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

APPLICATION: 899/2024

IN THE MATTER	of Declaratory Judgments Act 1994
AND	
IN THE MATTER	of the land known as PUOROMEA SECTION 47B2, AVARUA
BETWEEN	NGERE PAPERA **Applicant**
AND	LINDA HEREVASETI NGAUPOKO-E-VARU VAVIA **Respondent**

Hearing: 16 July 2024

Appearances: Mr T Moore for Applicant
Mr B Mason for Respondent

Judgment Date: 16 June 2025 (NZT)

JUDGMENT OF COXHEAD J

Introduction

[1] This is a judgment dealing with an application filed by Ngere Papera. Linda Herevaseti Ngaupoko-E-Varu Vavia is the Lessee and the Respondent, and the land that is the subject of the application is Puoromea 47B2, Avarua ("the Block").

[2] On 7 June 2024, the applicant filed an application for declaratory orders that a lease over the Block has come to an end pursuant to section 3 of the Declaratory Judgments Act 1994.

[3] The preliminary issue that this judgment deals with is whether the Limitations Act 1950 applies to this application.

Procedural History

[4] On 7 June 2024, the applicant filed the notice of application for declaratory orders that a lease over the Block has come to an end. On that day, the applicant also filed submissions and an affidavit in support of the application.

[5] On 12 and 13 June 2024, Mark Sherwin filed letters of objection to the application.

[6] On 8 July 2024, agent for the applicant submitted a memorandum to the Court indicating that they were ready to proceed with the hearing on 16 July 2024.

[7] On 9 July 2024, the respondent submitted a notice disputing the claim.

[8] On 10 July 2024, a number of landowners of the Block ("objectors") submitted a notice disputing the application for declaratory orders.

[9] On 16 July, a hearing was held. I decided that the preliminary matter of the Limitations Act provisions should be attended to first before moving to the matter of whether the substantive application could be granted.

[10] At hearing Mr Mason, counsel for the respondent, indicated that he was aware of a Court of Appeal decision pertaining to the applicability of the Limitations Act 1950 that was very relevant to this situation even though the Court of Appeal decision was contrary to his argument. I requested a copy of the Court of Appeal decision.

[11] I indicated that I would provide a decision on the matter once I received the requested Court of Appeal case from Mr Mason.

[12] The transcript for the 16 July 2024 court hearing was not provided until 7 April 2025.

[13] On November 2024, I issued a minute requesting that Mr Mason provide a copy of the Court of Appeal decision he referred to in the hearing. I still have not been provided with a copy of this decision.

Applicant's Submissions

[14] The applicant seeks a declaration that the lease in question is at an end.

[15] The applicant argues that the lease has been breached on two grounds. Firstly, the consideration for the lease was never paid. Secondly, the respondent assigned and sublet the lease without consent of the landowners or offering a first right of refusal to the landowners.

Respondents Submissions

[16] The respondent opposes the application for a declaration that the lease has ended. They claim that the consideration for the lease was paid.

[17] In the alternative, Mr Mason submits that the applicant is barred from bringing an action pertaining to the lease, pursuant to section 4(3) of the Limitation Act 1950, which requires an action against a deed be brought within 12 years. It is argued that the accrued action, the failure to pay the consideration, occurred more than 12 years ago and the applicant is barred from seeking a declaratory order that the lease has ended.

Decision

[18] On the face of it, the most recent legislation to apply in the Cook Islands would be the Limitations Act 2010. This is because s 641(1) of the Cook Islands Act 1915 provides that the current laws of limitations in New Zealand apply to the Cook Islands. The current legislation in New Zealand is the Limitations Act 2010, which repealed the Limitation Act 1950.[1]

---

[1] Limitation Act 2010, s 57.

[19] Section 641(1) of the Cook Islands Act 1915 states that New Zealand law will apply to the limitation of actions in the Cook Islands:

> **Limitation of Actions**
>
> (1) The law of the Cook Islands as to the prescription and the limitation of actions shall be the same as that which is in force for the time being in New Zealand.
> (2) For the purposes of the law as to prescription and the limitation of actions New Zealand shall in the Cook Islands be deemed to be parts beyond the seas, and the Cook Islands shall in New Zealand be deemed to be parts beyond the seas.
> (3) No right, title, estate, or interest in Native land shall be acquired or lost by prescription or limitation.
> (4) For the purposes of the law of prescription and the limitation of actions no account shall be taken of time which has elapsed before the commencement of this Act.

[20] However, the objectors argue that the s 641(1) of the Cook Islands Act 1915 and the Limitations Act 2010 are not the applicable law in the Cook Islands because Article 46 of the Cook Islands Constitution does not allow New Zealand law to extend to the Cook Islands unless provided for by the Cook Islands Parliament. Further, because the Cook Islands Act 1915 is an act of New Zealand it cannot have the effect of causing a law in New Zealand to apply to the Cook Islands. Therefore, the Limitations Act 2010 is not applicable.

[21] Article 46 of the Cook Islands Constitution states the following:

> **New Zealand Parliament not to legislate for the Cook Island**
>
> Except as provided by Act of the Parliament of the Cook Islands, no Act, and no provision of any Act, of the Parliament of New Zealand passed after the commencement of this Article shall extend or be deemed to extend to the Cook Islands as part of the law of the Cook Islands.

[22] On reading Article 46 the applicable Limitation Act must be the Limitation Act 1950.

[23] In the 2024 High Court of the Cook Islands decision of *Tuaine v Bank of the Cook Islands*,[2] Chief Justice Keane stated:

> [12] Absent such an unequivocal statement in the ERA 2012 (CI), as I held in my primary decision, an action at common law in the Cook Islands for wrongful dismissal remains a claim for breach of contract, subject only to the Limitation Act 1950. It must be brought within 6 years of the alleged breach.

---

[2] *Tuaine v Bank of the Cook Islands* [2024] CKHC 17; Plaint 1748 of 2022 (23 December 2024).

[24] The High Court judgment *Tuake v Toeta*[3] [2010] CKHC 4; Plaint 11 of 2010 (9 September 2010) also refers only to the Limitations Act 1050 as the operative Act.

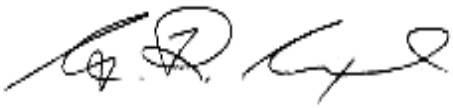
[25] These judgments note the Limitations Act 1950 as the applicable act in the Cook Islands in those applications.

[26] A further issue is raised in terms of s 641(3) of the Cook Islands Act 1915 in that "No right, title, estate, or interest in Native land shall be acquired or lost by prescription or limitation."

[27] It could be argued that s 641(3) does not negate any statutory limitations on bringing this action. But clearly what is being claimed is "consideration" which is not a right, title, estate, or interest in Native land. Further s 641(3) does not appear to extend to rights under a contract which the consideration that is being claimed is. Therefore, the Limitation Act 1950 again prevails.

[28] Based on the above the Limitations Act 1950 is the applicable act with regard to this application.

Dated at Rotorua, Aotearoa New Zealand this 16th day of June 2025.



C T Coxhead
JUSTICE

---

3 *Tuake v Toeta* [2010] CKHC 4; Plaint 11 of 2010 (9 September 2010).