

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

IN THE MATTER of Applications No:  
179/97, 2/98, 374/98,  
375/98 by MOUPARAU  
TARUIA and LYNNSAY  
FRANCIS, in respect of  
the lands known as  
TAAKARUA SECTION  
17N and KAOREI  
SECTION 17H.

RESERVE DECISION OF THE COURT.

The applications for determination by the Court have been clearly set out in the directions issued by Justice McHugh on the 26<sup>th</sup> April 1999. For the purposes of clarity and convenience however, that extract from those directions is repeated.

<b>Appln.</b>	<b>Date filed</b>	<b>Type</b>	<b>Land.</b>	<b>Applicant</b>
179/97	30.4.97	Section 450 appln. to revoke succession orders of 23 May 1966 re Komera	Taakarua sec 17N Matavera	Mouparau Taruia for Kurikuri family, Mrs Browne appearing..
2/98	19.8.99, amended on 16.11.99	Section 390A appln to Chief Judge to rehear decision of the Court Dated 7 April 1997.	Kaorei sec. 14H. Natangiia.	Mrs Lynnsay Francis.
374/98	26.8.98	Section 450 to revoke succession orders made on 15 August 1978 and 14 December 1981 re Komera.	Kaorei sec 14H Natangiia	Mouparau Taruia
375/98	26.8.98.	Section 450 to revoke succession order made 23.May 1966 re Aki.	Taakarua sec 17N Matavera.	Mouparau Taruia.

On the 30<sup>th</sup> August 1999, the above applications came before the Court, [ Justice McHugh ] for hearing. After hearing the parties, the Court reserved it's decision.

Regretably, Justice McHugh passed away on the following day, the 31<sup>st</sup> August 1999, and it has fallen upon the incumbent Judge to bring down a decision on the various applications.

Fortunately, there is available to the Court, the very extensive submissions filed at various times by both counsel, together with copies of Court minutes and title records and a transcript of both the initial hearing before Justice Dillon [now also deceased.] and Justice McHugh, on the 28<sup>th</sup> September 1998, and 30<sup>th</sup> August 1999 respectively. This Court sees no necessity to convene any further hearings, or call for any further submissions..and proposes to deal with the applications on the papers.

I must begin by congratulating both counsel for the wealth of research carried out by them, and for their very extensive and helpful submissions. Unfortunately, despite the assistance afforded through those submissions, the matters before the Court remain extremely convoluted.

The basic issue to be determined first, if the subject matter of the applications is to be addressed, is the identity of Komera, and to a lesser degree, that of Aki, also known as Akimano.

For the better understanding of these matters, it is necessary to look back over the history of the lands concerned, and the various orders made by the Court in respect thereof.

On the 26<sup>th</sup> July 1907, the Court carried out an investigation of the title to the land known as Taakarua 17N, and vested the land into the names of 15 owners including Aki appearing as number 7, and Komera as number 15.

On the 8<sup>th</sup> July 1908, the Court investigated the title to the land Kaorei section 14H, and vested that land in 12 named owners including Akimano listed as number 6, and Komera as number 12. Apart from three additional names appearing on the list for Taakarua section 17 N, the ownership of the two blocks was identical.

At various times, commencing on the 24<sup>th</sup> October 1947, the Court has made several succession orders in respect of various of the owners of both blocks, culminating in orders on the 14<sup>th</sup> June 1994, and the 12<sup>th</sup> June 1995, respectively vesting the interests of Mere Metua in Taakarua 17N and of Komera in Kaorei 14H in Lynssay Francis.

Between those dates, succession orders were made in respect of the interests of Komera as follows:

#### **Kaorei sec 14H**

7.8.78 M.B.37/356 in favour of Henry Teokotai m.a. That order was endorsed,  
*"this order does not vest the relative interests of Komera  
solely in Henry Taokotai as he, being a great grandson of  
Komera is only one of many who can claim right of succession."*

- 5.8.78 MB 38/7 in favour of Grace Ngaputa f.a.  
Tutu Ngaputa f.a.  
Maria Ngaputa f.a. limited to their interests
- 15.8.78 MB 38/8 in favour of Taimaramara Kopu ..
- 4.12.81 MB ? in favour of Tearii Motua Samuel f.a. limited to her interest.
- 12.6.95 RB 10/220 in favour of Lynnsay Francis Turike Rongokea f.a. limited to her interests..

**Taakarua 17N**

23.5.66. MB 27/57. In favour of 34 named successors.

Succession Orders have been made in respect to the interests of Aki or Akimano as follows :

**Kaorei 14H**

15.2.1988. MB 5/246 in favour of 8 named successors limited as to their interests.

**Taakarua 17N**

23.5.1966. MB 27/56-57 in favour of 60 named successors in specific shares

By order of the Court, [Justice Dillon ],on the 7<sup>th</sup> April 1997,in reliance upon an application 15/96 by Mouparau Teruia seeking orders in terms of s450 of the Cook Islands Act 1915 revoking the succession orders made by the Court on "7.August 1978, 16 August 1978, and 12 June 1995." to the interests of Komera in the land known as Kaorei 14H ,and upon being satisfied that, "an error did occur in connection with the three Succession Orders made on 7. August 1978, 16 August 1978 and 12 June 1995" those orders were revoked.

That decision triggered the filing of a number of applications, namely those referred to above and taken from the directions issued by Justice McHugh.

Throughout the history of these applications there has been a chapter of accidents all of which have contributed towards the added confusion surrounding these matters

In the first instance, application No 15/96 sought revocation of succession orders dated 7 and 16 August 1978 and 12 June 1995. Those are the orders that were revoked by the Court by its order of 7<sup>th</sup> April 1997. Unfortunately however, the Court did not make any orders on the 16<sup>th</sup> August 1978 by way of succession to Komera, although there were two such orders made on the 15<sup>th</sup> August 1978. Could this be regarded as a mere slip, and rectified in terms of s44 of the Judicature Act 1980-81 ? I think not. The Court exercises it's jurisdiction upon application, and the order as made was in accord with the application lodged.

It is clearly in an endeavour to remedy this fault that further applications have been lodged by Mouparau Taruia in respect to the succession orders made for the interests of Komera.

The substance of the submissions of counsel has been directed largely at the identity of Komera, and the Court, before making any orders in respect of the applications as filed must determine that issue.

Neither counsel in their submissions has addressed the reasoning behind the inclusion of Komera in the lands, following the investigation of title. Mrs Browne suggests in her submissions that Komera has no relationship to the Kurikuri family. If that is the case, then why have the Kurikuri family been included in the succession orders made in respect to the interests of Komera?

The only genealogy produced to the court to assist in the identification of Komera was as recorded in the following minute books;  
 M.B.9/219. 5<sup>th</sup> July 1922 which shows Komera as a child of Tekairangi and his second wife Akimanu. Komera is therein recorded as being married to Piritavake.  
 M.B.9/237 10<sup>th</sup> July 1922 which purports to correct that listed above, and records Komera as a child of Te Kairangi and his second wife Puaia. One can but wonder as to whether or not there is any commonality between the name Akimanu, named in M.B.9/219, as the second wife of Tekairangi, and Akimano appearing as an original owner in Kaorei 14H. This proposition could gain some strength from the evidence of Vaai Piri Maoate recorded at M.B.27/55 on the 23<sup>rd</sup> May 1966, when he said: "Aki was a sort of aunt of Rangi and Komera who were sisters,"  
 M.B.14/170 of July 1941 records Komera as the second wife of Taakarivapihitavaki with what appears to be eleven children.  
 M.B.27/55 of 23<sup>rd</sup> May 1966, referred to above, records that the genealogy of Komera, as given at M.B.14/170 was correct.

The comment made in M.B.27/55 that Komera and Rangi were sisters is in conflict with the genealogies contained in M.B. 9/219 showing Tekairangi as the father of Komera, and M.B.8/293 of the 14<sup>th</sup> February 1917 recording Rangi Kurikuri as a child of Takurua, and showing Aki as a sister of Takurua. That evidence was given by Rangi Kurikuri herself who at the time was aged 63.

But, if the Komera appearing in the titles for Kaorei 14H and Taakarua 17N is not the Komera appearing in the Minute books referred to above, then who is she? No other genealogy has been produced.

It is possible that at the time Rangi Kurikuri was stating her genealogy in Court on the 14<sup>th</sup> February 1917, Komera was already deceased, and was therefore omitted from the genealogy? Was Komera a feeding child of Takurua?

In so far as the investigations of the titles to Takurua 17N and Kaorei 14H were carried out in 1907 and 1908, and since Komera was included as an owner in both lands, it is reasonable to assume that Komera was alive at that time. No evidence has been adduced as to the date of death of Komera, except for the statement made by Vaai Maoate on the 23<sup>rd</sup> May 1966 when he said, "Komera died a long time ago." Surely her death must be recorded somewhere. Would not the entry of her death shed some light on her parentage? Even some indication as to her age would assist in placing her along side Rangi Kurikuri or

even Aki. Nothing of that nature has been placed before the Court .It would appear that in this matter it is not a case of what we know of Komera but more what we do not know,

Since the Court cannot with any certainty identify Komera,it follows that any determination by the Court as to the persons beneficially entitled to succeed to her land interests must be flawed. Therefore, in the interests of justice, it would be appropriate that the interests of Komera in Taakarua 17N and Kaorei 14H should be restored to her name until adequate evidence is produced to the Court, sufficient to determine, with a degree of certainty, the person properly entitled to succeed.

Accordingly,applications 179/97 and 374/98 seeking revocation of succession orders made on 23 May 1966 ,15 August 1978 [two orders] and 14 December 1981 are allowed,.

With regard to application 375/98 in respect to the order of 23 May 1966 relating to the interests of Aki, since the identity of Komera may impact upon who will succeed to Aki, it is appropriate that that order too is set aside.

There are orders in terms of s450 of the Cook Islands Act 1915 revoking all of the said orders. The Registrar is directed to ensure that no application for succession to Aki or Kimano is to be heard until such time as the successors to Komera have been determined.

\* Turning now to application 2/98,by Lynnsay Francis, this is a matter for determination by the Chief Judge,and the function of this Court is merely to investigate the claim and report back to the Chief Judge.Despite the fact that Justice Dillon by his order on 7 April 1997purported to revoke a nonexistant order of 16 August 1978, the order made by him is valid and has effectively revoked the orders made on 7 August 1978 and 12 June 1995.Clearly, for the reasons given above for the purposes of revoking the orders mentioned herein, it is appropriate that the orders revoked by Justice Dillon should remain revoked. For that reason it is the recommendation of this Court to the Chief Judge that application 2/98 be dismissed. The Registrar is to convey this recommendation to the Chief Judge and provide him with a copy of this decision.

This Court is satisfied, that despite the admonition delivered by Justice Dillon on the 28<sup>th</sup> September 1998,this is not an appropriate matter for the awarding of costs.The applications before the Court and the Chief Judge have arisen largely because of the actions of the Court in the past in making succession orders in reliance of what would appear to be inadequate evidence.It may prove, if and when the matters come before the Court again,that Lynnsay Francis and her clients can prove an entitlement to succeed,and it would be inappropriate at this stage to prejudge any right that may accrue to her and make an order for costs.

This decision was delivered at Tauranga in New Zealand this 23<sup>rd</sup> day of February 2000.



Norman F. Smith.