IN THE HIGH COURT
OF NIUE
(LAND DIVISION)

App No. 11338

IN THE MATTER	of Part Mataaho
BETWEEN	Vivaliatama Talagi
	Applicant
AND	Tofua Puletama and Lovely Puletama
	Respondents

Hearing: 27 November 2015

Judgment: 20 January 2016

DECISION OF JUDGE S F REEVES

Introduction

[1] Vivaliatama Talagi filed an application for title determination of Part Mataaho on or about 3 October 2015.

[2] On 20 November 2015 Mrs Talagi filed an application for interlocutory injunction to prevent an area of ploughed land adjacent to the land she and her family cultivate being planted by Tofua and Lovely Puletama.

[3] I heard Mrs Talagi's application for injunction on 27 November 2015.

Background

[4] Mrs Puletama and her family have been cultivating land near to the Talagi's plantation since September 2014. In September or early October 2015 they cleared further

land adjacent to the Talagi plantation. Mrs Talagi disputes the right of Mrs Puletama to word this additional area and she has filed the application for title determination.

[5] Mrs Puletama wrote to the Court on 4 October 2015 asserting her right to work the land in question and disputing Mrs Talagi's right to object. Her letter concludes *'I will continue to work on my family land continuously from my ancestors.'*

[6] There was at least one land investigation meeting prior to the hearing. At the meeting on 27 October 2015 the parties were unable to agree boundaries, and as at the hearing date a provisional plan of the block had not yet been produced.

[7] Mr and Mrs Puletama did not attend the hearing as they left for New Zealand for 2 weeks on 20 November, the same day the injunction application was filed. Mrs Talagi was obviously anxious that the area in dispute not be planted prior to the title application being determined by the Court, but it wasn't clear to me that the Puletamas' were imminently threatening to do so. When I asked Mrs Talagi what the actual threat was, given Mr and Mrs Puletama were in New Zealand, she indicated that their sons were still on the island, with the implication being that they could still plant the land.

[8] I was unwilling to deal with the injunction application on an ex parte basis and gave directions for service and that a response to the application to be filed by the Puletamas' prior to Christmas.

[9] Mr and Mrs Puletama's response is dated 14 December 2015 and makes the following points:

(i) The initial plough was cleared in September 2014 and has been partially planted and harvested;

(ii) The new plough plantation was cleared in September 2015;

(iii) As the matter is before the Court they have not made any attempt to plant the new plough plantation;

(iv) They wish to plant both plough plantations and ask the Court to allow them to do so, as it is uncertain when the title issue will be finalised.

Law

[10] Section 47(1) of the Niue Amendment Act gives the Court jurisdiction to grant an interlocutory injunction in respect of Niuean land.

[11] The principles concerning the grant of an interlocutory injunction are well settled.[1] The applicant must show that:

(i) There is a serious question to be tried;

(ii) The balance of convenience is in the applicant's favour; and

(iii) The overall justice of the case supports the grant of an injunction.

Decision

[12] I am satisfied there is a serious question to be tried. The applicant disputes the right of the Puletamas' to work the land in question, and the issue is now before the Court in the application for title determination. There is insufficient evidence currently before the Court to make an assessment of the merits of the respective positions, and both parties will need to put their cases to the Court.

[13] In my view the balance of convenience lies in preserving the status quo by granting interlocutory relief preventing the Puletamas' or any other party from planting the disputed area, cleared in September/October 2015 until the application for title next comes before the Court.

[14] Although the Puletamas' letter of 14 December 2015 said they have not planted the new plough area, they wish to do so and have asked the Court to allow them to. One of the reasons given is the cost to them of delay. No details are given of the cost, but the letter also says they live off the land and the sea. I note that the land at issue has only

[1] *Klissers Farmhouse Bakeries v Harvey Bakeries Ltd* [1985] 2 NZLR 129

recently been cleared, and so it appears the disputed area has not been cultivated by the Puletamas' or any other party in recent times.

[15] An interlocutory injunction will make it absolutely clear to both parties that there is to be no planting in the disputed area until the title issue is resolved.

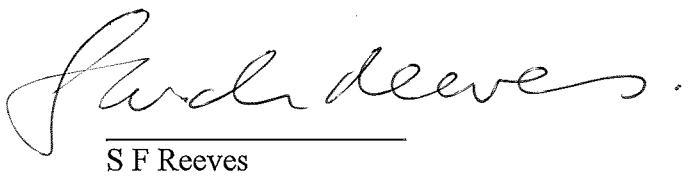
[16] Delay can be addressed by directions that the title determination application be set down for hearing at the next sitting of the Court in March 2016, or before the Land Commissioners if they can hear the matter sooner. The parties are also directed to prepare for that hearing by holding meetings of their respective magafaoa, so the views of the magafaoa can be presented to the Court, along with any other evidence they wish to put before the Court in support of their respective claims.

[17] The necessity for the injunction to remain in place can be reviewed by the Court at any time, on application of the parties or otherwise, particularly if the title application does not proceed to hearing in March 2016.

[18] For these reasons I am satisfied that the overall justice lies in granting the application for the interlocutory injunction.

[19] Order accordingly to issue forthwith.

Dated at Wellington this 20th day of January 2016.



S F Reeves
JUDGE