

Application No.

9883/28/6,  
9884/28/6 &  
8423 & 8424

IN THE HIGH COURT OF NIUE  
(LAND DIVISION)

IN THE MATTER OF Pt Fupao, Tumuovava,  
Gutupahua, Valikula,  
Lotovao, Tuapa District

BETWEEN

Poni Kapga & Poitogia  
Kapaga  
*Applicants*

AND

Iosefa Sionetuato  
*Respondent*

DECISION

The subject land is competed for by the issue of two of three brothers. The argument goes back half a century at least, and has being the subject of various applications to this court, meetings, arguments, assertions, confrontations, cross claims even descending into violence.

People now believe what they want to believe and what previous generations, for their own purposes, have led them to believe.

On one view of it the Matua of this people have left them a legacy of bitterness.

It will be interesting to see if this generation does better, or whether the next generation will be cursed by a failure to resolve this matter here and now.



I am required to determine title by reference to Niuean custom. There has been remarkably little reference to that custom in the evidence, but rather the respective cases are simply based on occupation patterns in recent generations.

Occupation is part of the picture of custom at work, but only part of the picture. Because the parties have chosen to represent their cases in this way, I proceed accordingly.

I must have regard to each case by each of the parties as it relates to each of the blocks. I must have regard to the level of proof required, for the titles must be robust in legal and cultural terms, so a great deal of care is therefore required.

I work from what has been referred to in the evidence as the coloured plan dated November 2008. I have also have regard to the preliminary sketch plan in 1983 and what it disclosed on the ground then. Of similar interest is the plan of August 1999.

The pattern of occupation and the exercise of use rights have clearly not only between broad family groups but also others, not directly of the blood.

Because of the need to leave the land fallow for ten to fifteen years after cultivation, cropping tends to move like a wave over the land. Land that appears to be abandoned is merely recovering its strength, as it were. Others may move onto this fallow land and disputes then arise. I am told that people of these very families will cut each other off in the line of cultivation and vigorously pursued disputes would arise.

A handwritten signature in black ink, consisting of a stylized, cursive 'M' or similar character.

Rights were not definite here. They grew and shrank over time with the personality and the personal strength of those involved and under the influence of blood or marriage links.

Rights melded into each other at what was contested by one generation might be accepted by the next. Use rights were mobile over the land and it appears that overlaps were inevitable. Disputes were a normal and accepted part of the landscape as was settlement and working together.

I look at the evidence that I have been given, and I have considered each witness in turn and bear in mind that some blocks are uncontested and others are heavily contested.

Some of the issues are the same for all block and some are very different. So far as the witnesses were concerned I believe that each of them was telling the truth as they saw it but to some extent all of them were wrong. Not only were they inconsistent with each other, but there were massive internal inconsistency.

In the round and having regard to all the probabilities and having regard to the seriousness of determining of title, my finding is:

- 1) That the Kapaga application is successful for Block A & B.
- 2) And the Sionetuato family succeeds in Blocks D, H & F.

The rest of the blocks are totally unproved and remain as untitled land and those parts of the application are dismissed.



In accordance with my findings above I now appoint the chosen, Leveki Magafaoa for blocks A and B, and blocks D, H and F.

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

Dated this 7<sup>th</sup> day of May 2009



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PATRICK J SAVAGE (JUDGE)