

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

Application No. 280/01

IN THE MATTER of Section 409(1) of
The Cook Islands Act
1915

AND

IN THE MATTER of an application by
STRICKLAND HENRY
of Aitutaki, Telecom
Representative, to
determine his right to
hold the chiefly title of
Vaeruarangi Ariki

Applicant

Mr Mitchell for Applicant

Mrs Browne for objectors Katarina Moetitii and Teaukura Teaukura

Dates of hearing: 19 and 20 August 2002

Date of decision: 23 August 2002

DECISION OF HINGSTON J

Before dealing with the substantive issues the Court records that at the completion of the case of the Applicant Strickland Henry Mrs Browne, who had been appearing for Katarina Moetiti, consulted with her client and subsequently indicated to the Court that she was able to appear for Teaukura Teaukura, the other candidate who had been formally invested with the title before Mr Henry.

Mr Mitchell made an oral application to the Court to amend the proceedings to add Teaukura Teaukura as second applicant and the Court amended the application as requested.

This course of action enabled the Court to deal with the question of this title in its entirety rather than the possibility of having to preside over a further application at a later date.

Mrs Browne adduced evidence of a meeting held by members of the Raitirua line during the Court adjournment at which inter-alia Katarina Moetiti withdrew as a candidate and gave her support to Mr Teaukura. Mr Mitchell argued against the change of support being relevant as it was past the election/selection and the investiture. This matter will be addressed later in this decision.

At the commencement of the hearing the Court enquired of counsel whether the "customs" in relation to this title were clear – as well the Court raised the question of whether the "custom" when there was a dispute was to accept the "Senior" line and if there was a suitable contender from that line he was recognised as holding the title. This approach had been adopted by the Court in the 1949 dispute for this title.

Mr Mitchell counsel for the applicant Strickland Henry argued that this was not the custom but what was accepted was a majority vote by the Kopu Ariki.

Mrs Browne counsel for Katarina Moetiti another possible candidate who was opposing the Henry application was not against this Senior line argument.

Both counsel addressed this matter in greater detail after the evidence was in.

Genealogy

There is a genealogy of this kopu that is on the Court file and accepted by the Court in 1949 (MB9/312 et seq); this was tendered in evidence by Mrs Browne. She also referred to Aitutaki MB 13/231 which confirms the Raiti line from Io and her husband Rua Paratu forward.

Mr Mitchell presented a new genealogy, that introduced a new line; the Tama Tekore line which claims that Io Te Ngaro Kairoro a great grand daughter of Raiti (Te Rangi O Tangaroa's first wife) had as well Rue Parutu shown in the Court file genealogy another husband Tama Te Kore.

To substantiate this the Court was referred to MB1/160 and the genealogy therein which showed "Io" as the wife of Tama Te Kore.

A printed copy of a genealogical table headed "Printed by James MacCauley" was produced. This document was not supported by any authentication by way of Court acceptance or even having been put in evidence before this case.

Mrs Browne argued that the Court should not accept this new genealogy. It was not supported by any previous evidence particularly that given in the 1939 and 1949 cases concerning this title.

This disputed genealogy as well as claiming Tama Te Kore as first husband, inter alia, shows the applicant Strickland Henry as being of this Tama Te Kore line.

Mr Mitchell questioned the validity of the Court file genealogy suggesting that it had not been accepted by the Court.

Dealing first with the Court file genealogy I found that it has been before, and accepted by the Court (Aitutaki MB 9/312 et seq). (Aitutaki MB1/232).

Moving to the "new" line I am aware that the purported author of the "MacCauley genealogy" was first the Registrar and then a Judge of this Court. I believe he would have had extensive knowledge of the genealogy of most if

not all the Ariki kopu but having said this I cannot accept the unauthenticated document.

The genealogy at Aitutaki MB 1/160 was in support of a claim for land known as Araiawa by one George Strickland. The evidence does not identify "Io" as being "Io" the daughter of Te Ngaru and Akateni (Raiti Line). This is the vital evidence lacking in Mr Strickland's new genealogy. I find that this genealogy is not proven to the standard required by the Court and therefore I do not accept it.

The Kopu Ariki

It is common ground that the Kopu Ariki select/elect the candidate to hold the title however it is not so clear what/whom comprise the Kopu Ariki in this Kopu.

In approaching the question of who is the Kopu Ariki it appears that all descendants of Raitirua and Kaiata, Te Rangi o Tangaroa's two wives are eligible to participate in some form or another.

The Raitirua line gave evidence in support of their line being subdivided into Imoko, Ana and Ina; Ina is disputed by those of Kaiata line supporting Mr Strickland.

Kaiata line submit that this line also divides into three Ruru, Urumakea and Kaitao the latter two being children of Tukurumaeva who is a brother to Taitua husband to Ruru.

Mr Teinakore Bishop suggested that there could be a further subdivision creating two more sub-lines. This was not vigorously pursued by counsel for Mr Strickland.

The Court was informed that the subdivisions were to ensure limitations on who could speak.

Looking at the subdivision into three from each line it must be said that compelling evidence to substantiate these divisions has not been placed before the Court – What is clear however is the acceptance by each line of their own subdivision into three.

Court minutes and decisions on previous determinations do not take me any further however the opposing evidence and arguments presented in the instant matter does not in the Court's view disqualify any one of the six divisions. Because of this consensus with the Raitirua and Kaiata lines I find that the Kopu Ariki comprises the six lines, Imoko, Ana and Ina from the first wife of Te Rangi o Tangaroa, and Ruru, Urumakea and Kaitao from the second wife.

Majority Vote

Mr Mitchell strongly argued that in this day and age because in Parliament and land matters, and other community decision making, majority vote was decisive so it should be in the election/selection for this title. Mr Bishop gave evidence that majority vote was the custom now and had been probably since the advent of Christianity.

Mrs Browne argued that the majority vote was not the custom and Mr Teaukura was adamant that it was not customary.

Neither party could offer more in support for or against this and all the Court has been able to discover is in the Tinomana Ariki judgment of Judge MacCauley in 1976 when he said :-

“Napa Tauei Napa was elected by two families and by three of the five branches of the other family. The Court presumes that this constitutes the majority of the Kopu Ariki.”

He repeated this observation, when discussing Naomi Te Pai’s candidature. (Rarotonga MB34/352)

The decision in this Tinomana case hinged on who were entitled to elect/select the Ariki – the Kopu Ariki or the Kopu mataiapo. It is helpful but does not determine whether this is customary.

I am not convinced that the current use of majority rule is anything other than a useful method of reaching a conclusion on when there has not been a clear consensus. I do not believe it can be held to be a custom ancient or otherwise and the 1949 and 1939 cases do not in any way support a majority rule principle.

I find that a majority vote for or against a candidate in this Ariki title cannot, be anything other than indicative of the conclusion reached at the various meetings. As I see the position – Members of Parliament succeed using the majority vote but that has legislative authority – almost any adult Cook Islander can become an MP but to become a recognised Ariki is the privilege of the few. I make this comparison to highlight the havoc that could ensue if the majority rule became the custom when determining customary titles.

The Senior Line

Mrs Browne in her submissions strongly supported the view that where there is a dispute in the Kopu Ariki the Senior line or branch takes if they have a person available and not unsuitable Mr Teaukura in his evidence supported this.

Mr Mitchell on the other hand was of the view that only if there was a deadlock in votes could this be considered.

After considering both arguments I see no reason to deviate from what was said by Judge McCarthy in the Vaeruarangi Ariki title in 1949 (Aitutaki MB 13/155) when he said:

"The Court, however, is forced to follow what it believes to be the ancient Maori custom, namely, "When there is a dispute over successions to an Arikiship, succession will go to the senior line if there is a member of that line available and suitable for appointment."

Having made these two findings the Court records it's view that the majority rule principle is but a useful tool to assist in the process but cannot be elevated to being a custom whereas the Senior line was and is recognized Maori custom.

The Candidates

Mr Henry relies upon a series of meetings held by members of the Kopu Ariki whereat he gathered support for his candidature then proceeded to the Putokotoko giving notice to the Kopu Mataiapo the endorsement by this kopu and the subsequent publication by way of drums and finally the investiture. To facilitate this process the incumbent Putokotoko was replaced by Mr Bishop allegedly because he refused to promulgate Mr Henry election/selection by the Kopu Ariki. But Mr Henry and Mr Bishop gave evidence that all proper procedure and ceremonial was carried out. They also suggest that Mr Teaukura had not adhered to custom leading up to his investiture.

Mr Teaukura relies upon a meeting of the Kopu Ariki on the 16th of May 2000. The minutes of that meeting support his candidature though the approval was based on a condition inter-alia that he live in Ureia village. The Putokotoko apparently carried out his function by giving written notice of Teaukura's selection to the Are Mataiapo on the 23rd April 2000, then the Ui Mataiapo held a meeting on 15th June 2000 confirming the appointment and set a date for the investiture in December of that year. The investiture however was not carried out until 11th October 2001.

Mr Teaukura in evidence said he also had complied with the customary ceremonial and also that he was invested before Mr Henry.

Mr Mitchell submitted a rather novel view that because Mr Teaukura did not have the support of the majority of the Kopu Ariki he must necessarily be deemed to be unsuitable.

Mrs Browne submitted that Mr Bishop's elevation to Putokotoko was not in accord with custom as the incumbent was in office and did not die or voluntarily relinquish the title therefore implies Mr Bishop could not properly carry out the function of Putokotoko and the Henry procedure was invalid.

I hold the view that if the investiture is carried out those conducting it must be assumed to know what is correct and in respect of this series ceremonies surely it is up to them to refuse to conduct the ceremony if the necessary preceding ritual has not been carried out correctly – as well if there had been breaches they would have the power to overlook them. I include the non acceptance by Mr Teaukura of the condition that he live in the village and the effect thereof as being within the purview of those conducting the investiture.

I therefore make a finding that legal challenges of the proceeding leading up to the respective investitures are unsustainable.

Having decided the ceremonial procedures are not for the Court the final enquiry must be whether the candidates cannot proceed further because of a substantive rather than procedural irregularity.

There has been an attack based upon majority rule and as I have found earlier it is useful but not determinative particularly as the voting appears liable to change meeting to meeting. This propensity for change has been demonstrated during the hearing with Kataraina of "Ana" withdrawing and supporting Teaukura of "Imoko"

As to the submission by Mr Mitchell that the Court should not take this change into account as it is post selection and post investiture. I am of the view that as the jurisdiction being exercised is to determine the right of a person to hold office, do not take all matters into account at the hearing would be a denial of rights-more form than substance.

The effect of this finding and without going further into the unchallenged statements of Teaukura that he was also the senior of the Kaitao line, is that the present support appear evenly spread the Raitirua three lines supporting Mr Teaukura and the three lines of Kaiata supporting Mr Henry. This equality of support also answers the unsuitability because of no majority submission advanced by Mr Mitchell.

The Court is now left with the question of which is the senior line.

Mrs Browne submits that Mr Teaukura is of the senior line.

Mr Mitchell does not argue with this contention but has not offered any firm evidence that Mr Henry is of the senior line. If the Tama Te Kore genealogy had been accepted he would have been on firmer ground.

Fortunately for the Court the senior line question can answered by recourse to the 1949 Vaeruarangi decision and the 1950 Court of Appeal dismissal of an appeal against that judgement. The Court of Appeal when referring to Charlie Tokai said

“It would not be competent for Charlie Tokai alone to dispose of the right of the senior line”
Appellate Court MB1366 at p 367.”

The lower Court held

“The Court must look to the senior line for a succession to Tom Bishop it does so and declares Charlie Tokai is hereby declared to be the rightful person to hold the Ariki Title of Vaeruarangi”
Aitutaki MB 13/155.

Teaukura Teaukura being of this line is declared by this court to be the rightful person to hold the Ariki Title of Vaeruarangi.



Judge