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

APPLICATION NO. 1139/2022

UNDER	Section 59(1) of the Land (Facilitation of Dealings Act) 1970
IN THE MATTER	of the land known as Pokoinu Section 107K-M, Avarua
BETWEEN	PUREAU MANUELA AND MINORA MANUELA Applicants
AND	TUAPIKEPIKE TINI AND TEAROA JOHN TINI Respondents

Date: 3 October 2023

JUDGMENT OF JUSTICE M P ARMSTRONG

Introduction

[1] Tuapikepike (Tutu) Tini and Tearoa John Tini live on Pokoinu Part Section 107K-M (L3440) in Avarua. Mrs Tini is an owner in the land. She was granted an occupation right in 1978. This was converted to a lease in her favour in 1997.

[2] Pureau Manuela and Minora Manuela live on Pokoinu Part Section 107K-M (L3710). The Manuelas and the Tinis are neighbours. Mr and Mrs Manuela are not owners in the land, however, their family has a long association with it. Mrs Manuela's grandfather obtained an occupation right for the land in 1979. This was converted to a lease in Mr and Mrs Manuela's favour in 2009. By agreement, the lease was for a smaller area than the earlier occupation right. It was reduced by 200m² on the condition that this area was to be transferred to Mrs Tini.

[3] In 2014, Mrs Tini sought to extend her lease by the additional 200m². This was approved at a meeting of owners on 18 August 2014. On 16 October 2014, Savage J granted an order confirming the resolution (the 2014 order).

[4] A signed copy of the deed varying the lease has not been found. Mr and Mrs Manuela apply to annul the 2014 order. This judgment determines whether it should be annulled.

Why are the applicants seeking to annul the order?

[5] Mr and Mrs Manuela argue the 200m² area included in Mrs Tini's lease in 2014 should be included in their lease. They have filed an application per s 390A Cook Islands Act 1915 seeking orders to effect this.

[6] I have reported back to the Chief Justice on the s 390A application. In that report, I set out in detail the background to this matter. I rely on that background in this judgment and I do not repeat it here. It is now for the Chief Justice to determine whether he should exercise his powers per s 390A of the Act.

[7] This judgment only determines application 1139/2022 and whether the 2014 order should be annulled per s 59(1) of the Land (Facilitation of Dealings Act) 1970.

What legal principles apply?

[8] Section 59(1) of the Land (Facilitation of Dealings Act) 1970 states:

> **59. Court may cancel resolution if not acted on** - (1) If any resolution passed by the assembled owners and confirmed by the Court is not carried into effect within a reasonable time after the date of confirmation the Court may annul the confirmation and hereupon the resolution shall be deemed to be rescinded.

[9] In *Tuoro v Toeta*, Isaac J held:[1]

> [21] Clearly, the question as to what is a reasonable time for compliance depends on circumstances in relation to this land and what has been done to it since 1 January 1984.

Do Mr and Mrs Manuela have standing to bring this application?

[10] Mr Arnold, for Mr and Mrs Tini, argues that Mr and Mrs Manuela do not have standing to bring this application to annul the 2014 order.

[11] Mr Nicholas, for Mr and Mrs Manuela, argues they do have standing. He relies on the decision in *Re: Puia*, which considered the rights of affected parties.[2] In that decision, Isaac J referred to r 2.5(1) of the Māori Land Court Rules 2011, which defines a person materially affected as:

> …any person whose rights or interests in any property [that] may be materially affected by a proceeding.

[12] Mr Nicholas argues that Mr and Mrs Manuela have standing as their rights or interests were materially affected by the variation to the Tini lease in 2014. Mr Nicholas appears to argue that it was this variation that resulted in the 200m² area being removed from Mr and Mrs Manuela's occupation area. That is not the case.

[13] This 200m² area was originally part of the occupation right granted to Tonga Henry. In 2009, that occupation right was surrendered on the condition that a new lease be granted to Mr and Mrs Manuela. That new lease was for a smaller area less the 200m². The Court granted those orders on 15 October 2009.

---

1 *Tuoro v Toeta* App 47/11 & 391/11, 29 April 2015.
2 *Re: Puia* [2017] CKLC 4 App 588/2012 and 228/2016.

[14] As such, Mr and Mrs Manuela never had a direct interest in that 200m² area. Mrs Manuela may have had an indirect interest prior to 2009 as a descendant of Tonga Henry who held the occupation right. However, once that occupation right was surrendered, and the new lease granted, Mr and Mrs Manuela's rights were restricted to the area that was the subject of the lease. That did not include the 200m² area.

[15] The application in 2014 to vary the Tini lease sought to include that 200m² area in Mr and Mrs Tini's lease. At that time, Mr and Mrs Manuela did not have any rights or interests in that 200m² area of land.

[16] Mr and Mrs Manuela are not owners in the land. They are lessees. Their lease is restricted to the lease site of 1,689m². That does not include the 200m² area that was the subject of the 2014 deed of variation. Mr and Mrs Manuela do not have a right or interest in the property that was the subject of the 2014 order. As such, they have no standing to bring this application to annul that order.

Should I annul the 2014 order?

[17] If I am wrong on the question of standing, I proceed to consider whether I should annul the 2014 order.

[18] Section 59(1) of the Land (Facilitation of Dealings Act) requires a two-step process. First, the Court must be satisfied that the resolution was not carried into effect within a reasonable time after it was confirmed by the Court. If that is met, the Court has to decide whether to exercise its discretion to annul the order. This is clear in s 59(1) which provides that the Court *may* annul the confirmation.

[19] Initially, there was some dispute as to whether the deed varying the Tini lease was signed. However, Mr Arnold conceded on behalf of Mr and Mrs Tini that it was not signed.

[20] The order confirming the resolution was granted on 16 October 2014. Almost nine years has passed and the deed has not been signed. I am satisfied that the resolution has not been carried into effect within a reasonable time.

[21] I now have to consider whether to exercise my discretion to annul the order. Such an exercise of discretion cannot be arbitrary. It must be principled and consistent with the purposes of the Act. I also have to take into account the surrounding circumstances of this case.

[22] Mrs Tini thought she had executed the deed to vary her lease. She now accepts, through her counsel, that this did not occur. However, I accept that she was genuinely mistaken about that. The land decision sheet has the following entry recorded by the Registrar on 2 February 2017:

> Deed of Lease Executed

[23] It is not clear what this entry is based on given that the signed deed cannot be found. However, this may well have contributed to the confusion.

[24] In addition to this genuine mistake, Mrs Tini and her husband have been unable to take possession of the 200m² area included in the variation to her lease. That area is currently occupied by Mr and Mrs Manuela. Part of their house sits on this area. The parties have attempted to resolve this by agreement but were unsuccessful. They both await the decision of the Chief Justice on the s 390A application on whether the 200m² area should be included in the Manuela lease.

[25] Taking these factors into account this application can be distinguished from others where the party in question acted unreasonably. In *Tuoro v Toeta*, the respondent received an occupation right in 1983.[3] The terms of that order required the land to be used for agricultural purposes within a reasonable time. Nothing had been planted on the land for 28 years. Isaac J found that the respondent had not complied with the terms of the order within a reasonable time. That can be contrasted with the current circumstances where the deed was not signed through a genuine mistake rather than a failure to act on the order.

[26] The legislative purpose behind the Land (Facilitation of Dealings Act) is also relevant. This statute is designed to assist owners to facilitate dealings with their land. The long title to the Act reads:

---

3 *Tuoro v Toeta* App 47/11 & 391/11, 29 April 2015.

> An Act to facilitate dealings in land by providing for incorporation of owners of Native land and powers of assembled owners.

[27] In *Tumu v Tumu,* the Privy Council held that one of the principal purposes of the Cook Islands Act 1915 is:[4]

> … to protect the indigenous people of the Cook Islands against exploitation, either by their own tribal chiefs or by people of European origin. Freehold native land was in general to be inalienable. Any permitted alienation was to be in writing. Partitions and exchanges were to be subject to the supervision of the Land Court to ensure fairness. These provisions, whether or not they may today seem paternalistic, have always been an essential part of the land law system in the Cook Islands, and in a system of that sort consent, even if assumed to be given freely, is not sufficient to override its operation.

[28] The Cook Islands Act does not apply here. However, it provides important context that the restrictions on alienation are to protect the interests of the owners. While there is good reason to require resolutions to be carried into effect within a reasonable period, it is significant that here, the owners support Mr and Mrs Tini. In 2009, the owners agreed to grant a lease to Mr and Mrs Manuela, on the condition that the 200m² area that was previously subject to the occupation right was to be transferred to Mrs Tini. The owners supported this again when Mrs Tini sought to extend her lease in 2014.

[29] Since then, the owners have met on two more occasions to consider this further. First, at a meeting of owners in 2019 called by Mr Manuela, and again at a meeting of owners in 2022 called by Mrs Tini. On both occasions, the owners supported Mrs Tini and confirmed their desire that the 200m² area should be included in her lease.

[30] The owners have not filed this application. None of the owners are seeking to annul the 2014 order. This case would be different if owners in this land were seeking to annul the 2014 order. If so, there would be good reason to exercise my discretion to annul the order to give effect to the wishes of the owners. That is not the case.

[31] I consider that the wishes of the owners is a significant factor here. They have made it clear on numerous occasions that they support Mrs Tini leasing this 200m² area.

[32] For these reasons, I decline to exercise my discretion to annul the 2014 order.

---

4 *Tumu v Tumu* [2012] UKPC 34.

Decision

[33] The application is dismissed.

Dated at 3:00pm (NZT) in Whangārei on this 3rd day of October 2023.

M P Armstrong
JUSTICE