

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

APPLICATION NO. 130/2001

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

AND

IN THE MATTER of Rule 193 of the Code of Civil
Procedure of the High Court
1981

AND of an application for an
injunction to restrain the
respondents named hereunder
from repeating or continuing
the wrongful acts complained of.

BETWEEN AREMATIEA AKAPEREPERE
PUNOUA RAKITU, of
Anaunga, Aitutaki, Chairman of
the Kopu Ariki o Vaeruarangi,
Retired

Applicant

AND TUNUI TEREU of Ureia,
Aitutaki, Mataiapo no
Vaeruarangi, Retired

First Respondent

AND LAWRENCE WILLIAMS
of Ureia, Aitutaki, Mataiapo
no Vaeruarangi, Retired

Second Respondent

AND NATINI SAMUEL
of Amuri, Aitutaki, Mataiapo
no Vaeruarangi, Unemployed

Third Respondent

AND KEU PAURANGI, of Amuri,
Aitutaki, Mataiapo no
Vaeruarangi Ariki, Pensioner

Fourth Respondent

2.

AND

TIPAPA TANGI NGARO of
Arutanga, Aitutaki, Mataiapo
no Vaeruarangi Ariki, Housemaid

Fifth Respondent

AND

TEARIKI SOLOMONA of
Arutanga, Aitutaki, Putokotoko
O Vaeruarangi Ariki,
Unemployed

Sixth Respondent

Mr Joseph Ka for Applicant.
Mr Teakura Teakura for Respondents.
Date of hearing: 27 August 2001

JUDGMENT OF SMITH J

This is an application seeking an injunction “restraining the Respondents named and their agents servants or followers from repeating or continuing to interfere, counteract, thwart, undermine, discredit, damage or defame his and the Kopu Ariki o Vaeruarangi’s reputation, authority and right to choose Strickland Henry to be the candidate for investiture with their traditional title Vaeruarangi Ariki on 11 October 2001.”

The application is in terms of Rule 193 of the Code of Civil Procedure 1981.

Although the cover sheet from the application cites Section 409(f) of the Cook Islands Act 1915, and the submission by Mr Ka on behalf of the applicant refers to a declaratory order to the effect that the Kopu Ariki has the sole right and authority to select the successor to the Ariki title, no application has been made in that regard.

The jurisdiction of the Court is exercised on application. Rule 327 of the Code of Civil Procedure 1981 provides:-

“every proceeding in the Court shall be commenced by an application in writing made to the Registrar in the Island of Rarotonga.”

In the absence of any application for the Court to exercise its jurisdiction under Sec 409(f) of the Cook Islands Act 1915 the Court makes no order in that regard.

Sec 409(f) of the Act empowers the Court to hear and determine any question as to the right of any person to hold office as an Ariki or other Native chief of any island.

There is settled law as to the function of the Court in applications of this nature. In the case before the Native Appellate Court on 14th October 1998 re Tinomana Ariki Title the Appellate Court held:

“It is not the function of the Native Land Court itself to appoint an Ariki or other Native Chief to the office. Any such application can only be made by the persons entitled to make the appointment under the ancient custom and usage of the Natives of the Cook Islands.”

The Court went on to say:-

“The most that the Court can do is to declare for the guidance and assistance of the people what it believes to be the custom governing such an appointment. Even if the applicant had appealed against this decision, this Court could not have appointed him as Ariki; the most it would do if it found that Te Pai had not been properly elected, according to custom, would be to declare that there had been no election and then a fresh election would have been necessary.”

There is equally settled law that it is the Kopu Ariki who make the appointments.

In re Ariki Title Kainuku 1991 McCarthy J said:

“Nevertheless, it is beyond question in my mind, that the spirit of the custom has always been apparent and is that the selection and appointment of an Ariki is the right and responsibility in each instance of the Kopu Ariki.”

This principle was traversed at length in the decision of the Court in re the Makea Nui Title on the 18th September 1995, and supports the proposition.

In that decision the Court also discussed at length the “Primogeniture Rule.” That is that it is the eldest of the successors of the deceased Ariki who should be appointed.

Although the Court did discuss arrangements whereby a title may be rotated amongst other members of the family, that requires clear and explicit approval before being endorsed by the Kopu Ariki.

Further, where there are several contenders for the title, the Court, while acknowledging that the majority decision of the Kopu Ariki may be implemented, found that custom dictates that in true customary fashion, the Kopu Ariki should sit until a single candidate is unanimously supported.

These comments are made by way of explanation and for the assistance of the parties.

Turning now to the application as filed, the Court’s jurisdiction is limited to granting the relief sought, namely the injunction.

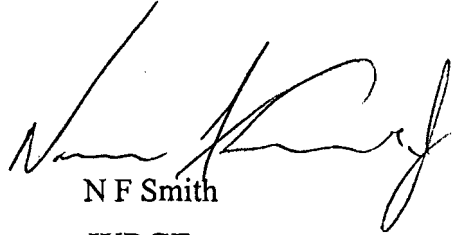
As stated above, in terms of Sec 409(f) of the Cook Islands Act 1915 the Court has no jurisdiction to appoint Ariki or other chiefly titles.

The application sought in this instance is such that if granted would be equivalent to the Court appointing Strickland Henry to the title. This, as is stated above, is in excess of the Court’s jurisdiction.

5.

The application is therefore dismissed.

Dated at Rarotonga this 5th day of September 2001.

A handwritten signature in black ink, appearing to read 'N F Smith', written in a cursive style.

N F Smith

JUDGE