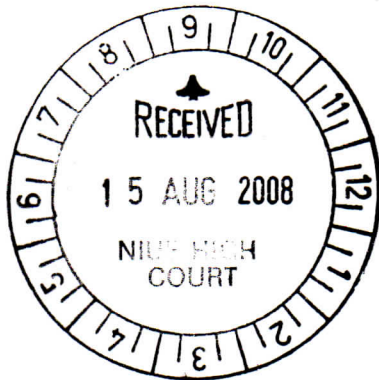


**IN THE HIGH COURT OF
NIUE (LAND DIVISION)**

**Application Nos. 9368/15/6,
9369/15/6, 9370/15/6 & 9371/15/6**



IN THE MATTER of Part Meimei, Hikutavake District
BETWEEN Mokavesi Jack Willie Lipitua
Applicant
AND Tuhipa Niutama
Respondent

Appearances: Toailoa (for Mokavesi Jack Willie Lipitua)
Dick Tuhipa (for Tuhipa Family)

DECISION

Background

- [1] The applications before the Court relate to the determination of title and appointment of Leveki Magafaoa for Part Meimei, Hikutavake District on Provisional Plan 9368 containing 2930 square metres.
- [2] One application is by Mokavesi Jack Willie Lipitua to determine title and declare the common ancestor to be Hinavele Mokahemotu with the Leveki Magafaoa to be Moka Jack Willie dated 9 April 2006.
- [3] The other application is by Tuhipa Niutama to determine title and appoint a Leveki Magafaoa. It should be noted that a common ancestor is not named and nor is a Leveki Magafaoa. The applications are not dated.
- [4] These applications came before the Court on 4 October 2007 and the application was adjourned to enable the boundaries to be clearly identified and for discussion between the families to take place.
- [5] This meeting did not take place as the Tuhipa family were in New Zealand.
- [6] The application was again heard by the Court on 1 May 2008, at which time the parties presented their evidence.

Mokavesi Lipitua Case

- [7] In essence, the Mokavesi Lipitua case was that the common ancestor to this land is Puasifa.
- [8] Puasifa was the kelemutu (the worm or origin) of this land and the rightful occupant.

- [9] Puasifa adopted Hinavele (see Adoption MB A folio 54 dated 8 December 1919) and Hinavele adopted Mokavesi and their family were born, lived and worked on this land.
- [10] Mrs Mokavesi Lipitua maintained in evidence that she was born on this land in 2 October 1934 by her natural parents Pepe Malamatagaloa, a sister of Hinavele. Hinavele adopted her but she is not sure of the registration. There were two houses on the land; one belonging to her natural parents and one to her adopted mother, Hinavele.
- [11] She lived on this land with her parents and then married Jack Willie Lipitua and continued to live on this land. They had three children, all born on the land. Their last born child is buried on this land.
- [12] Whilst on the land, their family built houses and planted coconut, banana and pandana trees. She later moved off the land with her husband Jack Willie and moved to Namukulu.
- [13] Evidence was also given that the Tuhipa family did not live or work on this land.
- [14] Although the applicant now lives in Namukulu, they still go back to Meimei to clear the roadsides.
- [15] In support of the above evidence, details of genealogy was filed as well as evidence from Mr Jack Willie Lipitua, Mr Morris Tafatu and Lalomanogi Togiakona.
- [16] There were also details of meetings from the families and descendants of the Hikutavake Village, all supporting this claim.
- [17] Counsel for Mokavesi Lipitua also referred to a letter by Dick Hipa to Umu of the Justice Department dated 4 September 1984 which accepted that the real owners of Meimei are Puasifa and Hinavele.

Tuhipa Evidence

- [18] The Tuhipa evidence was presented by Dick Tuhipa. He stated that he applied for the title of Meimei because it is 4 metres from his land and 40 metres from his house. He was born in 1954 and grew up in this area and worked this land, looking for food and firewood. His father cleared this land and has told him that the Meimei land is their land.
- [19] Tuhipa's evidence also questions the time the applicant has lived on the land and her work on the land. He also questions the adoption.
- [20] It should be noted that neither the evidence nor the applications refer to a common ancestor or propose a Leveki Magafaoa.

Decision Meimei

Discussion

- [21] Sections 10, 11 & 12 of the Niue Land Act 1969 set out the matters to be considered when determining title and declaring a common ancestor.
- [22] The evidence of Mokavesi Lipitoa establish the geneological connection and occupation, by building, planting, living and dying on the land. This happened for a number of generations until Mokavesi Lipitoa left the land with her husband, Jack Willie Lipitoa. This occupation was not challenged until now.
- [23] The application of Mokavesi Lipitoa has almost unanimous support from all members of the Hikutavake community with the exception of Dick Tuhipa.
- [24] Mr Tuhipa's objection however, is countered by his own acceptance in his letter to Umu of the Justice Department dated 4 September 1984 when he says:

"...the only reason I objected because of the actions of my sister, Tutagaioa for surveying the land without consultations with us..."

- [25] And further he states:

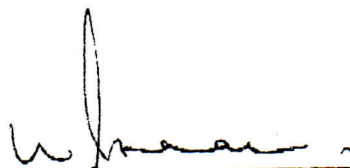
"...Tumataiki and Puasifa have one adopted child name Hinavele. She lived in Namukulu with Jack Willie. They are the real owners of this Part Meimej..."

- [26] Based on the evidence received, I make an order in terms of Sections 10 & 12 of the Niue Land Act 1969 determining title to this Part Meimej in Provisional Plan 9368 containing 2930 square metres and declaring the common ancestor to be Puasifa.

Leveki

- [27] Having regard to the above finding and also the support for the application of Mokavesi Lipitoa from virtually the entire Hikutavake Village, I appoint in terms of Section 14 of the Niue Land Act 1969 as Leveki Magafaoa, Moka Jack Willie.
- [28] A copy of this decision is to go to all parties.

Dated the 15th day of August 2008



JUDGE WILSON ISAAC