

Application No.
9881/28/6,

9882/28/6
&9885/28/6,
9886/28/6

IN THE HIGH COURT OF NIUE
(LAND DIVISION)

IN THE MATTER OF Pt Kauhi, Avatele District

BETWEEN Timber Folekene
Applicant

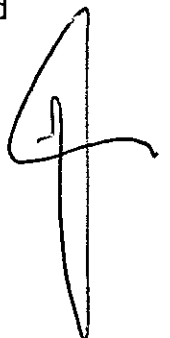
AND Tukitoga Ugamea
Respondent

DECISION

At the end of the hearing I considered the terms of 1968 Act in the Land Ordinance 1969 and the evidence of each of the witnesses. My consideration was confined to Lots 5 and 6, I having previously and by consent determined that Lot 2 would be vested as per the application in the owners of the Lot between it and the road. By consent Lot 1 on the provisional plan dated 19th November 2008 will remain untitled.

I remind myself of the seriousness of the step of titling Niuean land and the burden and the level of proof required.

After considering the evidence as a whole, it is clear to me that there has been no consistent pattern of use over the years and that members of the general family have come and gone, and that occupation rights had not been exercised in the sense that the concept of ownership has come into play.

A handwritten signature in black ink, consisting of a large, stylized letter 'A' with a vertical line extending downwards from its center.

The land was communally used. The use patterns included the planting of trees, harvesting of produce from the land, housing, the taking of unga, the construction, maintenance and use of tracks over the land, and stone being taken for umu and for fishing sinkers.

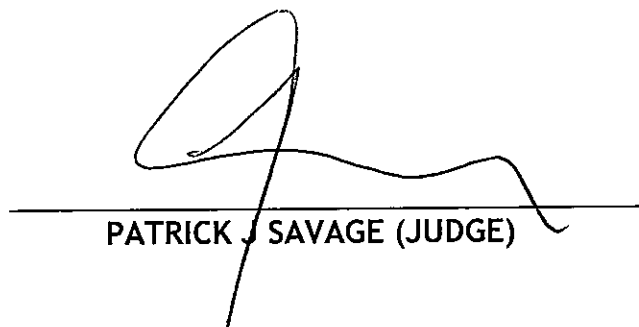
Use by one generation might be contested by the next. There was no stable pattern that suggested or would allow me to determine ownership disclosed in the evidence. Patterns of use change regularly and blended in and out and overlaid each other over time. Homes have been built, but on the evidence before me I accept that they only indicated acceptance of use by a general group of owners as might be contested by one generation, and accepted by the next.

Both applications are therefore dismissed as unproved so that Lots 5 and 6 remain as untitled lands.

As far as the homes on the lands are concerned those who wish to assert their rights to occupy should do so by applying for occupation orders.

A Copy of this decision is to be sent to all parties

Dated this 7th day of May 2009



PATRICK J. SAVAGE (JUDGE)