

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

App No. 10002

IN THE MATTER of section 45 of the Niue
Amendment Act (No. 2) 1968
and sections 12 and 14 of the
Land Act 1969

AND

IN THE MATTER The land known as Lot 1 and
Lot 2 Part Funiu, Mutalau
District

BETWEEN FASELETAMA ETTIE
VILITAMA

First Applicant

TOM TOMA and
FUATATOA
TAPATUETOA

Second Applicants

AND KILI OGOTAU OLOAPU
and TAONEFOOU
OGOTAU FALESIMA

Respondents

Hearing: 19-20 March 2013, Land Minute Book 17 Folio 260 and 261-268.

Judgment: 19 December 2013

DECISION OF JUDGE W W ISAAC

Introduciton

[1] This is an application for determination of the common ancestor for the mangafaoa of Lot 1 and 2 Part Funiu, Mutalau District (the land). A decision was issued on 21 January 2009 determining Hakegutu Matakamea as the common ancestor for the mangafaoa of the land. A rehearing was granted on 13 November 2010 so that disputes as to the correct genealogy of the nominated common ancestor for the mangafaoa could be resolved.

[2] The applicant for the rehearing, Faseletama Ettie Vilitama, has now been joined by two second applicants, Tom Toma and Fuatatoa Tapatuetoa. They represent the same interests.

[3] The respondents are Kili Ogotau Oloapu and Taonefoou Ogotau Falesima.

[4] The land was gifted by Faseletama Ettie Vilitama's adoptive father, who is also Fuatatoa Tapatuetoa's father, Tapatuetoa Laifone, to the respondents' father, Tavita Ogotautama Tukimaka, following two cyclones in 1959 and 1960 in order for Tavita to build a house for his family. A dispute has arisen as to the nature and consequences of that gift, specifically whether it was a gift in perpetuity or whether it was for Tavita's lifetime only.

[5] A hearing was held on 19 and 20 March 2013 and the case was adjourned for the applicant to consolidate information on genealogy and for the respondents to make submissions in reply.¹

[6] A genealogy chart was subsequently submitted to the Court by the applicants.

Applicants' submissions

[7] The applicants submit that the land was gifted to the respondents' father for his lifetime only. Gifts in perpetuity are not part of Niuean custom. They submit that the common ancestor for the land should be declared as Ikihega Koukouiki Hiligutu.

¹ Niue High Court Minutes, 19 and 20 March 2013 - Land Minute Book 17 Folio 260 and 261-268.

Genealogy chart

[8] Investigation of title is governed by Part 2 of the Land Act 1969. Section 12 states:

12 Ownership determined by ascertaining and declaring mangafaoa.

The Court shall determine the ownership of any land by ascertaining and declaring the mangafaoa of that land by reference to the common ancestor of it or by any other means which clearly identifies the mangafaoa.

[9] At s 2, the Land Act states that:

“**Mangafaoa**” in relation to Niuean land means the family or group of persons descended from a common ancestor, including any person who has been legally adopted into the family, who at any given time are recognised as entitled by Niuean custom to any share or interest in the land, and excludes a former member of the family legally adopted into some other family. Where Niuean land is owned by a single person exclusively, that person is the mangafaoa of the land.

[10] The applicants submit an extract from *Land Tenure in Niue*, in which the concept of mangafaoa is discussed:²

[T]he concept of a mangafaoa or descent group was only of direct relevance in land matters and that various person have varying degrees of influence which are increased by such factors as male sex, genealogical proximity, land use, economic co-operation and residence.

The traditional system appears from the case material to be one in which the land is traced ultimately from a moving source...

The mangafaoa: The term has several connotations, including that of a co-resident group, and that of the common descendants (irrespective of where they reside) of an important ancestor. In either case a relatively small group is referred to, comprising several generations of descendants (born or adopted) of one man (or occasionally one woman).

²

Ron Crocombe “Traditional and Colonial Tenure in Niue” in *Land Tenure in Niue* (1977, reprinted 1980, 1996) at 20.

In relation to land, mangafaoa seem to refer to that group of persons related by blood (and adoption in some circumstances) who, at a particular time and in respect of a particular set of circumstances, are considered by themselves to have common (though not usually equal) interests. People “belong” to several mangafaoa at once, but their status with respect to each is almost invariably different. People were linked with different mangafaoa by various processes.

The focus of the mangafaoa was the land, its identification with the group being legitimised by reference to the human source which had acquired a social validity irrespective of its historical accuracy.

[11] The applicants maintain that the genealogy presented to the Court by the respondents with their initial application was wrong. At the hearing on 20 March 2013, the applicants submitted sets of genealogical charts. One was the Tapatuetoa genealogy, another was the Vihekula genealogy, based on information from the Department of Justice Lands and Survey, Niue (the Department).

[12] The common ancestor nominated by the respondents, Hakegutu Matakamea, did not appear on the second genealogy chart. On 20 March the Court requested that the Department compare the first and second charts against the records held by the Court. Two charts were then provided by the Department. One supports the Vihekula genealogy provided by the applicants. The other shows the linkage from Vihekula to Tavita Ogotau and Matahei, the parents of the respondents. However, the chart does not show any linkage between Vihekula and Matakamea Hakegutu, the respondents’ nominated common ancestor, despite the respondents’ claims that she was from the Vihekula lineage.

[13] In their initial application, the respondents presented the genealogy of Tapatuetoa and Matakamea Hakegatu. There was no reference in that genealogy to Vihekula, the first ancestor named in the chart, from whom the genealogy in relation to the land is traced.

[14] The applicants nominate Ikihega Koukouiki Hiligitu, a descendant of Vihekula as the common ancestor.

A gift in perpetuity

[15] The applicants acknowledge that Tavita Ogotau was given permission to build a house on the land following the devastating cyclones in 1959 and 1960. However, the applicants submit that a “gift in perpetuity” is not a customary concept in Niuean land tenure, nor is it provided for in the Land Act 1969. The Land Act 1969 did not import totally the land concepts of a freehold tenure system. Control of land usage under the Land Act is vested in the leveki mangafaoa. The leveki mangafaoa has statutory responsibilities, but it is the wider mangafaoa that must be consulted before land can be alienated. The applicants submit that a gift in perpetuity is contrary to the purposes and intent of the Land Act.

[16] Section 26 of the Niue Amendment Act (No. 2) 1968 provides for land to be given or set aside by the owners exclusively for Church purposes. The provision describes this giving or setting aside of land as a gift. The applicants submit that the inclusion of the term “gift” in the definition of “alienation” in that Act applies solely in relation to Church lands.

Occupation rights

[17] The applicants submit that at the first hearing of this matter, the Court awarded the respondents unconditional occupation rights over Lot 1 of the Funiu block, and the net effect of this order is similar to a freehold grant, and that this is contrary to Niuean customary land tenure. The effect of such an order would be to disinherit the heirs and successors of the Ikihega Koukouiki Hiligutu mangafaoa from Lot 1. The applicants further state that “[t]o make matters worse, this is the front section of the Funiu Block”.

[18] The applicants submit that under Niuean customary law, it is possible for usage rights in respect of mangafaoa land to be granted to a person for their lifetime. They submit that prior to the introduction of the Land Act 1969, this was the extent of the rights that could have been granted to Tavita Ogotau and his wife, Matahei, as neither of them is a member of the Ikihega Koukouiki Hiligutu mangafaoa. The applicants further submit that Tavita and Matahei left the land and moved to New Zealand 30 years ago, and their children have only recently decided to “return to their roots”, but the life interest granted

to their father under customary land tenure is no longer available to them. In addition, the respondents, like their parents, are not directly linked to the Ikihega Koukouiki Hiligutu mangafaoa. This has been confirmed by the genealogy charts prepared by the applicants and verified by the Department.

[19] Instead of absolute occupation rights, the applicants earlier offered the respondents limited occupation rights for five years, including one right of renewal for a further five years in order to allow them to find somewhere else to re-establish themselves rightfully upon the land allocations of their parents at Tumuai and/or Fukau. The respondents rejected this offer, and it is no longer on the table.

[20] The Land Tenure Report to the Niue Assembly prior to the enactment of the Land Act 1969 states "No occupation licence granted to a stranger should ever exceed a life interest". Further, Information Paper No.4 (64) of the Niue Island Assemble Executive Committee entitled "Proposed New System of Land Titles" states at Article B regarding Certificates of Occupation that:

(iv) Certificates in favour of owner(s) may be for any specified period of time or for the lifetime of the grantee or it may be for any specified period of time or it may be inheritable, that is, to the grantee and his issue forever (in the latter event it would on the lack of issue or adopted children revert to the mangafaoa).

(v) Certificates in favour of persons who are not owners shall be limited to the life of the grantee except:

(a) where they are acquired for the purpose of erecting a dwelling of "permanent" materials. In such a case the Court may authorise a term of up to 60 years with a right of renewal for a further 30 years;

(b) where the grantee or his or her ancestors have occupied a dwelling(s) on the section for at least 50 years, in which case the Court may grant an inheritable certificate as in (iv) above.

(vi) Except as in (b) above the Court shall not grant any (inheritable or other) certificate of occupation to a person who is not an owner, unless all owners domiciled in Niue (including temporary absentees) consent; and the Court shall not grant an inheritable certificate to an

owner unless it is satisfied that the majority of owners of full age present in Court or represented by proxy consent.

(vii) All certificates of occupation to be registered, that is, to be entered as memorials on certificate of title.

(vii) Certificate of occupation for residential purposes should be granted to husband and wife jointly.

[21] Section 31 of the Land Act incorporates most of the principles set out in these passages. The applicants note that the respondents' family, with the permission of the applicants' family, built two dwellings on the land in 1960 and 1962 which have remained there since that time. However, for much of that time, the respondents' family has lived in Aotearoa New Zealand.

[22] The applicants submit that the respondents have excluded them from the Funiu lands for over 50 years and it is time the lands are returned. The utilities that were not available in 1959 are now readily available to the respondents upon the mangafaoa lands of their parents and Tumuai and Fukau, not far from Funiu. The circumstances that led to Tavita being allowed to build houses at Funiu in 1960 and 1962 are no longer relevant and the land should go back to the Ikihga Koukouiki Hilgutū mangafaoa.

[23] In summary, the applicants seek that:

- (a) This Court determine the common ancestor of the mangafaoa of Lot 1 and Lot 2 Part Funiu, Mutalau District to be Ikihga Koukouiki Hilgutū; and
- (b) Faseletama Ettie Vilitama be appointed leveki mangafaoa of Lot 1 and Lot 2 Part Funiu, Mutalau District.

Respondents' submissions

[24] The respondents submit that the land was gifted to their family by the applicant's family in accordance with Niuean custom and this gift was in perpetuity. They submit that the common ancestor for the land should be declared to be Vihekula Tokaatagala.

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Genealogy chart submitted by the applicants

[25] The respondents state that the Ogotau magafaoa have no objection to the appointment of the ancestor named in the chart, Vihekula Tokaagatala, as the common ancestor for the Funiu lands in the place of Hakegutu Matakamea because they are descended from that ancestor through both their mother, Mataheitagaloa Tauetau, and their father, Tavita Ogotautama Tukimaka. Further, the applicants accepted that the Ogotau family are direct descendants of the nominated ancestor, Vihekula, at the hearing on 20 March 2013, when Ahohiva Levi asked the witness for the applicant, Hafe Vilitama:³

Q: Do you accept respondent Falesima [is] a descendant of Vihekula of Mutalau.

A: Yes

Customary gifting of land

[26] Hafe Vilitama also stated at the hearing on March 20 that it is not Niuean custom to gift land, but neither he, nor any other witnesses have given any evidence to support this contention. Indeed, counsel for the respondents submits that he has been instructed that gifting of land is consistent with Niuean custom. Counsel for the respondents states that he is unable to locate any submissions from Mr Tongatule on the point.

[27] The respondents submit that the Niue Amendment Act (No. 2) 1968 states that:⁴

“**alienation**”, in relation to Niuean land, means the making or grant of any transfer, sale, gift, lease, licence, easement, profit, mortgage ... etc.

[28] In the respondents’ submission this shows that the governing legislation expressly contemplates that one of the methods by which Niuean land can be alienated is by gift. Section 26 of that Act also provides the power for the Court to make a vesting order in favour of a Church in respect of any land that has been “given or set aside” for that purpose by a leveki mangafaoa. It is the respondents’ submission that this shows that the

³ Niue High Court Minutes, 19 and 20 March 2013 - Land Minute Book 17 Folio 260 and 261-268.
⁴ Ibid.

Act expressly contemplates customary gifting of land as a legitimate means of alienation in Niuean custom law.

[29] The respondents state that the key issue that remains to be decided is whether the customary gift was a temporary or permanent one. The respondents are in no doubt that the land was gifted permanently to their family. However at the hearing on 20 March 2013, Fuatatoa Polima Tapatuetoa, the son of the donor and a witness for the applicant, made some contradictory statements about the nature of the gift. About his father, he stated:⁵

Because of his kindness he fully gives the land.

[30] And later in response to being asked whether his family wanted to take the land back:⁶

No we don't want to take the land back but change the common ancestor to Ikihega and correct title

[31] He was then questioned by the Court:⁷

A: Do you want to take the land back or change the common ancestor.

Q: We do not want to take the land back but change the common ancestor and at a certain time they will have to leave the land.

[32] Further, the applicant's counsel, Ikipa Tongatule, is recorded in the minutes as stating that while the main objective is to correct the genealogy, the applicant's family "[p]osition is do not want to exclude them but give time for them and want land back".⁸


[33] The respondents also submit that the land was gifted to their family by the applicant's family in accordance with Niuean custom and this gift was in perpetuity for the following reasons:

⁵ Ibid.

⁶ Ibid.

⁷ Niue High Court Minutes, 19 and 20 March 2013 - Land Minute Book 17 Folio 260 and 261-268.

⁸ Ibid.

- (a) The land was gifted by the applicant's adoptive father, Tapatuetoa Laifone, to the respondents' father, Tavita Ogotautama Tukimaka, in recognition of their close friendship and the blood ties between the families: Tapatuetoa's wife, Mokaholoatu Tauetau, being the sister of Tavita's wife (and the mother of the respondents), Mataheitagaloa Tauetau;
- (b) The gift was made following a hurricane in about 1959 so that Tavita could build a home for his family, which he did in 1960;
- (c) In 1962 a second home was built on the land for Tavita's daughter, the current respondent, Taonefoou Ogotau Falesima. The fact that a second house was built to enable another generation to live on the land is further evidence that the gift was intended to be permanent;
- (d) Although there is nothing in writing about the gift, it is valid under Niuean customary law;
- (e) There were no conditions attached to the gift. The Ogotau magafaoa is adamant that it was made for perpetuity. Had it been otherwise, they are sure that their parents would have informed them;
- (f) The letter from the Ogotau family to the Niue High Court dated 28 March 2009 stresses their belief that the land was given to them, not loaned as contested by the applicant's family;
- (g) The Ogotau family lived on and occupied the land at Funiu from 1960 until 1983, when they moved to New Zealand. The respondents' youngest brother and Taonefoou's daughter were born there, and a number of the respondents' nieces and nephews were also born and raised there;
- (h) Two generations of the Ogotau family have had their fonua buried on the land: the respondents' youngest brother, Taonefoou's daughter, and a number of the respondents' nieces and nephews all have their fonua buried there. The respondents submit that this is strong evidence in support of the
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permanent nature of the customary gift of the land. It is highly unlikely that Tavita would have allowed his children or grandchildren to have their fonua buried at Funiu if the land was only on loan and not given to them outright;

- (i) After the Ogotau family moved to New Zealand in 1983, they continued to look after the land and have maintained close links to, and affection for, the land during return visits to Niue for the past 30 years. Taonefoou's daughter, Jocelyn, provided a letter setting out the work done by the family over the years to maintain the land;
- (j) The respondents' brother, Kalalahetau Ogotau, returned to Niue permanently in 2008 with the intention of restoring the two houses. It was only at this time that the applicant's family raised the issue of returning the land to them. This was the first time this had been suggested after the land was gifted 50 years ago; and
- (k) In the last 50 years, the other Ogotau family lands suitable for house-building in both Lakepa and Mutalau have been occupied and built on by other members of the Ogotau extended family.

Title for Lot 1 and title for Lot 2

[34] The respondents submit that it appears the applicant's family have not occupied or cared for the land at Funiu for several decades. The land has recently been divided into Lot 1 and Lot 2. The respondents seek title and occupation of Lot 1, but do not contest title to Lot 2, which is a much larger block. The respondents submit that the applicant's family is in no way prejudiced if an order granting title and occupation of Lot 1 to the Ogotau mangafaoa is made. They will retain title to Lot 2 and will be able to live and build on that land, which has an area of over 1800 m².

[35] Further, after consideration, the Ogotau family would like to request a change to the order granted in 2009 appointing their cousin Fisi Taetau as leveki mangafaoa of Lot

1 and instead appoint their brother, Kalalahetau Ogotau, as he will be living permanently in Niue, looking after the land and renovating the houses.

[36] Counsel requests that should a further hearing be required, it take place in Auckland. The applicant and the respondents live there, along with the applicant's counsel. The respondents have already expending considerable resources attending several hearings in Niue and now have the additional expense of instructing a counsel to assist them.

Summary

[37] In conclusion, the respondents submit that the rehearing has primarily focussed on changing the common ancestor and correcting the genealogy. The respondents are happy to accept Vihekula as the common ancestor for the land.

[38] Witnesses for the applicant appear to vacillate between acknowledging that the land was "fully given" to the Ogotau family, and indicating an intention for the land to be returned to them at some future date. However, the applicant has not produced any evidence to prove that the land was not permanently gifted, despite several opportunities to do so during the five years this case has been running. Further, the Niue Amendment Act (No. 2) 1968 expressly recognises and incorporates gifting of land as a custom in Niue. All the evidence points to the conclusion that the land was gifted permanently in accordance with Niuean custom.

[39] The respondents submit that the orders made by the Court on 21 January 2009 be confirmed, but with the following variations:

- 1) That the common ancestor for Lots 1 and 2 on Provisional Plan 970 containing 1024 m² respectively is declared to be Vihekula Tokaatagala;
- 2) That Kalalahetau Ogotau is to be appointed as leveki mangafaoa for Lot 1, Provisisional Plan 9770 containing 1024 m²;
- 3) That an occupation order is granted to Kili Ogotau Oloapu in respect to Lot 1, Provisional Plan 9770 containing 1024 m²;

- 4) That Faseletau Ettie Vilitama and Hafe Vilitama be appointed as leveki mangafaoa for Lot 2, Provisional Plan 9770 containing 1890 m².

The law

[40] Section 2 of the Land Act 1969 states that:

“Mangafaoa” in relation to Niuean land means the family or group of persons descended from a common ancestor, including any person who has been legally adopted into the family, who at any given time are recognised as entitled by Niuean custom to any share or interest in the land, and excludes a former member of the family legally adopted into some other family. Where Niuean land is owned by a single person exclusively, that person is the mangafaoa of the land.

[41] Other relevant sections of the Land Act 1969 are set out below:

12 Ownership determined by ascertaining and declaring Mangafaoa.

The Court shall determine the ownership of any land by ascertaining and declaring the mangafaoa of that land by reference to the common ancestor of it or by any other means which clearly identifies the mangafaoa.

14 Appointment of Leveki Mangafaoa

(1) When the ownership of any land has been determined any member of that Mangafaoa who has reached the age of 21 years may apply in writing to the Court for an order appointing a Leveki Mangafaoa of that land.

(2) If the application is signed by members who in the Court's opinion constitute a majority of the members of the Mangafaoa whether resident in Niue or elsewhere the Court shall issue an order appointing the person named in the application as the Leveki Mangafaoa of that land.

(3) If no such application is received within a reasonable time, or applications are each signed by members who, though having attained the age of 21 years, constitute less than a majority of the Mangafaoa who have attained such age the Court may appoint a suitable person to be Leveki Mangafaoa of that land.



(4) The appointment of a Leveki Mangafaoa shall not be questioned on the grounds that any member of the Mangafaoa was absent from Niue, but the Court may consider any representation made in writing by any member so absent.

(5) Any person who is domiciled in Niue, and whom the Court is satisfied is reasonably familiar with the genealogy of the family and the history and location of Mangafaoa land, may be appointed as a Leveki Mangafaoa of any land, but if he is not a member of the Mangafaoa he shall not by virtue of such appointment acquire any beneficial rights in the land.

(6) In appointing any Leveki Mangafaoa the Court may expressly limit his powers in such manner as it sees fit.

31 Court may make occupation orders

(1) The Court may under this section make in respect of any Niuean land to a member of the mangafaoa or the spouse or surviving spouse of a Member or a Member and spouse jointly an occupation order on such terms and conditions not inconsistent with this section as may be specified in the order.

(2) Application for an occupation order shall be made by the leveki mangafaoa or by a member of the mangafaoa desiring the order, or by both, and shall be accompanied by a description and plan of the area to be occupied.

(3) Every occupation order shall upon registration take effect under its tenor.

(4) Unless the area concerned has already been defined by survey and used or occupied as a separate section and occupation order shall not be made over an area of less than 20 perches in the case of a village site and less than 2 acres for a plantation area.

(5) An occupation order may be made for the personal use of the person for whose favour it is made for his lifetime or some specified term of years or may be granted upon terms that it passes to that person's successors under Niuean custom.

(6) Every occupation order of village site land shall, if possible, be made in favour of a husband and wife jointly.

(7) No rental or premium shall be payable in respect of an occupation order.



(8) Such occupation order may provide for the termination of it and the reversion to the mangafaoa of the land affected if the person in whose favour it is made or the person otherwise entitled to the benefit of it;

- (a) Ceases to make full use of the land for any period of not less than 2 years which may be specified in such occupation order;
- (b) Is absent from Niue for any period of not less than 2 years which may be specified in such occupation order otherwise than with the prior written approval of Cabinet for the purpose of any training, education or instruction;
- (c) Fails to perform any of the special covenants which may be specified in the order;
- (d) Surrenders rights conferred by the order by executing an instrument in the approved form.

(9)(a) The leveki mangafaoa or the Registrar may apply to the Court for a certificate that the order has for any reason specified in subsection (8) was terminated and the Court may, if it is satisfied that the order was terminated under subsection (8), give a certificate accordingly.

- (b) Any such certificate may be registered.

Discussion

[42] It would appear common ground between the parties that following the cyclones in 1959 and 1960, Tavita Ogotau was given permission to build on and occupy the land by Tapatuetoa Laifone.

[43] Tavita built on the land in 1960 and his daughter Taonefoou Ogotau Falesima built a second home on the land in 1962.

[44] Therefore as at 1960, 53 years ago, Tapatuetoa Laifone had the control and authority for permission to be given to Tavita Ogotau to build on and occupy this land.

[45] It would also follow that he had the authority to nominate and determine who the common ancestor would be and nominate an appropriate leveki for this land.

[46] This was not done at the time, however, the applicants, Tapatuetoa Laifone's children, have nominated their father's grandfather, Ikihega Koukouiki Hiligutu as the common ancestor on the basis that it is his family who have owned and occupied this land since his time to the time of occupation by the Ogotau family.

[47] These factors are not in dispute and the issue that requires determination is whether the occupation of this land by the Ogotau family alters the underlying genealogy and authority over the land.

[48] In simple terms, the answer must be no; that is, regardless of occupation, the mana of the land and the genealogy to this land does not change.

[49] As a result I find that the common ancestor to this land at the time the Ogotau family obtained occupation was Ikihega Koukouiki Hiligutu. This has not changed and accordingly I find that the common ancestor is Ikihega Koukouiki Hiligutu.

[50] Although I have determined this point, I would comment that in my view the respondents' request to change the common ancestor from Hakegutu Matakamea to Vihekula is to attempt to go sufficiently far back in the genealogy to find a link to Ikihega. This in itself is an acceptance of the authority of Ikihega.

The 'gift'

[51] At the time that permission was given to the Ogotau family to build it was given in good faith and, as stated, with no conditions attached.

[52] However, the circumstances at the time which led to the permission being granted were to assist Tavita Ogotau and his family following the cyclones in 1959 and 1960.

[53] This was done and two houses were built and occupied by the Ogotau family until they left permanently for New Zealand in 1983.

[54] There was no evidence of any discussion between the two families relating to vacating the houses and the land and the issue only arose when Kalalahetau Ogotau, the respondents' brother, returned to restore the houses in 2008.

[55] The question arises as to whether the Ogotau family can now reoccupy the land with no conditions attached.

[56] In my view the answer lies with the mangafaoa who holds the authority to this land.

[57] As determined, the common ancestor is Ikihega Koukouiki Hiligutu and as a result it is his mangafaoa who have the authority to determine the occupation of this land.

[58] The circumstances are hugely different to those in 1960. This land was essentially abandoned by the Ogotau family for 30 years and they now wish to resume occupation. Notwithstanding, over this time the authority or mana to the land has remained in my view with the mangafaoa of Ikihega.

[59] The mangafaoa of Ikihega have now chosen a leveki mangafaoa for this land who complies with the provisions of the Niue Land Act 1969.

[60] Accordingly, I appoint the chosen leveki, namely Faseletama Ettie Vilitama, in respect of this land.

[61] It is now the leveki who must act with the best interests of the mangafaoa and the land in mind. This would include any consideration of the lease of this land or seeking an occupation order in respect of this land for the mangafaoa.

[62] As this has not yet been contemplated by the leveki, the application for an occupation order by the respondents cannot proceed and is dismissed. This can be reactivated by the leveki if that is considered in the best interests of the mangafaoa.

Summary

[63] In summary, I make the following orders:

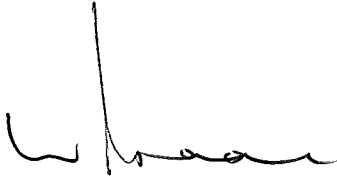
- (i) I declare the common ancestor for Lot 1 and Lot 2 Part Funiu, Mutalau District to be Ikihega Koukouiki Hiligutu;

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(ii) I appoint Faseletama Ettie Vilitama to be the leveki mangafaoa for Lot 1 and Lot 2 Part Funiu, Mutalau District.

[64] A copy of this decision is to go to all parties.

Dated at Wellington this 19th day of December 2013.



W W Isaac
JUDGE