not simply limited to mistake. The Chief Justice can amend or cancel an order if there has been a mistake, error or omission and the burden of proof is upon the applicant to prove that such a mistake, error or omission occurred.

[18] In the Minute of the Chief Justice dated 17 December 2012 he stated that he did not see anything in the Court order having the necessary quality of mistake. Orders were made deliberately as intended by the applicant and the judge.

[19] Counsel for the applicant contends that intention was irrelevant as further research has shown a mistake still occurred.

[20] While I understand the reservations of the Chief Justice, in my view the evidence presented to the Court in 2008 was in error. It was wrong and the intention of the applicant or the Court does not make it right.

[21] Accordingly I am satisfied that the applicant has shown that an error was made in the original order which should be corrected and recommend accordingly.

[22] In making the finding and recommendation I appreciate I have not dealt with the objection of Mrs Samatua. I am dealing with it at this stage because it does not alter my recommendation. Mrs Samatua is questioning the original order of investigation of title made on 10 November 1906 and not the order being complained. Should Mrs Samatua wish

to continue with this objection to the order of 10 November 1906 should would need to file a fresh application as it relates to that order.

[23] Notwithstanding, I note, Mrs Samatua's comment that if the applicant can prove his case then she does not object. As stated above I consider the applicant has been able to prove his case to my satisfaction.

[24] Before I conclude my report I consider it important to note that the jurisdiction provided to the Chief Justice in the Cook Islands by s 390A Cook Islands Act 1915 and that provided to the Chief Judge of the Maori Land Court in New Zealand by s 45 Te Ture Whenua Maori Act 1993 are not provided to the general Courts. In fact they are unique to these two jurisdictions.

[25] Unlike the general courts there is no time limit to question an order of the Court and at times the Chief Justice is required to cancel vary or amend an order of many years standing.

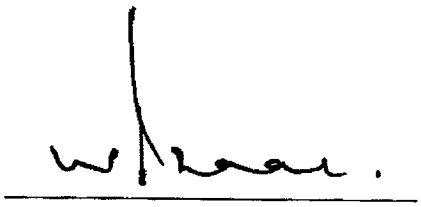
[26] The reasoning behind these provisions is simply that both the Land Division of the Cook Islands Court and the Maori Land Court New Zealand are titles courts. They are Courts that establish who are the rightful title owners and the interests of those persons in the land. The s 390A jurisdiction enables the Chief Justice to ensure the integrity of title to land in the Cook Islands exists and can be relied on by the present owners and their successors.

[27] Having made these comments I now conclude by finding that the applicant demonstrated that there was an error in the succession order of the Court of 17 November 2008 which should now be corrected.

[28] I therefore recommend that the order be amended to read:

> "That there be a succession order vesting the interest of VAINETUTAI TE ARIKI PAITI aka PATERSON PAITI (md) as from the 18 October 2008 in the following persons:
>
> | | | |
> |---|---|---|
> | 1 | David Paterson Paiti | m.a |
> | 2 | Maria Louise Shakespeare Paiti | f.a |
> | 3 | Lucy Anne Paiti | f.a |
> | 4 | Paterson Paiti | m.a |
> | 5 | Mary Paiti | f.a |
> | 6 | Louise Pricilla Paiti | f.a |
> | 7 | Andrew Ka Paiti | m.a |

8	Angela Paiti	f.a	
9	William Joshua Paiti	m.a	
10	Phillip Charles Paiti	m.a	
11	Belinda Paiti	f.a	
12	Amy Jacinta Paiti	f.a	
13	Benjamin Emmanuel Paiti	m.a	in equal shares"



Wilson Isaac, J