

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

IN THE MATTER of Section 409 of the
Cook Islands Act 1915

Mr Manarangi for Mrs McQuarrie, the Applicant
Mr Lynch & Mr Williams for Mrs Inanui Nia, the Respondent

Dates of Hearing: 17 February 1995 & 24 February 1995
Date of Judgment: 27 February 1995

JUDGMENT OF DILLON J.

BACKGROUND

The Makea Ariki title has been vacant for some time since the death of the previous holder. The Respondent held an investiture on Marae Arai-Te-Tonga on Friday the 28th October 1994. Her followers intended the following day to proceed to the Pare-o-Tane Palace grounds for the continuation of the ceremonies which, it is claimed, related to the investiture that was carried out the day previously. On that subsequent day Mr Manarangi applied to the Court for an injunction to prevent a potential conflict between the supporters of the Applicant, who were in effect barricading the entrance to the Palace grounds in order to prevent the supporters of the Respondent from entering. They were approaching the Palace grounds at the time the injunction was granted. The Court on that occasion relied on the evidence provided by an Inspector of Police, Inspector Tini, who expressed serious concern as to the potential for a serious breach of the peace if the supporters of each of the parties actually met at the Palace gates. On the basis of the

potential for a breach of the peace and a serious situation of disorder, the Court granted an injunction which is still in effect. As a result neither the Applicant nor the Respondent, nor their supporters, have occupied the Palace or its grounds.

COURT PROCEEDINGS

Since the issue of the injunction and the investiture by the Respondent there has been an application filed in Court by the Applicant laying claim to the Makea title.

No claim has been filed by the Respondent. It is acknowledged, of course, that the Respondent is perfectly entitled if she so wishes not to lodge a claim and to rely simply on the investiture as the basis for her claim to the title.

We therefore have the interesting situation that the Applicant has not had an investiture but has filed proceedings to confirm her entitlement to the Makea Ariki title. On the other hand the Respondent has held an investiture but has not filed a claim in the Court for determination as to the right of any person to hold that Ariki title. Such a situation insofar as this Court is concerned, is most unusual.

APPLICATION

Mr Manarangi has now made application to the Court for partial exemption to the injunction which has remained in force since it was granted late last year. His request is as follows:

- (a) He asks for a day to be allowed to permit the Palace building to be opened, aired and cleaned, and for the grounds to be mown, cleaned and cared for. In this respect he says that the grounds are badly overgrown and neglected, and as a consequence would be most inappropriate without prior upkeep to be a suitable place for an investiture.
- (b) He asks that the injunction be lifted for the period from 13 to 17 March to enable the investiture ceremony to be prepared for, to be carried out, and then for the property to be cleaned up. He avers that five days are necessary for the preparation work, the actual investiture and the cleaning up of the grounds etc.

Mr Manarangi makes this application on the following grounds:

1. He claims that the investiture of this title should be carried out at the Palace and on the grounds surrounding. He claims that he has the majority of the Kopu Ariki in support of this decision. He says that there are four distinct families in

the Kopu Ariki, and that the Applicant has the support of three and a quarter of those four families, and that the remaining three-quarters support the Respondent. His principal claim therefore is that on the basis of that significant majority that there is a substantial support in favour of the application which he makes.

2. Mr Manarangi, while claiming that the Applicant can select the place and procedure of the investiture, concedes that the formalities associated with the investiture itself cannot prejudice in any way the prior proceedings and the prior investiture of the Respondent. That question will, of course, be one of the issues which the Court will have to determine when examining the applications once they come before the Court. The Respondent held her investiture at the Marae Arai-te-Tonga away from the Palace and its surrounding grounds. The Applicant wishes to hold her investiture at the Pare-o-Tane Palace and on the grounds surrounding. There could well be some significance as to where the investiture is held which could be advantageous to one or other of the parties. These are matters about which the Court knows nothing^{not} upon which there have been any submissions. It is not necessary to enquire at this stage as to which is the correct forum for such an investiture. That will form part of the litigation which will undoubtedly follow.

3. Mr Manarangi referred to the Tinomana title dispute. On that occasion a similar wrangle occurred where both Applicants were granted exemption from an earlier injunction to enable them to separately hold their investitures on the Palace grounds. The accommodation provided by that exemption enabled both parties to be satisfied, while at the same time easing the tension and conflict which had previously existed. Both parties faithfully kept to the arrangements that were made and each vacated that Palace in accordance with the conditions laid down at the time the exemption from the injunction was granted. Consequently it is appropriate for Mr Manarangi to refer to that particular injunction as, with the benefit of hindsight, all parties were able to satisfactorily carry out their wishes and complete their investitures.

4. Mr Manarangi has pointed out that the original injunction that he was instrumental in seeking was not against the Respondent but was against the supporters of both the Applicant and the Respondent. Mr Manarangi was acting for the supporters of the Applicant at that time, even though the Applicant had not received official recognition from the family of the support which she now apparently enjoys. The Court believes that that is a reasonable submission and that the injunction was granted not only against the supporters of the Respondent, but also against the supporters of the Applicant. In other words it was an application based on maintaining law and order at a

time where possible confrontation could have produced a situation of serious disorder which the Police acknowledged they may not have been able to contain.

THE OBJECTIVES

In the course of an international conference call on 17 February 1995 and again on the 24 February 1995 Mr Williams opposed any relief from the injunction. His submissions, in the main, referred to the following:

1. That it was Mr Manarangi who applied for the injunction which precluded the followers of the Respondent from completing what they believed were formalities associated with the investiture which had been carried out the previous day. That observation is, of course, quite true. But it is fair to concede that not only was the injunction against the followers of the Respondent, but also against the followers of the Applicant. There is no suggestion that the Respondent was prevented in any way by the injunction, now the subject of these proceedings, from carrying out the investiture that she had arranged. The investiture was not done at the Palace or in the surrounding grounds, but at the Marae Arai-Te-Tonga selected by the Respondent for the purpose of her investiture. There is therefore a distinction, as pointed out by Mr Manarangi, which the Court understands, without in any way

making a decision on the formalities carried out at the investiture of the Respondent. The Court has no details whatsoever of those formalities and the Court believes that it is appropriate that such considerations are quite unnecessary at this stage.

2. Mr Williams believes that any concessions from the injunction would provide a most unfair advantage to the Applicant and a serious disadvantage to the Respondent. The Court is not able to really follow that argument. It appears, as already stated, that the Respondent selected her Marae for the investiture, believing no doubt that that was the correct procedure that she wished to follow. On the other hand the Applicant has decided that she wishes the investiture to be done at the Palace and the surrounding grounds. If the Tinomana case was followed, both parties could quite easily have had the investiture at the Palace or surrounding grounds. The Respondent chose to have her investiture at her Marae and not the Palace. To that extent I do not believe there is any unfair advantage. In fact it may very well turn out as an advantage to the Respondent in that the Applicant may have selected the incorrect location for the investiture to be undertaken. In other words the Respondent may have selected the correct Marae, and so has that advantage over the Applicant who has selected a different forum for the investiture proceedings.

3. Finally, Mr Williams challenges the degree of support that Mr Manarangi claims. Mr Manarangi says that his support is three and a quarter out of the four families, and only a three-quarter interest in support of the Respondent. Mr Williams has claimed otherwise and has supported his claim just the same as Mr Manarangi has supported his claim with documentation which will have to be considered by the Court in due course. However I believe that it would be most inappropriate for the Court to enquire into the allegations and counter-allegations as to support. Especially at this preliminary stage. That is a matter which will have a big impact on any decision the Court will have to make. I do not propose therefore to make any definite ruling on either party's support or lack of support. I believe it would be unfair to both parties to at this stage determine some critical analysis of their respective support. Rather I believe it would be better if I simply disregarded the alleged support and approached the question on the basis that the Respondent has already had her investiture and the Applicant now applies for the opportunity of having her investiture. Once again I believe that the heart of the matter is whether or not there will be a breach of the peace, and it is for that reason that I rely heavily on the information provided by the Inspector of Police.

BREACH OF THE PEACE

Mr Williams refers to the likelihood of a breach of the peace. As originally stated it was the concern of the Inspector of Police of a possible serious breach of the peace that motivated the Court into granting the original injunction. With the passage of time the Court believes there would not be a situation similar to that which existed when the original injunction was granted. Time heals. The Respondent has completed her investiture proceedings and one would expect that any opposition or objection would be limited to that which is associated with every contested Ariki title. In fact it is a recognised part of the procedure, and in effect essential to proceedings.

However at the hearing on the 24 February 1995 Inspector Tini was questioned about the grounds of his belief that a breach of the peace might occur and a serious situation of disorder might result which the Police in Rarotonga may not have been able to control. Naturally such belief by the Inspector raises serious concerns. However further enquiry revealed that Inspector Tini had reached that conclusion by speaking to only one supporter of the Respondent.

The following questions immediately arise from that most unusual situation viz:-

1. Should the owners of the Palace grounds be prevented from using them by an opinion gained from one person;
2. Should the Applicant be deprived of an investiture of her and her family's choice because one supporter of the Respondent has threatened to disrupt proceedings;
3. Should not tradition be supported by the Police whose responsibility it is to maintain law and order and not capitulate to threats of violence from one person;

For those obvious reasons the Court finds that the circumstances that existed on the 29 October 1994 when the injunction was first granted cannot be compared with the circumstances existing at the date of this Judgment.

There is no real evidence of a possible breach of the peace; there is no evidence that the Police will not be able to perform their function and duties in maintaining law and order; and the Court cannot find any reason why the families associated with the Makea Ariki title should be prevented from carrying out what they believe is their traditional investiture. To hold otherwise would involve this Court in preventing an investiture taking place - an unheard of situation.

CONCLUSION

In saying that I again repeat that is not prejudicing the Respondent; nor advantaging the Applicant. The Respondent held her investiture on the 28 October 1994. The exemption from the injunction sought is merely to permit the Applicant to hold her investiture. Which ~~the~~ Applicant has selected the correct venue for her investiture is of course an important issue that will be decided at a later date.

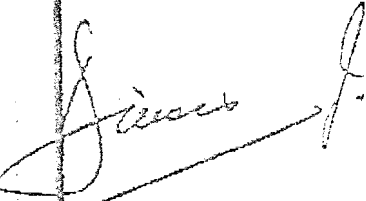
There is one further matter to which the Court should refer. It is acknowledged that protest at an investiture is traditionally acceptable. At the Applicants investiture I have no doubt that there will be the traditional protests. But there is a very serious difference between acceptable protests and unacceptable breaches of law and order. If such breaches occur the person or persons creating them may very well disadvantage the Applicant for the title who they believe they are supporting.

Both the Applicant and the Respondent have the responsibility therefore to ensure that these supporters commit no breaches of law and order, and that if they fail to maintain that control, their respective claims to the title may in some circumstances be seriously compromised. I am heartened by the responsible attitude already recorded in the affidavit of the Respondent when she

declares that she has already instructed her Rangatira and tribes to maintain the Mana and authority of the Makea Ariki title in the event of a partial lifting of the injunction.

Fortified by that statement that there will be no problem from the Respondents supporters; and relying on a similar attitude by the Applicant and her supporters I make the following orders:-

1. The injunction will be uplifted for 1 day only between the date of this order and the 10 March 1995, for the purpose of opening, airing and clearing the Palace and cleaning up the Palace grounds;
2. The injunction will be uplifted from the 13 to 17 March 1995 to enable the investiture ceremony to be prepared for, to be carried out and then for the Palace and grounds to be cleaned up.
3. The question of costs is reserved.



Dillon J