

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

Application No: 2025-00110

UNDER: Section 47(1)(e) of the Niue
Amendment Act (No 2) 1968 - An
application for Injunction

AND

IN THE MATTER OF: Pt Pokotava Lalovaituku, Tuapa

BETWEEN: FETALAINA S LIAKIMATAGI
Applicant

AND: HALAFOOU TIFI MOKALEI
Respondent

Date: 27 August 2025 (NZT)

ORAL JUDGMENT OF IKI FAKAFILI LAHI HA NIUE C T COXHEAD
Judgment of Iki Fakafili Lahi Ha Niue C T Coxhead

Introduction

[1] The Court has an application for an injunction where there is a mixture of customary law and western law, a mixture of legal theory and practical realities and a mixture of formal and informal arrangements. This is not surprising given the land in question is unregistered.

[2] There are a number of family members who have lived in the area for a long time. Only recently has there been an issue regarding an access way.

[3] On the file is a provisional plan that was drafted in 1994. Clearly there has been an intention from as far back as 1994 to determine title on these lands. Why that was not progress is unclear.

[4] There is also a newer plan on the file which I think forms part of an application for determination of title that is currently before the Court. The plans show boundaries, a number of sections and a number of houses. The plans indicates that people have been living

on these lands for some time. However, the plans are provisional as title to this area is yet to be determined. Specific boundaries are yet to be formally determined.

[5] In March 2025, steps were taken to determine title. An application for determination of title and appointment of Leveki Magafaoa was before the Court.

[6] That application was adjourned.

Injunction Application

[7] The applicant seeks a permanent injunction pursuant to s 47(1)(e) where the Court has jurisdiction to grant an injunction against any person in respect of actual or threatened trespass or any other injury to Niuean land.

[8] Mr Toailoa referred me to the decision of *Pavihi v Pavihi*. That decision, like this situation was where one party was seeking an injunction on land where title had yet to be determined.

[9] Mr Toailoa correctly cites the law in that in seeking a permanent injunction (not an interim injunction) the applicant must show trespass. Importantly the action for trespass to land is primarily intended to protect possessory rights. Therefore, the person prima facie entitled to sue is the person who has possession of the land at the time of the trespass.

[10] Actual possession consists of two elements: the intention to possess the land; and the exercise of control over it to the exclusion of other persons. Either element alone is not sufficient.

[11] Mr Toailoa submits that clearly the applicant has possession. There have been informal (non-court) arrangements, where people have houses on certain lands and have used access ways.

Decision

[12] When title is determined, then it is clear as to the Magafaoa who have title to the land and interest in the land. It is also clear as to the boundaries and scope of a magafaoa's area.

Ownership and possessory rights can be determined where the Court has gone through the process of a s 47(1)(a) application and determined ownership or possession.

[13] No such process has occurred here. Although there is an application before the Court to determine title.

[14] In this situation, common in the Niue context, while there seems to be clear evidence and acknowledgement that the applicant and others occupy areas of land, there is no formal Court determination as to title.

[15] There is clearly customary processes and procedures which are in operation. The respondents have referred to themselves as Leveki looking after land. But this was in an informal non-Court appointed way rather than referring to Leveki, who had been appointed by the Court.

[16] The lands being unregistered sit outside the formal title system. Unregistered lands with no determination as to who owns those lands is part of the Niue context that clearly must be taken into consideration.

[17] In order to grant a permanent injunction, I need to be satisfied that the applicant is entitled to possession of the property and that the respondent was trespassing.

[18] There has been no Court determination pursuant to s 47(1)(a) of the Niue Amendment Act which has clearly determined ownership, possession or occupation and the scope and area of ownership or possession.

[19] The determination of the current application before the Court for determination of title will provide legal certainty to all parties not only as to ownership and/or possession but also as to the extent and boundaries of that ownership and/or possession.

[20] I do not have that certainty at this point and time and am also not satisfied that the applicant does have possession of the property or as to the extent and the boundaries of possession of the applicant or any party and therefore I am unable to determine whether any trespass has taken place.

[21] The applicant clearly has the intention to possess the land, but I am not satisfied that they exercise control over it to the exclusion of other persons especially given others use part of the area being the access way.

[22] I acknowledge that at a customary level, there are arrangements that families recognised and acknowledged however, I am not satisfied that the applicant is entitled to possession given there has been no determination as to who has ownership of the land.

[23] For these reasons, the application is dismissed.

Dated at Rotorua, Aotearoa/ New Zealand this 27th day of August 2025.



C T Coxhead
IKI FAKAFILI LAHI HA NIUE
CHIEF JUSTICE OF THE NIUE HIGH COURT