

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

**Application No. 2/2007**

IN THE MATTER of an Application to the Chief Judge for  
Inquiry under Section 390A of the  
Cook Islands Act 1915

AND

IN THE MATTER of the land known as **TOREAIVA 91B  
ARORANGI**

BETWEEN **RANGIPIRA MACPHERSON** of  
Arorangi, Landowner  
Applicant

AND

**METUANGARO VAETERU** of  
Arorangi  
First Respondent

AND

**TEUIRA PIRANGI** of Arorangi  
Second Respondent

Decision: 8 June 2012 (NZT)

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**DECISION OF CHIEF JUSTICE**

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**The application**

- [1] On 10 May 2007 Mr George filed an application on behalf of Mrs Rangī MacPherson in relation to a parcel of land known as Toreaiva, part section 91B, Arorangi. He raised concerns in relation to:
- [a] the grant of an occupation right by Smith J on 6 September 2006 in relation to application 636/06;
  - [b] the grant of an occupation right by Hingston J on 20 February 2007 in relation to application 06/07.
- [2] Both of the challenged decisions appear to relate to broadly similar parcels of land as I will describe below.
- [3] Mr George seeks to invoke the Chief Justice's jurisdiction under section 390A as a result of alleged errors and omissions on the part of the Court.
- [4] Mr George lodged various materials in support of his application including an affidavit by Annie Rangipiri Maurangi together with various other applications and minutes of family meetings as I will describe in more detail.
- [5] In December 2007 the second respondent (a niece of the applicant), filed a notice of opposition.
- [6] The notice of opposition was considered by the then Chief Justice who issued a minute on 28 July 2008 seeking evidence in support of the notice of opposition.
- [7] The second respondent then filed a short affidavit dated 6 August 2008 which attached a number of relevant items.
- [8] Following that, Mrs Browne on behalf of the first respondent, filed a memorandum. She opposed Mr George's application. There is no affidavit in support or detailed explanation.
- [9] The matter was then considered again by the Chief Justice who gave the applicant the opportunity to respond to the newly filed materials. See his Minute dated 17 October 2008.
- [10] It seems that Mr George did not learn of this minute until May 2009 when he filed a memorandum in response.

[11] It then seems the matter languished there. The application was first drawn to my attention in late 2011. At that time I was sent some materials from the file. I asked for the balance. Nothing further happened, however, until Mr George chased the matter up in March of this year. At that point, the balance of the file was located and it travelled back to New Zealand with me when I returned from the March sitting.

[12] On reviewing the file it turned out that Mrs Browne's memorandum was missing and this needed to be chased up. That has now been received.

**Events in 2006 leading up to the hearing before Smith J**

[13] On 26 July 2006 there was a family meeting concerning a claim by the applicant to 2100 square metres of land by way of occupation right. The proposed land sat on the seaward side of the main road as well as the inland side. The land on the seaward side had a house located on it which was in a rundown condition. The land itself had been damaged by erosion in recent storms.

[14] The minutes of the meeting indicate that most of those present (if not all) agreed to the applicant having an occupation right in relation to the seaward parcel of land but not for the inland parcel of land.

[15] The applicant then filed two applications. The first was numbered 578/06 and concerned the seaward parcel of land. The second was numbered 579/06 and concerned the inland parcel of land.

[16] Some weeks later, on 21 August 2006, the second respondent (as I said, the niece of the applicant) filed application 636/06. This concerned a parcel of land of approximately 2400 square metres on which was situated a house.

[17] The various applications as summarised above contained plans. On casual inspection, the plans in relation to 579/06 and 636/06 appear to be of neighbouring parcels of land. Certainly, there is no obvious suggestion that the two parcels overlap (as it now appears is the case).

[18] The various applications came before Smith J on 6 September 2006. He granted the application in 578/06 concerning the seaward block of land. I do not need to say any more about that.

[19] The applicant encountered headwinds in relation to 579/06 and, as the transcript shows, Mr George, late in the hearing, sought an adjournment so

that this parcel of land could go back in front of the family for further consideration. The adjournment was granted by Smith J.

- [20] It seems that the application 636/06 was then granted on the same day by Smith J. I do not have a transcript in relation to this application. There was, however, considerable discussion in relation to application 579/06 as to the relationship between the land which was the subject of that application and the land which was the subject of 636/06. I refer, for example, to pages 4, 13, 25 and 36. These various references lead to the Court saying, page 37, that the two parcels of land did not overlap.
- [21] It is clear to me that the Judge made the relevant orders in the belief that the two parcels of land lay apart from each other.
- [22] It seems that later in the year (perhaps in October) the applicant learned that the second respondent, who was then surveying off her occupation right, was now asserting a right to some 420 square metres of the inland section which the applicant was claiming in 579/06.

**Events in 2007 leading up to the hearing by Hingston J**

- [23] There was a family meeting convened on 11 January 2007 which resolved to undo the occupation right granted to the second respondent and return some of that land to the applicant so that she had 1000 square metres on the inland side of the road, as originally proposed. It is now said that this meeting did not involve a majority of landowners.
- [24] On the same day it seems that the first respondent brought application 06/07 in relation to land on the inland side of the road. As best I can tell from the application this application seems to have related to the same parcel of land granted to the second respondent in relation to application 636/06. The dimensions of the parcel appear to be the same and the plan refers to Part 91B which would be the right section.
- [25] On 13 February 2007 there was a meeting approving the granting of a lease in relation to that parcel of land which the second respondent had obtained by way of occupation right in 636/06.
- [26] On 20 February 2007 Hingston J granted an occupation right in relation to application 06/07. I have very few materials in relation to this hearing but it seems to me that the Judge made orders inconsistent with those made by Smith J and described above.

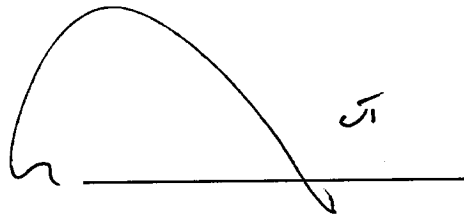
- [27] On 27 March the second respondent's application for the grant of the lease came before Kenning JP who granted the lease. An appeal was filed against this on 16 April 2007 in 1/07.

**Submissions and discussion**

- [28] Mr George submits that Smith J was mistaken in his belief that there was no overlap between the two parcels of land.
- [29] Mr Little asserts that his client never made a claim to the contrary.
- [30] I accept Mr George's submission that, on the face of it, Smith J appears to have laboured under the mistaken belief (encouraged by the parties and counsel) that there was no such overlap.
- [31] While I am conscious that, so it would seem, the applicant did not enjoy family approval in relation to her application 579/06, I think it unlikely that Smith J would have adjourned 579/06 and, a short while later, granted application 636/06 (which would have the effect of granting approximately half of the land claimed in 579/06 to the second respondent) if he had been aware that the two parcels overlapped.
- [32] In relation to the order of Hingston J, it seems to me that this was made in ignorance of the earlier order of Smith J. It is not clear how that order was made without objection by anyone but it appears that it was.
- [33] I note Mr Little's argument that the occupation right granted by Smith J has since been surrendered consequent upon the lease being approved by the family and then by the Court. I am also conscious of the fact that it appears that a very large number of family members approved the lease and that, all things being equal, the will of a majority of the landowners should prevail.
- [34] Mrs Browne's memorandum of opposition challenges the validity of the family meeting held on 11 January. She appears then to say that the land subject to application 06/07 is different to the land otherwise discussed in this decision. But that is not entirely clear.
- [35] The simple fact of the matter is, however, that it appears the Court processes have miscarried.

**Resolution**

- [36] I refer the matter to the Land Division of the Court for it to prepare a report to me in relation to the orders of Smith J and Hingston J described above. In addressing those, the Land Division should give consideration to the impact and effect of the lease approved by Kenning JP.
- [37] In order to reach my conclusion that I should seek a report from the Land Division of the Court I have, necessarily, have had regard to the file and my summary above reflects that. The Land Division should not feel bound by any of my observations or conclusions should it appear, from more detailed consideration, that a different conclusion should prevail.

A handwritten signature in black ink, consisting of a large, sweeping arch that descends into a horizontal line. To the right of the horizontal line, there are a few small, stylized characters that appear to be initials or a mark.

Tom Weston  
Chief Justice