IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(LAND DIVISION) **APPLICATION NO. 4/2012**

IN THE MATTER	of the land known as **MAROKATOTI SECTION 89E, ARORANGI** and all such other lands
AND	
IN THE MATTER	of an application under Section 390A of the Cook Islands Act 1915
BETWEEN	**PAI CHAMBERS** for the issues of PU TAMAIVA and SAMUELA TAMAIVA ("Tamaiva Family")
	Applicants
AND	**PUAI CUTHERS** (for himself and twelve other members of the Cuthers Family)
	Respondents

Counsel:	Ms Miria-Tairea for Applicants Mr A Manarangi for Respondents
Date of Application:	29 March 2012
Date of Hearing before Land Division:	24 April 2013
Date of Land Division Recommendation:	15 May 2014
Date of Judgment:	**15 June 2018**

JUDGMENT OF HUGH WILLIAMS, CJ

[WILL0422.dss]

Introduction

[1] By application filed on 29 March 2012 the abovenamed applicant, acting for the Tamaiva Family, sought a rehearing under s 390A of the Cook Islands Act 1915 of a succession order made on 13 March 2000[1] on the basis that the genealogy provided to the Court on that date to establish a blood connection between Makiroa Cuthers and

[1] Said in para [1] of Isaac J's Report and Recommendation dated 15 May 2014 to have been made on 13 March 2002; this seems to be an error

Te Ava Tamaiva was not the Cuthers genealogy, the respondents are not related by blood to Te Ava and so the order should be cancelled.

[2] The application was accompanied by submissions from Ms Miria Tairea, counsel for the applicants, containing the documents said to support the application.

[3] After the making of preliminary timetable orders on 5 June 2012 and 9 July 2012 and the receipt on 18 July 2012 of comprehensive submissions from Mr Manarangi, counsel for the respondents, Weston CJ apparently issued a Minute on 5 September 2012 in which he held that a prima facie case had been made out and directed that the file be referred to the Land Division for the preparation of a report under s 390A(3).

[4] The Chief Justice's direction resulted in a hearing before Isaac J on 24 April 2013 and the Judge's recommendation dated 15 May 2014 which forms the basis for this judgment.

[5] Since the application filed on 29 March 2012 challenged the correctness of the decision of Smith J given on 13 March 2000, twelve years previously, before the Chief Justice could make an order following the recommendation, s 390A(8) required the consent of the Queens Representative to be obtained as a precursor to such order.

[6] For some unexplained reason, the consent of the Queen's Representative was not sought until 31 October 2017 and was not given until 23 February 2018[2]. The delay of some four years is unfortunate, and, to the extent the Court is responsible for any part of the delay, the Court conveys its regrets to the parties but, since Isaac J directed[3] that his recommendation be conveyed to all parties, it would seem that no prejudice is likely to have accrued by reason of the four year delay in the matter being finalised.

Discussion and decision

[7] Isaac J commenced his recommendation by recounting the order made by Smith J on 13 March 2000 as being:

> "having heard the objection and perused the genealogy produced it is clear that there is a blood connection between Makiroa and the deceased.

[2] received by present Chief Justice 4 May 2018 (NZT)
[3] Para [67]

> Succession order in respect to all the lands of Te Ava in favour of the descendants shown in the genealogy produced with the application cited in numbers 1 to 13 inclusive equally".

[8] As noted, the applicant maintains the genealogy produced to the Court was incorrect and the respondents were not related by blood to Te Ava so the order should be cancelled.

[9] Isaac J then summarised the applicant's first submissions[4]. That was followed with a summary of the respondent's submissions – including citations of authority[5] – with the submissions concluding that:

> "in conclusion the respondents submit that adopted children of the blood are clearly able to succeed to their adopted parents. Makiroa was legally adopted within the blood, and therefore the respondents can succeed to Te Ava's interests. Even if there was no blood connection there is nothing in native custom which precludes legally adopted children not of the blood from succeeding unconditionally. The applicants have not provided any evidence to support their claim that the respondents should be precluded from succeeding fully to Te Ava's interests.

[10] The recommendation then summarised the applicant's response[6] and the respondent's further reply[7]. Then, after citing s 390A and authority as to the approach to exercising the jurisdiction[8] Isaac J summarised the issues to be considered as being whether the evidence showed there was a blood connection between Makiroa and Te Ava and whether s 446 of the Cook Islands Act precludes legally adopted children, regardless of blood connection, succeeding to the lands of their adoptive parents.

[11] The Judge then noted it was common ground that the genealogical charts C1 and C2 relied on by the Court to reach its 13 March 2000 decision were incorrect as they did not show a blood relationship between Mataroa and Te Ava but it was again common ground that the genealogies produced by the applicant as F and G were correct. However, the respondent relied on a genealogy produced to the Court in 1946 of which the Judge, after considering that document, concluded[9]:

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4 at [7]-[15]
5 at [16]-[32]
6 at [33]-[38]
7 at [39]-[43]
8 at [44]-[48]
9 at [55]-[57]

> "However when the genealogies referred to ... are brought together it demonstrates to me that Te Ava and Makiroa are linked by blood. This being the case, even though the genealogies produced at the Court in 2000 did not show the blood connection, the genealogies now produced do so. For this reason ... I would recommend that the order of 13 March 2000 remain unaltered. However the genealogies which should be relied on as being correct are genealogies F, G and H."

[12] The recommendation then considered whether s 446 of the Cook Islands Act 1915 permits legally adopted children regardless of a blood link to succeed to their adoptive parents and, after citing authority, held the section is sufficiently broad[10] to "enable the Court to vest the land interests of an adoptive parent in to an adoptive child even if not related by blood".

[13] The Judge's recommendations then concluded that the application should be dismissed but that the "correct genealogies F G and H annexed to this report and recommendation be added to the Court record regarding the succession of Te Ava."[11]

Decision

[14] The jurisdiction conferred by s 390A of the Cook Islands Act 1915 enables the Chief Justice to make whatever orders are appropriate to remedy mistakes errors or omissions of fact or law in earlier decisions by the Land Court or the Land Appellate Court.

[15] It is clear from the careful and comprehensive analysis undertaken by Isaac J summarised above that although the genealogies produced to the Court which resulted in the challenged order of 13 March 2000 were incorrect, the later genealogies produced to Isaac J showed the blood connection between Te Ava and Makiroa and thus the correctness of the order of 13 March 2000 despite its then incorrect basis.

[16] Adopting Isaac, J's findings, it is therefore ordered that the application filed on 29 March 2012 be dismissed but, further, adopting Isaac J's recommendation, the genealogies F G and H annexed to his report and recommendation are to be added to the Court record regarding the succession of Te Ava.

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[10] at [64]

[11] at [65]-[66]

[17] If costs are an issue, submissions may be filed (maximum 5 pages) with that from the respondents being due 28 days after delivery of this Judgment and that from the applicant's being due 35 days after such delivery, with the parties certifying, if they consider it appropriate so to do, that all issues concerning costs can be determined by the Court without a further hearing.

[18] A copy of Isaac J's Report and Recommendation dated 15 May 2014 and its annexed genealogies are to be attached to this Judgment and form part of it.

Hugh Williams, CJ