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

Applications Nos:
334-337/96, 411/97
413-415/97

IN THE MATTER of Section 450 of the Cook Islands Act 1915

AND

IN THE MATTER of the lands known as

1. Papua Section 4A, Vaimaanga
2. Te Areroa Section 8A3, Ngataangia
3. Papua Section 4, Vaimaanga
4. Te Tavaroa and Te Arakura Section 14L and 14M No.2 Ngataangia
5. Te-Mata-o-Te-Enua Section 10A1 - Turangi
6. Kataruaine Section 141 - Turangi
7. Raemaru Section 14A, Ngataangia
8. Te Varurau Sec 14F, Ngataangia

AND

IN THE MATTER of applications by Kairangi Elizabeth Henderson (nee Peyroux) to revoke succession orders made on 8 May 1991 and 23 September 1991.

Parties: Kairangi Elizabeth Henderson appearing in person — **The Applicant**

Pa Tepaeru TeAriki Upokotini represented by Mrs T.P Browne — **The Respondent**

Hearing, Date and Place: 2 May 1997 and 19-20 January 1998 at the High Court in Rarotonga

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Judgment of the Court - McHugh J

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1. References

Five separate written submissions were lodged by the applicant Kairangi Henderson and four by Mrs Tina Browne counsel for the respondent. The Court will be referring to arguments presented in these submissions and also to various minutes etc attached thereto. For convenience the applicant's submissions will be abbreviated to eg. KH1/Attach H; KH2/-; KH3/-; KH4/-; KH5/-; and similarly Mrs Browne's submissions introduced as TB1/-; TB2/- etc.

2. Introduction

There are eight applications before the Court, each of which is in respect of a separate piece of land. They are as follows:

334/96	1.	Papua Section 4A Vaimaanga
335/96	2.	Te Areroa Sec 8A3 Ngataangia
336/96	3.	Papua Sec 4 Vaimaanga
337/96	4.	Te Tavaroa & Te Arakura Sec 14L and 14M No. 2 Ngataangia
414/97	5.	Kataruaine Sec 14I Ngataangia
415/97	6.	Te-Mata-o-Te-Enua Sec 10A1 Ngataangia

The above six applications are in respect of succession orders made on 8 May 1991.

411/97	7.	Raemaru Sec 14A Ngataangia
413/97	8.	Te Varurau Sec 14 F Ngataangia

The above two applications related to succession orders made on 23 September 1991.

The applications came before the Court on 2 May 1997 and then concerned applications Nos 1-6 above. After this hearing the Court on 11 October 1997 gave an interim decision requesting the parties to confer on the question of the lands involved. The Court also issued directions that further evidence was necessary and that a hearing be scheduled for the next Court sittings in Rarotonga. As a result of these directions the Court has now finalised the lands subject to inquiry. These are set out Nos 1-8 above. A two day hearing was held during which the Court heard further

evidence, inspected certain of the lands and received further comprehensive submissions from the two parties. The decision which now follows includes review of the evidence and submissions of the first hearing on 2 May 1997 and also the 2 day hearing on 19-20 January 1998. The Court also emphasises that its interim decision of 11 October 1997 be read in conjunction with this judgment as the Court in that earlier review raises several issues of concern.

3. Parties before the Court and grounds of the application

The applicant is Kairangi Elizabeth Henderson (nee Peyroux). Mrs Henderson is the sixth born of the nine children of the late Pa Tepaeru Terito Ariki who died on 3 February 1990. From her marriage to George Peyroux there were these children (S.O 23.9.91; RB 7/214).

1. Marie Rima Desiree
2. Margaret Daisy Dwayne
3. Bamby Tetianui-o-Pa-Paioro Titia
4. Te Ariki Upoko-Tini-Tini
5. Isabell Paitai
6. Kairangi
7. Te Ariki Tutini Memory Teao Manea Atua
8. George Meredith Ani Akatauira
9. Hironui Maoata Rapu Malcolm

The respondent is the eldest child of the late Pa Tepaeru and is the person shown as No 1 on the above list. The applicant is No 6 on the list and she is supported by her seven siblings also listed.

The applicant seeks to revoke succession orders made in favour of the respondent solely on 8 May and 23 September 1991 and to have those lands redistributed to the nine children of the late Pa Tepaeru.

The applicant claims that the eight blocks of land in issue were personal family lands and not Ariki title lands as claimed by the respondent. The applicant says the Court erred in awarding these lands solely to Pa Tepaeru TeAriki Upokotini.

The respondent contests this application and submits there is no evidence to suggest the lands are family lands and the application should be dismissed. The Court has been presented with a mass of evidence not only from Court records such as copies of the Register of Title and Court minutes but also oral and written statements from family members and tribal dignitaries and even a past Deputy Registrar of the Court. The parties have also filed nine separate written submissions so what on the face of the application appears to be a simple and straight forward issue as to whether or not the lands are personal family lands or lands owned by Pa Ariki as title lands, has been complicated by the huge array of evidence and submissions. In its endeavour to answer the question posed, the Court will look at the title history of each of the blocks and the sometimes conflicting evidence in the minute books. Unfortunately as the result of a fire in the Court offices on 10 May 1992, evidence before the Court on 7-16 May 1991 was destroyed. An important thread in this process is the genealogy of the Pa Taputapuatea (Pa Puretu) family and the succession of title holders and inter-relationship. The Court now traces this genealogy.

4. Genealogy and list of Title Holders

4.1 *List of Title Holders*

There is no dispute between the parties as to this chronological sequence of Ariki. The Court has extracted the following list from tables supplied by each party. The first Pa Ariki is shown as Pa Taputapuatea but Court records show an earlier holder Pa Te Ruaroa.

1. Pa Taputapuatea (m) (aka Pa Puretu) (1770)
2. Pa Tepou (m) (1795)
3. Upokotakau (f) (aka Mere Pa) (1819) - died 1888
4. Pa Maretu (m) (aka Te Ariki Upokotini) (1895) - died 1906
5. Pa Tetianui (f) (1906) - died 27.6.1924

6. Pa Tepaeru (f) (aka Terito TeAriki) (1932) - died 3.2.90
7. Pa Tepaeru Te Ariki Upokotini (f) (1990) - The Respondent

Note: The dates respectively shown in brackets after each of the seven Ariki designate time of appointment.

4.2 *Genealogy*

The Court has used the two tables supplied respectively by the applicant (see KH1/Attach "H") and respondent's counsel (TB1/"L") to construct the table attached hereto marked Appendix "A" . There is not serious dispute between the parties as to the correctness of this table except in relation to the question of whether Pa Te Tia Nui was an adopted child of Upoko Takau (aka Mere Pa). The Court will return to this issue shortly.

Appendix "A" also lists the seven Ariki from Pa Puretu (1770) down to the present Ariki Pa Tepaeru Te Ariki Upokotini who is the respondent in these proceedings. The full list of the seven Ariki is set out in the previous paragraph 4.1 herein.

The respondent took the position in counsel's first submission that Pa Tetianui was adopted by Mere Pa in a customary way (TB1/4.2) and disputed that Te Tetianui was an issue of Mere Pa as claimed by the applicant. In her third submission counsel again contends that Pa Maretu was the only adopted child of Mere Pa and that Tetianui was a feeding child. The applicant submitted that both Te Tianui and Maretu were customary adoptions by Mere Pa and thus became brother and sister (KH1/6) and (KH2/8) and also (KH 3/2).

The Court is satisfied that both Maretu and Te Tianui were customary adoptions and there was no distinction in form between the two adoptions. There is strong evidence given by four witnesses to the Court in 1930 to the effect that Mere Pa and Opura adopted both Maretu and Te Tetianui.

- See evidence of	(1)	George Crummer Senior
MB 10/181	(2)	Rangi (Mrs Tangirau Tauei)
MB 10/195	(3)	Tiaki Tako MB 10/197
	(4)	Pharoah Karopuake MB 10/99

MB 10/200 also sets out a whakapapa (genealogy) showing that there were no issue to Mere Pa's marriage with Opura but that they adopted Maretu and Tetianui. Most of these witnesses were elderly and would have been alive at the time of the adoptions.

The relationship between Maretu and Te Tetianui will be reviewed again later as the Court looks at various succession orders made by the Court. The genealogical table supplied by the applicant (see KH1/"H") shows Maretu and Te Tetianui as issue of Mere Pa and Opura and not as adopted children but the applicant clearly agrees in all her submissions that the children were both adopted at customary law.

5. Amendment to applications

At the final Court hearing on 20 January 1998 the applicant conceded that there were two title lands which were not personal family lands and sought leave to withdraw those applications from the Court. The two applications were (1) Application 413/97 in respect of Te Varurau Section 14F, Ngataangia and (2) Kataruaine Section 14I, Ngataangia. The Court acceded to this request and both these applications were dismissed. There are accordingly six blocks of land remaining the subject of this inquiry and the Court intends to deal with each of these extensively, having particular regard to the title register, Court minutes and other formal evidence such as Court orders, wills and other deeds. By way of supporting evidence both parties presented written and verbal statements from various people including officials, tribal leaders and family. Most of this evidence was general in nature and presented personal views rather than objective and independent expert information. In at least two cases the authors of submissions to the Court were not available for cross examination and to that extent the Court has had to have regard to the weight and acceptability of that evidence. The Court has done that and relied upon the documented and verbal evidence in reaching its decision. However the Court proposes by way of background in this important case to refer to the nature of the supporting evidence as presented by both parties before the Court.

6. Case for the applicant

The applicant's main claim is that the six blocks of land vested in the respondent were not traditional title lands but family land. She states that at the hearing in 1991 when succession was ordered solely to the respondent as the then applicant, Pa Te Paeru Te Ariki was the only family member living in Rarotonga. The applicant says that Pa Te Paeru held power of attorney for her eight siblings but none of these were aware of the succession taking place and therefore unable to voice objection.

Before looking at the detailed minute book evidence presented by the applicant in each of the six blocks the Court sets out the other general submissions made by the applicant.

She claims:

Firstly - that at a hearing in the High Court at Rarotonga on 20 December 1989, only two months before she died, her mother, the former Pa Ariki, said under oath that her family had never had Ariki title land and that this statement was never brought to Court notice.

Secondly - That certain of the lands are subject to leases and according to tribal elders it is not customary for title lands to be on lease.

Thirdly - The area of land allocated for title use does not usually exceed one acre - 1/2 acre for house site and 1/2 acre for planting.

Fourthly - That if land was solely for the needs of an Ariki it may be title land but the lands at issue were personal lands.

Fifthly - That Court title records listing total family succession to four of the subject lands had been amended to erase their names and any submission that this was a clerical error must be viewed with suspicion.

Sixthly - The use of the word "Pa" does not necessarily mean "Ariki land". Applicant refers to Puoro Section 15B and other blocks.

Seventhly - The Ariki's right to lands are primarily symbolic. As titular head the whole of the lands were often spoken of as the lands of the Ariki.

Eighthly - The former Pa Ariki namely Pa Tepaeru (mother of applicant) consistently succeeded land in her maiden name and not her title name.

Ninthly - Takau Rangatira, Sir Apenara Short, in a written submission, after excepting the two title blocks previously referred to, namely Te Varurau Sec 14F and Kataruaine Sec 14I, confirms balance are family lands.

7. Case for the respondent

The principal ground advanced on behalf of the respondent, who claimed that the succession orders made by the Court in 1991 were properly made, is that all six of the blocks in dispute were title lands for five reasons.

1. At the time the lands were investigated they were claimed by the title holder.

2. The Court at the time vested the land in the title holder eg Pa Ariki Pa Tetianui, Te Ariki Upokotini Pa and Te Tia Nui TeAriki Upokotini Pa.

3. In subsequent succession orders evidence was given that the respective lands were title lands or belonged to Pa Ariki.

4. In the case of Papua Section 4 which was vested in Te Ariki Upokotini Pa (aka Pa Maretu) if this had been family land it would have gone to a much wider group.

5. There was no evidence to suggest the lands were family lands.

Counsel for the respondent informed the Court that the respondent had applied for succession to 33 lands of which 8 were title lands and 25 were family lands. Counsel stated there were still some further lands to be succeeded.

Several witnesses were called by the respondent including (i) Pa Tuterangi Ariki, Sir Thomas Davis, husband of the late Pa Tepaeru Ariki; (ii) Mr Terepai Noo, ex Deputy Registrar of the High Court who was commissioned by respondent's counsel to prepare a list of title and family lands for presentation to the Court in 1990 and 1991. This list was produced by the respondent (TB 2 Attach "G").

The respondent directed extensive submissions into each of the six lands in issue and produced several witnesses, as did the applicant, to particularise the status of the land as either title or family land. The Court will deal with that evidence as it later moves herein to examine each of the blocks and the parties' submissions relating thereto. At this point the Court wishes to refer to Maori custom as it affects title lands.

8. Maori custom and special lands for the title holder

During the course of this hearing both parties referred to the 1970 and 1977 reports by Koutu Nui on Lands and Titles. Counsel for the respondent at TB2/4.3 indicated this report had not been approved by the House of Ariki and a current review by the Koutu Nui was presently before the Minister of Justice. This Court in its interim decision dated 29 October 1997 on Application 485/96 dealing with the Mataiapo title of Te Pa dealt at some length with the Koutu Nui Report and in particular the difficulty experienced by the House of Ariki and Parliament in formulating a codified statement of Maori custom relative to land and titles. The Court does not intend to reiterate its previously stated views which are on the record. The Koutu Nui Report is however useful in looking at that important body's view of title lands. In Part VI of the Report under the heading of "Special Lands" it says this:

> **"(A) SPECIAL LANDS FOR THE TITLE**
>
> The Koutu Nui accepts that it is an indigenous custom that a certain piece of tribal or clan land is set aside exclusively for the occupation and use of the person holding the traditional title of the tribe or clan. There are two types of land recognised for these purposes -

(i) The Enua Ariki taonga - this land is set aside to support the functions and responsibilities of the title holder.
(ii) The Enua rautao - this land is set aside for the production of food crops to support the title holder and his family.

These special lands are those which have been so recognised since ancient times.

The right of occupation and use of these lands is vested in the title holder only and no other member of the tribe or clan is given the right."

The Koutu Nui Report refers also to another third type of special land namely:

"the family land designated by the family as sacred land primarily for the installation and investiture of the title holder for the tribe or clan. This special land is that which has been so recognised since ancient times."

The Court is mindful of these views but regards just as importantly in the present proceedings the attitude and views of the Court which made the original orders after the turn of the last century. These orders were made after investigation of title and are crucial.

9. The principles guiding the Court in the early 1900's

The Court, has in addition to looking at Court minutes and records, read several text books on Cook Island history and in particular has been greatly helped by Richard Gilson's book "The Cook Islands 1820-1950". Unfortunately Gilson died suddenly in 1963 before completion of the book. This task was entrusted to Ron Crocombe who edited the manuscript and the book was published in 1980. The book reflects the outstanding scholarship shown by Gilson and Crocombe. Although its title indicates the start point at 1820, the authors have as well commented on early Rarotongan Society. The Court proposes to refer to several passages from this book and will identify these by page reference shown in brackets. The first reference is taken from (p16) and relates to the pre missionary period:

"The people did not conceive of ownership in the sense of an individual having the right to acquire, use and dispose of land as he saw fit, like the concept of 'private ownership' in capitalistic societies. The two principles which determined an individual's land rights were his kinship affiliation and the nature and extent of his authority. Chiefly titles, most of which were the names of various descent lines and existing descent groups, were identified with certain blocks of land ... The whole district was referred to, in inter district affairs, in the name of the Ariki, who acted in such matters for all its people. Most land,

> however, was controlled by the separate mataiapo as heads of their respective tapere, and to a lesser extent by rangatira and komono. ...The main obligations of the mataiapo to his Ariki consisted of organising labour and materials for the erection and construction of the latter's house and of the larger marae or sacred grounds, and contributions to certain major feasts."

Gilson describes how the Ariki sought to retain economic control by collecting tribute and controlling elections. As economic development took place in the late 1880s and constitutional changes occurred such as the proclamation of the British protectorate and annexation of the Cook Islands to New Zealand in 1901, Lieutenant/Colonel Gudgeon who had arrived in 1898 and became Resident Commissioner "with increased powers, tightened his grip on the Administration, and in the first 19 years of the dependency nominal independence and self government gave way to the crushing of chiefly authority and the imposition of control from Wellington through the Resident Commissioner." (p2)

Gudgeon saw as his first task the need to reorganise the Courts. Gudgeon was aware the Ariki would not willingly relinquish any authority for what he saw as the most essential reform, namely, that of land tenure. (p93)

In 1899 Gudgeon set up the Rarotonga Land Board, the members of which were the five Ariki and himself. In July 1902 the Land Titles Court was established by Order-in-Council. The chiefs were told nothing of the plans for the Court. (p106) Gudgeon was appointed as Chief Justice and it is interesting in the context of this inquiry that Pa Maretu was appointed an associate Judge of the Court. (p113) The Court was empowered to determine ownership based upon custom or other legal means. It also had power to partition land, to exchange land, to determine succession but it should be noted that only a European Judge or the Chief Judge could decide land cases. (p140) The Land Court was constituted because:

> "Seddon had stressed the Land Court as the key to economic progress. In his view, it was necessary because of the conservative attitude of the chiefs towards their land rights." (p17)

The first task of the Land Court was to determine ownership of land:

> "Upon application by any claimant all interested parties would be invited to submit statements about the history of the land and the rights of individuals and

> descent groups associated with it. The Court then had to choose which individuals or groups were to be recognised as the owners." (p140)

Through the Land Court, Gudgeon proceeded to limit chiefly control over land (p119). In 1908 it is recorded in Parliamentary Papers A-3 1908 p6, that Gudgeon made a scathing attack on the Ariki for whom, apart from Pa Maretu, he had scant respect (p120). He succeeded in having Ariki Courts abolished under the Cook and Other Islands Government Act Amendment Act 1904. The Rarotongan Ariki Courts were not affected by the 1904 Amendment "but Gudgeon planned to close them eventually by refusing to appoint new judges."

With that background the Court now reviews, again with Gilson and Crocombe's assistance, Gudgeon's attitude as a Land Court Judge towards Ariki title and land rights.

According to Gilson (p139) Gudgeon had come to the conclusion that the only lands traditionally set aside for the sole use of the Ariki were small blocks for their personal gardens and for the royal koutu or royal Courts. All other land should be considered "family land" held on lease or by hereditary right by the various families, including those of the paramount chiefs, and subject only to the rendering of the customary atinga. Gilson goes on to say of Gudgeon's attitude (p143):

> "The only blocks of land to which an Ariki acquired sole freehold title were the village house sites and the blocks associated with his office, i.e his personal gardens and his koutu site. This land adhered to the chiefly title and was not shared by the kinsmen of the Chief nor by kinsmen of any of this successors." (NZPP A3 92-4).

The Court concludes this reference to the historical review by Richard Gilson by one final reference on page 144 which states:

> "In 1908 Gudgeon finished the initial investigation of all arable land in Rarotonga. By this time Pa Maretu and Tinomana had died and most of the land of their districts had been awarded as unencumbered 'family' freehold land."

It should be said, however, that subsequent judges to Gudgeon, such as Judges MacCormick and Ayson, were more favourably disposed to the Ariki and this has also been noted by Gilson (pp144-146).

The Court now proposes to look at the original land titles for each of the six lands as well as subsequent minutes of the Court and other supporting evidence.

10. Review of the evidence

There are six blocks in issue as follows:

1. Papua Section 4A
2. Te Areroa Sec 8A3
3. Papua Sec 4
4. Te Tavaroa & Te Arakura Sec 14L and 14M No. 2
5. Te-Mata-o-Te-Enua Sec 10A1
6. Raemaru Sec 14A Ngataangia

Before examining each of these blocks the Court proposes to refer to the two sections which were withdrawn from the revocation application, namely Kataruaine Section 14I and Te Varurau Section 14F.

10.1 *Kataruaine 14I*

Dealing first with Kataruaine 14I Minute Book 4/163 records the proceedings at the time title was investigated before the Court on 6 July 1908. The area of the land was 160 ars (4 acres). The 1908 minute expressly records:

> "Claimed as Ariki land of Pa.
> Order in favour of Pa Te Tianui f.a
> Pati More (life) fa"

Pati More was the widow of the previous Ariki Pa Maretu and the Court obviously included her for a life interest during her widowhood. Pati More died and on 21 June 1912 (MB 5/371) her interest ended. The minute is clear and unequivocal. This land was Ariki title land.

10.2 ***Te Varurau Section 14F***

Passing now to Te Varurau Section 14F a small section at Turangi of just over 1/2 acre. The Court on 6 July 1908 investigated title and MB 4/163 records:

> "Claimed for Pa Ariki. Order in favour of Pa Te Tianui f.
> Rongomauri m.a. Custodian.
> Tute m.a. Custodian"
>
> On 1 July 1912 Rongomauri's interest as custodian was vested in Pa Te Tianui absolutely".

Again the minute indicates the land was claimed and awarded as Pa Ariki title land. Reference to various other awards recorded in minute Book 4 pages 160-166 show those awards made by the Court as personal to the persons claiming and named therein.

10.3 ***Papua 4***

The title register for Papua 4 records this section as being 103 acres 3 roods (41.99 ha) in area. On the 9 July 1903 the Court investigated title and Minute Book 1/42 records this entry.

> "Vaimaanga No 4
>
> Pa. I claim this piece of land as mine. I claim it for myself only.
> Objection challenged. None.
> Order in favour of Pa Te Upokotini."

Pa Te Upokotini was also known as Pa Maretu and is the Ariki shown as No. 4 in the list of Pa Ariki in paragraph 4.1 supra. As stated earlier in this judgment Pa Maretu was an Ariki respected by Colonel Gudgeon.

The applicant asserts that MB 1/42 substantiates her claim that Papua 4 was not Ariki title land but personal family land. The applicant states that the words used "for myself only" indicate the land was personal. She further claims that support for this view is contained in a lease agreement dated 6 July 1903 between Pa TeAriki Upoko Tini and Pereiti Pereni of portion of Papua 4 containing 21 acres and which was produced at the first Court hearing as KH1/"N". A further amended copy was later

produced to the Court on 19 January 1998 as Exhibit "AA". The lease agreement as originally drawn showed the Lessor as "Pa Ariki" and that name was used four times in the agreement. However, at some undefined date after it was prepared, the name "Pa Ariki" was amended, in the four places used, to the name "Pa TeAriki Upoko Tini". This change, argued the applicant, was purposely done to correct any impression that the land was Ariki title land.

The respondent argued that the investigation order made at MB 1/42 was only part of the Court's investigation which was reviewing the whole of the Vaimaanga Tapere and that at MB 1/30 TeAriki Upokotini Pa gave evidence to the effect that the Tapere of Vaimaanga belonged to Pa and his Mataiapo who would bring their atinga and gifts to him. The respondent submitted this showed the overlordship of Pa Ariki and ruled out any suggestion that Papua 4 was family land (TB 3/5-7). The respondent further submitted that amendment to the lessor's name was immaterial because the name "Pa TeAriki Upoko Tini" still retained the status Ariki name of "Pa".

The next title dealing recorded on the Court register is the succession order vesting the interest of Te Ariki Upokotini Pa, who died on 8 February 1906 into the name of Te Tia Nui TeAriki Upokotini Pa f.a solely. The record at MB 2/345 is brief and says:

> "Vaimaanga No 4
>
> Application of Te Tianiu Pa to succeed Pa Maretu in Vaimaanga No 4. Objection challenged. None. Order accordingly."

It should be noted that this order was made on 15 October 1906 and later in that same day (MB 1/347) the Court made another succession order vesting Vaimaanga 4A (aka Papua 4A) in favour of Te Tianiu Pa. The Court will deal with Papua 4A later although there is substantial common evidence linking Papua 4 and Papua 4A. The purpose in mentioning Papua 4A at this point is because both blocks were simultaneously leased on 29 October 1906 to W J Wigmore. Before referring to that next entry in the title register the Court refers to argument addressed by the applicant on the succession of Te Tianui Pa to Pa Maretu at MB 2/345 and which she also claims applied in the succession to Papua 4A at MB 2/347. Mrs Henderson submitted that Pa Maretu died without leaving issue and his land interests were succeeded to by his only kin and adopted (customary adoption) sister Te Tia Nui TeAriki Upokotini Pa. She

claims this was a succession by Te Tia Nui in her personal capacity as an adoptive sister of Pa Maretu. In para 4.2 of this decision the Court has referred to this matter and to the genealogy set out in Appendix "A" hereto. The respondent through her counsel disputes there was a proper customary adoption of Te Tia Nui by Mere Pa and Opura and that Pa Maretu was the sole customary adopted child of Mere Pa and Opura. The Court is of the view that Te Tia Nui was adopted under customary law by Mere Pa and Opura and rejects any notion there was a lesser relationship such as a feeding child. Both Pa Maretu and Te Tia Nui Pa were adopted by the same adoptive parents and became adoptive brother and sister. Counsel for the respondent, Mrs Browne, submitted that even if Te Tia Nui did succeed as an adopted sister, upon her death it would be argued that the issue of the first and third wife of Pa Taputapuatea would be entitled to succeed to that interest. The Court does not agree with that contention and relies upon not only the statement of customary law set out in Part V of the 1977 recommendation of the House of Ariki, but also upon similar New Zealand Maori customary adoption law as reported in re Kahumate Reupena Deceased (1959) CJMB (Tai Whati Index of Judicial Decisions).

That issue aside, the more relevant question to determine is whether the succession recorded at MB 2/345 and 2/347 was by personal family entitlement or by right of Ariki entitlement. The Court will return to answer that question shortly.

On 29 October 1906 (MB 3/14) Te Tia Nui leased portion of Papua 4 and Papua 4A to William John Wigmore for 99 years from 8 October 1906. These leases do not feature in the submissions of either party in the present proceedings. The Court notes that the Lessor reserved from the lease "the right for her life (emphasis added) to use and occupation of that portion of the land between the Road and the Sea Westward of the Creek on which the house of the Lessor now stands and also the use and occupation of a Taro swamp to the North of the land occupied by Ruatai and near the boundaries between Section 4 and 4A (See Title Register for 4A). The actual minute at MB 3/14 states "and Ariki to have use of a Taro swamp during her life".

There is nothing unusual perhaps in an owner reserving out a piece of land before leasing, but the use of the words "Ariki" and "during her life" could be interpreted as an indicator the lands were title and not personal lands. If the lands were owned

absolutely by the Lessor there would surely be no need to use the term "during her life"

The next important and material evidence is that contained in MB 11/151 when on 21 September 1934 Te Tia Nui TeAriki Upokotini Pa, who died on 24 June 1924, was succeeded in both Papua Sections 4 and 4A by Pa Tapaeru Terito Ariki. Evidence was given by Ironui Rangatira who said:

> "These are Ariki land and succession should go to the present Ariki named Pa Tapaeru Terito Ariki. I and Tupe Takau are requests (sic). No objectors.
>
> 2. Succession orders in favour of Pa Taperu (sic) Terito Ariki f 11
> Trustees to be Ironui Rangatira and Taka Rangatira."

The applicant answers this strong evidentiary statement by saying at KH/4:

> "That this comment was made some 31 years after the Investigation of the Title, that it was uncorroborated witness testimony and that no part of this evidence was incorporated in the judgment."

The applicant added:

> "That the terminology was symbolic in use and that my mother was only 11 years old at the time (1934) and had not assumed the title of Pa Ariki".

Again, in her later submission KH 5/2 the applicant submits the evidence was uncorroborated and referred the Court to the lease agreement "Exhibit AA" and to the handwritten letter of Tetianui (Exhibit AK).

The respondent's counsel argued that this evidence was clear and supported the respondent's claim the land was title land. Mrs Browne referred the Court to MB 10/343 of 31 August 1932 which sets out details of a Court hearing to determine Ariki title following Pa Te Tianui's death. There were present a number of tribal officers who had agreed among themselves that because of Tapaeru's age, - she was then 9 years old, there was a need for regents to be appointed. The minute records:

> "Following orders made: - (by consent)
>
> I Order made declaring that Tapaeru f.9 years is entitled to hold the office or title of Pa-te-Ariki Upoko-tini.

> II That during minority of Tapaeru, Iro Nui Rangatira m.a and Takau Rangatira are to be Regents for Tapaeru.
>
> This order may at any time be cancelled or varied by the Court."

The applicant was therefore incorrect in her submission that when her mother Pa Tapaeru succeeded Te Tia Nui TeAriki Upokotini Pa she had not assumed office as Ariki.

The Court considers that the formal record recited above raises a strong presumption that Papua 4 and Papua 4A were Ariki title lands and that the arguments put to the Court by Mrs Henderson do not shake that presumption. However, there were other submissions and evidence relied on by both parties which relate to Papua 4 and 4A and which need further examination before the Court can give a decision.

10.4 *Further evidence submitted by applicant and the respondent's reply thereto*

10.4.1 *Sworn statement of Pa Tepaeru dated 20 December 1989*

In all her submissions to the Court, the applicant, Mrs Henderson, placed emphasis on the importance and relevance of a statement made to the High Court by her late mother on 20 December 1989 less than 2 months before she died. The statement is recorded in the present proceedings at KH 1/Attachment C1 and was made when the Pa Ariki was giving evidence during a dispute over the Maoate Mataiapo Title. At page 187 of the Courts' 1989 minute there was a discussion between the Court and Pa Ariki on custom relating to title land. Pa Ariki said this in answer to a question that the custom of Ariki title could be different from tribe to tribe:

> "Pa Ariki: Yes. I have never really gone deeply into this matter. I am taking you back a long time ago. My family has never had Ariki title land. Pa Ariki never had land, Pa Ariki shares the land. It was customary to give the land to the people when they hold the title of Ariki and the people are very precious and they have always been, as far as my family is concerned. Pa Ariki has been deprived of many things and land is one of them. Pa Ariki never stands in Court over land. Each one of us know the little bit that we have. If I had to appear in Court it is my father's interest in someone else's land. Pa Ariki has always been deprived of this kind of thing as the people's needs has always been paramount."

The respondent has submitted that the statement must be treated in the context of the application then before the Court which was dealing with the Maoate Mataiapo Title and was not dealing with Pa Ariki's title lands. Counsel argued that the statement did not reflect the position as shown in the Court records and was also countered by other evidence before this Court.

There were other statements made which need examination before the Court expresses a view These now follow.

10.4.2 *Statement by Sir Apenara Short*

This evidence was in the form of a letter dated 10 January 1998 addressed to the Court (Exhibit AE). Sir Apenara was not called to give evidence and his statement was therefore not able to be examined further by the respondent or the Court. The deponent stated that of the eight lands in issue only two, namely Te Varurau Section 14F and Kataruaine Section 14I, were designated as title lands of the Pa Ariki. Sir Apenara's father, Tupe Takau Short was a Rangatira to Pa Tepaeru and also a trustee appointed by the Court in 1932 and in 1934 when succession was ordered (MB 10/343 and TB/151).

10.4.3 *Statement by George Peyroux*

Again this evidence was in the form of a letter to the Court dated 26 November 1997 (Exhibit "AD"). The writer was the former husband of the late Pa Tepaeru, was married to her for 40 years and the father of the nine children previously referred to herein in para 3. Mr Peyroux said his late wife had never spoken to him about any of her lands being title land during their marriage and that it was his belief his former wife would not wish for just one of her children to benefit from the land.

10.4.4 *Minutes of a meeting of Ui Rangatira of Pa Ariki with Kairangi Henderson on 19 March 1997*

These minutes were put in as Exhibit "AC" and it was submitted by the applicant that this meeting supported her contention that the six blocks now in issue were personal family lands. This meeting was called of Pa Ariki's Rangatira to give an opportunity to Riri (Kairangi Henderson) to explain her revocation application. The minutes record that the applicant attacked the actions of her sister, Pa Ariki, and informed the meeting:

> "From what I know, Pa Tepaeru had only 2 title lands. But today Marie (Pa Ariki) had 8 title lands".

The meeting which lasted 1½ hours was mainly directed towards seeking the parties to settle out of Court and to keep peace in the family. The Court has read the minutes carefully and can see no evidence of the Ui Rangatira deciding there were only two title blocks and the balance as family lands.

10.4.5 *Evidence of Sir Thomas Davis*

Sir Thomas, called by the respondent, appeared in person at the hearing, read an affidavit and was subject to cross examination. His affidavit is filed as Exhibit "AF" and his evidence appears in the transcript pages 10-15. He married the late Pa Ariki in 1978. He explained events subsequent to his wife's death and in particular moves, which he resisted, for the title to move across to the descendants for the Pa Taputapuatea's third wife. In a statement attached to his affidavit Sir Thomas detailed discussions with Pa Ariki over the Vaima'anga (Papua) lands. He expressed the view that these discussions, together with his own personal research, clearly accepted and endorsed the view that the Papua lands were title lands to be used by the Ariki in any manner required to maintain Pa Ariki's standard of living fitting to the station of Ariki.

The applicant, Mrs Henderson, said Sir Thomas Davis's evidence was in general terms and that he had admitted not getting involved in family land matters (HK 5/7).

10.4.6 *Evidence of Puretu Maoate*

This witness was called by the respondent and gave evidence (Exhibit "AI") mainly directed to the status of Te-Mata-o-Te-Enua Section 10A. The Court will review that land shortly. Puretu Maoate holds the title of Autaua Rangatira and described herself a Pa Ariki's "orooro" (runner or messenger). Puretu was present at the meeting of Ui Rangatira held on 19 March 1997 and was deputed by the meeting to meet with Pa Ariki to discuss the application lodged by Mrs Henderson. The witness reported that the meeting took place but no decision was reached (Transcript p26).

10.4.7 *Evidence of Terepai Noo*

Terepai Noo was employed by the Justice Department in Rarotonga for about 34 years and was Deputy Registrar of the Court for 10 years up to his retirement in 1996. He appeared at the January hearing and confirmed evidence sworn in an affidavit also filed. The witness claimed he had some experience in land title searching and had been asked by Mrs Browne sometime in the earlier 1990s to look at a list of lands supplied by Mr Browne and indicate which lands were family lands and which were Ariki title lands. Mr Noo said he "worked through the Register of Titles, the various minute books and the block files". The witness produced a schedule (Exhibit "G") which detailed 38 land interests of Pa Ariki deceased. The schedule classified 16 out of the 38 land blocks as either "Ariki land" or "Family land" and gave minute book references supporting these categories including details of derivation. The witness designated the 16 categorised by him as being five Ariki lands and thirteen family lands. The blocks classified as Ariki land were:

1. Papua 4
2. Papua 4A
3. Raemaru 14A
4. Kataruaine 14I
5. Vaitapu 32

It is to be noted that Kataruaine 14I is the land conceded by the applicant as being title land. The witness did not classify the other conceded title block Te Varurau 14F. The section listed as No 5 above Vaitapu 32 is not at issue in this present application. None of the other 3 sections claimed by the applicant as family lands namely

1. Te Areroa 8A3
2. Te-Mata-o-Te-Enua 10A1
3. Te Tavaroa 14L and Te Arakura 14M2

were classified by Mr Noo in his schedule. The Court will be looking at Mr Noo's evidence later herein in relation to blocks other than Papua 4 and 4A.

Mr Noo was quite extensively cross-examined on his evidence by the applicant and again the relevant portions of that evidence will be reviewed later as each block is examined. Mr Noo was questioned only shortly by Mrs Henderson concerning the Papua lands and her inquiry was directed to the evidence of Ironui given in 1934 at MB 11/151. Mrs Henderson also unsuccessfully tried to get the witness to admit that her late mother's age of 11 years upon succession to Papua 4 and 4A would indicate those lands were personal lands.

The Court has considered the evidence of this former Deputy Registrar with some care as, although he was called by the respondent, Mr Noo gave his views quite objectively and admitted when he was unable to classify the land as either Ariki or family land. The references on which the witness relied and set out in Exhibit "G" have all been checked by this Court and indeed some additional minutes have been found by the Court not referred to in the schedule. Mr Noo has endeavoured to help the Court but his evidence does not, except in one instance relating to Te-Mata-o-Te-Enua, add anything more than this Court has available to it from the records before it.

10.4.8 *Court's finding in respect of Papua 4 Block*

The Court, after considering all of the extensive evidence and submissions in respect of Papua 4, has come to the conclusion that this Block and Papua 4A adjoining are special lands which fall within the category of Enua Ariki taonga to ensure and maintain the status of the Ariki for the time being.

10.4.9 *Papua 4A*

It is convenient here to deal with this section the status of which the Court has already determined as Ariki title land.

Papua 4A has an area of 69 ha and abounds Papua 4. It was leased to William John Wigmore at the same time as Papua 4 for a similar period of 99 years.

For the reasons set out in the previous paragraph 10.3 the Court also determines the status of Papua 4A as Ariki title land.

The Court has closely examined the numerous grounds put forward by the applicant and referred to in paragraph 6 (supra). The Court can understand the importance to the applicant of the statement made by her mother shortly before her death and how this has motivated the applicant to present that statement as sufficient of itself to justify a declaration that the Vaimaanga - Papua Sections 4 and 4A and four other blocks are personal family lands. The applicant stresses that this is an unequivocal statement by her mother, the late Pa Ariki, that there were no title lands. The Court in this application is faced with not only conflicting views of such distinguished people as Sir Apenara Short and Sir Thomas Davis but also statements from such persons as an experienced Land Court Deputy Registrar and other tribal elders expressing their uncertainty as to the status of the land. The Court has considered all of the argument for and against determination of this land as Ariki title land but is unable to find sufficient cause or reason to ignore the clear unambiguous evidence given at MB 11/151 in reference to Papua 4 and 4A "these are Ariki land and should go to the present Ariki"...". That evidence was given in 1934 and as, submitted by the present applicant, 31 years after the original 1903 investigation of title order. Nevertheless the

persons present before the Court and also 2 years earlier in 1932 when the late Pa Ariki was declared as title holder, aged then 9 years would have been much closer in time and thus in knowledge and experience of the status of the land than witnesses before this Court another 65 years on. Perhaps undisputed ownership of the title to the Papua lands by the late Pa Tepaeru from 1934 until her death in 1990 - a period of 56 years may well have left an impression in the late Pa Ariki's mind that she personally owned the Papua sections. Her statement in 1989 that her family had never had Ariki land must also be measured against the admission by the appellant in these proceedings that there were two title lands.

In construing the 1989 statement this Court considers the late Pa Ariki may have been emphasising the fact that the bulk of the lands was in fact held by the people and given to them by previous Pa Ariki. The fact also that the Papua lands were leased out in 1906 for 99 years and were still leased in 1989 and unavailable to her may also have had a bearing. These observations are simply that. The Court accepts that the late Pa Ariki's statement was made sincerely and in good faith but does not accept it as an uncontrovertible fact. The Court does not propose to deal at length with the other grounds set out in paragraph 6.2 - 6-9 inclusive but summarises these as follows.

As to paragraph 6.2: the Court disagrees that title lands cannot be leased.

As to paragraph 6.3: As a general rule land allocated for title use is usually small in area but this is not compulsorily so.

As to paragraph 6.4: the Court disagrees. Papua lands were set aside for Pa Ariki solely for his needs as Ariki.

As to paragraph 6.5: the Court sees no suspicious circumstances in the erasure of incorrect Court records.

As to paragraph 6.6: the Court agrees use of the word "Pa" does not automatically label the land as "Ariki" title. Words used may well be a factor in helping to determine status. All surrounding circumstances must be considered.

As to paragraph 6.7: the Court agrees that the Ariki is regarded as the titular head of the tribal lands and the title use is symbolic in many instances. This does not mean there are no title lands.

As to paragraph 6.8: the Court acknowledges that Pa Tepaeru succeeded some lands in her maiden name without reference to the title word "Pa". If this is to be accepted by the Court as an absolute indicator then conversely the use of the word "Pa" upon succession should indicate the lands were Ariki title. The Court observes that the succession in respect of Papua 4 and 4A Blocks was not in the late Pa's maiden name but as "Pa Tapaeru Terito Ariki". The late Pa Ariki succeeded Te-Mata-o-Te-Enua 10A1, Te Areroa 8A1, and Te Tauaroa 14L Te Arakura 4M2 as Te Rito TaiterAriki - her maiden name. She also succeeded Kataruaine 14I in her maiden name although this is conceded as title land. The other conceded land Te Varurau 14F was succeeded in the name of "Pa Tepaeru Te Ariki Upokotini".

If weight is to be attached to this submission then the Papua lands should be regarded as Ariki title lands and the others which are yet to be herein examined should be regarded as personal.

The Court adopts the view it has already expressed above in answering ground 6.6 that the name used may be a factor but all relevant circumstances must be considered.

As to paragraph 6.9: the Court has referred to the evidence of Sir Apenara Short and its conflict with that of Sir Tom Davis.

10.4.10 *Additional Submissions*

There were three other submissions made by the applicant specifically in respect of Papua 4 and 4A sections. These were as follows:

1. The words used in the original investigation orders could only be interpreted as determining these lands as personal family land.

2. That an amendment to the lease agreement dated 6 July 1903 between Pa Ariki and Pereiti Pereni clearly indicated that Pa Ariki was not signing as Ariki but as the personal land-owner and the land was therefore family land.

3. That Te Tia Nui Pa's succession to Pa Maretu was based on her relationship as the sister of Pa Maretu.

The Court has referred to these three circumstances earlier herein but they bear further consideration. The Court accepts that the words "I claim this piece of land as mine. I claim it for myself only" as used in the Papua 4 order could raise an inference or be interpreted as meaning "personal family lands". But these words could also be interpreted as meaning land claimed by Pa Maretu for himself solely as Ariki and without other occupation rights being included. The Title Register shows that there were two other persons Ruatai and Tiakana occupying areas of the land. These two persons were in fact given recognition for a life interest in 1906 when Papua 4 was leased and no doubt in order to protect their occupation. The Court must look at all the surrounding circumstances and earlier in this decision referred to the 1906 lease which reserved rights to Te Tia Nui during her life. This Court does not accept the applicant's submission that the words used are definitive of the status.

Passing to the applicant's second submission as to the amendment of the name "Pa Ariki" to "Pa TeAriki Upoko Tini" it should be noted that this lease was actually drawn up and dated 6 July 1903 - 3 days prior to the making of the order on investigation of 9 July 1903 which vested Papua 4 in "Te Ariki Upokotini Pa". The lease document was also confirmed on 9 July 1903. The Court had drawn to its notice by the applicant in her fourth submission (KH4 (1)) that the translated copy of the lease incorrectly showed the name "Te Ariki" "instead of "TeAriki". Reference to the handwritten lease produced in KH 1/Exhibit "M", however, shows that the name "Te Ariki" is in fact shown as such in the opening reference and indeed throughout the document. Furthermore the amendment to the original lease placed the name "Pa" at the end of the name and not at the beginning as the applicant's Exhibit "M" shows. The applicant's translated copy does not agree with the original handwritten lease.

This Court considered that the most likely reason for the inserted amendment to the original lease was to make it correspond with the name set out in the investigation order made three days later. The applicant cannot rely on this circumstance as a supporting indicator of family land status.

The third submission relates to the applicant's claim that Te Tia Nui was a sister of Pa Maretu as a result of both Maretu's and her adoption by Mere Pa and Opura. The Court has detailed this adoption earlier herein. The respondent argued that upon the death of Pa Maretu the issue of the first and third wives of Pa Taputapuatea would have had rights of succession under customary law. This Court has accepted the relationship of brother and sister between Pa Maretu and Te Tia Nui but does not accept that the order made on 15 October 1906 was a succession under customary law but was a succession from Ariki to Ariki. The Court does not therefore propose to look at the persons who may have had customary rights to succeed. At this point, however, it is pertinent to note that Te Tia Nui had a full blood brother Tupe Takau alive at the time the 1906 order was made. The Court will shortly be looking at Te Mata-o-Te-Enua 10A1 block where Te Tianui and her brother Tupe were put in together as owners on 6 July 1908 (MB 4/167).

Having regard to the totality of the evidence before the Court, it is of the view that both Papua 4 and Papua 4A were Ariki title lands.

The applicant has most diligently and sincerely endeavoured to persuade the Court that these sections were personal family lands and not title lands. However, the weight of evidence is against that assertion and, in particular, the strong evidence before the Court in 1934 that these lands were Ariki lands (MB 11/151) has not been rebutted and cannot be ignored when taken in conjunction with other supporting evidence. Although the historians have been careful to note the reluctance of the Court in early 1900 to award large areas of land as Ariki title land, nevertheless the evidence in this case points to the Papua lands as having been awarded by the Court to Pa Maretu as Ariki title lands intended for his sole occupation and use rights as such.

The Court therefore determines that the decision of the Court made on 8 May 1991 in respect of Papua Section 4 and Papua Section 4A was correct and applications 336/96 and 334/96 respectively should be dismissed.

For the reasons set out in the previous paragraph 10.3 the Court also considers the application to revoke the order made on 8 May 1991 in respect of Papua Section 4A should also be dismissed.

10.5 *Te Areroa Section 8A3*

The Title Register records this section as being in the Ngatangiia Tapere and containing 24 ars (2 roods 16 perches).

On 17 October 1912 Te Areroa Section 8A was partitioned and divided into five separate sections, 8A1 to 8A5 inclusive. Section 8A3 was awarded to "Pa Ariki F." Pa Tetianui was the then Pa Ariki. The applicant relied, in her early written submissions, on the general grounds put forward in support of her application and as set out herein in paragraph 6 but she made two further submissions: firstly, that the Section 8A partition in 1912 awarded Sections 8A1, 8A2, 8A4 and 8A5 as personal or family interests; that all vesting orders were done on the same day, date and place and that 8A3 was no different from the other four and was a personal interest. Mrs Henderson also claimed that when 8A3 was succeeded by the previous Pa Ariki in 1986 the Court vested the land in her maiden name and this was further evidence the land was family land.

The respondent placed emphasis on the use of the words "Pa Ariki" used in the 1912 order and drew comparison with the different vesting of Te Areroa 10A2 in the names of Pa Te Tianui and Tupe on 6 July 1908 (MB 4/167).

Following the Court's first hearing of these applications on 2 May 1997 the Court, having carried out its own research, requested a copy of MB 8/211 which had not been referred to by either party. This minute recorded proceedings before the Court on 22 January 1917 at a time when the Ariki Title was held by Pa Te Tianui. The application

was made by Pa Te Tianui to amend the title of 8A3. It is important to set out the text of the recorded minute.

> "Pa Ariki - I want to add certain names. These people have ancestral rights. They have had occupation. They are to have the shares they are now occupying. There is no trouble over the boundaries. The last Pa promised them by the last Pa (sic). This is not Ariki land. Given by Nia to Pa".

Another witness at this 1917 hearing named Teeiao also confirmed:

> "This is not Ariki land and was promised to these people by the present Pa's mother."

This minute was referred to the parties herein in its interim decision and directions of 11 October 1997. Counsel for the respondent sought to show Teeiao's inconsistent stance as that person later in the 1917 hearing stated the land came down through a previous holder of the title and further that, although gifted, the land remained with the title. The Court follows this argument but is strongly persuaded by the actual statement of Pa Ariki herself that the land was not Ariki land. The Court observes that counsel for the respondent at TB2/4.5 made this statement to the Court:

> "If there are statements made in minute books which clearly identify these interests as being title interests then the Court , it is submitted, must take them into account."

The Court completely agrees and places the statement of Pa Tetianui at MB 211 within that category. The applicant has of course adopted the MB 8/211 evidence as supportive of her case.

The witness, Mr Terepai Noo - former Deputy Registrar, in his schedule of lands (Exhibit"G"), did not classify Section 8A3 as either title or family lands. During cross examination Mr Noo stated he had not seen MB 8/211 in the course of preparing his schedule (Transcript p16). He was not prepared to move from the position that he did not know whether it was title land or family land.

This Court has no such doubt and can see no more relevant positive or compelling evidence than that coming from the Ariki herself. Associated with that statement are the circumstances surrounding the partition itself in 1917 when land which was not previously Ariki land was divided up and shared among five family groups.

The Court therefore finds that Te Areroa Section 8A3 is not Ariki title land and is personal family land which should now be shared by the nine children of Te Rito Tepaeru.

10.6 *Te Tavaroa (Tauaroa) and Te Arakura Sections 14L and 14M No 2*

The Title Register shows the title to this land being constituted by way of a partition order of the Court on 30 June 1941. Prior to that partition the land was known as Turangi 14 L M Te Tauaroa, Tearakura. On 6 July 1908 (MB 4/164) the land was investigated and the short minute records:

> "Turangi 14LM Te Tauaroa, Te Arakura
>
> Claimed by Pa. Order in favour of
> Pa Te Tianui fa
> Timi ma
> Te Pou m.a".

On 30 June 1941 Te Pou son of Kaitara Nicholas applied to the Court to partition the land and obtained an order cutting out an area of 2 acres to be called Te Arakura 14 M No 1 for citrus planting. The balance land of 9 acres 3 roods was then vested in

1. Pa Te Tianui fa
2. Timi ma.
3. Te Pou

On 26 February 1952 Pa Te Tianui and Timi - the husband of Te Tianui - were succeeded by Te Rito TaiteAriki. On 22 March 1972 Te Pou was succeeded by his five children and in 1987 and 1996 further succession orders have been made in favour of Te Pou descendants. One of these, Tetianui Nicholas, a grand-daughter of Te Pou obtained an occupation right in 1984 for the purpose of providing a house site and

agriculture land. On 8 May 1991 the present Pa Ariki succeeded Te Rito TaiteAriki and the title records this interest as held "by virtue of her office of Ariki". It is this order which is now sought to be revoked.

The applicant contends this is personal family lands and advances similar arguments as presented in respect of Te Areroa 8A3. The respondent relies on the 1908 vesting in which Pa Te Tianui claims the land and also refers to the evidence given by Terito Tai TeAriki at MB 21/295 in 1952 when Terito stated:

> "Land is from Pa and at time land was investigated, Tetianui was the Pa Ariki".

Once again the Court has had to look at the totality of the evidence. It does not accept that the land is Ariki title land because it was claimed by Pa. Pa could well have been claiming in his personal right. Nor does the Court accept that Terito Tai TeAriki was admitting the land to be Ariki title in her evidence at MB 21/295 above. Her statement could quite properly be interpreted as a statement of fact.

This Court is more influenced by the fact that three persons were named as owners both in 1908 and 1941 and that personal successions have followed the Te Pou interest as well as an occupation right. Former Deputy Registrar Terepai Noo did not record the land as Ariki or personal family land. The Court is of the view, after having considered the principles guiding the Court in Chief Judge Gudgeon's time as investigating judge, it is a reasonable presumption to apply that land shall be deemed to have been vested as personal family land and not Ariki title land unless there is clear evidence to the contrary or that the weight of evidence over-rules that presumption. That presumption seems to lie squarely in line with the views expressed by Gilson and other historians conversant with the attitude of the Court at the beginning of this century.

In this instance the Court finds firstly, that there is no clear evidence the land is Ariki title and secondly, that the recorded dealings with the land indicate the interest is a personal family interest. Having reached this conclusion the Court finds that Te Tavaroa (aka Tauaroa) Section 14L and Te Arakura Section 14L is family land and the order made on 8 May 1991 should be revoked.

10.7 *Te Mata-o-te-Enua 10A1*

This is the fifth section of land at issue in these proceedings and as will be seen shortly also involves an adjoining section Te Arerca 10A2. A plan showing both sections was produced to the Court as Exhibit "AH".

The title to Te Mata-o-te-Enua 10A1 was established on 6 July 1908 following an investigation of title. Minute Book 4/166 records this:

> "TAPERE OF NGATIVAIKAI
> Ngati Vaikai 10A Te-Mata-o-Te-Enua
>
> Claimed for Vaikai Tamaru
> There is a deed handed in in which it is shown that the Mata o Te Enua was given absolutely by Vaikai in 1859 to Pa by Paparau Vaikai.
> Ordered that Pa Te Tianui be the owner. Order in favour of
> Pa Te Tianu f.a
> Tupe m.a."

The Pa holding office in 1859 was Upokotakau aka Mere Pa (see list in para 4.1 supra). The person shown as Tupe in the order is the full blood brother of Pa te Tianui.

At this point the Court wishes to refer to evidence produced as Exhibit "AL" at the hearing. The evidence relates to two wills made respectively by Tapurau Vaikai before he died in 1972 and by Vaikai Manatu younger brother of Tapurau on 21 June 1903. Both these documents refer to the gift of land in 1859. The Court does not intend to set out the full text of the documents which are relied on by both the applicant and respondent in support of their respective cases. The following is an extract from Tapurau Vaikai's Will:

> "This is the wish of Tapurau Vaikai in giving a house-site for Pa Ariki and her husband Morea Opura on February 10, 1859 ...
> I am giving this to both of you without payment of any kind, no labour the land is yours ...
> The land I gave Pa and her husband for a house site will not revert back to Vaikai
> It is for Pa and her husband forever."

The following is taken from Vaikai Manatu's Will:

"Vaikai Manatu: I have nothing to say abut that land, what my older brother Tapurau had said, I accept that. It is Pa's land and the decision is yours".

The Court will examine this gift and its relevance on the status issue a little later herein.

It would seem that the Court in 1908 being aware of the gift in 1859 would have determined the land should follow down from Upokotakau (Mere Pa) to Pa Maretu and thence on to Te Tianui. The inclusion of Tupe would on the face of it seem to indicate that the Court in 1908 did not regard the land as Ariki title.

The Court now returns to the Title Register and official records.

On 12 June 1957 (MB 23/245) the interests of both Pa Te Tianui and Tupe were vested in Te Rito TaiteAriki. The next entry in the title register is indeed most interesting. It records the confirmation of a lease dated 16 October 1958 from Te Rito TaiteAriki to Pa Te Ariki Upokotini by virtue of her office as Ariki (emphasis added). It would seem to indicate that Te Rito TaiteAriki in her personal capacity as owner was leasing portion of 10A1 to herself in her capacity as Ariki. The Court early in the second hearing on 20 January 1998 drew this lease to the notice of both the applicant and respondent and indicated that the lease must raise a presumption the land was personal land. The Court is grateful to counsel for the respondent for her research into this query raised by the Court. Mrs Browne has filed a detailed submission (TB4) which shows that the confirmation of lease entry recorded in MB 24/118 is in fact a wrong entry against the 10A1 title and should have been recorded against Te Areroa Section 10A2 which is the land adjoining Te Mata-te-Enua Section 10A1 (See Exhibit "AH"). The lease was confirmed on 17 November 1958 (MB 24/118) and the error was discovered sometime between that date and 20 December 1961 and brought before the Court (Judge Morgan) for rectification (MB 25/106 produced as attachment "S2" in TB 4/2). Judge Morgan accepted a surrender of the lease which effectively removed the confirmation entry from the title record of 10A1. The mistake came to light when confirmation of a lease of 10A1 to the Ngatangiia Co-Operative Thrift and Credit Society Limited was brought to the Court. The second lease was for only a small area of 12 perches but the first lease was for the whole of 10A1 so there was a need to straighten things out. The

second lease was then registered against the 10A1 title. The effect of this error and its rectification would seem therefore to remove any suggestion that there was a presumption 10A1 was family land but the presumption must of course still lie against Te Areroa 10A2. This latter block is claimed as part of the palace grounds of the Ariki Although 10A2 is not at issue in the present proceedings and in fact this block was actually succeeded by the applicant's family on 29 June 1990 MB 6/344, nevertheless there is notice from the Respondent (see TB 3/10A2) that an application may yet come from the respondent to seek revocation of the 1990 order in not only 10A2 but also Ngatangiia and Vaiuna Section 10A4. The respondent has signalled this possibility on the grounds that evidence before the Court in these proceedings as to all of these adjoining blocks being given for palace purposes warrants a second look at the status. This Court observes that the respondent might have great difficulty with 10A2 in the light of the lease dated 17 November 1958 which seems to show 10A2 is personal land.

The Court also comments that the lease of portion of 10A1 to the Credit Society could be interpreted as an indicator 10A1 is also family land.

The applicant submits that the official residence of Pa Ariki of Takitimu was Te Areroa 10A2 and that land was found by the Court to be family land when it made its order on 29 June 1990. Mrs Henderson claims that Te-Mata-o-Te-Enua 10A1 was originally a gift from Vaikai Mataiapo to Pa Te Tianui and though designated for a palace it was never title land of Pa Ariki.

The applicant says the documents evidencing the gift (Exhibit "AL") refers to a house site only, does not mention that the land is intended to be known as Ariki title land and refers to three blocks, Te-Mata-o-Te-Enua, Te Areroa and Vaiuna. The applicant also asserts that the inclusion of Tupe is a further proof the land was family land.

The respondent argues that Te-Mata-o-Te-Enua Section 10A1 was once the site of Pa Tetianui's palace and that the Rangatira and people of Takitumu have always understood this land to be the site for Pa Ariki's Palace. It might be observed here that there are the ruins of what is said to be Pa Ariki's first palace on Raevaru Section 14A which land the Court will next review. Counsel for the respondent submitted it was a well known fact that there was a Palace on Section 10A1 lived in by Pa Tetianui. It fell

into disrepair and was demolished but the section has been kept mowed and plans were under way for the construction of a palace for the present Pa Ariki. Counsel claimed official functions had been hosted on these grounds. As earlier stated the respondent contends that not only 10A1 but also 10A2 and Vaiuna Section 10A4 formed part of the palace grounds and all were gifted in 1859 as title lands. In her fourth written submission Mrs Browne produced as attachment "S7" copy of a telegram from Pa Ariki dated 10 August 1987 to the Court confirming her objection to Ngamata More Rua building a marae "in her palace grounds".

Because of the confusion over the extent of the area claimed as Palace ground the Court with counsel visited the site and stood on the northern boundary of Te Areroa 10A2 looking south to the adjoining land Te-Mata-o-Te-Enua. The plan of both sections is set out in Exhibit "AH". The area of 10A2 is 1 acre 1 rood 24 perches and 10A1 is 2 roods 32 perches. The whole area is a little over 2 acres. The Court heard evidence from several people at the site and also back in the Court room

The Court summarises the evidence as follows:

1. Pari Tamarua testified she was 84 years old and that the land was palace ground and "belongs to the Ariki, no matter which Ariki". The witnesses said there were 3 buildings on the land, the palace, Guest House and "are utuutu" for resting and kaikai. Those buildings were erected in Tetianui's time.

2. Puretu Maoate, Autaua Rangatira aged 83 Exhibit "AI" confirmed the whole as being palace ground and was unaware there were two sections. She believed the land belonged to Pa Ariki.

3. Kaue Nia aged 80 years also confirmed the area was known to him as one piece of land and set aside as palace grounds.

4. Manarangi Nicholas was born on the land and lived with his parents in the guest house. He also confirmed the one area as palace grounds.

> The Court notes that former Deputy Registrar Noo did not classify the land as either Ariki or family land. In evidence (transcript 19 January 1988 p16) the witness said he was familiar with the land and understood the land was Kainuku land given to Pa to build a palace although he was unsure about the area allocated for the palace.

It should be noted that the evidence presented to the Court concerning this land is as follows:

1. Te Mata o Te Unua Section 10A1 was part of the land gifted in 1859 by Tapurau Vaikai.

2. The land was gifted as a house site for Pa Ariki and her husband.

3. Te Areroa 10A2 adjoining 10A1 was also included in the gift.

4. Buildings were erected on 10A1 and possibly 10A2 by Te Tianui.

5. There seems to be an understanding by several of the tribe that the palace grounds is regarded as one piece of land and not two separate titles.

6. There is consensus also that certainly 10A1 and possibly 10A2 were intended to be designated as palace grounds.

7. One of the witnesses Pari Tamarua was certain the lands were Ariki title. Another Puretu Maoate believed the land "belonged to Pa Ariki".

The applicant throughout the hearings has never denied that Te Mata-o-Te-Enua 10A1 was intended to be used as the site for the palace of the Ariki. She claims her family respects and accepts that view but maintains that the land can still remain family land even if set aside as a palace site. It is not clear from her submissions whether the family as owners of Te Areroa 10A2 include that land also as designated for future palace use.

Again in this instance the Court is required to determine the status of 10A1.

The land in question was originally Kainuku family land. It was gifted absolutely to Pa Ariki and her husband as a house site without any conditions attaching. It was given to Pa and her husband Morea. The land was awarded in 1908 to Pa te Tianui and his brother Tupe by a Court which was cognisant of the 1859 gift and its terms. Pa te Tianui built a house and other buildings on the land and possibly on 10A2. At this time there was an official palace on Raemaru 14A. The buildings on 10A1 were demolished. The palace on Raemaru 14A was also in ruins. This could well have led to an intention in Pa Tepaeru Terito's mind to build a palace on 10A1. The Court has been given no evidence as to why Pa Tepaeru Terito sought a lease of 10A2 block in her capacity as Ariki. Did she perhaps have a new palace in mind? Unfortunately when the Court is looking back in history it has to rely on such records available to it and the viva voce evidence of people is sometimes affected by passing time and by distance from the event.

The Court does not doubt the sincerity of those elderly witnesses who have given evidence in these proceedings. It is inevitable there be some confusion and conflict. As in the previous section dealing with Sections Te Tauaroa 14L and Te Arakura 14M2, the Court must look at all the circumstances. It has done so and concludes that Te-Mata-o-Te-Enua 10A1 is not Ariki land but personal land. The land was not Ariki land at the time of its original gift in 1859. It did not become Ariki title in 1908 when vested by the Court in Tianui and her brother Tupe. It did not become Ariki title at any other time subsequent to 1908 until the order presently sought to be revoked was made in 1991. There is no doubt the land belonged to Pa. There is also no doubt it was intended to be used for construction of a new palace for Pa. But the land remains personal land and if the family successors follow their stated acceptance this land is designated for a palace that objective can be achieved. The Court will in its concluding paragraph refer to this aspect.

One final comment in relation to Section 10A1 and perhaps including Te Areroa 10A2 as well is that, although these lands are family lands they do have importance for the people as the place proposed for palace grounds. There has been no formal designation of the land as palace ground by the family and the land does not yet fall

within the category of sacred land used for the installation and investiture of the Ariki such as is spelt out by the Koutu Nui in its reference to marae. There is evidence also that Pa Tetianui built a home and lived there. The successors in title to this land are Ariki family and in time to come this land may well become more significant as a marae and palace ground.

10.8 *Raemaru Section 14A*

This is the sixth section and final section of land subject to this present inquiry and probably the most difficult title to determine. As has been the task of this Court in all these applications it is faced with interpreting actions of the Court in 1908 and in later dealings with the land. The Court is not helped because of the paucity of evidence and recording of the evidence before the Court from 1908 until now.

The 1908 order vested Section 14A in four persons (MB 4/160). The land comprised an area of 7 acres 2 roods 24 perches.

1.	Pa Te Tianui	fa
2.	Tearo Paretiare	f.a
3.	Te Ariki Akauruuruia	m10
4.	Tiria (interest ceased on death)	(Custodian)

On 8 August 1930 the interest of No 2 above passed to Nehemia m.a solely. In 1927 a portion of the land containing half an acre was set aside for a school. On 12 August 1940 the interests of No 4 above terminated. On 27 September 1949 the interest of Te Ariki Akauruuruia ma was vested in Reginald Nicholas m12 and Pa Te Rito, the then Pa Ariki, was appointed as trustee for Reginald.

In 1953 the Court granted to Marie Peyroux, then aged 5 years, a right of occupation over an area of 1 acre 3 roods 15 perches for the purpose of cultivation of citrus. Marie Peyroux was the daughter of Te Rito Tai Te Ariki who was appointed trustee.

On 23 September 1991 the interest of Pa Te Tianui was vested by succession order in Marie Peyroux alias Te Rito alias Pa Tepaeru Ariki fa. It is that order the applicant

seeks to be revoked. In addition to her general grounds referred to in paragraph 6 the applicant claims that Raemaru 14A had been promised to her by her mother and that this wish had been communicated to, not only the other eight children, but also to her father George Peyroux and also the Mataiapos and Rangatiras and wider family. The applicant filed a statement signed by all her siblings apart from the respondent (KH 3 Attachment 2) consenting to Kaurangi Henderson occupying and obtaining title to Section 14A. Reference to George Peyroux's letter to the Court (Exhibit "AD") discloses his view that the front section of 14A was verbally willed to Kairangi by her mother. The applicant submits that this incomplete gift also confirms the land was personal family land.

The applicant called Mrs Tamara Raina (Exhibit AB) who deposed she grew up with the late Pa Tepaeru and went to school with her. She remembered the late Pa telling her late husband that the land beside the Mormon Church from the main road to the end of the Mormon Church was for Kairangi. The witness, was however, not able to say whether the land was title land or family land as this had never been spoken about with the late Pa Ariki. She also stated that she and her late husband used to live on Section 14A and planted kumara and other crops from the Arametua road to the back of the palace ruins.

As a further argument, the applicant claims that the vesting of the land into four persons' names in 1908 was a further proof Section 14A was personal and not Ariki land.

The respondent's principal argument in reply relied upon the evidence given by Makea Tinirau who held the Makea Ariki Title of Te Au o Tonga. This evidence was given during a Court hearing on succession to Te Aro Paretiare on 8 August 1930 (MB10/244). The following is an extract from that evidence:

> "Makea Tinirau:
>
> This is Ariki lands of Pa. Pa's child is in my care. Ask matter be left over until child of age (14 years more).
> Court said it could see no reason why a child should not succeed his mother whatever the interest was.
> S/O to Nehemia m.a."

It would seem the Pa referred to in this minute is Pa Te Tianui and the child referred to is Tepaeru Te Ariki although Tepaeru was not a child of Pa. Pa Tetianui had no children. Previous evidence already detailed herein (MB 10/343) also records Tepaeru being vested with the title in 1932; that is, 2 years later than the above extract. Clearly however Makea Tinirau regarded the land as title land.

Counsel for the respondent submitted that the presence of other names in the 1908 order does not make the land personal family land and that in some cases title land may still include persons other than the Ariki. Former Deputy Registrar Noo also made this point when cross-examined by Mrs Henderson (Transcript p22). Terepai Noo said that, although the lands are given to the title holder, certain people are put there because they have lived on it e.g house sites near to the church. The Court agrees with that view although there is a need to look at the relationship between the Ariki and other persons included. If, for example, the only brother of the Ariki is also included with the Pa Ariki the land could well be personal land as was the case in Te Mata-o-Te-Enua 10A1. Mr Noo scheduled Raemaru 14A as Ariki title land but mainly relied on Makea Tinirau's evidence at MB 10/244.

The Court also visited Raemaru Section 14A and saw the ruins of the old palace which was the home of the Pa Ariki prior to Tetianui. There is a reference in MB 10/195 to Pa on his "paepae" Raemaru adjoining Matakata.

The Court, upon reviewing all of the evidence and minute books, consider that the weight of evidence indicates that Raemaru Section 14A was Ariki title land and not the personal family land as claimed by the applicant.

This now completes this review of the six pieces of land at issue.

In her written submissions at KH 1/11-13 and KH 3/8, the applicant takes issue with the action of counsel acting before the Court in 1990 and 1991 and in conflicting submissions made to the Court by counsel. She also referred to certain erasures made to a Court record. The Court has looked at the applicant's submissions but does not consider these are material to the decision this Court has to make. During the process of investigating succession, it is not always initially apparent what status the land has

i.e Ariki title or personal family land. In many cases later evidence is discovered which helps to clarify the position. In these instances it is not uncommon for counsel and the Court itself to review and amend previous submissions. Indeed there is an imperative that counsel present additional relevant evidence to the Court. This Court does not accept that there was any suggestion of evidence being withheld or changed or erased so as to present an erroneous view to the Court. In any event the whole purpose of the present revocation application is to ascertain whether the Court previously erred. This present inquiry has been extensive, with a great deal more evidence being discovered and presented than was before the Court in 1990 and 1991. It has been no easy task for this Court, even with the benefit of additional material, to determine the status of these lands.

11. Conclusion and Orders of the Court

The Court has found that the applicant has failed to prove an error was made in respect of the following succession orders.

1. Order made by the Court on 8 May 1991 in respect of Papua Section 4. Vaimaanga (Application 336/96)

2. Order made by the Court on 8 May 1991 in respect of Papua Section 4A Vaimaanga (Application 334/96)

3. Order made by the Court on 23 September 1991 in respect of Raemaru Section 14A Ngatangiia.

The applications made under Section 450/1915 in respect of the above three orders Nos 1-3 are hereby dismissed.

The Court has found that the following three orders were made in error by the Court.

4. Order made by the Court on 8 May 1991 in respect of Te Tavaroa (Tauaroa Section 14L and Te Arakura Section 14M No 2 Ngatangiia (Application 337/96).

5. Order made by the Court on 8 May 1991 in respect of Te Areroa Section 8A3 Ngatangiia (Application 335/96).

6. Order made by the Court on 23 September 1991 in respect of Te Mata-o-Te-Enua Section 10A1 Turangi (Application Nos 334-337/94 Amendment No 1).

The above three orders Nos 4-6 are hereby revoked and in their place the Court substitutes orders under Section 448/1915 vesting each of the respective land interests of the deceased person in the nine children of Te Rito TaiteAriki alias Pa Tepaeru Te Rito Ariki equally as previously recorded in Court minutes and orders of this Court on 29 June 1991 RB 6/344.

12. Costs

The Court, in the circumstances of this case and its decision, is not prepared to make an order for costs to either party.

13. Obiter observations by the Court

These comments by the Court are observations only and given in the hope there may be a reconciliation within the Peyroux family. The Court earlier observed the need for harmony particularly as future leadership of the greater family or Kopu Tangata may come down this descent line.

Quite obviously the Ui-Rangatira and mataiapo present at the family meeting on 19 March 1997 (Exhibit "AC") wanted a peaceful and united outcome within Pa Ariki and Kairanga's immediate family. There is no need to stress that the relationship between the Ariki and the ngati is not a one way affair. There is a need for respect and cooperation and a two-way obligation for the Ariki and the people to help each other and help will certainly be needed, not only in the administration of the numerous and important land holdings, but also in the use of those lands for the benefit of all the family. As the evidence has shown in this case, there is a family desire for the development of Te Areroa and Te Mata-o-Te-Enua for palace purposes. There is

evidence of the late Pa Ariki's desire to award land to the present applicant on Raemaru for a house site. A large family of 9 people will generate growing demand for occupation rights not only by present members but also their children. There appears to be sufficient land available not only to maintain Pa Ariki in her status and work but also to provide housing sites and communal areas for this family.

This Court simply echoes the wishes of the Ui-Rangatira that the family come together in harmony to deal with family issues. Because of the spread of title and family lands, there will be a need of consensus to provide housing and agricultural opportunities and to develop a site for the palace and marae of this tribe.

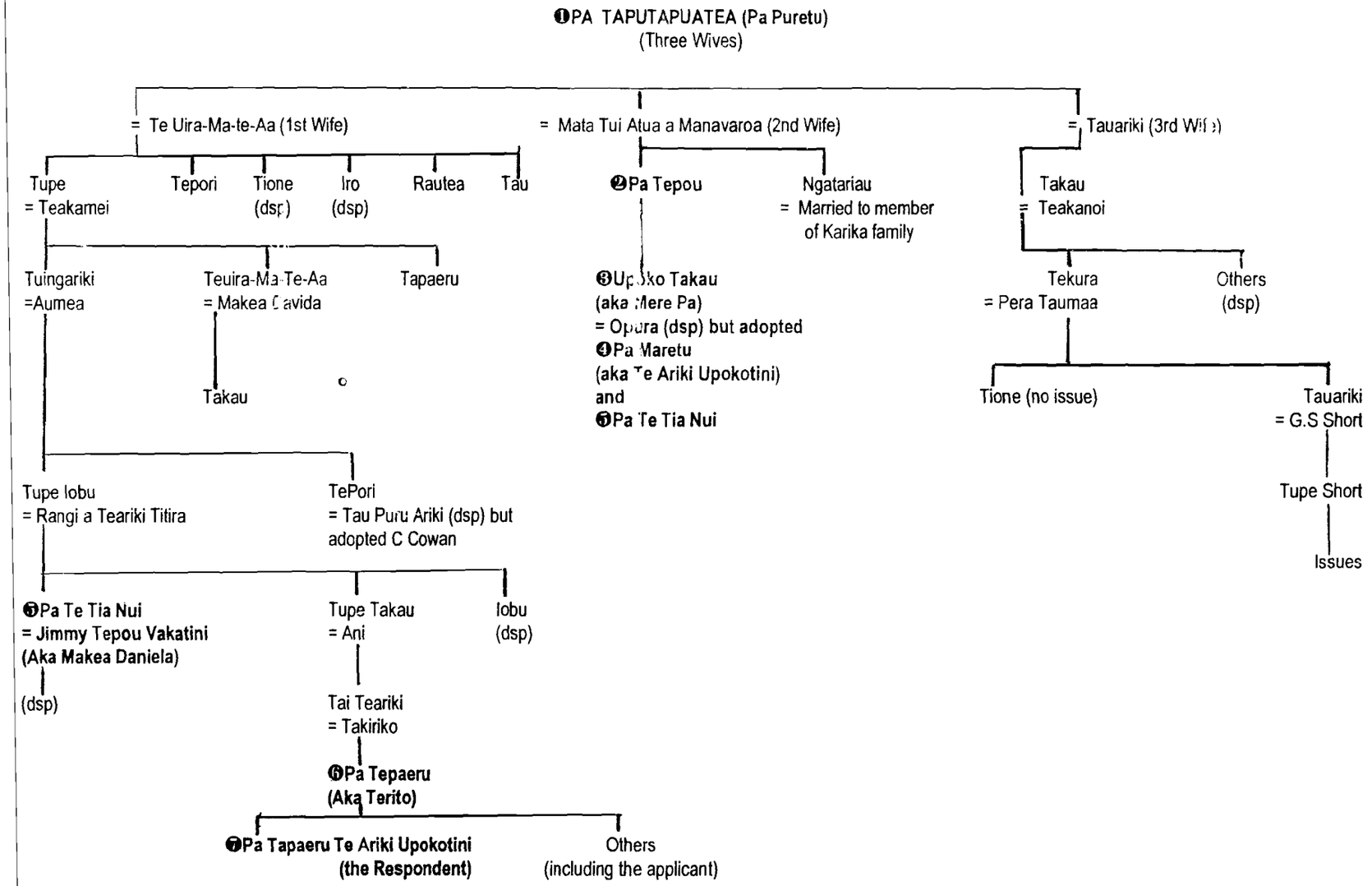
The Court and the Kopu Tangata would like to think that this family will become unified and put any present or past disagreements aside. It can be done.

Dated this 17th day of July 1998.

A.G. McHugh J

A.G. McHugh, J

APPENDIX A



Note: The circled numbers show the Ariki office bearers from 1770 to present day.