

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

No. 16/97

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

AND

IN THE MATTER of an Application for an Injunction
by **DANIELA CRUMMER** ("the
Applicant") restraining **TEARIKI**
MAOATE and his family, agents
and others ("the Respondents")

AND

IN THE MATTER of the land **TE AVAAYAROA**
SECTION 14K, NGATANGIA
("the Land")

AND

IN THE MATTER of an Occupation Right Order
granted to the Applicant on the
Land on the 19th day of June 1995

Mr Lynch for the Applicant
Mr Teariki Maoate in person
Date of Hearing : 1 February 1997
Date of Judgment : 1 February 1997

JUDGMENT OF DILLON J.

This is an application to the High Court for an injunction restraining Teariki Maoate (hereinafter referred to as "the Respondent") from interfering with Section 14(k) referred to above.

The position briefly is as follows. Mr Crummer was granted an Occupation Right on 19 June 1995. He wishes to develop the section and to build on it. At the time when that Occupation Right was granted the Respondent was living in New Zealand. In the course of an international conference call this morning he indicated that he had been living in New Zealand for the last ten years. He returned to Rarotonga last year and has cleared the section with ^{out} Mr Crummer's permission; he has placed a container and a shed on the section in which he is now

living; he has also made an incorrect right of way on the incorrect side of his section. There are other issues referred to in an affidavit in support of this application for an injunction.

Mr Crummer replied to the Court for an Interim Injunction and this was considered by Mr Jebb, Justice of the Peace, on 31 October 1996. The Interim Injunction was granted. The Respondent has ignored that injunction and in the course of the proceedings this morning indicated that he had refused to get off the land; could continue to refuse to leave the land; that he would not obey any Court orders; and that as far as he was concerned he is quite prepared to be put in prison.

The Respondent claims that he holds the Rangitera title with which he was invested in 1981. He claims that as holder of the Title he is entitled to the section that he is squatting on because that land is Title land. He says that as holder of the Title and the land being titled land, he is therefore entitled to the section.

Mrs David, who attended this international conference sitting, examined the Court records in Rarotonga and advised the Court that this section is not Title land. The Respondent's claim therefore is ill founded. There is no challenge to his claim that he holds a Rangitera title, but it is quite clear that this section in dispute is not Title land.

There is a second issue. When this application came before the Court it was adjourned to enable a further discussion by members of the family present. As a result of that meeting there were no objections to Mr Crummer's application. Those who consented were Tairi Maote, the son of the Respondent; Ata Piakura, a nephew of the Respondent, and Ruru Maote, another nephew of the Respondent. Consequently, as a result of that meeting and the earlier meeting, and there being no objections to Mr Crummer's application, an Occupation Right was granted.

If the Respondent believes that this is Title land, or that he has some other claim which should be considered by the Court, then of course he is free to lodge whatever applications he requires. In the meantime, however, he must vacate the section which belongs to Mr Crummer. There will therefore be the following Orders :

1. An injunction is to issue against the Respondent to remove his container and shed from off the section prior to 14 February 1997.
2. Any trees or shrubs that the Respondent has planted he is entitled to remove prior to 14 February 1997.
3. In the event that the Respondent fails or refuses to remove his items from off the section within the time limit provided, the Registrar shall notify the appropriate police authorities to provide Mr Crummer with the appropriate protection while he removes the container, shed and any other items remaining belonging to the Respondent.
4. The Respondent is entitled to file whatever applications he wishes in order to establish what he believes is Title land relative to this section.
5. The cost of this conference call is likely to be in excess of \$100.00. There will be an order for costs against the Respondent for \$200 legal costs, and \$100 towards the costs of the conference call. Those costs are to be paid prior to 14 February 1997.

Finally, it should be recorded that the Court endeavoured to assist the Respondent on several occasions in the course of this international conference call. The Respondent did not wish to be assisted, and stubbornly insisted that he was going to stay on the section and that he was prepared to go to prison. The Court has allowed a period of two weeks before this injunction becomes effective which will enable the Respondent to seek advice either legal or otherwise. This is especially necessary in view of the contempt of the Court's previous orders and his expressed intention to commit contempt of this present Order. It is to be hoped that the Respondent seeks the assistance of wiser Counsel than himself in order to avoid the consequences which flow from the intention of contempt of the Court's orders.



Dillon J.