

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

Application No. 2/2009

UNDER

of Section 390A of the Cook Islands Act 1915

IN THE MATTER

of the land **TUAIVA SEC 4 ANAUNGA**

AND

IN THE MATTER

of an Application by **NGAOA RANGINUI** to correct an omission in an Order sealed 21st December 1903 **and** for a re-hearing of an application for succession heard on 30th August 1967

Applicant

Date of Judgment: 4 May 2011 (NZT)

JUDGMENT OF THE CHIEF JUSTICE

[1] On 17 September 2009 Ngaoa Ranginui applied for orders under section 390A, Cook Islands Act 1915. The purpose of the application was to correct an Order as sealed which omitted the name of Mereana where Mereana had been included as a landowner in Minute Book 2/28 on 11 September 1903.

[2] Pursuant to a direction of my predecessor, David Williams CJ, given on 11 June 2010, this matter was referred to a Judge of the Land Court for a Report.

[3] Savage J heard the matter in Aitutaki on 7 October 2010 and issued his report on 19 April 2011.

[4] The transcript of the hearing before Savage J is brief. It is clear that Savage J subsequently undertook some of his own research in order to address the matter.

[5] At paragraph [2] of his Report, Savage J summarised the documentary history.

[6] He started with Minute Book 2/28, a copy of which was annexed to his Report. It is not entirely easy to read this page but it appears to show Mereana as one of seven people entitled to the land concerned.

[7] Some months later, on 21 December 1903, an Order was signed by the Chief Judge with an attached schedule. This schedule shows only six names, with Mereana omitted. No reason is given on the face of the Order for the alteration as between the Minute Book entry and the subsequent Order.

[8] Some sixty four years later an application was made to succeed to Mereana (whose name was apparently recorded on the title). This was dismissed on 30 August 1967 at Minute Book 18/88. Savage J sets out the full text and I think this can usefully be repeated here:

"In MB 2/28 Mereana appears as an owner in this land. Her name does not appear in the sealed order of the Court and she is therefore not an owner (SEC. 394/6). The Court has been unable to find any person knows who Mereana was. Her name does not appear in any of the genealogies but evidence in Minute Book 2/267 indicates that she was an old lady who died without issue – possibly she died after the minute in 2/28 and before the order was drawn up. The Registrar is hereby directed to have her name deleted from the record of owners as shown in the (word unclear) register of this land. The application is dismissed and deceased is not an owner."

[9] The reference to "394/6" appears to be a reference to section 394(6), Cook Islands Act 1915. It is in the following terms: *"(6) All orders other than those hereinbefore in this section referred to shall be deemed to be complete when a minute thereof has been made in the record-books of the Court and signed by a Judge, and any such order may, when necessary, be at any time thereafter drawn up under the seal of the Court."*

[10] It is not clear to me how the Judge in 1967 thought that this provision supported his conclusion.

[11] As Savage J points out, however, section 394, Cook Islands Act 1915, was itself repealed and replaced by section 48, Cook Islands Amendment Act 1946. This is in the following form: *"No order shall be questioned or invalidated on the ground of any variance between the order as so drawn up, sealed, and signed in the minute thereof; and in the case of any such variance the order as drawn up shall prevail over and supersede the minute thereof."*

[12] This provision does appear to support the Order made in 1967.

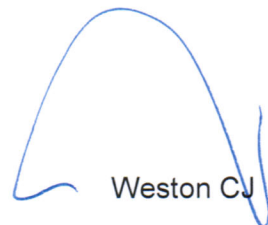
[13] Savage J researched the legislative position as at 1903 when the original order was made. He identified that on 10 July 1902 regulations were promulgated establishing the Cook and other Islands Lands Title Court and he located those regulations. Regulation 25 is in the following form: *“All amendments necessary to remedy or correct defects or errors in any proceeding or document, or to give effect to or record the intended decision in any proceeding, may be made at any time by the Court, whether applied for or not, and upon such terms as to the Court may appear just.”*

[14] Savage J was of the opinion that if a Judge in 1903 wanted to amend his decision because one of the owners was dead at the time of the decision, or had died between the hearing and the drawing up of the Order, then it seems this would have been accomplished pursuant to Regulation 25.

[15] Savage J considered that whether the matter was looked at in terms of the law as it stood in 1903, or as it stood in 1967, the Order would prevail over the earlier Minute and would not be corrected.

[16] Savage J then addressed a second issue, namely, whether the succession application in 1967 was in excess of jurisdiction. In paragraph [13] Savage J concluded that the 1967 Order ruled as to the effect of the 1903 Order and that the direction to amend the Register of Title was simply to require the Register to conform with the sealed Order.

[17] Savage J concluded his report by expressing some misgivings in paragraph [15]. Notwithstanding those misgivings, and on the basis of the materials put before me, I adopt the report of Savage J and dismiss the application dated 17 September 2009. No order for costs needs to be made.


Weston CJ 