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

APPLICATION NO:312/93
APPLICATION NO:685/93

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

AND

IN THE MATTER of the Mataiapo Title known as **Kaputa Mataiapo**

AND

IN THE MATTER of an application by Mrs Tukura Uti Tou (nee Mokotua)

First Applicant

AND

IN THE MATTER of an application by **Tuakana Toeta**

Second Applicant

JUDGMENT OF DILLON J.

The First and Second Applicants have both applied to the Court claiming the Kaputa Mataiapo title. Extensive evidence has been produced and referred to. The Court heard evidence in 1993 and again in 1994 and following those hearings detailed and comprehensive submissions have been filed in order to assist the Court in its deliberations. However the complexity of the case and the conflicting submissions tend to produce difficulties rather than resolutions because of the divergence of opinion, especially as to the genealogy of the two complainants.

Mr Temu Okotai appeared for the First Applicant and in his Statement of Evidence described the procedure that had been undertaken in accordance with traditional Maori custom for the investiture of the title on the First Applicant on 25 April 1993. There seems no doubt that in accordance with the evidence submitted by Mr Okotai the traditional procedure was in fact followed in the carrying out of the investiture. That evidence was not challenged by the Second

Applicant. Nor was there any challenge by the First Applicant to the investiture of the Second Applicant to which I shall refer shortly.

The objections by both applicants against the other relate to genealogy rather than procedure. The question that the Court has to grapple with relates to the genealogy of Kaputa Metua and the question of whether the Second Applicant's father was adopted or legally adopted or adopted according to Maori custom and recognised. The significance of this evidence, and the difficulty of co-relating to the Minute Book references supplied, can be gathered from the following brief extract of Mr Okotai's submissions that he filed in June of this year. These are as follows :

"i. Kaputa Metua married Upoko.

ii. The same Upoko married Uri Varokura.
Question, Is Uri Varokura the same person as Kaputa Metua? If Uri Varokura is Kaputa Metua then all the Ngati Uri today are Ngati Kaputa which is plainly not the case.

Tuakana's counsel makes the assumption that Upoko had two husbands, Kaputa Metua and Uri Varokura and the title and lands of Kaputa comes from Kaputa Metua and that Toeta and our line come from Uri Varokura's line.

This proposition is totally untenable because if this was so then how did Kaputa son of Konini and Teariki Apaiau get the title and lands of Kaputa. Which Kaputa Metua is this Itiao referring to?

In Ngati Uri we only recognise Toeta's extended family through their connection of Uri Varokura as a brother to Konini Uri our ancestor and Uri Varokura's large number of descendants recognise us as the descendants of Konini Uri.

iii. Konini married Teariki and had a son Kaputa no issue. Itiao is the second husband of Konini whose son is Arekura had a son Kaputa adopted by Kaputa the son of Konini and Teariki.

iv. The second part of this genealogy is more clearly explained when you look at the Ngati Uri genealogy given by Kumu in Minute Book 16, pages 161-16 Appendix B. This genealogy is the basis of the Ngati Uri family today and is supported the most by that family.

The genealogy shows the following :

a. Uri married Te Upoko and they had three children, Konini Uri, Uri Rata and Uri Varokura.

b. Uri Varokura was Konini's brother and he therefore cannot be the connection to the Kaputa title and lands. Uri - Varokura had a daughter Upoko who gave birth to Toeta and he was adopted by Kaputa Metua.

c. Itiao Rautiti and Teariki Apaiau are the two husbands of Konini Uri.

d. Kaputa Iti (Young Kaputa) was the grandson of Itiao Rautiti, and Toeta was the grandson of Uri Varokura. These are the children adopted by Kaputa, by customary tradition.

e. Temataina was Konini Uri and Teariki Apaiau's only daughter and therefore Kaputa Metua's only sister."

Included in those same submissions on Page 5 is further detailed evidence relating to genealogy and confirming the First Applicant's lineage while disputing the relationship to Kaputa claimed by the Second Applicant. This is referred to in the submissions as follows :

> "In any case, the inclusion of Konini's brothers and her other husband Itiao was not important to Mrs Uti Tou's application. This is because the Kaputa title and land had nothing to do with these people. The Kaputa title and land only entered the Ngati Uri family via Teariki Apaiau (also known as Kaputa Kaena). That was the only way Kaputa Metua got the title which then passed on, despite my family's protest, to Toeta and then as claimed by Tuakana.
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> No one has disputed that Temataina is Konini and Teariki Apaiau's daughter. To do so is to deny that we are part of Ngati Uri and that Temataina's descendants exist today. It is therefore my contention that Mrs Uti Tou has priority right to the Kaputa title by direct blood connection through Temataina to her father Kaputa Metua whom Temataina's descendants still regard as Temataina's natural brother."

Mrs Browne appeared on behalf of the Second Applicant and filed detailed submissions on his behalf. The history of her client is that he was invested with the title on 14 June 1979 and since that date claims to have carried out the obligations under the Kaputa Mataiapo title. It is claimed there have been no problems regarding this title since 1979 up until 1993 - a period of 14 years - before the present challenge has been mounted by the First Applicant.

The thrust of the First Applicant's claim and the objection to the Second Applicant's claim related to the adoption of the father of the Second Applicant by Kaputa. It was claimed that there was no blood right and that the adoption was not legally consummated.

However this problem of blood relationship and alleged illegality of the adoption was countered by evidence from the Second Applicant that while his father was adopted by Kaputa, he was also the natural son of Kaputa - a most unusual situation which the Court has never experienced previously. The Second Applicant explained it this way. His father was produced by a relationship between Kaputa and his niece, and that in order to minimise the embarrassment and

humiliation of such a situation the procedure of adoption was contrived in order to meet this problem. As a result the Second Applicant claimed that his father was in fact adopted by Kaputa, although Kaputa was his father's natural father. This evidence was not challenged in any way by the First Applicant or Mr Okotai and the Court therefore accepts it.

Apart from the Second Applicant being invested with the title on 14 June 1979, and having carried out the obligations under that title since then, evidence was given that the previous holder was his own father Toeta who died in 1977, and that prior to Toeta holding the title it was held by Kaputa. Once again that evidence was not challenged by the First Applicant, that is the succession of title holders from Kaputa to Toeta to the Second Applicant who has held the title for 14 years until this present challenge.

On the other hand the First Applicant did not refer to any ancestor in her lineage claiming that title, apart of course from Kaputa.

I do not propose to refer to the many references to Minute Books dating back to Minute Book 8, page 224 on 25 January 1917 and subsequently. Suffice it to say that I have perused all those Minute Book references provided by Mr Okotai and Mrs Browne in an effort to comprehend the complex genealogy that has been included in the submissions. While I appreciate the thrust of Mr Okotai's submissions and those of Mrs Browne relative to their respective clients, it does appear to the Court that these very same considerations were presented to the Court on 2 November 1976. On that occasion Judge MacCauley, after hearing extensive evidence which has been recorded, gave a decision which deals with the very issues which are now again before the Court. Judge MacCauley dealt with applications to revoke succession orders which had been made on 29 January 1917 and on 10 September 1968. His judgment sets out the evidence relied on firstly for making the succession orders and subsequently in that judgment for asking that the succession orders made be revoked. In the course of that judgment he stated as follows :

> "Counsel for the Respondent submitted that the applicant had no case as the Court had not erred in either of the two succession orders granted. The order made in favour of the respondent on 25 January 1917 was handed down after genealogical evidence was given. It was stated then, that respondent was adopted by the deceased but no mention was made of any registration of such adoption. However, the Court granted succession in accordance with the wishes of applicant, and no doubt under the statutory provisions of section 448. Counsel submitted also, that the succession order made on 10 September 1968 was handed down after lengthy evidence in which it was clearly shown that the Maori customary adoption was accepted. The holder of the Mataiapo title of Kaena had

given a complete picture as to why respondent should succeed. He (Kaena Mataiapo) stated inter-alia "... The people who objected this morning viz., Tutai Te Eu and Kura Mokotua are not Ngati Kaena. They have no right to this (Kaputa deceased) share and no right to object ..." (M.B. 28 at page 265). This Court called on the two persons named and it is recorded they did not question the evidence. At the conclusion of the evidence Te Kura Mokotua withdrew her claim. It should be noted that Tutai Te Eu and Te Kura Mokotua are first cousins to the applicant. At this same hearing Irai Maeuterangi who is the sister to the applicant's mother, also gave evidence that the land in question was Kaena land. She applied for a rehearing of the same successions now before the Court, but after a preliminary hearing, the Court dismissed the applications (see M.B. 28 at pages 310-311).

This Court is of the opinion that the applications for rehearing dismissed on 22 October 1968 should have been the end of a matter which had been well and truly aired before all interested parties. The present application is again trying to upset a court decision of fifty-nine years ago, as well as a later order of eight years.

On the first ground of the application, this court finds that there was no error as the relationship of customary adoption was known to all parties in both cases referred to.

On the second ground of the application there is again no error as the Court was well aware of the genealogical background and handed down its decision as requested by the then applicants.

This being so, the Court dismisses the application."

As I have said that Court hearing and the decision was delivered in 1976. It will be appreciated that the Judge on that occasion seemed to be complaining about the attempt to overturn a Court decision made 59 years earlier. Since then, of course, a further 18 years have passed so that the present application by the First Applicant is an attempt to overturn a Court decision made 77 years ago.

However perhaps the most significant evidence associated with this decision of Judge MacCauley is that an application to succeed came before the Court on 10 September 1968. This application was objected to by the First Applicant. The application was to succeed to Kaputa. At that time evidence in support of the application was provided indicating that the proper successor to Kaputa should be Toeta. While that is of significance it is much more significant that the First Applicant stated at that Court hearing that - "I do not now set up a claim".

It does seem strange therefore that in light of that decision on 10 September 1968 to which the First Applicant did not object that the issues consented to by the First Applicant in 1968 and that the issues identified in the decision of Judge MacCauley should now be resurrected after such a vast lapse of time. This more especially when, as already indicated, the First Applicant withdrew

any objection to the succession in 1968. Mr Okotai did not refer to this decision of Judge MacCauley and I am not sure whether he is aware of it. However the First Applicant must surely be aware of that decision but more importantly of her acceptance and agreement with the succession order derived as it was from Kaputa.

The purpose of both these applications is to hear evidence and to determine any question as to the rights of the Applicants to hold the office of Mataiapo. In this connection the First Applicant has acknowledged the genealogy and has withdrawn any objection in the succession application to Kaputa on 10 September 1968. Her challenge by way of an application for revocation of succession orders made on 29 January 1917 and 10 September 1968 were disallowed. This is a further attempt to seek recognition which the Court over the last 77 years has refused to acknowledge because of the evidence which has been presented to it. I do not for one moment question the sincerity of the present application, nor the persistence in attempting to achieve what no doubt the First Applicant and her followers believe is their right and entitlement based on the genealogy which they claim would entitle the First Applicant to hold the Mataiapo title.

It was for those reasons that the Court has taken some time, not only to grapple with the intricacies of the genealogies, but also to stand back as it were from the evidence that has been produced and the submissions made in order to better appreciate whether the tenacity of the First Applicant would indicate that there may have been the possibility of error in the past. The Court has not been able to find any indication of error. In fact the history of the cases that have come before the Court seem to indicate that these claims have been well and truly tried by various Courts, the last one in 1976, indicating the lengths to which the First Applicant and her followers have striven. The Court is of the opinion, based on those previous decisions, that the First Applicant does not have the right to hold the office of Kaputa Mataiapo.

I turn now to the Second Applicant. As previously stated he has held this title since 14 June 1979. His father before him held the title until he died in 1977. The Second Applicant's father Toeta was the natural son of Kaputa, although for the reasons already stated Kaputa let it be known that he adopted Toeta. There is therefore the unbroken line of succession from Kaputa to Toeta to the present Second Applicant. In addition to that there has been no challenge to the Second Applicant's application since his investiture fifteen years ago. The Second Applicant has been invested with the Title and while he did not adhere strictly to every formality, such as biting the pigs ear, nevertheless the reason given was because of his religion which preclude the eating

of pork.

The Second Applicant's qualifications; the length of time that he has been appointed; and his succession from Kaputa through his father has until now been recognised and is only now subjected to the present challenge. That challenge has been disallowed. From the evidence it is clear that Tuakana Toeta, the Second Applicant is the person who has the right to hold office as Mataiapo.

The objection by Mr Okotai to that application is disallowed. The question of costs is reserved.

Dillon J. 26/11/94