

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

JP APPEAL NO. 2/2003
LAND APPL. NO. 96/03

IN THE MATTER

of Section 409(d) of
the Cook Islands Act
1915 and Rule 132 of
the Code of Civil
Procedure of the High
Court 1981

AND

IN THE MATTER

of the land known as
TE PUNA SEC. 50A
TAKITUMU,
RAROTONGA

AND

IN THE MATTER

of an application to
Appeal the Decision of
a Justice of the Peace

BETWEEN

NGAPOKO MARETA
of Rarotonga
Appellant

AND

RONGO PRESTON of
Rarotonga
Respondent

Mr Charles Petero for Appellant
Ms Karen Harvey for Respondent
Date of hearing: *6 March 2003*
Date of decision: *25 March 2003*

DECISION OF SMITH J

On the 6th March 2003 the Court heard an appeal by Ngapoko Mareta against an order of the Court granting an interim injunction against her building on or occupying the land known as Te Puna S 50A Takitumu, and directing the removal of the house.

The Appellant in evidence stated that she arrived in Rarotonga from New Zealand where she had resided for some time. Within two days of her arrival she proceeded to build a house on the land and finished it two days later.

She stated that she had called a meeting of the landowners and they agreed with her proposal.

A witness, who took the minutes of the meeting stated that the meeting was called after the house was completed and Ngapoko Mareta was told to vacate the land.

The Respondent commenced upon the fact that she had told the Appellant at the time building began that she should not build on the land. That was ignored and application was made for the injunction which was granted.

Neither the Appellant nor the Respondent are owners in the land.

The section under dispute falls within the general description of "Te Puna lands" and are the subject of a rehearing before the Court. That has not yet been resolved.

On the 1st February 1997 Dillon J granted an injunction against any of the Te Puna family using or occupying this land pending determination of the rehearing still before the Court. Both the Appellant and the Respondent are members of the Te Puna family.

Counsel for the Appellant argues that the Respondent Rongo Preston has no right to bring an application for an injunction because she is not an owner.

Sec 409(d) of the Cook Islands Act 1915 empowers the Court:-

"To grant an Injunction against any person in respect of any

threatened or actual trespass or other injury to Native land.”

There is nothing within the section limiting the class of persons who may bring an application. The Court need only be satisfied that there is actual or threatened trespass or Injury to the land.

Rongo Preston has for some time been cleaning the land and keeping it clear. She has not exercised any right over the land and sought only to preserve it.

Counsel for the applicant submits that his client did not know of the Injunction issued by Dillon J.

Nevertheless she obviously acted with inordinate haste and with the assistance of her son and against the cautions of the Respondent erected a dwelling on the land.

Counsel for the Respondent is seeking costs.

This Court is of the opinion that ordinarily costs should be awarded against the appellant whose irresponsible actions were the cause of the proceedings.

The Court has some reservations however having regard to the status or lack of status on the part of the Respondent. She is not an owner in the land, nor was any evidence given to the effect that she was acting with the consent or authority of the owners.

In the absence of status in the proceedings she is not entitled to costs.

Application for costs is dismissed and costs will be where they fall.


JUDGE