

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CIVIL DIVISION)**

OA 1028/2022

IN THE MATTER of the Infrastructure Act
2019

AND

IN THE MATTER certain lands that comprise
and adjoin the Manihiki
Airport

AND

IN THE MATTER of the need for an order of
the Court to allow the
construction of new
infrastructure on those lands

AN

APPLICATION by **JOHN-MARY NIMETI
NIMETI**, as Executive
Officer of the Manihiki
Island Government acting as
Infrastructure Manager

Applicant

Hearing: 27 September 2022

Counsel: Mr Tim Arnold for Applicant
Ms Henry Herman for CIIC

Date: 27 September 2022

MINUTE [1] OF THE HONOURABLE JUSTICE PATRICK KEANE

[1] In this application, dated 25 August 2022, John-Mary Nimeti Nimeti, the Executive Officer of the Island Government of Manihiki, seeks orders, under the Infrastructure Act 2019, relating to the land on which Manihiki Airport lies, and lands adjacent to it.

[2] He seeks orders consistent with a draft enduring agreement, which has been approved in principle by the local customary owners, who wish to see the work proceed:

- (a) confirming the ongoing rights and interests of the customary owners in the airport and adjacent lands:

- (b) allowing him, as Crown agent, acting by and through Infrastructure Cook Islands, to rebuild, upgrade, and extend the length of, Manihiki Airport:
- (c) granting to all engaged in the project, and in operating the airport on an ongoing basis, access to the airport and adjacent lands:
- (d) directing that compensation be payable to the customary owners as the draft enduring agreement specifies.

[3] In the first instance, the applicant seeks directions as to the service of this application on grounds that:

- (a) the infrastructure project proposed is a matter of public interest as well as of interest to the customary owners:
- (b) the local customary owners favour the project, on terms consistent with the draft enduring agreement:
- (c) the agreement cannot legally take effect, because all who may be customary owners cannot now, or foreseeably, be completely identified:
- (d) orders of this court under the Infrastructure Act 2019, consistent with the draft enduring agreement, are therefore essential:
- (e) customary owners living offshore, as well as local customary owners, must be notified of the application.

[4] The applicant has made a sensible series of proposals to notify all customary owners of the application; and, under s 46 (2), I direct as follows:

- (a) copies of the application, affidavit in support, and draft enduring agreement (specifically that informally signed) are to be held at the Tauhunu and Tukao offices of Island Administration Office

(Corporate Services) for public viewing, during normal office hours, each week:

- (b) notice is to be given in the Cook Islands News, Cook Islands Herald, and on Cook Islands Television, on three separate occasions at least five days apart, notifying customary owners and others interested that they may read the papers in hard copy at Avarua Courthouse, during normal working hours, or as PDF copies on the website Infrastructure Cook Islands at <http://ici.gov.ck>:
- (c) notice is to be given to the moderators of Facebook and other social media sites with the request that it be posted for those who are, or believe themselves to be, customary owners, or otherwise affected by the making of an order:
 - (i) Facebook – Manihiki Whanau:
 - (ii) Facebook – Manihiki Henua Queensland Inc’:
 - (iii) Facebook/Messenger – Principal G Nehemia (President of Manihiki Association, Auckland, New Zealand):
 - (iv) Facebook/Messenger – Terry Tuhe (President of the Manihiki Community, Sydney, New South Wales, Australia).

[5] Customary owners, and those who believe they may be, and those having any interest in the land, are to be advised in each of these ways that they have until a date specified (eight weeks from the date on which the last notice is given under para [4](b)) to file in this Court a notice stating:

- (a) their full name, address, telephone numbers and email addresses:
- (b) the airport or adjacent lands in which they claim an interest as customary owners, and the nature and extent of that interest:

- (c) their lawyer or registered agent in the Cook Islands, or otherwise:
- (d) their intent to support, or to oppose, the application and their general reasons.

[6] On a date to be fixed by the Registrar, after the eight week date, I will hold a zoom hearing to review the responses received and to issue further directions as to how the application is to proceed.

[7] The Registrar is to give at least seven days' notice of that hearing date in the Cook Islands News and the Cook Islands Herald; and at least seven days specific notice to any person who has filed a para [5] notice.

[8] My hope is that by the review date the local customary owners, who approve the project in principle, will be represented by counsel.



Patrick Keane, J