

**IN THE HIGH COURT OF THE COOK ISLANDS**  
**HELD AT RAROTONGA**

Application No 248/96

**BETWEEN**

TUATATA TOETA  
Applicant

**AND**

INA TAPURAU  
and MATAORA FORBES  
Respondents

**Hearings:** 5 May 1997  
27 January 1998

**Venue:** Court House Rarotonga

**Counsel:** Mrs Browne for the Applicant

**Agent:** Mr Pera for the Respondents

**Decision:** 25 March 1998

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**Reserved Decision of McHugh J**

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**Solicitors:** Clarkes PC Rarotonga for the Applicant

This is an application by Tuatata Toeta on behalf of the Pirangi family to revoke succession orders made by the Court on 2 May 1955 to the interests of three deceased namely, Marokaa, E Goodman and Mataroa Vaine in the land known as Vainganau Section 91 I, Arorangi. The applicant claims that the Court erroneously awarded the interest of the three deceased to the 20 descendants of Kaimarama MB 22/375-376 when these interests should have been succeeded by the 39 persons previously determined by the Court on 4 March 1952 as successors to the deceased - MB 21/278 and 306 - in Vainganau Section 91J block.

The application was part heard before the Court on 5 May 1997 but was adjourned for the wider family to meet to see if a settlement could be reached. The meeting did not take place. Mr Pera informed the Court that the Kaimarama family had conducted a workshop and invited representatives of the Pirangi family to participate but they did not come. The applicant requested that the Court determine the matter on the evidence contained in Court minutes and referred to in the affidavit filed by the applicant. The respondents made no formal submissions but simply relied on the order made by the Court (Judge Morgan) on 2 May 1955.

Before turning to consider that order which is now sought to be revoked it is important to look at the original order made on investigation of title to the subject land Section 91 I. The Courts minute at MB 2/366 is brief and as follows:

“350 91F Vaingangau  
Claim of Kaimarama

Kaimarama Sworn:

I claim this land. The boundary in dispute left for Court (sic) settled on Plan accordingly. Objectors challenged - none.  
Order in favour of Kaimarama m.a.

Tui: This land was sold by the old Tui to Kaimarama.

The Court:

You are bound by the Acts of your ancestors from whom you derive your rights to this land.

|                |     |                   |     |              |     |
|----------------|-----|-------------------|-----|--------------|-----|
| Aia            | m.a | Kaimarama         | m.a | Ngapoe       | m.a |
| *Maroka        | m.a | Kapukai           | m.a | Tuaua        | m.a |
| *E Goodman     | m.a | Romia             | m.a | Enuake       | m.a |
| *Mataroa Vaine | f.a | Poko              | f.a | Te Konini    | f5  |
| Te Keu         | f.a | Rapana            | f.a | Te Ei        | f2  |
| Te Au Vaine    | f.a | Mataara           | ma  | Pati         | fa  |
| Ruiki          | m.a | Toka              | m.a | Puranga      | fa. |
| Elia           | ma  | Te Ariki Maurangi | ma  | Rongo        | fa  |
| Kaitapu        | ma  | Enua              | ma  | Matata Vaine | fa  |
| Taueke         | ma  | Apai              | ma" |              |     |

There were in fact 29 persons awarded interests in this block of whom Kaimarama was one. The three deceased persons in the 1955 succession were all original owners and are marked with an asterisk in the above list.

The applicant placed before the Court copies of the title records in respect of Te Rakai 91 J Block and in so doing referred to succession orders made by Court in respect of interest held by E Goodman, Marokaa and Mataroa Vaine in this block. Particulars of the successors are as follows.

Firstly, as to E Goodman. By an order dated 4 March 1952; that is, 3 years prior to the succession order of 2 May 1955 which is now under review the Court awarded the interest of E Goodman and two others of the original owners to thirty nine successors whose names are listed on the title binder for Te Rakai 91J Block. Their names are set out also in paragraph 2 of the applicant's affidavit. Judge Morgan made this order. A rehearing took place also before Judge Morgan on 4 July 1955 and the Court upheld the succession orders made on 4 March 1952. The applicant for the unsuccessful rehearing was Tui Makea aka Tui Pori who then appealed against Judge Morgan's decision. The appeal was dismissed. The effect of these three reviews established the 39 person entitled to succeed to E. Goodman.

Secondly, as to Maroka and Mataroa Vaine. Succession to both these persons was also awarded by the Court (Judge Morgan) to the same 39 persons found entitled to succeed E. Goodman (MB 23/11 and 21/278).

As was the case in the E Goodman succession the 39 persons succeeding to Maroka and Mataroa Vaine held their respective shares unequally and in the proportion shown in the title register. It should be also noted here that Judge Morgan upon rehearing the E Goodman succession on 4 July 1955 found that Maroka had 2 sisters Tu and Mareta and that Tu had left the Marokaa family more than 100 years prior to 1955 but Mareta had not. The learned Judge in making the order confirming succession of the 39 person went on to make orders vesting Section 91J interests of Marokaa and Mataroa Vaine in the same 39 persons. This was done only two months after he gave the decision of 2 May 1955 in respect of Section 91 I.

It is therefore necessary to look at the judgment of 2 May 1955. The evidence and decision of the Court are recorded in MB 22/375-376. The Court (Morgan J) prefaced the hearing of evidence by stating “ See MB 2/366. This appears to be Kaimarama land”.

Evidence was given to the Court by Ari Pirangi who stated “this is Kaimarama land”. The witness claimed the land for herself as an unregistered but adopted child and referred the Court to the Kaimarama genealogy in Minute Book 5/354. Ari stated to the Court she had no right except by adoption and did not object to the succession going to the Kaimarama side. It is interesting to note that Ari made this statement in respect of the three deceased. “I really wanted the names struck out”. Perhaps by this statement she believed that as the three deceased had no issue of their own (MB 22/375) then respective interests should die with them. Her evidence was against her interest and this also may have had influence on the Court. There were no objectors and Ari Pirangi and Te Ei - a Kaimarama descendant - were the only witnesses. The Court then made an order in favour of the successors to Kaimarama. This is a list of 20 persons - MB 22/376.

It is difficult to understand why the Court ignored previous succession orders made by it only a short time previously. There is no mention of these successions at MB 22/375-6. The Court seemed to be influenced by the short reference in MB 2/366 on 3 October 1906 by the applicant Kaimarama “I claim this land”. Because of Ani Pirangi’s evidence also supporting the succession by Kaimarama descendants and no objections being recorded it

is possible to see that the Court might have been influenced to award the land to the Kaimarama family. What is important however is that Section 91 I was not awarded to Kaimarama solely in 1906 but to 29 persons including not only Kaimarama but also E Goodman, Marokaa and Mataroa Vaine.

This Court is satisfied that the Court acted erroneously on 2 May 1955 and that the interests of the deceased in Section 91 I should have been vested in the same 39 persons and in the proportions listed in the succession dated 4 July 1955 in respect of Te Rakai 91J Block.

Accordingly, there is an Order under Section 450 of the Cook Islands Act 1915 revoking the succession order of the Court made on 2 May 1955 in respect of Vainganau Section 91 I in respect of the interests of E Goodman, Marokaa and Mataroa Vaine deceased.

There is a further order under Section 448 awarding the respective interests of those three deceased persons to the 39 persons listed in the succession order of 4 July 1955 referred to supra and in the respective proportions set out opposite their names in the said order.

Dated this 25th day of March 1998.

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A G McHugh

