

Ct.

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

APPLICATION NO. 259/90 and 333/90

This is the document referred to in the affidavit

IN THE MATTER of Section 490(f) of the Cook Islands Act 1915

this before

A N D

A Solicitor

IN THE MATTER of the PA ARIKI TITLE

A N D

This is the document referred to in the affidavit of 3 Tapaeru Teariki Upokotini dated 20th May 1990

IN THE MATTER of an application by MORE-URI-ATUA-RUA to hear and determine his right to hold the office of PA ARIKI

A Solicitor for the Cook Islands
Registrar

A N D

IN THE MATTER of an application by PA TEPAERU TEARIKI UPOKOTINI to hear and determine her right to hold the office of PA ARIKI

Mr Campbell : Counsel for More-Uri-Atua-Rua

Mrs Browne : Counsel for Pa Tapaeru Teariki Upokotini

Date of Hearing : 28 November 1990

Date of Judgement : 21st December 1990

JUDGMENT OF DILLON J.

Following the death of Pa Tapaeru Ariki on the 3rd day of February 1990, two applications have been lodged with this Court to hear and determine who should be the rightful person to hold the office of Pa Ariki. The

application by More-Uri-Atua-Rua was the first to be filed and Counsel agreed that consideration of these applications should be dealt with in that order.

APPLICATION BY MORE-URI-ATUA-RUA

More-uri-Atua-Rua (hereinafter referred to as "More Rua") supported his application by detailed evidence of his geneology which he claimed entitled him to succeed to the Pa Ariki Title. Attached to his application were details of his Investiture with the title described as More Pa Teariki Upokotini the IV and which was held on 5 June 1990 at the Raemaru I Te Itinga O Te Ra Marae.

More Rua's application, as I understand it, is founded on geneology; election; and investiture. These are the normal requirements to establish a claim pursuant to Section 409(f) of the Cook Islands Act 1915.

GENEOLGY

The whole emphasis of this application was based on the geneology dating back to Mere Pa and because of its importance is set out as described in the application, viz.

Pati-a-More (f) (Mere-Pa) - Title Holder

|
Rongo Mauri (m)

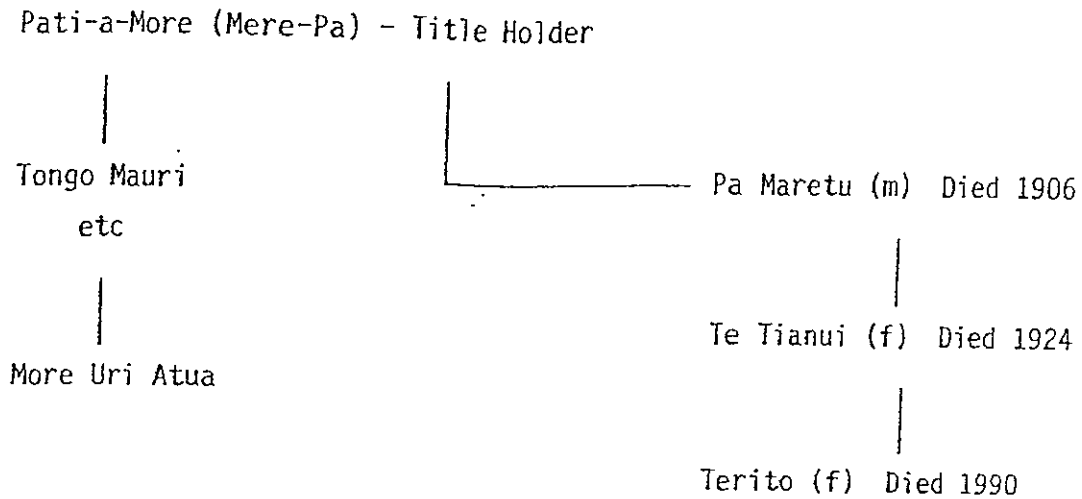
|
More-Uri-Atua (m)

|
Poro-a-More (f)

|
Mare Ariki

|
More Uri Atua (m) - The Applicant

On the same geneology while Mere-Pa is shown as a title holder, the Successors to that title do not flow through the family until the present applicant. This geneology is further described by the applicant as follows :



It is critical to the applicant's case therefore that the Mere-Pa referred to is one and the same person as Pati-a-More from whom he succeeds. His geneology is not challenged as coming through Pati-a-More. What is challenged is that Pati-a-More is the same person as Mere-Pa as he claims.

Mrs Browne questioned the applicant very closely on this aspect of his claim to the Title and I am satisfied that as a result of his explanations; his failure to give satisfactory explanation; and the evidential information with which he was confronted does not establish that Pati-a-More and Mere Pa are one and the same person. To refer to just some of the matters which Mrs Browne put to the applicant :

1. The Court records confirm that there is a Mere Pa (MB 10/194) who married Opura (More Rua's Mere Pa married Mahuta Ariki). There is further support for this in MB 10/197; 10/200 and also MB 17/280 onwards.
2. That Mere Pa married Opura and is not the same person as Pate-a-More is confirmed by :
 - (a) Pastor Maretu Tuaivi a LMS missionary living in the time of Mere Pa ("Cannibals and Converts 1983" Page 98).

(b) The original manuscript in Rarotongan Maori in the Turnbull Library, Wellington.

3. That Mere Pa was also known as Pa Upoko or Upokotakau daughter of Pa Tepou.
4. That the Pa Title went from Mere Pa to her adopted son Maretu II.
5. That if Patia-More held the Pa title why did her father More-Kite-Akataura and her grandfather before him, namely More-Uri-Kaitangata, never hold this title? In this context reference was made to :
 - (a) the manuscript by Ngatamariki (archives - Takuwaine p. 84);
 - (b) Journal of the Polynesian Society Vol. 1, Page 27;
 - (c) "E Tuatua Taito" by Steven Savage (1908) Page 18

which tends to confirm that More was a Taunga Title held by Pati-a-More's father and grandfather.

6. That the overwhelming evidence against acceptance of the alleged 1910 and 1911 documents relied upon by the applicant.

While the applicant produced two substantial volumes of records certified by a Notary Public, this did not diminish in any way from the validity and effectiveness of the information referred to above. From all this evidence I am satisfied that Mere Pa is not the same person as Pati-a-More, although I accept that More Rua is a direct descendant of Pati-a-More. However, he is not a descendant of Mere Pa.

ELECTION

The applicant explained in great detail his approach to claiming this title; and the steps he took to ensure his claim was accepted by the people of Rarotonga. For this reason he conducted a number of meetings around the Island. His approach was to obtain what he believed was a more public democratic approval and public recognition of his intention to apply for the Pa title.

While this course of action may be categorised as democratic it certainly was not in accord with what this court has been informed for many years now as the custom relating to titles. There was no evidence that the applicant was a member of or had been elected by the Kopu Ariki; there was no evidence as to who he considered was the Kopu Ariki. In fact there is no substantive evidence presented to the Court indicating how the applicant became the selected person to take over this title - he provided no information by evidence at the Court hearing; and there is no documentation evidence attached to his application. This is most unusual in an application of this nature.

INVESTITURE

Attached to the application are details of the investiture that took place on 5 June 1990. This of course is an essential ceremony that is associated with all titles and I do not believe it necessary for the purposes of this enquiry to consider the procedure adopted and the people involved. I accept that an investiture was held; but Maori custom does not accept that this of itself confers a Title.

APPLICATION BY PA TAPAERU TEARIKI UPOKOTINI

This application states that it is based on the grounds that :

1. It is the wish of the issues of the late Pa Tapaeru Ariki;
2. It is the wish of the majority of the ui Rangatira of Pa Ariki; and
3. It is the wish of the Pa Ara of Tekitumu.

Supporting the application are :

1. Minutes of a meeting of the issues of Pa Tapaeru Ariki held on 14 February 1990.
2. Minutes of a meeting of the Ui Rangatira held on 23 February 1990.
3. Letter dated 12 July 1990 to the Minister of the House of Ariki from the Chairman of the Puara of Pa and Kainuku.

4. Copies of MB's 5/238; 6/103-109; 17/231-233.
5. Geneologies and notes from Rarotonga (Journal of the Polynesian Society P.27).
6. Geneology of Pa Ariki dictated by Taarua Rangatira and Tupe Short.
7. Geneology prepared by J. MacCauley.

GENEOLGY

The geneology relied upon is set out in detail in Counsel's submissions filed in support of the application, and are as follows :

"Geneology

According to the Court Records the person holding the Pa Ariki title at the time the Gospel was introduced into Rarotonga was Pa-Te-Pou. He died in 1855. The previous holder of the title was Pa Taputapuatea and before him Pa Teruaroa. There are several geneologies recorded in the Court records and elsewhere. The Court is referred to the Exhibit which includes the following :

1. Minute Book 5/238.
2. Minute Book 6/103 and 109.
3. Minute Book 17/231, 232 and 233.
4. Geneologies and notes from Rarotonga (Journal of the Polynesian Society) Page 27.
5. Geneology of Pa Ariki dictated by Taarua Rangatira and Tupe Short.
6. Geneology prepared by Jock MacCauley.

The Geneologies confirm the following :

1. The title has been held by the following persons :
 - Pa Teruaroa
 - Pa Taputapuatea (alias Pa Puretu)
 - Pa Te Pou (time of the Gospel - died 1855)

- Upokotakau alias Mere Pa (Gudgeon says alive in 1885)
- Pa Maretu alias Teariki Upokotini (died 1906)
- Pa Tetianui (died 1924)
- Pa Tapaeru (died 1990)

2. Pa Taputapuatea had three wives :

- (a) Teuira-Ma-Te-Aa
- (b) Mata-Tui-Atua
- (c) Tauariki

3. Pa-Te-Pou was Pa Taputapuatea's son from the second wife.

4. Mere Pa was the natural daughter of Pa-Te-Pou. She married Opura (son of Maretu (Senior) and Tanuke - see Converts and Cannibals M. Crocombe). They had no issue but adopted Pa Maretu (the son of an Aitutakian woman and a Frenchman). Pa Maretu therefore had no blood connection to the title.

5. Pa Tetianui was also adopted by Mere Pa (in the customary way). She was however a descendant from Pa Taputapuatea's first wife, i.e. from the senior line. She died in 1924 without issue but adopted Pa Tapaeru.

6. Pa Tapaeru was also from the senior line. She was Pa Tetianui's grand niece.

7. The Applicant is the daughter of Pa Tapaeru."

This geneology shows the continuous succession in title from Pa Teruaroa down to the last holder of the title, the late Pa Tapaeru. IT also refers in particular to Mere Pa who was the natural daughter of Pa-Te-Pou and who married Opura and not as claimed by More Rua - Makuta Ariki. The evidence supporting this geneology is overwhelming and is accepted by the Court.

ELECTION

Evidence was produced at the hearing that the applicant's election was supported by :

- (a) her-immediate family;
- (b) the Ui Rangatira of Pa;
- (c) Te Puara o Takitumu; and
- (d) that there were no objections from the Kopu Ariki of Ngati Pa.

Significantly in the Court's view, there was no objection to this evidence from the other applicant - More Rua.

INVESTITURE

The applicant was invested with the title on the Marae at Pokata on 27 June 1990. Present were six Mataiapo's; nine Rangatira's; and there were no objections or objectors at the investiture.

Of even more significance, in view of the importance of an investiture relative to the conferring of a title in accordance with Maori custom, was the complete absence of any criticism, questioning, or enquiry by More Rua of the Investiture, i.e. the procedure adopted; the proceedings followed; the custom applied; the parties participating; and similar aspects so important to any Investiture.

The Court must therefore assume acceptance by More Rua of the election and the Investiture both of which are so important when conferring a Title; and both of which are so important when a Court is required to consider the applications now before it.

CONCLUSION

More Rua, when asked in cross-examination "what confirmation have you got that Pati-a-More is also Mere Pa?" replied "I just say so". Again when asked "Were there any minutes of any meetings?", he replied "no".

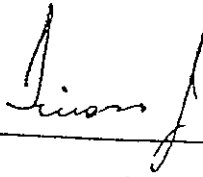
On the other hand, Pa Tapaeru Teariki Upokotini produced minutes relating to each stage of her election; and called her sister Bambi Meti; Mr Turepu, the Moate Matipo; and Mr Apenera Short to the witness stand to support the evidence which she herself had given on her own behalf. The totality of this evidence was unchallenged.

Finally I am satisfied that the basis on which the claim to this title is presented by More Rua, viz. that Pati-a-More is one and the same person as Mere Pa, has no foundation; has no supporting evidence; and cannot be accepted by this Court. On the other hand the evidence available and presented at this hearing overwhelmingly supports the geneology showing Mere Pa as having married Opura. I accept that geneology.

Section 409(f) of the Cook Islands Act 1915 under which these applications have been brought provides jurisdiction to this Court :

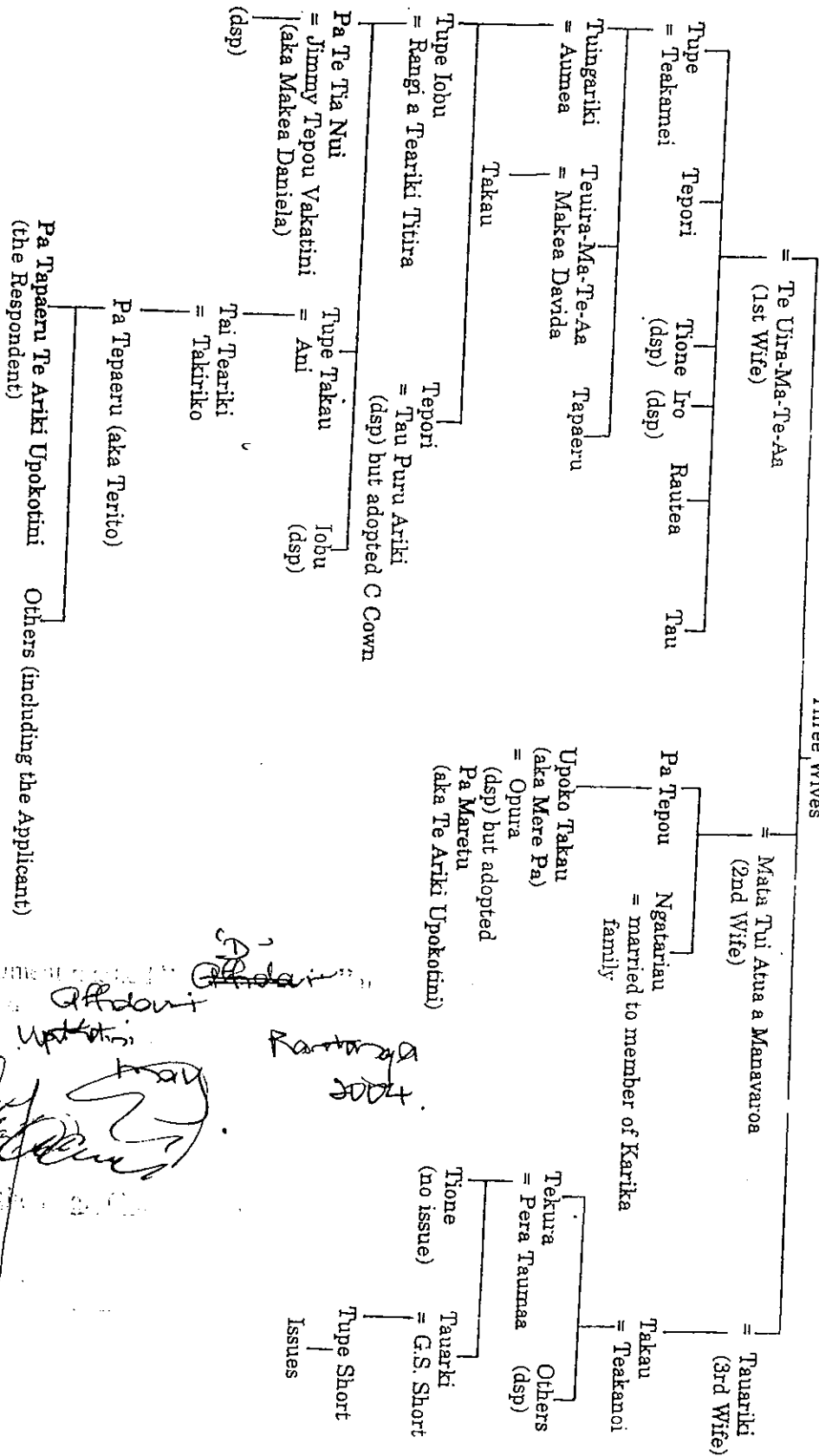
"To hear and determine any question as to the right of any person to hold office as an Ariki or other native chief of any Island."

I therefore determine that Pa Tapaeru Teariki Upokotini has the right to hold the Ariki Title of Pa.



Judge

PA TAPUTAPUATEA (Pa Puretu)
Three Wives



This is the document
to in the name of *Pa Tapaeru Te Ariki Upokotini*
this *06*
before me

Pa Tapaeru Te Ariki Upokotini
06
before me

A Solicitor
Registrar

Pa Tapaeru Te Ariki Upokotini
06
before me

PA TAPUATEA alias PA PUMU

PA TAPUATEA (m) - Teaira-ma te ea (wife)

- 1. Tupe (m)
- 2. Tepori (f) married out of family - to Tinomana Ariki - according to Ancient Maori custom, this line have no further claim on Ariki title of Pa Ariki or lands.
- 3. Tione (m) - No issue
- 4. Iro (m) - No issue
- 5. Rautea (m) - Present Tepoi family - Rangatira of Makea Karika.
- 6. Tau (m) - Present Rangatira family of Tione Iro

No 1 above - Tupe (m) - Teakamai - daughter of Vaikai.

1. Tuinga Ariki (m) - Aunau-a-Tamarua 2. Teaira-ma-te-aa (f) - Makea Davida (h) 3. Teacru Noia (f)

[Faint illegible text]

Takau - alias - Makea Takau Ariki of Avarua.
 Note:-; Takau was not the daughter of Makea Davida, but was an illegitimate daughter of Vakadini, but is kept a secret by the Makea family - ask Tupe short - he knows.

Tupe Iodu (m) - Rangia-a-Teariki Titira (1st w) Tepori (f) - Tau Puruariki (h) No Issue, but adopted C. Cowan.

Te riu Nui (f) - Jimmy Tepou Vakadini (m) alias - Turaupoko (no issue) Tupe Takau (m) Ani (wife) Iodu (m) no issue

also known as Makea Daniela

Tai Teariki (m) - Takirioio a - Manarangi Potiki-taua (w).

Teacru (f) Present Pa Ariki. Terito.

(family from first wife).

This is the document to in the name of *Alhadani*

Pa Teacru Te Ariki Upokutu this of before

Ranganga 2004

[Handwritten signature]
 Registrar

TAPUTAPUATEA- alias Pa Paretu (m) - 2nd wife- Mata Tui Atua-a- Manavaroa Tapou o te Rangi.

I. Tapou (m)-

2. Ngataraciau (f)- Married out of family to Makea Kurika, according to Maori custom, she cannot claim Ariki title of Pa or land.

Upoko Takau (f)
Makau (f)- Opura -alias-Morea Rangatira (M)

(No issue)- adopted Haretu (m)- an illegitimate boy by a Aitutaki mother and Rarotonga father).

by 3rd wife- TAUARIKI-A-MOATE ATUA

Takau (m) - T'cakanoi (wife)

Tekura (f) - Pera Taunaa (M)

*other girls upoko Pare Ana
see, Iriteopu (all in
issue)*

T'ione (m)
(No issue)

T'auriki (f) - G. Short
Tape Short (M)

Title Holders

1. Pa Taputapuatea (heathen time)
2. Tapou (son by 2nd wife- or 7th child-Junior line) *Gospel in his time*
3. UPOKO TAKAU-alias-Mere Pa- Junior line-
4. Pa Haretu - adopted son only- no Pa Ariki blood.
5. Pa Te Tia Nui- of the senior line
6. Pa Tapacru-alias-Terito- senior line- present line Pa Ariki.

Story :-; When Pa Taputapuatea died in heathen times, his son and 7th child by a second wife (Tapou) held title- the family of Manavaroa Mataiapo elected him, they were a powerful family, then title went to Upoko Takau, then to Haretu the adopted son, all above from the junior line. In 1906 Te Tia Nui was elected to hold the title the first of the senior line to hold the title since the heathen time from Pa Taputapuatea. by right of Ariki family and Mataiapos of Takitumu, the real true Ancient Maori Custom.

Dictated by Taarua Rangatira and Tape Short (trustee for Pa Ariki).

Copy Mrs. P. TAUUA