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

APPLICATION NOS. 450 & 451/2017

IN THE MATTER of Section 238 of the Cook Islands Act 1915

AND
IN THE MATTER of the lands known as TAPUEINUI and ARATAA 91H4, VAIKOI 910, both of Arorangi (the Arorangi Lands)

AND
IN THE MATTER of the lands known as PUNAMAIA 190E2Al & 190E2A2, Tapeau 19111, Vaimutuuri 31, Te Rua A Kina 66B1, Tutae Rupe and Puiaro 127R2, Motiti 188J, Tapae I Tai and Te Ruatoki 192C, Vaimutuuri 82B2B, Taumata 190H, Te Ai 132B, Areara Punangaariki 127M, Poroititara 190T2C, Outu 190X, Kaae 191N, Tauranga Manu 192F, ALL of Avarua (the Avarua Lands)

AND
IN THE MATTER of an application by PAORA KAINUKU JNR to succeed to the interest of Ani Pori Kainuk:u (the deceased)

APPLICANT

AND
IN THE MATTER of an objection by The Proprietors of Punamaia 190E2Al Incorporation

OBJECTOR

APPLICATION NO: 476/2017

AND
IN THE MATTER of section 132 of the Code of Civil Procedure of the High Court 1981 and section 9 of the Judicature Act 1980-81

AND
IN THE MATTER of all the lands being the estate of the late ALBERT GEORGE NICHOLLAS

AND
IN THE MATTER of an Application for interim injunction by PAORA KAINUKU JUNIOR (a.k.a. Sonny) to stop any future payments of monies from the estate of ALBERT GEORGE NICHOLLS and any dealing with such funds

APPLICANT

AND
IN THE MATTER of an objection by The Proprietors of Punamaia 190E2A1 Incorporation

OBJECTOR

Date: 27 August 2019

DECISION AS TO COSTS

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[l] This is a simple but totally misguided matter. It comprises two applications to succeed and an application for an injunction to prevent the payment out of rental monies until the succession matters are dealt with.

[2] In fact succession orders already existed. The application could never be considered on its merits because I had no jurisdiction. Mr Rasmussen seemed to think that I had a discretion to overturn previous orders.

[3] The matter occupied very little hearing time being called twice on one day and then on another when all their applications were withdrawn.

[4] The applications should never have been filed and needlessly put the objector to the cost of employing an agent.

[5] At the end of the hearing, it was suggested that costs would be agreed but the course of the correspondence shows that Mr Rasmussen has not responded and again he has not responded to two submissions filed as to costs by Mr Moore.

[6] Mr Moore's costs total $2,414.75 including VAT. The bill appears reasonable and Mr Rasmussen has not taken the opportunity to submit otherwise.

[7] As to what percentage of these costs ought to be ordered I find that it is not one of those cases where the behaviour of a party is such that indemnity costs should be ordered. It is however a situation where the applicant counsel should have known better and should have realised that the application would draw objection and the objector would incur reasonably substantial costs.

[8] I assess a proper order of costs at 75% and round that out to the sum of $1,800 to be paid by the applicant to the objector and there is an order accordingly.

Dated at Rotorua this 27th day of August 2019 Aotearoa/New Zealand.

P Savage
JUSTICE