

IN THE HIGH COURT OF THE COOK ISLANDS

HELD AT RAROTONGA

(LAND DIVISION)

APPLICATION NO. 359/01

ROBERT BRUCE GRAHAM

Applicant

Mrs Browne for applicant,

Mr Mitchell for objectors

Date of hearing: 8 September 2003

DECISION OF SMITH J

This is an application for succession to the interests' of the deceased occupiers named in an Occupation Right dated 22nd March 1972.

The order provides;

“that the land shall be used as a site for a dwelling house for the benefit of the said Albert Royle Henry and Elizabeth Henry and their direct descendants.”

The right is restricted to a term of 60 years.

Application was made to the Chief Judge under s. 390A/15 by the applicant seeking to cancel the order.

The Chief Justice dismissed the application leaving the way clear for the application for succession to proceed.

2.

Mr Mitchell queried the right for the Court to make Succession Orders in respect of Occupation Rights, arguing that the right thereunder does not constitute an interest in Native freehold land.

Mrs Browne having previously given evidence that the applicant, Robert Bruce Graham is a grandchild of the deceased original occupiers, and produced the consent of the other issues entitled to the applicant succeeding solely, sought orders.

Section 448/15 provides that the Court has exclusive jurisdiction to determine the rights of persons to succeed to the interests in Native freehold land in the name of a deceased owner.

Section 2 of the said Act defines "Native freehold land" as land which, or any undivided share in which, is owned by a Native or a descendant of a Native for a beneficial estate in fee simple, whether legal or equitable.

Under ss 2 of s 50 of the Cook Islands Act 1946, any person occupying any land under any Occupation Right Order shall, subject to the terms of the order, be deemed to be the owner of the land under Native custom.

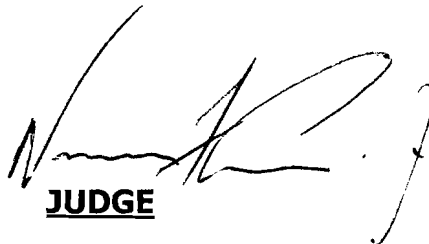
Accordingly, in terms of the order made in this instance Mr and Mrs Henry and their direct descendants are the owners of the land for a period of 60 years from the making of the order, the 22nd March 1972.

The Court therefore has jurisdiction in terms of s. 448/15 to make the order sought.

3.

Succession order granted in terms of Section 448/15 vesting the interests of Mr and Mrs Henry and their direct descendants in Robert Bruce Graham solely for a term expiring on the 21st March 2032.

Dated at Rarotonga this *9th* day of September 2003.



JUDGE