

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

**No. 374/93**

**IN THE MATTER** of Section 391 of the Cook  
Islands Act 1915

**A N D**

**IN THE MATTER** of the land known as Akitua  
Motu Section 3

**A N D**

**IN THE MATTER** of an application by  
**MARAEARA TEKII**

Mr Lynch for the Applicant  
Mr Arere for the Objectors

Date of Judgment : 2<sup>nd</sup> February 1995

**JUDGMENT OF DILLON J.**

There has been an unfortunate delay in the transcribing of the evidence which was given in both this particular case and in all other cases dealt with by the Court at its last sitting at Aitutuki. The Court Stenographer at that Court sitting was transferred from Rarotonga to Mangaia with the result that the transcribing of the all the evidence taken has only just been completed.

This application pursuant to Section 391 of the Cook Islands Act 1915 applies for the annulment of a Court Order made in 1964 alleging fraud.

Mr Lynch called two witnesses. The first was Mrs Purenga Tikitenga who gave somewhat limited evidence as to her relationship to the Kaiti Te Ra family to whom she believed she was related. She gave evidence of occupation in the way of collecting coconuts on this uninhabited motu which she used to visit with her mother from time to time.

The second witness was Mr Maraeara Tekii. He described how he was 59 years of age, that he was from the Kaiti Te Ra lineage and that his mother was in direct relationship to that family. He

recalled in his evidence his visiting this particular motu when he was a young boy of 12 years old. He used to accompany his father on Saturdays in order to fish at a special fish trap which had been established in the vicinity; he also gave evidence of picking coconuts on the Island; that the motu was not inhabited or lived on; and he believed that as a descendent from the Kaiti Te Ra family he and his family should have been included in the Order that was made in 1964.

It was on the basis of those two witnesses that Mr Lynch submitted that the 1964 Order had been obtained by fraud - the fraud consisting of the non-inclusion of the applicant's family. The witnesses were questioned on the evidence that was recorded in 1964 when the Order was made. At that Court hearing the Order was made by consent, and the Court was therefore faced with the difficulty of the Consent Order without objections but now some thirty years later was being questioned, such questioning being based on an allegation of fraud. The Court records clearly indicate that discussions and deliberations took place at the Court hearing when the Order was made. The Court records disclose as follows :

"Following an adjournment of twenty minutes the parties report agreement so that both the applicants and objectors have agreed ... "

It is clear that there were objectors initially when the application was first heard, but that agreement was subsequently reached and a Consent Order was made. Such evidence is very conclusive of the objectors to the original application in 1964 being subsequently satisfied; thus withdrawing their objections; and the Court in due course making an Order which was not opposed and was made by consent.

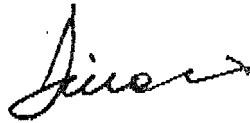
I have examined carefully the evidence presented by the two witnesses called by Mr Lynch. I believe that he recognised the difficulty of establishing fraud on the evidence that was presented. He conceded that the evidence presented at the 1964 hearing did not of itself create a fraud in the way it was presented. Mr Lynch put it this way, according to the notes of evidence :

"It has created a false impression even though no one fact can be pointed to which we can say was false."

That concession by Mr Lynch is quite correct. Neither of his two witnesses have made a specific allegation against any evidence that was provided to the Court in 1964 that was fraudulent. That of course is the basis of the application. The section is specific and limited to the establishment

of fraud or a fraudulent intent. This has not been established and Mr Lynch concedes that fact.

The only thing that has been established is that the two witnesses believe that they come from a specific line which they claim is entitled to be included in the list of owners. It is not clear from the 1964 records as to which families were objecting and whether they were families represented by the two witnesses supporting this application. If it is, then the ancestors of the two witnesses have consented to the Order made in 1964. Clearly the grounds on which the application has been founded have not been established. The application is therefore dismissed.



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Dillon J.