

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

IN THE MATTER OF      Kaingavai Section 49C2B1, Takitumu, Rarotonga

**APPLICATION: 353/21**

UNDER                      Section 3, Declaratory Judgments Act 1994

BETWEEN                 KIRIAU TUREPU  
Applicant

**APPLICATION: 354/21**

AND UNDER             Section 478, Cook Islands Act 1915

BETWEEN                 JOHN PETER DUNN  
Applicant

AND                        NGATI MAOATE KOPU  
Respondents

Hearings:                 11 November 2021 (via Zoom)

Appearances:            B Mason for Kiriau Turepu  
B Marshall for John Dunn  
T Nicholas for Respondents

Judgment:                28 June 2022

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**JUDGMENT OF JUSTICE C T COXHEAD**

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## CONTENTS

<b>Introduction</b> .....	[1]
<b>Background</b> .....	[6]
<b>Procedural History</b> .....	[8]
<b>Preliminary issues</b> .....	[17]
<i>Section 390A Application</i> .....	[18]
<i>Evidence relied upon given the objectors witnesses' withdrawal</i> .....	[25]
<i>Standing</i> .....	[27]
<i>Decision on standing</i> .....	[30]
<b>Issues</b> .....	[38]
<b>The Law</b> .....	[41]
<b>Mataiapo Title</b> .....	[46]
<i>Applicant's submissions</i> .....	[48]
<i>Respondent's submissions</i> .....	[53]
<i>Decision</i> .....	[55]
<b>Status of Kaingavai Section 49C2B1</b> .....	[64]
<i>Applicant's Submissions</i> .....	[64]
<i>Respondent's submissions</i> .....	[67]
<i>Decision</i> .....	[69]
<b>Occupation right</b> .....	[75]
<i>Applicant's submissions</i> .....	[76]
<i>Respondent's submissions</i> .....	[79]
<i>Decision</i> .....	[80]
<b>Lease</b> .....	[82]
<i>Applicant lessee's submissions</i> .....	[82]
<i>Respondent's submissions</i> .....	[85]
<i>Lessor's submissions</i> .....	[92]
<i>Decision</i> .....	[96]
<b>Decision summary</b> .....	[103]

## **Introduction**

[1] This decision is regarding two applications for orders over Kaingavai Section 49C2B1 in Takitumu District.

[2] The first application is made by Kiriau Turepu under s 3 of the Declaratory Judgments Act 1994, seeking a declaration that the occupation order in favour of Barbara Chitty (also known as Barbara Thompson) is at an end.

[3] The second application is made by John Peter Dunn under s 478 of the Cook Islands Act 1915 for confirmation of alienation to approve a lease agreement made between himself and Mr Turepu.

[4] I note that the lease is in respect of the same part of the land as the occupation order and therefore if the lease were to be approved, it would be first necessary for the occupation order to be removed by the Court.

[5] These applications are opposed by a group of objectors describing themselves as Ngati Maoate Kopu on the grounds that Kiriau Turepu is not the Maoate Mataiapo and therefore has no authority to make decisions for this land. There are also objections to these interlinked applications in terms of Mr Turepu's approval of the lease where he has refused other leases and Mr Turepu's proposed payment to the family of Barbara Chitty without Ngati Maoate consultation.

## **Background**

[6] Kiriau Turepu was invested as Maoate Mataiapo in 1989. He then surrendered his title in 1995 and a new mataiapo was appointed. After the mataiapo passed away, Pa Ariki, under whose authority the title is vested, chose Mr Turepu to step back into the role. Mr Turepu did not have a second investiture ceremony; rather this second ceremony was incorporated into the celebrations for Pa Ariki's 25<sup>th</sup> anniversary.

[7] Barbara Chitty built a house on the land after gaining the occupation order in 1984. She passed away in 2018 and the occupation right does not extend to her successors. Kiriau

Turepu has arranged for John Dunn to lease the area of land under the occupation right, extending to the mean high-water mark, for a period of 60 years.

### **Procedural History**

[8] Application 353/21 for a declaration that the occupation order for Barbara Chitty has ended was filed on 8 September 2021. Application 354/21 for confirmation of lease was filed with the Court on the same date.

[9] Submissions were filed by Mr Marshall for Mr Dunn in respect of the lease on 14 October and 19 October 2021.

[10] Ngati Maoate Kopu filed a Notice Disputing Claim against 353/21 on 19 October 2021. An Amended Notice Disputing Claim was then filed on 28 October 2021 to include 354/21. Submissions and a Bundle of Documents were filed for the objectors on 2 November, with further affidavits filed on 4 November 2021.

[11] Submissions and documents were filed by Mr Mason for Mr Turepu regarding 353/21 on 8 November and 10 November 2021.

[12] On the day before the hearing, Lynnsay Francis filed an application for 390A in respect of Kaingavai 49C2B1.

[13] I heard the two applications 353/21 and 354/21 on 11 November 2021 via Zoom.

[14] I reserved my decision.

[15] Mr Nicholas filed the Memorandum of Agreement referred to in the hearing with the Court's permission on 12 November 2021.

[16] I received the transcript for this hearing on 18 March 2022.

## **Preliminary issues**

[17] There are three preliminary issues, which are the s 390A application, the issue of standing for Ngati Maoate Kopu and the evidence relied upon given the objectors witnesses withdrew from these proceedings.

### *Section 390A Application*

[18] The day before the hearing of this matter, Ms Francis, who had been a key member of the objector group, submitted an application under s 390A. That application concerns the partition order made in 1937 which resulted in the separate title of Kaingavai Section 49C2B1 among others.

[19] Ms Francis asked that the current proceedings be adjourned for a decision on the s 390A application.

[20] Counsel for the applicants submitted that filing a s 390A application the day before this hearing was scheduled to proceed was an abuse of process and an attempt to hijack the proceedings.

[21] Applicant counsel confirmed in the hearing that the orders sought in relation to the two current applications would not be disturbed if the original partition order was investigated by the Chief Justice under s 390A.

[22] As well as seeking an adjournment for the Chief Justice to consider the s 390A application, Ms Francis also sought the adjournment to give the family time to discuss future plans for the land under the occupation order.

[23] The witnesses for the two current applications withdrew in favour of the s 390A application, which left Mr Nicholas without witnesses for the objectors.

[24] I declined to grant an adjournment. It was clear to me that while the very late filed 390A application could potentially have implications for this land and these landowners I was satisfied that we could proceed with these applications.

*Evidence relied upon given the objectors witnesses' withdrawal*

[25] With the applications proceeding, Mr Nicholas was left in the difficult position of having no witnesses to call to give evidence. He therefore relied on cross-examination of the applicants' witnesses and legal submissions.

[26] For completeness and so parties are clear, this decision relies on the evidence that was presented to Court. Even though sworn affidavits of the objectors were filed with the Court, those cannot be relied on, given the contents of those sworn briefs were not confirmed and there was no opportunity for cross-examination.

*Standing*

[27] Mr Marshall does not accept that the objectors, described as Ngati Maoate Kopu, have standing to oppose the application for the lease to be confirmed. This is because the land is owned solely by the holder of mataiapo title for Ngati Maoate, Kiriau Turepu. The objectors are not named on an individual basis, which Mr Marshall considers unfair to the applicant Mr Dunn in pursuing these proceedings. The objectors are not owners of that land and therefore, Mr Marshall contends, should not be able to disrupt decisions made over it.

[28] I note that Lynnsay Francis, William Rennie and Dion Kerr-Bell have filed affidavits for the objectors, however it is unclear whether there are more objectors represented than these three. As mentioned, these witnesses have since withdrawn from these proceedings in favour of the s 390A application.

[29] Mr Mason for Mr Turepu has accepted the standing of the objectors, as Mr Turepu considers it fair that they should have their say about the occupation right ending.

*Decision on standing*

[30] The Cook Islands legislation is silent on the issue of standing. There are also limited cases on the issue. In *Puia* Justice Isaac noted that "the concept of standing is well-settled in the law; that a party must have a sufficient interest in or be sufficiently affected by the proceedings in order to have a right to be heard in court"<sup>1</sup>.

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<sup>1</sup> *Puia* [2017] CKLC 4 at [23].

[31] Given the collective nature of land ownership, the Land Division of the High Court has taken a flexible approach when considering matters of standing.

[32] In this particular situation, Mr Turepu has continued that approach, and while he potentially could have raised objections, he has conceded that given the nature of the title and the issues before the Court, that the objectors should get to have a say - even though it is in opposition to him.

[33] I take Mr Marshall's point, that given Lynnsay Francis, William Rennie and Dion Kerr Bell, who have filed affidavits for the objectives, have now withdrawn from these proceedings in favour of s 390A application, it does raise questions as to who Mr Nicholas' clients are.

[34] From my perspective Mr Nicholas should be, and was, permitted to provide the Ngati Maoate Kopu views on this application given that Mr Turepu holds the Maoate Mataipo title for Ngati Maoate and the lands in contention are within the traditional Kopu area of Ngati Maoate. Ngati Maoate Kopu will be materially affected by the outcome of this application.

[35] Clearly, Ngati Maoate Kopu have sufficient interest in or will be sufficiently affected by the proceedings.

[36] To take a very strict legal approach in this case, which is clearly a mixture of legal and customary issues, would not be beneficial and would not allow the Court to obtain a full appreciation of the issues with respect to the applications before the Court.

[37] I accept that the objectors, described as Ngati Maoate Kopu, have standing to oppose the application for the lease to be confirmed.

## **Issues**

[38] The central issue is whether or not Mr Turepu holds mataiapo title, which would give him the right to deal with the land in making the application for declaration and as lessor to Mr Dunn.

[39] The second issue is whether the land being dealt with is mataiapo land or if a previous mataiapo had the land vested in them in their own right. This would affect whether the

current mataiapo has authority over Kaingavai Section 49C2B1. Counsel for the objectors has pointed to the fact that the land is not vested in Mr Turepu but remains vested in a previous mataiapo.

[40] If these two issues are answered in the affirmative, then the applications for declaration that the occupation right has ended, and confirmation of the lease to Mr Dunn are live matters.

## **The Law**

[41] The Court has jurisdiction under s 409(f) of the Cook Islands Act 1915 to determine any question as to the right of any person to hold office as an Ariki or other Native Chief of any island.

[42] Section 426 provides for the vesting of land that belongs with a title:

### **426. Ariki land**

- (1) When by Native custom any land belongs to an Ariki or other Native chief by virtue of his office [the Land Court] in making a freehold order in respect of that land may in such order declare accordingly, and the land shall vest in fee simple in such Ariki or Native chief and his successors in office in the same manner as if they were a corporation sole.
- (2) For the purposes of this section tenure of office as an Ariki or Native chief in any island shall be determined by any ... enactment in force in that island with respect thereto, and in default of any such enactment, then by Native custom.

[43] The applicable law to the declaration that the occupation order is at an end is s 3 of the Declaratory Judgments Act 1994. The relevant part of that section provides:

### **3. Declaratory orders on originating summons**

- (1) Where any person –
  - (a) has done or desires to do any act, the validity, legality, or effect of which depends on the construction or validity of any enactment, or any deed, will, or document of title, or any agreement made or evidenced by writing, or any memorandum or articles of association of any company or body corporate, or any instrument prescribing the powers of any company or body corporate; or
  - (b) claims to have acquired any right under any such enactment, deed, will, document of title, agreement, memorandum, articles, or instrument, or to be in any other manner interested in the construction or validity thereof,



such person may apply to the High Court by originating summons for a declaratory order determining any regulation, bylaw, deed, will, document of title, agreement, memorandum, articles of instrument, or of any part thereof.

[44] With regard to the lease, s 478 provides that the Court can confirm an alienation such as a lease, as follows:

**478. Application for confirmation**

- (1) No such confirmation shall be granted unless application therefor is made by or on behalf of a party to the instrument of alienation within 6 months after the execution thereof by the Native [or descendant of a Native].
- (2) When an instrument of alienation is executed at different times by different persons alienating, successive applications for confirmation may be made in respect of the successive executions of the instrument, and the instrument may be confirmed from time to time accordingly.

[45] The conditions for confirmation of alienation are provided under s 482:

**482. Conditions of confirmation –**

- (1) Subject to the provisions of this section, the confirmation of an alienation shall be in the discretion of the Court.
- (2) No alienation shall be confirmed unless the Court is satisfied as to the following matters:
  - (a) That the mode of execution of the instrument of alienation is in conformity with this Act;
  - (b) That the alienation is not contrary to equity or good faith or to the interests of the [persons] alienating or to the public interest; and
  - (c) That the consideration (if any) for the alienation is adequate.
- (3) For the purposes of this section any alienation made in consideration of any fine, premium, or other payment in advance exceeding twice the annual value of the lease or other interest acquired by the alienee shall be deemed to be contrary to the interests of the [persons] alienating.
- (4) The Court may, nevertheless, in its discretion confirm an alienation, notwithstanding any informality or irregularity in the mode of execution of the instrument, if satisfied that the informality or irregularity is immaterial, having regard to the interests of all the parties, and that all the parties consent to such confirmation.
- (5) No instrument of alienation shall after confirmation thereof be questioned or invalidated on account of any defect in the form or mode of execution thereof.

**Mataiapo Title**

[46] Kiriau Turepu was invested as Maoate Mataiapo in 1989. He then surrendered his title in 1995 and a new mataiapo was appointed, Terepai Maoate. Terepai passed away in 2012 and although there was a voting process to elect a new mataiapo, Pa Ariki, under whose authority the title is vested, was unhappy with the elected mataiapo, and chose Mr Turepu to step back into the role.

[47] The matter of whether Kiriau Turepu is the correct holder of the Maoate Mataiapo title was considered by the High Court in *Tuavera v Turepu*, where Justice Isaac held that:<sup>2</sup>

[65] At the meeting of 17 December 2012 it was agreed after much discussion that the majority of Ngati Maoate kopu would support the decision of Pa Ariki. In the meeting of 7 January 2013 Pa Ariki made her decision and appointed Kiriau as Maoate Mataiapo.

[66] Having regard to my earlier findings relating to the appointment of prior Maoate Mataiapo it is clear to me that what took place in the meetings of 17 December 2012 and 7 January 2013 was in accordance with Maori custom associated with this title.

[67] The only matter outstanding which would complete Kiriau's appointment would be for Kiriau to be invested with the title in accordance with custom.

[68] Therefore I can confirm that once the investiture of Kiriau has been completed, that his appointment as Maoate Mataiapo would be in accordance with Maori custom pertaining to this title.

[69] When this has occurred I ask that the Registrar refer the application for succession by Kiriau Turepu in respect to the interest of Terepai Maoate in Kaingavai Section 49C2B1, Ngatangia to me for completion.

#### *Applicant's submissions*

[48] Counsel for Mr Turepu submits that Mr Turepu is the Maoate Mataiapo and is entitled accordingly to make decisions regarding the land.

[49] Pa Ariki approved his reinstatement as mataiapo and therefore Mr Turepu holds this role and the lands that go with it.

[50] Pa Ariki holds the authority to conduct a second investiture as she saw fit. Given a situation of reinstatement like this this has not happened before, she was not bound by custom as to how this ceremony should be performed.

[51] The investiture was included as part of Pa Ariki's Silver Jubilee and was a very public event acknowledging Pa Ariki's reinstatement of Kiriau Turepu as Maoate Mataiapo.

[52] Justice Isaac, in hearing the matter on 24 April 2013 and making his judgment of 9 October 2013, was not aware that Kiriau Turepu had already been reinstated as mataiapo by Pa Ariki on 2 February 2013.

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<sup>2</sup> *Tuavera v Turepu* [2013] CKHC 74 at [65]-[69].

### *Respondent's submissions*

[53] The objectors dispute that Kiriau Turepu is Maoate Mataiapo as he has not been invested according to Maori custom.

[54] Further, they object that he has not applied to succeed to the land and therefore may not deal with the land.

### *Decision*

[55] Justice Isaac's decision of October 2013 *Tuavera v Turepu* provides helpful guidance, in terms of the custom governing the title of Maoate Mataiapo.<sup>3</sup> Justice Isaac noted in his decision that Mr Turepu's resignation and the subsequent appointment of Terepii to the Maoate Mataiapo title meant that Mr Turepu no longer held the title.<sup>4</sup> Justice Isaac was also clear that this title belongs to Pa Ariki and the Maoate Mataiapo title is subject to the control of Pa Ariki in terms of appointment, duties and removal.<sup>5</sup>

[56] At the hearing on 24 April 2013, for some unknown reason, the February 2013 ceremony was not mentioned in Court. Therefore, in completing his decision, clearly Justice Isaac was not aware of the fact that Pa Ariki had undertaken a ceremony for the reinstatement and confirmation of Mr Turepu as Maoate Mataiapo.

[57] As I say, a major consideration was not put before Justice Isaac, in that he did not know about the February 2013 ceremony undertaken by Pa Ariki.

[58] This is a unique situation, one which, Pa Ariki in giving evidence, could not recall occurring previously - where a Mataiapo resigns and then takes up the title for a second time.

[59] It is clear what the custom is with regards to an investiture and that has been outlined by Justice Isaac in his decision.<sup>6</sup> However, there has been no historical process which helps us to determine what previous custom was with regards to a reinstatement. Probably because, as Pa Ariki notes, this situation has not happened previously. The Court was provided with no

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<sup>3</sup> *Tuavera v Turepu*, above n 1 at [22]-[30].

<sup>4</sup> At [63].

<sup>5</sup> At [54]-[55].

<sup>6</sup> *Tuavera v Turepu*, above n 1 at [41] to [55].

evidence or submissions as to what is the custom for a “reinstatement” or a “second investiture”. Therefore, I rely on Pa Ariki’s evidence. She clearly indicated that it was her view that it was not proper to go through the full investiture custom again to reinvest Mr Turepu on the Marae, given that he had already been through an investiture ceremony previously. As Mr Turepu explained, he had already bitten the ear of the pig and did not think it appropriate to do that again.

[60] Pa Ariki gave evidence that she had notified all of Ngati Maoate that there would be a blessing, of an investiture nature, at her Palace. However, there needed to be some form of ceremony and Pa Ariki, the controller of appointment and removal of this title, held a ceremony at the Palace to bless Mr Turepu and confirm his appointment to the public and to Ngati Maoate.

[61] In my view the ceremony that took place in February 2013 was a public reconfirmation of Mr Turepu with the title of Maoate Mataiapo. It was not an investiture that would normally take place when someone is invested with the title for the first time. A process was followed. That process was not in accordance with the custom for when a person is originally invested with title but was a modification of that, given this was a reconfirmation of a person who had previously been through an investiture ceremony, had previously been Maoate Mataiapo and who is to be Maoate Mataiapo again. The ceremony provided a public occasion, importantly where Pa Ariki confirmed to the public and to Ngati Maoate that Mr Turepu was again invested with the title of Maoate Mataiapo.

[62] Justice Isaac in his 2019 decision noted that investiture was required. He stated this without being informed that an investiture reconfirmation ceremony had actually taken place in February 2013 before the April hearing of the matter.

[63] Having now considered the evidence of the February 2013 ceremony, I now confirm that I am satisfied that the ceremony that took place in February 2013, reconfirming and investing Mr Turepu as Maoate Mataiapo, was in accordance with Māori custom pertaining to reconfirmation of this title and that his appointment is now complete.

## **Status of Kaingavai Section 49C2B1**

### *Applicant's Submissions*

[64] The land under application is mataiapo land, given to each mataiapo for them to manage for the benefit of Ngati Maoate Kopu as they see fit.

[65] The finding of Justice Dillon in *Ataera Family v Gladney* was that the title to Kaingavai 49C2B1 was “clear and unequivocal” and was held by the Maoate Mataiapo as sole owner “by virtue of her [or his] office”.<sup>7</sup>

[66] Therefore, counsel for Mr Turepu submits that although Mr Turepu may apply to succeed to the land, it is not necessary that he do so. The land is held by the mataiapo titleholder “in the same manner as if they were a corporation sole” in accordance with s 426.

### *Respondent's submissions*

[67] Mr Turepu has not applied to succeed to the mataiapo lands and accordingly they are not vested in him. This is despite Justice Isaac's directions for a succession application to be filed.<sup>8</sup>

[68] Therefore, counsel for the objectors submits that Mr Turepu does not have authority to deal with the land as it is not vested in him but remains vested in a previous mataiapo.

### *Decision*

[69] Justice Dillon's decision in *Ataera Family v Gladney* makes it clear that the holder of Maoate Mataiapo is the sole owner of Kaingavai 49C2B1 by virtue of their office. In my view Justice Dillon's words could not have been any clearer when he stated:<sup>9</sup>

The title to this land is clear and unequivocal – Mrs Gladney is the sole owner of Kaingavai 49.C.2.B.1 and hold this land “by virtue of her office as Maoate Mataiapo.”

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<sup>7</sup> *Ataera Family v Gladney* [1982] CKHC 26/482 at [3].

<sup>8</sup> *Tuavera v Turepu*, above n 1 at [69].

<sup>9</sup> *Ataera Family v Gladney*, above n 6 at [3.3].

[70] I see nothing that persuades me to take a different approach to that of Justice Dillion. The land is Maoate Mataiapo land. As such Mr Turepu does not hold the land as an individual but holds the land by virtue of his office akin to if he were a corporation sole. This recognises the person holding the office is a custodian of the title which is different to the situation where someone 'succeeds' in a Kopu arrangement to a Kopu member who is deceased.

[71] Therefore succession is not required for the holder of Maoate Mataiapo to deal with the lands. Once they are confirmed as the title holder then by virtue of holding that office they also have authority over the land. It is the office that holds the land, not the individual.

[72] While in my view succession is not required for the holder of Maoate Mataiapo to deal with the lands, in these situations succession is still important for administrative purposes and so the Court title reflects the correct situation.

[73] Succession therefore becomes an administrative process. And as Justice Isaac indicated, once the investiture was completed succession could be attended to in Chambers. The succession process is therefore a formalisation of the situation and provides notice through the titles record to the public as to who is the custodian of the title at a particular time. That succession process is important to provide clear notice to all who deal with the land as to who has authority as the holder of the office of Ariki.

[74] In order to update the Court record, Mr Turepu is to file an application for succession which the Registrar is to refer to me in Chambers for completion.

### **Occupation right**

[75] The occupation right was granted to Barbara Chitty (later known as Barbara Thompson) in 1985 on the condition she built a home on the land. The order covered an area of 1180m<sup>2</sup> in the south-eastern corner of Kaingavai 49C2B1. Barbara passed away in 2018 and the occupation order did not extend the right to her successors.

### *Applicant's submissions*

[76] The occupation right has come to its end and now needs to be removed from the land to allow for further dealings in the land, such as the lease to John Dunn. The area to be leased covers the area under the occupation right and extends down to the mean high water mark.

[77] Barbara Chitty built a substantial house on the land and Mr Turepu intends to compensate her family for the value of the house from the funds that will be received under the lease agreement. The house was valued by Mr Eggelton in his valuation dated 20 May 2020 at \$392,500.00 and Mr Turepu has indicated he intends to give the children of the late Barbara Chitty \$400,000.00 in recognition of their mother's outlay.

[78] Mr Turepu seeks a declaration from the Court that the occupation order in favour of Barbara Chitty is at an end.

### *Respondent's submissions*

[79] Ngati Maoate Kopu object to the application for cancellation of occupation order on the basis that Mr Turepu does not have authority to deal with the land as he was not correctly invested as mataiapo and has not succeeded to the land.

### *Decision*

[80] The issue of who has authority to deal with the land is separate to whether the occupation right is at an end or not. Sadly, Barbara Chitty passed away in 2018. The occupation order did not extend the right to her successors. It is clear to me that the occupation right was at an end.

[81] I therefore declare that the occupation order in favour of Barbara Chitty is at an end.

## **Lease**

### *Applicant lessee's submissions*

[82] The lease to John Dunn for an area of 1,488m<sup>2</sup> for 60 years from 1 January 2022 was executed on 10 September 2021. The lease is for consideration of \$700,000.00, which is

greater than the value reached by valuer Mr Eggelton of \$680,000.00, with a yearly rental of \$3,390.00.

[83] Mr Marshall for the lessee submits that the application for alienation conforms with the Act and that the arrangement will be beneficial to Ngati Maoate. The consideration for the lease exceeds the valuation and so is more than adequate.

[84] Counsel for the applicant lessee asks that the Court exercise its discretion and confirm the alienation under the lease agreement.

#### *Respondent's submissions*

[85] Counsel for the respondents raised an issue with the format of the lease as being non-compliant with r 30 of the Leases Restrictions Regulations 1977 (as amended in 2006) and r 351 of the Code of Civil Procedure of the High Court 1981.

[86] Further, the respondents submit the lease is not compliant with s 482(2) of the Cook Island Act 1915. Section 482(2) provides that the Court can only confirm alienations where (a) the mode of execution conforms with the Act, (b) the alienation is not contrary to equity, good faith, or the interests of the persons alienating or the public interest, and (c) that the consideration is adequate.

[87] In addition to the concerns about the form of the lease, Mr Nicholas submits that the lease is contrary to equity and good faith, as well as the interests of Ngati Maoate Kopu, as there are existing agreements over the land that are cut across by the lease. Mr Nicholas also asserts that Mr Turepu has acted unfairly in granting leases to non-family members but refusing to consider renewing or extending leases to family members.

[88] Further Ngati Maoate was not consulted about the lease to Mr Dunn or the proposed payment to the children of Barbara Chitty, nor were they consulted about the establishment of a trust to administer the rental monies. Mr Nicholas puts forward that it is not in the public interest to have mataiapo acting unilaterally against the interests of those connected to the land.



[89] Mr Nicholas contends that the valuation by Mr Egelton is now out of date, as it was completed in May 2020 and so the consideration may now not be adequate.

[90] Therefore it is Mr Nicholas' submission that the alienation via the lease should not be confirmed by the Court.

*Lessor's submissions*

[91] Mr Marshall, submits that the issues raised about the form of the lease have now been remedied by the filing of the duly executed lease with the Court.

[92] Mr Marshall states that the lessee, John Dunn, operates the hotel next door to this section, the Royale Takitumu, and is a Cook Island surgeon who has given a great deal of free surgery in the Cook Islands. Dr Dunn has also made monetary donations for Cook Islands medical students.

[93] The remaining consideration and the yearly rental will go to the Charitable Trust, for the benefit of Ngati Maoate Kopu. This, Mr Marshall submits, is better for Ngati Maoate as a whole than occupation by family members for little or no consideration as occurred in the past.

[94] In respect of the issues raised regarding prior agreements and denying leases to family members, Mr Marshall submits that the submissions are self-contradictory and internally inconsistent. He notes that there was no opposition to the transactions which were publicly notified, and that some of the objectors benefited from the transactions they appear to oppose retrospectively.

[95] There is no obvious public interest factor. Neither is the lease contrary to equity, good faith or the interests of the landowners. The consideration exceeds the valuation and the Court should be satisfied that it is adequate. Counsel for the lessor asks the Court to confirm the alienation under the lease.

## *Decision*

[96] I have found that Mr Turepu was in accordance with Māori custom pertaining to this title for reconfirmation of title that his appointment as Maoate Mataiapo is now complete. Further, Mr Turepu does not hold the land as an individual but holds the land by virtue of his office akin to if he were a corporation sole. As such in my view Mr Turepu, Maoate Mataiapo, had authority to enter into the lease.

[97] I note that the issues with the lease being non-compliant were resolved with the filing of an executed copy of the lease and the valuation of Mr Egelton on 14 October 2021.

[98] There are no obvious public interest factors involved with this application. The lease is not contrary to public interest.

[99] The situation here is that Mr Turepu is seeking to enter the lease with the interest of all landowners in mind as well as dealing with the issue of an occupation right holder who has improved the land. I agree with Mr Mason that Mr Turepu is looking to be “fair to everyone”. He is seeking to compensate the occupation right holder for the capital spent on improvements to the land as well as settling the balance of the proceeds for the purposes set out in the Maoate Mataiapo Trust.

[100] There have been a number of discretion issues raised for the Court to consider. Some of which I have already addressed such as the submission that Mr Turepu did not have authority to approve the lease. Other issues of the title being subdivided and contravention of family agreements, the lack of consultation by Mr Turepu. Those issues lack evidence.

[101] I am satisfied that confirmation of the lease will not be contrary to equity and good faith, the landowner alienating, and the public interest. The consideration for the lease exceeds the valuation and there are no issues with the adequacy of the consideration.

[102] Therefore, the Court confirms the alienation as per the lease agreement.

## **Decision summary**

[103] The decisions I have made above are:

- (a) I accept that the objectors, described as Ngati Maoate Kopu, have standing to oppose the application for the lease to be confirmed.
- (b) I am satisfied that the ceremony that took place in February 2013, reconfirming and investing Mr Turepu was in accordance with Māori custom pertaining to this title for reconfirmation of title that his appointment as Maoate Mataiapo is now complete.
- (c) Mr Turepu does not hold the land as an individual but holds the land by virtue of his office akin to if he were a corporation sole. This recognises the person holding the office is a custodian of the title. Therefore succession is not required for the holder of Maoate Mataiapo to deal with the lands. Once they are confirmed as the title holder then by virtue of holding that office they also have authority over the land. In order to update the Court record, Mr Turepu is to file an application for succession which the Registrar is to refer to me in Chambers for completion.
- (d) I declare that the occupation order in favour of Barbara Chitty is at an end.
- (e) I am satisfied that confirmation of the lease will not be contrary to equity and good faith, the landowner alienating, and the public interest. The consideration for the lease exceeds the valuation and there are no issues with the adequacy of the consideration. The Court confirms the alienation as per the lease agreement.

Dated at 10.00am in Aotearoa/New Zealand on the 28<sup>th</sup> day of June 2022.

C T Coxhead  
**JUSTICE**