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

APPLICATION NO. 94/89 and 406/89

IN THE MATTER of the land known as  
PONONO SECTION  
114 AVARUA

A N D

IN THE MATTER of an application for  
succession to HENARE  
KETA

BETWEEN MAVIS AITU of  
Parekura

Applicant

A N D LOUISA WICHMAN  
of Rarotonga

Objector

Mrs Browne for Mavis Aitu  
Mr Manarangi for Louisa Wichman

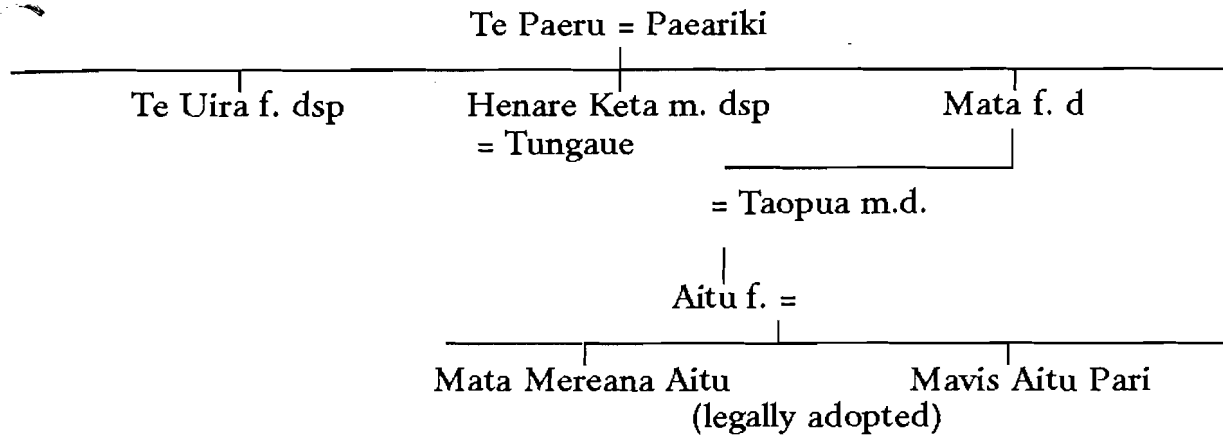
Date of Judgment : 5th MARCH 1993

JUDGMENT OF DILLON J.

Two applications to succeed to the interests of Henare Keta in Ponono Section 114 Avarua have been filed. With agreement of Counsel both applications have been heard together. Application No. 94/89 was filed by Mavis Aitu and is opposed by Louisa Wichman. In this Judgment Mavis Aitu will be referred to as the Applicant and Louisa Wichman as the Objector. The other application, No. 406/89, was filed by Louisa Wichman and is opposed by Mavis Aitu.

GENEALOGY

There is no dispute as to the genealogy of the deceased Henare Keta. It is as follows :



While Henare Keta was the natural child of Te Paeru and Paeariki he was adopted by his uncle Keta Te Ara who married Kairangi Agnes Stewart.

Henare Keta married Tungaue and had no natural issue.

This background to the genealogy of the deceased is common ground and accepted by both the Applicant and the Objector. The difficulty and disagreement arises over the three feeding children of the deceased, namely - Ritua; Okirua; and Mata.

The Objector claims that these three children were adopted by Henare and so entitled to succeed to his interests in this land. If adoption is established then the application by Louisa Wichman will apply; if adoption cannot be established then the application by Mavis Aitu will apply.

### THE APPLICANT'S CASE

The applicants rely on earlier successions to other interests of lands owned by their mother's uncle, Henare Keta. Those successions refer to the following blocks, viz :

1. Mangaiti Kairoa - Succession Order dated 23 August 1932 (MB 10/311).
2. Enuakura Section 205A2, Avarua - Succession Order dated 23 August 1932 (MB 10/311).

3. Tutakimoa Section 6, Avarua - Succession Order dated 23 August 1932 (MB 10/311).
4. Areatu Section 104B, Avarua - Succession Order dated 9 February 1945 (MB 16/315).
5. Enuakura Section 5, Avarua - Succession Order dated 23 August 1932 (MB 10/311).

There were no objections at the time to those successions. Subsequently however an appeal was lodged but this was dismissed on 27 April 1970 (AMB 3/74). An application under Section 390A and 391 of the Cook Islands Act 1915 was filed to in effect re-hear the succession orders but this application was like the appeal dismissed in 1972.

The applicant claims therefore with some justification that not only have five succession orders already been made in those blocks referred to above, but this Court and the Court of Appeal have subsequently reviewed the claims which now form the basis of the objector's present application and objection. The Court of Appeal and this Court disallowed such claims by dismissing the appeals.

The Objector relies on Ritua, Okirua and Mata having been adopted. She relies on various minute book records to support the adoptions claimed. I shall refer to those references shortly. It is, however, relevant to refer when considering the Applicant's case to those same minute books and the references in them to the fact that those three are "feeding children". For example :

MB 17/277 states "Mata had no right at all in land. She was a feeding daughter of Henare Keta, also Okirua and Ritua were feeding children."

MB 21/355 states "Ritua was the adopted child of Akenata not of Henare Keta."

MB 29/199 states "Okirua, Ritua and Mata were feeding children of Henare."

It is clearly established and accepted by the Objector that there is no documentation to evidence an adoption of Okirua, Ritua and Mata by Henare Keta. The Objector relies on a number of other substitutes to establish that Henare Keta did adopt those three feeding children. That they were feeding children is acknowledged by the Applicant; that they were adopted children is challenged for the reasons set out above.

### THE OBJECTOR'S CASE

The Objector claims that she is entitled to succeed to Henare Keta. It is states as follows :

"... the Objectors have by adoption and blood relationship a greater entitlement to succeed to the interests of the Henare Keta."

Originally the Objector relied on the adoption of Ritua by Kairangi Agnes Stewart. However Mr Manarangi abandoned that adoption as in any way supporting the present applications. He now relies on the statements, evidence, observations and records contained in MBs 16/351; 17/29; 17/277; 21/354; and 29/199. There is no doubt that those minute books do refer to Ritua, Okirua and Mata; they refer to those three as feeding children; they even in some instances refer to them as children; but nowhere are they referred to as the legally adopted children of Henare Keta.

Mr Manarangi relies strongly on a will of Henare Keta. As this is the only real substantive or written evidence, it is included in full in this Judgment for the completeness of the record, viz :

"RAROTONGA

30TH DECEMBER 1928

This is the last will and testament of TEARA (ENERE KETA).

1. My first statement relates to my family (children), and that is, not to dispute over the land.  
May they reside on the land in harmony.  
These are the children that I refer to.
  1. Ritua and her husband and children.
  2. Okirua and his wife and children.
  3. Mata and her husband and children.

May they reside on the land in harmony. Their guardian is AITU and may she look after them and be a guardian mother to them. What I have practiced, may she (AITU) also follows.
2. Regarding the family residence, this belongs to all of them but AITU is still the master of it.
3. Regarding the squatters on my lands, may they continue to reside thereon without interference until such time they vacate the land.
4. Regarding those people planting on the land, may they continue to use the land in peace without being interfered with, AITU is their landlord.
5. Regarding leased lands, AITU is to receive their rental and it is up to her how and what to share with my children. Regarding my share of the rental, AITU is to collect and disburse to my children.
6. Regarding my title, I will not give it to this or that person; AITU has the say on the matter. The title is to remain with the residence and AITU has the say on this matter.

Translated by G.F. Ellis."

It is abundantly clear that Henare Keta acknowledged Ritua, Okirua and Mata as his children - but feeding children are not converted to adopted children by a will when Section 445 of the Cook Islands Act 1915 provides that :

"No will made by a native (or descendent of a native) shall have any force or effect with respect to his interest in native land."

Henare Keta's wishes, his hopes and his expectations in leaving his lands, house and rentals to Aitu does not create a legal adoption in favour of Ritua, Okirua and Mata, or any one of them. For those reasons the will of Henare Keta does not assist the Objector's application.

Mr Manarangi also relied in a general way on blood relationship and native custom - but did not develop those grounds which he said supported the Objector's application which he claimed was to be preferred to that of the Applicant herself. I find there is no evidence to support either of those two claims.

Finally Mr Manarangi referred to the Ponono Section 114 Block. He based his submissions on the following :

"It is significant that the Order on Investigation of Title (attachment 9) records Ritua Okirua and Mata as owners. Okirua is the only one of the three owners having a blood relationship to Henare Keta (attachment 7).

Having regard to this it is suggested that Okirua's inclusion in the Order is as a result of his adoption by Henare Keta otherwise Okirua's brothers and sisters would have also been included.

Similarly, it is suggested that Ritua's and Mata's inclusion could only have been by adoption also as there is no blood relationship between Henare Keta and Ritua and Mata."

To assume that Okirua, Ritua and Mata were included in the Ponono land because they were adopted cannot be accepted. They were included in other lands as well, for example Areatu 104B. Their inclusion related to circumstances existing in 1906 upon the investigation of the Title to Ponono. Many and varied were the reasons why people were included in titles at that time. However under no circumstances can this Court be expected to assume that inclusion in an Order of Investigation of Title will of that fact itself convert feeding children into legally adopted children.

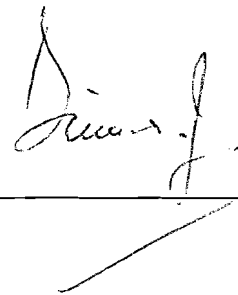
### THE DECISION

The previous orders that have been made and which have been scrutinised again

by this Court and by the Appellate Court clearly justify an order in favour of the Applicant.

There will be a Succession Order in favour of Mata Mereana Aitu and Mavis Aitu Pari equally to succeed to the interests of Henare Keta in the Ponono Section 114 block. The application by Louisa Wichman is dismissed.

There has been an unfortunate delay in the completion of this Judgment for which the Court sincerely apologises to Counsel and all parties.



A handwritten signature in cursive script, appearing to read 'D. J. King', is positioned above a horizontal line. A diagonal stroke extends from the bottom right of the signature down towards the bottom right of the page.