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

APPLICATION: 285/2020

UNDER	the Declaratory Judgments Act 1994
IN THE MATTER OF	the land named MATARIKIRUA 10D2C2, Ngatangiia (the Land)
AND	
IN THE MATTER OF	a Deed of Lease dated 9 December 2003 vested in TAMATOA JOSEPH SHORT (the Lease)
AND	
IN THE MATTER OF	an application for a declaration that the Lease is at an end
BETWEEN	PIERRE KAINUKU, landowner **Applicant**
AND	TAMATOA JOSEPH SHORT, lessee of the Lease **Respondent**

Date: 30 April 2021 (NZ)

DECISION ON RECALL

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[1] The facts are simple. A consent order was made by me in October last year in relation to rental payable on this land based upon a valuation produced by one of the parties.

[2] The now applicant says that there was an error either in his calculation or in relation to the basis of the valuation. He says that the loss to his client, as a result of this error, is in the order of $10,000.00.

[3] The now respondent has been served and has taken no steps. I am therefore in a position where the fact of the error is not contested, and the application is not opposed.

[4] Be that as it may, it is often said that the jurisdiction to recall is to be used with circumspection. It brings in to issue the finality of judgments and the principle that once a Judge has issued a judgment, then he or she is functus officio.

[5] The authorities are well known in New Zealand and have their accepted base in the Horowhenua decision.[1] The jurisdiction is available in the Cook Islands.[2]

[6] If I were to exercise the jurisdiction it would be under the third category in the Horowhenua decision, namely:

> *...Where for some other very special reason, Justice requires that the judgment be recalled.*

[7] The matter has recently been discussed in the NZ Court of *Appeal Sisson v Chesterfields*[3] and in that judgment the Court of Appeal held

> *...The Court does however have an inherent jurisdiction to recall a sealed judgment, for example when the underlying agreement is tainted by duress, undue influence, unconscionability or mistake. Although consent orders "are not easily disturbed", the ultimate test will always be where the interests of justice lie. A relevant factor in determining where the interests of justice lie will be whether setting aside the consent orders will materially prejudice the rights of others.*

[8] It is interesting to note in that decision that the issue of mistake was discussed and for the purposes of this judgment I will presume that mistake maybe a basis for the exercise of the inherent jurisdiction.

[9] The ultimate point, however, is that I do not believe that I should invoke an inherent jurisdiction when there appears to be an adequate statutory jurisdiction to remedy the matter.

[10] The Chief Justice has jurisdiction under section 390A of the Cook Islands Act 1915 to correct an error such as this. In case I am mistaken in that view I will not, now, dismiss this application but I adjourn it sine die until the matter is resolved in that way. If no such application is filed before the 1st of July 2021, the file is to be referred to me to consider dismissing this application.

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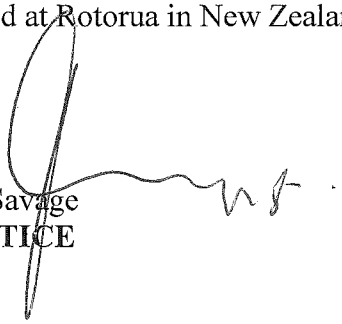
1 *Horowhenua County v Nash (no.2)* [1968] NZLR 632 (SC). Note that this case is also cited in *Bates v Mateara*, above n 2.

2 *Baudinet v Tavioni & Macquarie* [2010] CKCA, 18 June 2010.

3 *Sisson v Chesterfields Preschools Ltd (in Liq)* [2020] NZCA 687 at [18].

Dated at Rotorua in New Zealand on the 30th day of April 2021.



P J Savage
JUSTICE