

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

App Nos. 2021 - 12096, 12097

UNDER Section 34 and 14 of the Land Act 1969

IN THE MATTER OF Partition of Land at Part Ulumago/Tahiono

AND Appointment of Leveki Magafaoa

BETWEEN NEWLAND POUMALE
Applicant

AND VILIKAIUA VILIKAI
Respondent

Hearing: 6 October 2022

Appearances: Mrs Eneletama Kaiuha for the applicant
Mr Vilikai in person

Judgement date: 19 June 2025

DECISION OF JUSTICE S F REEVES

Result

[1] The order for partition is granted.

[2] The common ancestor will be Makavao, and Newland Poumale is appointed leveki for the partitioned land.

Introduction

Partition

[3] Newland Poumale applies to partition Part Ulumago/Tahioni in Liku to build a family home. He also applies to change the common ancestor for the partitioned block and to be appointed as leveki.

[4] Mr Vilikai is one of the two levekis for the block. He opposes the partition and disputes Mr Poumale's connection to the land. Mr Vilikai also complains that Mr Poumale has behaved in a disruptive and intimidating way towards him.

[5] The other leveki, Mrs Ahitautama Makaea-Cross initially supported the partition at the family meeting held in 2021. She did not appear at the hearing but has provided letters to the Court expressing concerns about Mr Poumale's conduct. She does not dispute Mr Poumale's connection to the land and says that if a partition is granted, then he should keep to his boundaries and not encroach into surrounding land.

Change of leveki

[6] Mr Poumale has also applied to change leveki for Part Ulumago/Tahioni and appoint himself as leveki in place of the current levekis, Mr Vilikai and Mrs Cross.

[7] At the family meeting held in 2021, Mrs Cross supported the change of leveki for Part Ulumago/Tahioni and she agreed that she and Mr Vilikai should step aside as leveki. Whether she still holds that view is unknown.

[8] Mr Vilikai was not present at the 2021 meeting and his position is unknown.

The Land

[9] Part Ulumago/Tahiono was titled in 2005 and is recorded in the Niuean Land Register, as Section 3, Block II/IV, Liku District comprising 6.1878 hectares. Tulagi was identified as the magafaoa or common ancestor, and Ahitau M. Cross, Vilikaiua Vilikai and Aifolia Poumale were appointed as joint leveki.¹

¹ Land Court Minute Book Reference Vol 13, Folio 108-110

[10] The minutes of the family meeting of 8 February 2021, refer to on-going tensions in the magafaoa surrounding the titling of the land in 2005 when four blocks were before the Court. Mrs Kaiuha, who chaired the family meeting referred to the issue stating that Section A (which became Part Ulumago/Tahiono) belonged to the Poumale family, yet Mrs Cross and Mr Vilikai were appointed leveki alongside Aifolia Poumale.²

[11] In 2006, the Court removed Aifolia Poumale, the applicant's brother, as leveki. This was done upon the application of the other two leveki following a dispute between Aifolia Poumale and Mr Vilikai.³

[12] These events have caused friction in the magafaoa over the years with the heart of the issue appearing to be the rights of the applicant and his family on Part Ulumago/Tahiono because of the adoption of their father, Sionepata. The current applications are partially aimed at putting right what the Poumale family see as a wrong that was done.

The Application

[13] Mr Poumale's partition application was received by the Registry on 2 August 2021. He applies for an area of 4909 m² located towards the western side of the block.⁴ The land investigation report describes the area as located at the back of the village green of Liku near to the homes of Mrs Tulisa Thomson and Mr Vilikai.⁵

[14] Mr Poumale filed an affidavit received by the Court on 5 October 2022, and the hearing took place on 6 October 2022. Mrs Kaiuha who is the leveki for the Tulagi magafaoa supports Mr Poumale's application and spoke for him at the hearing.

[15] Concerns raised about Mr Poumale's conduct in the village were discussed at the hearing. After the hearing Mr Vilikai filed a copy of a Police report dated 7 October 2022, listing the complaints made by him against Mr Poumale in the period 2010 to 2022.

² Niue High Court (Land Division), 11 October 2005

³ Land Court Minute Book Reference Volume 13 Folio 168

⁴ Provisional Plan No. 12096

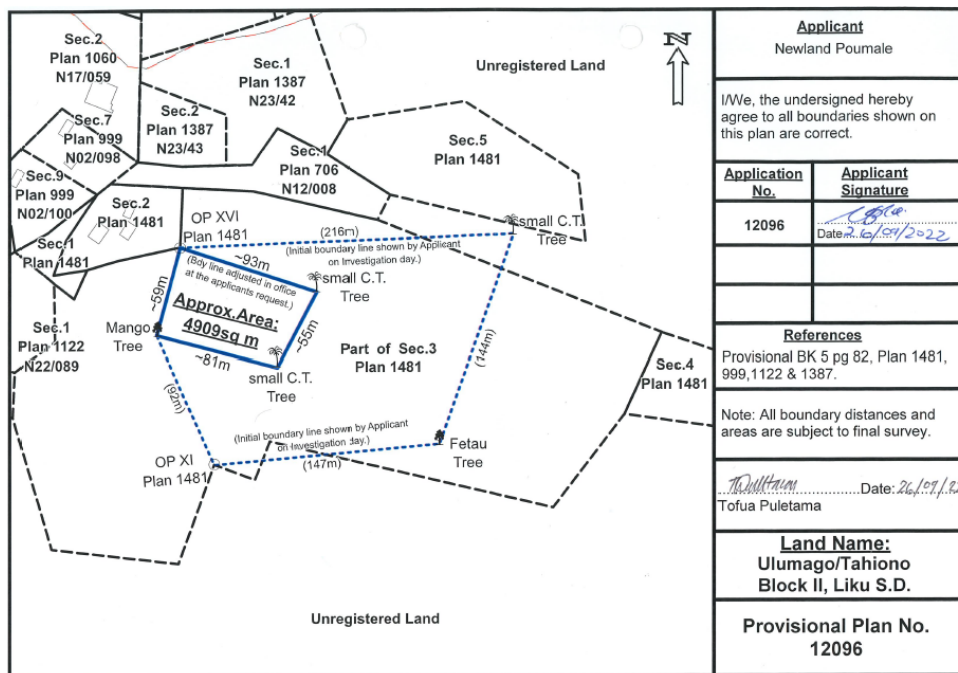
⁵ Land Investigation Report, dated 23 August 2022

[16] Because the allegations about Mr Poumale’s conduct potentially raised an issue of the exercise of the Court’s discretion under section 34 of the Land Act 1969 (“the Land Act”), I made the following directions:

- a) The Registrar obtained an updated report from the Niue Police,⁶
- b) The Registrar circulated the updated Police report dated 12 March 2025 to the parties including Mrs Cross, with 2 weeks for any further submissions,⁷
- c) A letter dated 8 April 2025 from Mrs Cross was circulated to parties,
- d) Letters in response were received from Mrs Kaiuha dated 22 April 2025, from Mr Poumale dated 28 April 2025, and from the pastor of the Liku Ekalesia, Rev. Kennedy Tukutama dated 22 April 2025.

Submissions for the Applicant

[17] Mr Poumale has proposed the following partition:



[18] He claims the land through Makavao Poumale, his paternal grandfather, who is also named as the new common ancestor in the application. Makavao legally adopted Sionezata

⁶ Directions dated 28 February 2025.

⁷ Directions dated 27 March 2025.

who is Mr Poumale's biological father.⁸ Mr Poumale was also adopted by Makavao but this was not a legal adoption.

[19] Makavao and his family worked for many years on this land planting a coconut plantation, passionfruit, and limes. The family built two houses on the land, including one made of limestone mortar.

[20] Makavao and his wife Lelemanogi also legally adopted several of Sionepata's children including Mr Poumale's older brother John Junior Poumale, who continued living on the land after the grandparents died. After Junior moved to New Zealand in 1998, other family members continued to maintain the land.

[21] Mr Poumale records that before his grandparents died, they both stated, "No one should remove Sionepata Poumale and his children from Tahione Lalo. Live together in peace."

[22] He also gave evidence that his family has been maintaining the land for many years, clearing the land, mowing lawns, removing fallen coconut leaves, and picking up rocks. He personally has been looking after his brother's homes and land at Tahiono Lalo since February 2021.

[23] Mr Poumale wants to stay on the island with his family and live in the village. He is contributing to the community as a member and deputy chairperson of the Liku Village Council, and as a deacon and vice treasurer to the Liku Ekalesia.

[24] Mr Poumale also gave assurances in court that he would not be disruptive, and that he wants to build his house and try to be a good citizen in the village. He stated that he wants to create a good relationship between the families.

[25] Support for the partition was confirmed by the family at a meeting on 8 February 2021 and minutes of this meeting were filed. Mrs Cross, one of the two leveki for the block, consented to the partition during this meeting. She also confirmed at that meeting that she was

⁸ Department of Justice, Lands & Survey genealogy chart of the direct descendants of Tulagi Taupule Katikula dated 06/10/22.

happy not to be leveki for the new section. The other leveki, Mr Vilikai, did not attend the meeting.

[26] Junior Poumale also filed an affidavit in support of the partition. He confirmed that all of the siblings have consented to the partition. He stressed the Poumale family's association with the land and gave evidence of how his grandparents toiled to clean and look after the land and build houses on it. He also recalled the words of his grandparents that Sionepata and his children should not be removed from the land.

[27] Junior Poumale also gave evidence about how Mr Vilikai came to live on Tahiono Lalo. While Junior was growing up with his grandparents, there was older man named Ukupeau who also lived on the land, and the Poumale family cared for him until he died as he had no other family on Niue. Ukupeau's son Kauhemitu returned from New Zealand after Makavao had died, and asked Sionepata for a piece of land to build at Tahiono Lalo. This was agreed and the house was built on the southern side of the Poumale's limestone house.

[28] When Mr Vilikai returned to Niue from New Zealand in 2003, he had nowhere else to live. The Poumale family cared for him, and he lived with them for about 2 months. Kauhemitu had left for New Zealand by this time and the Poumale family agreed to Mr Vilikai's request that he live in Kauhemitu's house.

[29] Mrs Kaiuha supports Mr Poumale's application. She submitted it is important to encourage young people to stay on the island and she wants him to be able to build his house in order to remain in the village. Mrs Kaiuha also emphasised Mr Poumale's contributions to the village, including being a village council member and deacon.

[30] In terms of the police reports and complaints filed against the applicant by Mr Vilikai, Mrs Kaiuha pointed out that the police had resolved all of the complaints, and no charges were laid.

[31] Pastor Kennedy Tukutama of the Liku Ekalesia also wrote to the Court in support of Mr Poumale, emphasising his contributions to the community and that he has been ordained as a deacon in November 2024.

Submissions for the Respondent

[32] Mr Viliakia Viliakia opposes Mr Poumale's partition application.

[33] Mr Viliakia filed a police report dated 7 October 2022, setting out details of complaints made by him about the actions of the applicant over a number of years. These included the use of firearms in a residential area and playing loud music late into the night. Police did not bring any charges as a result of these complaints. The police report concludes by saying that Mr Viliakia and Mr Poumale are family and should resolve these issues peacefully.

[34] Mr Viliakia states that he was disappointed with the response of the police, who he does not believe took his complaints seriously. He also disputes the family connections which Mr Poumale has presented to the Court, stating during the hearing that "they don't know who their father is, and they keep using Poumale name, that's not their father".

[35] The other leveki, Mrs Cross, initially agreed to the partition during the family meeting. However, on 20 September 2022, she wrote to the Court stating that she did not want to go against the other leveki, Mr Viliakia, who is her blood relation. She also had misgivings about Mr Poumale's behaviour, as well as the behaviour of his siblings.

[36] In response to my directions, Mrs Cross made a further submission to the Court, again emphasising her concerns about Mr Poumale and the impact of his actions on elderly residents of Liku. Mrs Cross concluded her submission by requesting that Mr Poumale stay within the boundaries of the partitioned area. To that end, she asked if the High Court Office could put markers around the boundaries of the partitioned area.

The Law

[37] Part 3 of the Land Act sets out the provisions for the partition of Niuean land. The key provisions for this application are section 34 which sets out the Court's power to partition land, and section 36 in relation to the Court's discretionary powers:

34 Jurisdiction to partition Niuean land

(1) The Court shall have exclusive jurisdiction to partition Niuean land.

(2) The jurisdiction to partition shall be discretionary and the Court may refuse to exercise it in any case in which it is of the opinion that partition would be inexpedient in the public interest or in the interests of the Magafaoa or other persons interested in the land.

36 Discretionary powers of Court

In partitioning any land the Court may exercise the following discretionary powers –

(a) It may where the Leveki Magafaoa wishes to allocate a portion of the land to a member of the Magafaoa or the Magafaoa has become unduly large or in cases of irreconcilable family disputes, partition the land among groups of members of the Magafaoa on what appears to the Court to be the general desire of the persons concerned to be just and equitable;

(b) It shall avoid, as far as practicable, the subdivision of any land into areas which because of their smallness or their configuration or for any other reason, are unsuitable for separate ownership or occupation;

(c) It may appoint new Leveki Magafaoa in respect of the pieces of land affected by any partition orders.

[38] The High Court stated in *Tafatu v Tongahai*, that as individual land ownership does not exist in Niue, there is a clear difference from a partition of land in other jurisdictions.⁹ In Niue, underlying ownership of land remains with the magafaoa following partition, although the magafaoa may change if it is decided that a new common ancestor should be appointed for a subset of the wider magafaoa.

[39] This may be appropriate where a smaller subset of the magafaoa who has been more closely associated with the land undertakes the partition and has chosen a more specific common ancestor. Therefore, a partition under the Land Act is a rationalisation of land holdings, a means of better managing people and property, as opposed to a division of title and ownership rights.¹⁰

[40] Section 36 provides the means for resolving disputes between magafaoa members, which is to partition land. Partition does not sever the relationships between members of the

⁹ *Tafatu v Tongahai* [2019] NUHC 11; Applications 11204, 11205, 11347 (19 March 2019) at [36].

¹⁰ *Tafatu v Tongahai* at [37].

magafaoa, even where those relationships have broken down. Those members are still linked by blood to the land and that link cannot be broken.¹¹

[41] The Court’s jurisdiction to partition land is discretionary. It may refuse to exercise it in any case where it thinks that partition would be inexpedient (that is, not practical, suitable, or advisable) in the public interest or in the interests of the magafaoa or other persons interested in the land.¹² For instance, in *Ikimotu v Toamio*, the Court of Appeal cancelled a partition order because one of the boundaries of the partition cut through a house owned by the appellant.¹³

[42] In *Tafatu v Tongahai*, there was a dispute between members of the family.¹⁴ The partition was granted as a means of allowing a land title to remain within the magafaoa while allowing magafaoa members who are in dispute to live upon separate areas of land. In the High Court Chief Justice Coxhead stated, “in this situation, it is appropriate to and in the interest of the magafaoa to grant the partition.” The decision was upheld on appeal by the Court of Appeal.¹⁵

Public interest discretion

[43] A question arises whether the allegations concerning Mr Poumale’s conduct are relevant to whether the partition is inexpedient in the public interest.

[44] Few Niuean cases have discussed the meaning or application of “public interest” in the context of the Court’s discretion to decline a partition application. The (now repealed) Māori Affairs Act contained a similar provision at section 174:

174. The jurisdiction conferred by this part of this Act shall be discretionary, and the Court may refuse to exercise that jurisdiction in any case in which it is of opinion that partition would be inexpedient in the public interest or in the interest of the owners or other persons interested in the land.

¹¹ At [41].

¹² Niue Lands Court Bench Book (2012) at 71.

¹³ *Ikimotu v Toamio* [2019] NUCA 4; Application 11639 (1 July 2019).

¹⁴ Above n 9.

¹⁵ *Tongahai v Tafatu* [2025] NUCA; Application 11898 (8 April 2025).

[45] In *Tafatu v Strickland*, the Niue Court of Appeal stated that “the partition of Niuean land is closer to the general definition of subdivision or of a partition of Māori land, as common ownership between the areas is still capable of being maintained.”¹⁶ Māori Land Court case law can therefore offer some guidance regarding the discretion of the Niue Court.

[46] In *Cottrell v Roberts* the Māori Appellate Court stated that the term “public interest” requires an examination of all the circumstances.¹⁷ The Court cited *Smeaton v Queenstown Borough* where “public interest” was defined as including “all matters which can in any circumstances be of public interest” and further that:¹⁸

...so being a term of wide and varying meaning, it is often synonymous with ‘public policy’ or ‘public good.’ From a decision of the House of Lords in *Northwestern Salt Co Ltd v Electrolytic Alkali Co Ltd* (1914) A C 461 it can be deduced that questions of public policy or interest depend upon an examination of the whole of the surrounding circumstances and can fluctuate with them.

[47] The Māori Land Court in *Re Karaka Huarua A & B* declined to grant a partition on public interest grounds.¹⁹ The Court referred to the definition of public interest set out in *re Tarawera C6* of “any particular matter of Māori interest” and found that a proposed partition would not be in the public interest because the new block would not constitute an economic farming unit. On appeal, the Māori Appellate Court overturned the decision finding that the partition was in the public interest because of the industry and ability of the applicants, whose plans for the block, included using some land for farming and planting trees on the remaining land.

[48] Two further cases in the Māori Appellate Court considered the issue of productivity as a public interest consideration. In *Taharoa A7H2B*, it was argued that the partition was not in the public interest because it would have a negative impact on the productive use of the partitioned land, with the Court finding that argument insufficient to prevent the partition being granted.²⁰ In *Chase v Horton*, the Court considered the respective abilities of the two parties

¹⁶ *Tafatu v Strickland* [2016] NUCA 3; Application 10589 (26 September 2016) at [44].

¹⁷ *Cottrell v Roberts - Tarawera C6* (1982) 9 Takitimu Appellate Court MB 286 (9 APT 286).

¹⁸ *Smeaton v Queenstown Borough* (1972) 4 NZTPA 410 at 422.

¹⁹ *Re Karaka Huarua A & B - Partition and Roadway* (2004) 98 Taitokerau 273 (98 WH 273).

²⁰ *Maikuku - Taharoa A7H2B* (1984) Waikato Maniapoto Appellate Court MB 2.

to farm the land, and decided in favour of the party it was believed would best enhance the overall productivity.²¹

[49] In summary, the Court can exercise its discretion to decline a partition on the basis of inexpediency in the public interest or in the interests of the magafaoa or other persons interested in the land. The case-law strongly suggests that in this context “public interest” is confined to issues concerning Niuean land, its use and occupation.

Discussion

[50] The issue is whether to grant the partition application, and if so, to appoint a new common ancestor for the partitioned block and the applicant as leveki magafaoa.

The Magafaoa

[51] A partition of land is done in the interests of the magafaoa of the land. Mr Vilikai disputes the applicant’s connection to the land in terms suggesting that he does not accept that the adoption of Sionezata is sufficient to entitle the Poumale family to partition the land.

[52] There have been disputes and tension between the Poumale family and the two levekis following the 2005 titling of Ulumago/Tahiono and subsequent removal of Aifolia Poumale as a leveki. The Poumale family were left with no ability to control the land their family had worked and lived on for many years.

[53] Mrs Cross does not dispute the association of the Poumale family to the land, but Mr Vilikai does, however his view is not supported by either the law or the evidence.

[54] The definition of “magafaoa” set out in section 2 of the Land Act “includes any person who has been legally adopted into the family, who at any given time are recognised as entitled by Niuean custom as entitled to any share or interest in the land”. The genealogy compiled by the Department of Justice records that Sionezata was formally adopted by Makavao.²² Makavao is a direct descendant of the common ancestor Tulagi who is his great-great grandfather.

²¹ *Chase v Horton - Motukawa 2B22A* (1981) 13 Whanganui Appellate Court MB 20 (13 WGAP 20).

²² Above, n8

[55] There is also evidence of the wishes or instructions of Makavao before he died that no-one should remove Sionepata or his children from the land.

[56] On this basis, it is clear that the Poumale family are part of the magafaoa of Tulagi and have a right to be on the land and to seek partition.

The Court's discretion

[57] The Court's jurisdiction to partition is discretionary, and the matters influencing the exercise of the Court's discretion to partition will differ from case to case.

[58] At the family meeting of 8 February 2021, the magafaoa members present expressed support for the partition. The long association of the Poumale family with the land was emphasised, as was the legal adoption of Sionepata by Makavao. The leveki in attendance at the meeting, Mrs Cross, expressed support at that time.

[59] But by the date of hearing, both leveki opposed the application but for differing reasons. Mr Vilikai says that Mr Poumale has behaved in a disruptive and intimidating way towards him, but no charges have ever been laid and police say this is a family issue. It is clear that the source of the tension between Mr Vilikai and Mr Poumale is the issue over control of the land.

[60] Mrs Cross initially supported the partition but has since been more equivocal in her views because of antisocial behaviour she describes including noise from stereos and loud parties in the village. She has not challenged the association of Mr Poumale or his family to the land and in her correspondence to the Court appears to accept that a partition will be granted, saying that Mr Poumale should keep within his boundaries and not clear any land that is not his own.

[61] Generally speaking, complaints concerning noise or other public disruption are a public order issues and not directly related to the land, its use and occupation. It is not the Court's role to resolve public order issues through a partition application and such matters are best left to the police, village council or family to sort out.

[62] But as noted above, the matters influencing the exercise of the Court's discretion will differ from case to case and there may be instances where egregious conduct relating to the

land or magafaoa, should be weighed in the Court's ultimate exercise of discretion. There is also the discretion available to the Court in section 36 of the Land Act in cases of irreconcilable family disputes.

[63] When the Court raised the issue of conduct with Mr Poumale, he responded that he wishes to be a good citizen in the village.²³ He has support from the magafaoa, from Mrs Kaiuha, from the Liku Ekalesia pastor, and the police have expressed confidence that he is ready to be responsible. I have considered the objections of the levekis. The Court cannot take this matter any further and I conclude there is sufficient evidence that Mr Poumale is likely to be a good steward of the land.

[64] According to the surveyor's report, the land sought for partition is 4909m² in size. Mr Poumale showed the boundaries and landmarks. The site is located at the back of the village green in Liku and is for the purpose of a family home. There have been no objections to the size or location of the land.

[65] After considering all the evidence, I conclude it is appropriate and in the interests of the magafaoa to grant the partition. The new common ancestor for the partitioned land will be Makavao. The applicant should also be able to manage the land where his family's home will be located separately from the current levekis for Ulumago/Tahiono, given the disagreements and in particular the dispute with Mr Vilikai. The applicant will be appointed leveki under section 14(3) of the Land Act.

Irreconcilable family dispute

[66] Having concluded pursuant to section 34 that the partition should be granted, I now consider whether to exercise any of the powers in section 36 of the Land Act on the basis that there is an irreconcilable family dispute.

[67] As I have already determined the partition should be granted it is not necessary to invoke section 36(a) of the Land Act in order to make that decision. The dispute with Mr Vilikai is long-standing but may in likelihood be resolved through the partition. This allows the

²³ See para [22] above

Poumale family to cement their connection and entitlement to the land but also create a degree of separation, both physical and in title.

[68] However, just to be clear, the applicant is to stay within the boundaries of his block and is not to work on or clear any land that is not his own without proper permission.

Orders

[69] The Court grants orders as follows:

- (a) Partitioning 4909m² of land under section 34 of the Land Act 1969 in favour of Newland Poumale in accordance with the survey plan filed with the application, provisional plan 12096.
- (b) The common ancestor shall be Makavao.
- (c) Newland Poumale is appointed leveki under section 14 of the Land Act 1969.

[70] There is also a direction that the application for change of leveki for Part Ulumago/Tahiono be referred to the Land Commissioners for hearing.

Dated at Te Whanganui-a-Tara, Aotearoa/New Zealand this 19th day of June 2025.



S F Reeves
JUSTICE