

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

**App No. 32/2013
112/2013**

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

AND
IN THE MATTER of an application for determination of the
traditional Maori title of MAOATE
MATAIAPO

BETWEEN TAMAIVA TUAVERA

Applicants

AND KIRIAU TUREPU

Respondent

Hearing: 24 April 2013

Appearances: Mrs Francis appearing on behalf of the applicant
Mrs Browne counsel for the respondent

Judgment: 09 October 2013

DECISION OF JUSTICE ISAAC

Introduction

[1] The applications before the Court are in respect to the tribal title of Maoate Mataiapo.

[2] Application 32/13 by Tamaiva Tuavera (“Tamaiva”) in terms of s 409(f) of the Cook Islands Act 1915 (“the Act”) asks the Court to confirm that Tamaiva has the right to hold the office of Maoate Mataiapo.

[3] Application 112/13 by Kiriau Turepu (“Kiriau”) is for succession to the land Kaingavai Section 49C2B which was held by the previous Maoate Mataiapo, Terepai Maoate by virtue of his title. Terepai died on 8 February 2012 and if this application is successful

then Kaingavai Section 49C2B would be vested in Kiriau and by the virtue of the vesting he would succeed to the title of Maoate Mataiapo.

[4] The hearing of these applications took place on 24 April 2013 and at the commencement of the hearing it was agreed by both parties that the applications could be dealt with together as the outcome sought by each party was to hold the office of Maoate Mataiapo.

The case for Tamaiva Tuavera

[5] The case for Tamaiva was presented by Lynnsay Francis with evidence from the applicant.

[6] The main thrust of Tamaiva's case was that he was elected by Ngati Maoate after following the correct procedure which was in accordance with Maori custom. As a result the Court should confirm Tamaiva's appointment in terms of s 409(f) of the Act.

[7] It was submitted by Mrs Francis for Tamaiva that the Maoate Mataiapo title belongs to Ngati Maoate and that the majority of Ngati Maoate elect the Maoate Mataiapo. The title may have originated from Pa Ariki during the time of Keu Maovete the first holder of the title but this has changed. Ngati Maoate is a "living cultural" and custom and traditional practices change overtime with each new generation so that now the title belongs to Ngati Maoate and not Pa Ariki.

[8] Mrs Francis also referred to various historical documents and Court minutes that relate to the previous elections of Maoate Mataiapo as evidence of how the custom relating to the election of Maoate Mataiapo has changed overtime. The documents filed in support can be summarised as follows:

- (a) On 20 May 1916 Ngati Maoate wrote a letter to the Resident Commissioner to inform the Commissioner that the family had all agreed to elect Paiau Maoate (Fred Rennie) to succeed Vaikai Maoate.
- (b) On 16 January 1956 the Court heard an application by Clara Gladney to determine her right to hold the title. Evidence at the hearing was given that all

Ngati Maoate had met and elected Clara as the new Maoate Mataiapo. Subsequently, the Court made an order declaring Clara had been properly elected as the Maoate Mataiapo.

- (c) On 7 May 1989 representatives of Ngati Maoate told Clara's speaker they would remove the title from her if she did not stop alienating pieces of land from Kaingavai. Ngati Maoate asked Pa Te Rito Ariki to intervene and Pa responded by taking the title into her custody.
- (d) On 20 December 1989 the Court heard an application by the Kiriau for determination of title. In evidence Pa Ariki confirmed she took the title from Clara at the request of Ngati Maoate and that the title was given back to them so they could elect the next Mataiapo Mataiapo. Ngati Maoate changed custom by removing the title from a holder namely Clara.
- (e) On 10 May 1996 at a meeting between Pa Ariki's and representatives from 6 kopu of Ngati Maoate, Pa advised she had sought legal advice concerning the election of the Mataiapo. Pa's counsel had advised that the family should elect their Mataiapo. Pa stated it was not wrong for her to elect the new Mataiapo but it the family had erred in giving her the right to elect the new Mataiapo.
- (f) On 16 May 1996 Terepai Maoate was elected by the majority to hold the title. On 21 September 1998 the Court confirmed his election.
- (g) Historically the title was passed down the senior Tauariki line of Ngati Maoate. Ngati Maoate has changed custom by agreeing to rotate the title between the 7 kopu to enable all families an opportunity to hold the title. When Ngati Maoate met on 2 December 2012 to consider who should succeed Terepai Maoate as Maoate Mataiapo the majority of Ngati Maoate agreed that they would continue to rotate the title.

[9] Mrs Francis therefore submits that the above evidence from the previous elections makes it clear that the title belongs to Ngati Maoate and the custom is that the majority of Ngati Maoate elects the Maoate Mataiapo.

Role of the Maoate Mataiapo

[10] Tamaiva gave evidence which set out his understanding of the role of the Maoate Mataiapo. He stated that the role of the Maoate Mataiapo is to be the head of Ngati Maoate and carry out any obligations that the family might have. Tamaiva quoted Pa as saying that “without your people you’re nothing”. An Ariki without their people is nothing and likewise a Maoate Mataiapo is nothing without his people. A Maoate Mataiapo cannot carry out the obligations of the family alone but needs the support of the family.

[11] Tamaiva disagreed with position of Pa Ariki that the role of Maoate Mataiapo is as her speaker and as the Chair of the Pura. Tamavia was elected by the majority of Ngati Maoate to be Maoate Mataiapo not to hold the office of Pura as Pa Ariki said. Pa Ariki does not play a role in the affairs of Maoate Mataiapo.

[12] While Maoate Mataiapo may have been under Pa Ariki when it was created Maoate Mataiapo was subsequently made a Tutara. A Tutara is an overlord of the district in their own right. This elevation made Maoate Mataiapo an equal to Pa Ariki.

Suitability of the Applicant

[13] Tamaiva in evidence said why he considered himself to be suitable for the role of Maoate Mataiapo. Tamaiva has been running his own business for 21 years and considers himself to be of high standing in the community. For three years Tamaiva has been the President of the Ngatangia Matavera Rugby League Sea Eagles Club and has also held other positions of significances in the community.

[14] Tamaiva accepted that he is a “hot head” but considered that this would be mitigated by having Tinirau Tamarua as his advisor to ensure he acted with a clear head.

Election of the applicant

[15] On 2 and 10 December 2012 respectively Ngati Maoate held two meetings to discuss suitable candidates and elect a new Maoate Mataiapo to succeed Terepai Maoate. These meetings were chaired by Kiriau. Representatives from the seven kopu were present at both meetings and so was Pa Ariki. At the meeting on 2 December 2012 it was agreed by the

majority to follow the practice of the previous elections of Maoate Mataiapo, and they would continue to rotate the title to enable all families an opportunity to hold the title.

[16] On 10 December 2012 six of the seven kopu present voted on who should become Maoate Mataiapo. Tamaiva was elected to hold the title by the majority of Ngati Maoate. Four families, namely the Taioti (George) family, the Tau family, the Miro family and the Tauariki family voted in support of Tamaiva for Maoate Mataiapo.

[17] On 20 December 2012 Ngati Maoate held a meeting with the representatives of the seven kopu for the purpose of affirming the election of Tamaiva and advising the kopu that the investiture would take place on 10 January 2013. At the meeting the Tairo family gave their support to Tamavia as Maoate Mataiapo increasing the majority support of Tamavia to five families. Pa Ariki's objection to Tamaiva's election was noted but the representatives said Ngati Maoate would support Maoate Mataiapo as leader of the family.

Investiture

[18] On 10 January 2013 Tamaiva was invested with the title of Maoate Mataiapo. The investiture was held on Pukuruvanui Marae in Ngatangia. This was completed in accordance with custom. Representatives of five kopu participated in the ceremony and there were an estimated 250 people present at the ceremony.

Election of the respondent

[19] Ms Francis for Tamaiva submits that it does not make sense to declare Kiriau holds the title as he gave the title back to Ngati Maoate in 1995.

The case for Kiriau Turepu

[20] Kiriau's case was presented by Tina Browne with supporting evidence from Itinga Vaai Maoate (of the Te Ariki (Pekamu) line), Iriti Maoate (of the Tairi line), Mere Roti Teuroa (of the Miro line), Bill Kamana (of the Tauariki line), Tukaka Ama (of the Tairo line) and Pa Ariki.

[21] It was submitted that the Court's jurisdiction with regard to s 409(f) of the Act applications is well established. In the 1948 Native Appellate Court case *Re: Tinomana*¹ the Court stated that the most the Court can do is declare whether the applicant had been appointed in accordance with what the Court considers to be the custom governing an appointment. The Court has no jurisdiction to make an appointment.

Custom relating to the election of Maoate Mataiapo

[22] The first holder of the title was Keu Maovete and all successive Maoate Mataiapo have been direct descendents of the first holder of the title. It is accepted that Tamavia and Kiriau are both eligible to be elected as the holder of the title.

[23] Mrs Browne however submitted that Tamaiva was not elected in accordance with the custom relating to the election of Maoate Mataiapo and as the result the Court cannot find that he has a right to hold the title. The Maori custom relating to this title is that the title was created by and belongs to Pa Ariki and that Pa Ariki either elects the Maoate Mataiapo or approves the election of the Maoate Mataiapo made by Ngati Maoate.

[24] To support this contention Mrs Browne referred to historical documents and records held by the Land Court relating to the previous elections of Maoate Mataiapo.

[25] First in a document purported to be the autobiography of Maretu who held the title of Pa Ariki, Maretu gives an account of the election of Paara as Maoate Mataiapo. While Paara was still in his mother's womb his mother went to Pa Ariki and asked that the child be elected Maoate Mataiapo. Pa Ariki granted the request of Paara's mother and Paara was elected Maoate Mataiapo while still in his mother's womb.

[26] On 20 May 1916 by way of letter the members of Ngati Maoate advised the Resident Commissioner of the election of Paiau to Maoate Mataiapo. It is recorded at the bottom of the letter that the election was approved by Pa Ariki and Kainuku Ariki.

[27] On 16 January 1956 the Court heard an application by Clara Gladney to determine her right to hold the title of Maoate Mataiapo. At the hearing evidence was given that Fred

¹ *Re: Tinimama* (Native Appellate Court, App 2, 14 October 1948, Morison, Morgan and Harvey JJ).

Rennie (Paiau Maoate) had wanted his daughter Clara to hold the title. Clara's election was supported by her family, Ngati Maoate and Pa Te Rito Ariki. The Court accordingly made an order in favour of Clara Gladney. At the hearing on 20 December 1989 of an application by the Kiriau for an order declaring he had been elected as Maoate Mataiapo in accordance with custom Pa Te Rito Ariki told the Court that when Clara was elected that she had intervened and insisted that the title go to Clara rather than Clara's younger brother Fred. Pa Te Rito Ariki also told the Court that she owns of the title and it is for her to decide who the title is given to.

[28] At the hearing on 20 December 1989 of an application by Kiriau for an order declaring he had been elected as Maoate Mataiapo in accordance with custom Pa Te Rito Ariki confirmed that she had removed the title of Maoate Mataiapo from Clara and given the title back to Ngati Maoate to elect a new Maoate Mataiapo. Pa Te Rito Ariki told the Court she approved of their subsequent election of Kiriau. Although removal of title is not at issue in this case the Mrs Browne refers to the above because the title is for "Pa Ariki to give and for her to take".

[29] In terms of the above evidence Mrs Browne's submission is that either Pa Ariki has elected or approved the election made by Ngati Maoate of the Maoate Mataiapo. In the present case Pa Ariki did not elect Tamaiva and on 17 December 2012 Pa Ariki advised Ngati Maoate she did not approve the election and that she would elect the Maoate Mataiapo herself.

[30] It is important to note that attached to the affidavits of Itinga Vaai Maoate (of the Te Ariki (Pekamu) line), Iriti Maoate (of the Tairi line), Mere Roti Teauroa (of the Miro line), Bill Kamana (of the Tauariki line), Tukaka Ama (of the Tairo line) is a copy of a form signed by the members of their respective lines supporting the decision of Pa Ariki to reinstate Kiriau as Maoate Mataiapo. This brings into question the submissions of Tamaiva that there is majority support for his appointment.

Investiture

[31] The investiture ceremony that was conducted for Tamaiva did not accord with the custom for this title. The investiture was not carried out by Pa Ariki and an alternative

process was created by Tamaiva for his investiture. As the title of Maoate Mataiapo belongs to Pa Ariki it is Pa Ariki who akapare (crowns) the holder of Maoate Mataiapo.

Election of Kiriau Turepu as Maoate Mataiapo

[32] As mentioned above, on 17 December 2012 Pa Ariki advised the kopu of Ngati Maoate that she did not approve of the election of Tamaiva and she would appoint Maoate Mataiapo herself. In accordance with custom Pa Ariki has selected Kiriau as Maoate Mataiapo.

[33] Following the hearing on 20 December 1989 the Court declared Kiriau had been elected Maoate Mataiapo in accordance with the custom. The Court made an order dated 22 February 1991 determining that Kiriau was properly invested with the title. Although Kiriau stepped down as Maoate Mataiapo in 1995 the order of 22 February 1991 is still in force. Therefore, as the Court has already determined that Kiriau was properly invested with the title there can be no declaration that Tamaiva can hold the same title.

[34] Kiriau has also been appointed by Pa Ariki as her speaker and the Chairman of Pu Ara a Pa Ma Kainuku (Pu Ara), a gathering of all the Mataiapos in Takitumu. The appointment is a matter for Pa Ariki and should not be determined by the Court. If the Court were to make an order in favour of Tamaiva it will create an inconsistency because Kiriau will continue to be Pa Ariki's speaker and Chairman of the Pu Ara.

Discussion

[35] The Court's jurisdiction to determine the right of Tamavia and Kiriau to hold office is contained in s 409 of the Act which provides:

409. Miscellaneous jurisdiction of Land Court - In addition to the jurisdiction elsewhere conferred upon [the Land Court] by this Act, that Court shall have jurisdiction-

...

(f) 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.

[36] This jurisdiction is limited and does not give the Court jurisdiction to appoint an Ariki or Native chief. The Court's role is merely to answer questions as to the right of a person to hold office as an Ariki or other Native chief.

[37] The Native Appellate Court in 1948 in *Re: Makeanui Tokau*² held:

It is not the function of the Native Land Court itself to appoint an Ariki or other Native chief to office. Any such appointment can only be made under the ancient custom and use of the Natives of the Cook Islands.

[38] Also in *Re: Tinimama*³ the Native Appellate Court confirmed that:

The most that the Court can do is to declare for the guidance and assistance of the people what it believes to be the custom governing such an appointment... the most it could do if it found that Tepai had not been properly elected according to custom would be to declare that there had been no election, and then a fresh election would be necessary.

[39] The principle set out by the Native Appellate Court in 1948 has not altered over time and has been followed in Ariki title cases in the Land Court by Justices McHugh and Dillon in *Makea Ariki Nui*⁴ case in 1995 and Justice Smith again in a *Makea Ariki Nui*⁵ title case in 1999.

[40] Therefore in terms of my jurisdiction the main question which I must consider is whether Tamaiva and Kiriau were appointed in accordance with the custom governing the title of Maoate Mataiapo. To answer this question I need to consider what the custom is relating to the election of that title.

[41] For Tamaiva, Mrs Francis submitted that the Maoate Mataiapo title may have originated from Pa Ariki in the time of Keu Maovete but submits that the history and custom

² *Re: Makeanui Tokau* (Native Appellate Court, App 147, 16 October 1948, Morison, Morgan and Harvey JJ).

³ *Re: Tinimama* (Native Appellate Court, App 2, 14 October 1948, Morison, Morgan and Harvey JJ).

⁴ *Makea Ariki Nui* (High Court Cook Islands, Land Division, Apps 502/94 and 138/95, 18 September 1995, Dillon and McHugh JJ).

⁵ *Makea Ariki Nui* (High Court Cook Islands, Land Division, Apps 395/98, 299/98 and 121/99, 30 March 1999, Smith J).

relating to the title has evolved and now the title belongs to Ngati Maoate and the kopu of Ngati Maoate determine the appropriate title holder.

[42] Mrs Francis refers to Minute Book MB 43/121-123 on 5 May 1908 where the Maoate gave evidence that he was the Maoate Tutara or the overlord of the district of Titikaveka. Stephen Savage's A Dictionary of Maori Language of Rarotonga, defines a Mataiapo-Tutara as a principal chief almost equal in rank to an Ariki, an overlord. Also reference was made to Minute Book MB 50/94 in 1981 relating to Kaingavai Section 49C2 where it was submitted by counsel appearing that Maoate Mataiapo is the head of the family and the head of the Ngati.

[43] It should be noted that this was also the opinion of Tamaiva when he gave evidence before me at page 10 of the Court transcript when he said, "...at first (the position) was under Pa, yes but once Maoate was made a Tutara he became an equal and he became an overlord in his own right...".

[44] Mrs Browne submissions on this issue referred to similar historical documents and Court records relating to the Maoate Mataiapo title.

[45] Mrs Browne sets out in summary for the manner in which the past Maoate Mataiapo have been appointed with the title which I set out below:

- (i) Keu Maovete – Pa Ariki bestowed the title on him. He was the first to hold the title.
- (ii) Tairo Vaitoka – There is no record of how he was elected.
- (iii) Putu – There is no record of how he was elected.
- (iv) Paara – Pa Ariki elected him.
- (v) Teavae – No record.
- (vi) Porokau – No record.
- (vii) Vaikai – No record.
- (viii) Paiau (Fred Rennie) – He was elected by Ngati Maoate, the rangatiras and others. Pa Ariki approved his election.
- (ix) Tapaeru Maerarau (Clara Gladney) – She was elected by Pa Te Rito Ariki.
- (x) Kiriau Turepu – Pa asked Ngati Maoate to elect. She approved of the election.

(xi) Terepai Maoate – Pa allowed Ngati Maoate to elect. She approved the election.

[46] In essence Mrs Browne's submission is that this title was created by Pa Ariki and belongs to her. It is her title to give, to approve and to take away. This was demonstrated clearly in the case of Clara Gladney when Pa Ariki gave evidence before the Court to say that she insisted on Clara getting the title and then at the application by Kiriau to hold title she stated, "... she did not listen and because they insisted I took the title off her... nobody said at that meeting Pa Ariki you cannot do that as each one knew it was my title."

[47] As the title belongs to Pa Ariki, it was also contended by Mrs Browne that Pa Aiki can determine the role of Maoate Mataiapo. In this case Pa Ariki stated in her evidence that the primary role of Maoate Mataiapo to Pa Ariki is as her speaker.

[48] This issue relating to the creation and role of Maoate Mataiapo was covered in the decision of Dillon J on 22 February 1991 when he declared that Kiriau was properly invested as Maoate Mataiapo in accordance with Native custom.

[49] In that decision Dillon J noted that title of Maoate Mataiapo was created by Pa Ariki when he reported that Mrs Gladney had handed back her title to Pa Ariki "... from whom the Mataiapo title is derived."

[50] Further Dillon J in this case accepted the evidence of Pa Ariki as clear and unequivocal evidence of custom relative to this title. Pa Ariki's evidence was that the title was given to Clara Gladney as a result of her direct intervention, that the title has been withdrawn and that Pa Ariki had given it to Kiriau in accordance with her wishes and that of the family and that this was followed by an investiture.

[51] Pa Ariki's evidence before Dillon J in 1991 and the evidence of Pa Ariki and the submissions of Mrs Browne before me were essentially the same.

[52] Further the historical evidence before me which goes back to the creation of the title supports the position that the title belongs to Pa Ariki. This evidence clearly records that when Pa Ariki is required to intervene or approve the title holder she can do so and this intervention has a direct bearing on the holder of the Maoate Mataiapo title.

[53] Although the evidence as to the Maoate Mataiapo title being created by Pa Ariki was not disputed by Tamaiva, he stated in evidence that the Maori culture is a living culture and in subject to change over time. In Tamavia's view the decision has been made in the family to rotate the title which although he accepts that this is not in accordance to Maori custom he says it is what the family want with this title.

[54] In considering the history of this title and what has happened in the present case I find that the custom relating to the appointment of this title has not changed. It is the same now as it was in 1991 when the title issue came before Dillon J. Further the evidence shows that it was the same in historical times. That is that the title belongs to Pa Ariki, she is entitled to approve it and withdraw it and although she looks to the majority of the family for guidance and consensus it is her title.

[55] I therefore find that the Maoate Mataiapo title is subject to the control of Pa Ariki in terms of appointment, duties and removal.

[56] As a result I find that the appointment of Tamaiva was not in accordance with Maori custom.

[57] Accordingly in terms of s 409(f) of the Act the application of Tamaiva is dismissed.

[58] The next matter for me to consider is the status of the order of 22 February 1991 which determined that Kiriau was properly invested with the title.

[59] Mrs Browne for Kiriau submitted that although Kiriau stepped down from the title in 1995 the title was never removed from him and that the 1991 order is still in force.

[60] Mrs Francis for Tamavia submitted that Kiriau gave the title back to Ngati Maoate at a meeting on 13 July 1995 and Ngati Maoate were asked to elect another Maoate Mataiapo. Terepai Maoate was elected and confirmed by the Court and he held the title until his death in February 2012.

[61] It is accepted by both parties that Kiriau resigned from the title in 1995. It is also accepted that Pa Ariki called a meeting on 16 May 1996 to elect another Maoate Mataiapo. It is interesting to note at that meeting that it was accepted that the families should vote and that

Pa Ariki makes the final decision and that Pa Ariki determines the duties of the Maoate Mataiapo.

[62] This was done and Terepai Maoate was elected and approved by Pa Ariki. This appointment was later confirmed by the Court at application 157/98 on 21 September 1998.

[63] The resignation of Kiriau and subsequent appointment of Terepai to the Maoate Mataiapo title in my view clearly means that Kiriau no longer holds the title.

[64] The meetings called by Pa Ariki on 17 December 2012 and 7 January 2013 demonstrate that Pa Ariki supported this view in that she called these meetings firstly to obtain the support of the 7 kopu that make up Ngati Maoate to agree that as Pa Ariki the Maoate Mataiapo is her title and she had the authority to choose the Maoate Mataiapo if she did not agree with the Tamaiva's selection.

[65] At the meeting of 17 December 2012 it was agreed after much discussion that the majority of Ngati Maoate kopu would support the decision of Pa Ariki. In the meeting of 7 January 2013 Pa Ariki made her decision and appointed Kiriau as Maoate Mataiapo.

[66] Having regard to my earlier findings relating to the appointment of prior Maoate Mataiapo it is clear to me that what took place in the meetings of 17 December 2012 and 7 January 2013 was in accordance with Maori custom associated with this title.

[67] The only matter outstanding which would complete Kiriau's appointment would be for Kiriau to be invested with the title in accordance with custom.

[68] Therefore I can confirm that once the investiture of Kiriau has been completed, that his appointment as Maoate Mataiapo would be in accordance with Maori custom pertaining to this title.

[69] When this has occurred I ask that the Registrar refer the application for succession by Kiriau Turepu in respect to the interest of Terepai Maoate in Kaingavai Section 49C2B1, Ngatangia to me for completion.

[70] There will be no order as to costs.

[71] A copy of this decision is to go to all parties.

Dated at Wellington this 9th day of October 2013.

A handwritten signature in black ink, appearing to read 'W W Isaac', written over a horizontal line.

W W Isaac
JUSTICE