

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

Application No: 9368/15/6, 9369/15/6, 9370/15/6 &
9371/15/6

IN THE MATTER of Part Meimei, Hikutavake
District

BETWEEN TUHIPA NIUTAMA of Hikutavake,
Niue, now deceased

AND NIUTAMA TUHIPA formerly of
Hikutavake, Niue but now of 3154
Great North Road, New Lynn,
Auckland, musician and

LAPASITAMA TUHIPA-TALAGI
Also formerly of Hikutavake, Niue
But now of 40 Aliford Avenue, One
Tree Hill, Auckland, retired

Second Applicants

AND MOKAVESI JACK WILLIE LIPITOA,
of Namukulu, Niue, retired.

Respondent

Introduction

- [1] On the 16th November 2011 I heard an application for a rehearing of a decision made by me dated 15/8/2008.
- [2] This decision determined the title to the land known as Part Meimei in P.P 9368 containing 2930m², declaring the common ancestor to the Puasifa and appointing the leveki magafaoa to be Mokavesi Jack Willie Lipittoa.
- [3] The application for the rehearing, dated 15/10/2008 was filed by Niutama Tuhipa, Dick Hipa Tuhipa and Lapasitama Tuhipa-Talagi on behalf of the original applicant Tuhipa Niutama who is now deceased.

Case for the Applicants

- [4] The applicants accept that the application was outside the 14 day time limit prescribed by the legislation. The reason given for the late filing was that Mr Tuhipa, as the original applicant, was seriously ill and hospitalised at the time of the hearing. He died on 10/8/2008 and the decision was issued on 15/8/2008.

[5] For the applicants, Mr Tongatule also submitted that the Constitution of Niue requires the Court to consider the justice of the case when exercising its discretion and that it would be just if the rehearing was allowed.

[6] It was submitted that genealogy and adoption are significant issues in this case and that as the parties were not legally represented these important issues were not fully explored.

Case for the Respondent

[7] The case for the respondent was argued by Mr Starling. He accepted that genealogy was at issue but submitted that for the applicant to say genealogy was overlooked was a depressing submission. If that submission was correct there would be no hope of certainty with the determination of title.

[8] It was also submitted that the fact the applicant was not represented by counsel does not give them a right to be heard. It was maintained that the Court has an inquisitorial jurisdiction to ensure the process is fair and also that Niue has many experienced advocates who can assist with land cases.

[9] In this case there is nothing new before the Court and in essence the applicants do not agree with the decision and should have applied for an appeal.

[10] If there is a discretion regarding accepting a rehearing application out of time, it should be narrowly applied.

Law Relating to Rehearing Applications

The Law

[11] Rule 30 of the Niue Land Court Rules 1969 states:

"That no application for rehearing under s.45 Niue Amendment Act (No.2) 1969 shall be after the expiry of fourteen (14) days after the making of the order sought to be reheard."

[12] Section 45 Niue Amendment Act (No.2) 1968 provides:

(1) *"On the application of any person interested, the Land Court may grant a rehearing of any matter either wholly or as to any part of it."*

- (2) *On any such rehearing the Court may either affirm, vary, or annul its former determination, and may exercise any jurisdiction which it might have exercised on the original hearing.*
- (3) *When a rehearing has been so granted, the period allowed for an appeal shall not commence to run until the rehearing has been disposed of by a final order of the Court.*

[13] This provision makes it clear that the Court has an absolute discretion as to whether or not to grant a rehearing.

[14] The principles relating to rehearing cases are set out in the cases of *Grove Broadcasting Co. Limited v Telesystems Communications Limited* (2000) GENDND 1496 (10 November 2000), *Ladd v Marshall* (1954) All ER 745, 748, and *Dragicevich v Martinovich* (1969) NZLR 306, 308. The principles include:

- i) There has been serious misconduct on the part of a judge, juror, witness or lawyer;
- ii) Perjured evidence has been offered to the court;
- iii) There has been discovery of credible and material evidence which could not have been reasonably foreseen or known at the trial;
- iv) There has been a breach of natural justice; or
- v) There has been fraud or corruption; and
- vi) The court is satisfied that there has been a miscarriage of justice.

[15] An application for a rehearing will not be allowed merely for the purposes of repairing omissions in the presentation of the earlier case or for reshaping that case (*Realtycare Corporation Ltd v Cooper*) 1989 2 PRNZ 426.

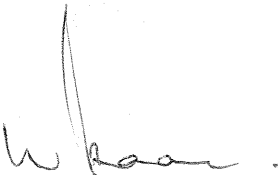
Discussion

[16] As set out above, Rule 30 Niue Land Court Rules 1969 requires the application to be filed within 14 days of a decision. This application was filed one and a half months late. Notwithstanding, having regard to the Courts wide discretion when considering the granting of the rehearing, I consider it fair to take into account the serious illness and subsequent death of the applicant a week before the decision was issued as a valid

reason for the delay in filing the rehearing application. The 14 day time limit is accordingly waived in this case.

- [17] I find however that the substantive grounds submitted by the applicant in support of the rehearing application to be without merit.
- [18] Counsel maintains that significant issues of genealogy and adoption were not properly canvassed by the Court.
- [19] The transcript of the case and the resulting decision demonstrate that this was not the case.
- [20] Genealogy and adoption were considered in detail. Furthermore, the applicants had every opportunity to present their case and to cross-examine other witnesses.
- [21] None of the principles set out above in the law section relating to the rehearings have been satisfied.
- [22] The applicants simply do not agree with the decision which was reached and want to relitigate their case. The correct course of action would have been to appeal.
- [23] Clearly this option is still open for them and if an appeal is received it will be referred to the Chief Judge for consideration.
- [24] The application for rehearing is dismissed.

Dated at Wellington in New Zealand on this day of 6th January 2012.


W W Isaac
JUDGE