

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

Application No. 921/07

IN THE MATTER of **POROPOROUATEA**
SECTION 11M,
MATAVERA

AND
IN THE MATTER of an application by
THE GEORGE TAMARUA
FAMILY to revoke the
Succession Order made
on 25 May 1982 to the
interest of Mataia

Applicants

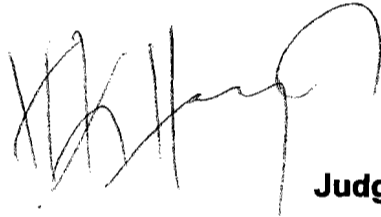
Mr Little for applicants
Mr McFadzien for Respondent
Date: 19 March 2008

DECISION OF HINGSTON J

1. The background to this matter is not complex. In 1907 there was a determination of ownership of the above block, that is, Poroporouatea Section 11M Matavera and one of the owners was Mataia m.a.
2. This person was succeeded to in 1982 and it is this 1982 order that is challenged.
3. Both parties presented genealogy; neither party disagreed with the genealogy, however Mr Little whilst accepting both pointed out that if the Mataia, owner in the above block was correctly succeeded to there were none of his siblings in the determination of title to this block as co-owners. He showed the pattern of determination in other blocks where the Mataia claimed by the respondents if included, was always accompanied by sibling co-owners.
4. Developing this argument, he showed how if his contention was correct, the Mataia claimed by the applicants as of their line, shared the determination with two other siblings and others of that generation, nieces and nephews of the respondent's Mataia.

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5. The Respondent suggested that as Mataia was adult in 1907 when the order determining the ownership of the above block was made, and that the Mataia m.a. was the uncle and not the nephew.
6. The Respondents also suggested that it is only supposition on the part of applicants and the order should not be disturbed.
7. The way I have approached this matter, is to consider what the Court in 1982 when making the orders now challenged, would most likely have done if the applicants had been involved in the matter then.
8. On the one side, a pattern of behaviour i.e. including siblings of the respondent's Mataia in the various determinations affecting this family around that time. On the other side, a determination without any siblings of the respondent's Mataia included but siblings and cousins of the applicant's Mataia on the title. I note the wife of a sibling of the respondent's Mataia is on that title.
9. I am of the view that in 1982 the balance of probabilities would have been in favour of the applicants' Mataia because of the way the determination to the family was dealt with in other blocks. The inclusion of siblings was a normal practice and the determinations for the above block is an anomaly unless the Court accepts the applicants' Mataia rather than the Respondent's.
10. The outcome of the above reasoning is that the applicants' claim is accepted by the Court and the 1982 succession order is revoked.
11. The Court also makes a new succession order in terms of the genealogy to the Mataia, the son of Tioti.

**Judge**