

CIVIL NO. 30

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

JOHN GREGG ALLERTON and PAUL G. RICE,)

Plaintiffs,)

vs.)

HEIRS OF HANAH K. AHI, et al.,)

Defendants.)

INTERLOCUTORY ORDER IN PARTITION

FILED at 2:30 o'clock p m.
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Filing Clerk

PRATT, MOORE, BORTZ & CASE
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The Complaint of JOHN GREGG ALLERTON and PAUL G. RICE having been filed in this Court in the above entitled cause on June 17, 1955, under the provisions of Chapter 304 of the Revised Laws of Hawaii 1945 (now Chapter 337, R.L. Hawaii 1955) praying for a partition between themselves and the defendants named therein as tenants-in-common thereof of the lands of the Hui Kuai Aina o Haena, in the District of Halelea, Island and County of Kauai, State of Hawaii, and being all of the Ahupuaa of Haena, being also all of Royal Patent 3596, Land Commission Award 10,613, Apana 6 to Abner Paki, and being the same land conveyed by deed of William Kinney dated January 5, 1875 and recorded in the Bureau of Conveyances of Hawaii in Liber 52 at Page 100 to Kenoi D. Kaukaha and 37 others as tenants-in-common owning said entire tract of land in 38 equal shares; and the matter having come on for hearing on May 25, 1967, the Court finds:

That a Lis Pendens against said lands was filed on June 27, 1955 in said Bureau as Document 956; that an order of the Honorable A. M. Felix, Judge of the above entitled Court by Assignment was filed herein on June 17, 1955, ordering publication of notice to all persons named in the summons and setting 9:30 o'clock A.M., August 15, 1955, at the Court-house at Lihue, Hawaii as the return day and place of said summons and for hearing of said Complaint; that process was issued, served and published, all in accordance with law and said order; that certified copies of the complaint, exhibits and summons were sent by registered mail pursuant to said order to various parties residing out of said State, and certified copies of said summons were posted upon the premises in question, all as required by said order; that returns of serving officers, admissions of service, affidavits, etc. are on file showing that all defendants named in said proceedings, other than those who could not be located after due and diligent search, received notice of said hearing; that further orders were filed herein on June 29, 1955, appointing Norito Kawakami, Esq., as guardian ad litem to represent as a class all minors and incompetent persons and other persons unable by reason of any disability to represent themselves in said proceedings, who had or may have had any claim or interest in the land sought to be partitioned;

That said matter came regularly on for hearing before this Court on August 15, 1955 upon said complaint and

the answers of various defendants; at which time the Court granted additional time to various defendants to file answers to said complaint and set the matter for further hearing on September 9, 1955 at 9:30 o'clock A.M.;

That on September 7, 1955 a general Order of Default was entered against all parties named other than those who had filed answers herein; that on September 9, 1955 the Court filed an Order wherein and whereby it found and determined that said lands should be partitioned as prayed for in said complaint and also determined the ownership of all parties and interests in said lands (except as to a contest as to ownership of one-half of share 25 between John Gregg Allerton and the Estate of Alice Robinson which was subsequently settled by said contestants dividing said half-share between themselves) and further appointed HENRY C. WEDEMEYER, YEISO YAMAURA and NICHOLAS A. AKANA as Commissioners of Court to act under the direction of and subject to the review and approval of this Court and to proceed in the manner and upon the terms in said Order set forth, including the preparation and recommendation of a plan for division of said lands into lots, including provisions for necessary roads and rights of way and to make maps and surveys in connection therewith and to appraise or procure appraisements of the values of said lands and of the various portions of any divisions that might be made thereof and to investigate and report on any assignments, transfers or devolutions of any interests and any other matters

affecting the rights and claims of any persons interested in said lands; that said Commissioners were also authorized to negotiate with owners of various kuleanas within said lands for exchanges of parcels so as to straighten roadways, etc.;

That thereafter said Commissioners engaged the services of R. M. Towill Corporation, civil engineers and surveyors, to assist them in making necessary surveys and maps and also engaged the services of Samuel M. Fuller, appraiser and former State tax assessor, to assist them in appraising the value of said lands;

That on August 15, 1962, the Commissioners filed a motion for instructions to determine the force and effect of Ordinance No. 94 of the County of Kauai, or any other ordinance or law as might govern the method and manner of partitioning said Hui lands; that said motion was heard on December 7, 1962, following publication of notice to all parties concerned; that evidence was adduced and memoranda filed by counsel and a Decision of this Court entered on January 22, 1963, to the effect that said Ordinance No. 94, or any other ordinance or law as might govern the method and manner of partitioning said Hui lands, other than Chapter 337, R. L. H. 1955, does not apply and directing the Commissioners to proceed in accordance with said Chapter 337 and as previously ordered by the Court;

That on July 5, 1963, the Commissioners filed a petition for a License to convey certain portions of said

Hui lands to the County of Kauai for the development of water for domestic supply purposes; that said petition was heard on August 12, 1963, following publication of notice to all parties concerned; that evidence was adduced and a License granted on November 13, 1964; that pursuant thereto, by deed dated November 17, 1964 and recorded in said Bureau in Liber 4905 at Page 488, the Commissioners conveyed portions of said Hui lands to the County of Kauai, being a well site and a tank site, together with easements for access, utility lines, pipes, valves, etc., and for a chlorinator;

That on April 11, 1967 said Commissioners filed a detailed report herein showing that after personally going upon and inspecting the lands sought to be partitioned and carefully considering all matters involved, they had prepared and recommended to this Court, for its approval and adoption, a comprehensive and detailed plan for the partition of said lands, from which Report it appears:

1. That because of the great variation in the nature and classes of land and in the values thereof, the partition should be made on the basis of value rather than upon the basis of area and that for the purpose of these proceedings the value of one whole share in the Hui Kuai Aina o Haena is \$11,612.77;

2. That said lands have been classified so as to show the respective or proportionate valuations of every parcel thereof, all in fair relation

to the nature, character, location, usefulness and accessibility thereof, the value of each classification being placed thereon for the purpose of arriving at a comparative value for the various classifications;

3. That it is practicable and advisable to allot a portion of said lands to everyone having an undivided interest therein, save and except that in certain cases where the individual interests of members of a family group were too small to justify individual awards or members of a family group prefer a family award to preserve a prior allotment under the Hui Directorate or to obtain a more sizeable parcel, the members of such family groups, or certain members thereof, should be awarded one large parcel, the members of such family or partial-family group holding the same as tenants-in-common;

4. That said Commissioners have provided for the division of the entire lands into lots and parcels, including provisions for necessary roads and rights of way and for the allotment of the specific parcels to the various parties, all with due regard for existing rights or preferences of various parties by reason of prior occupation or improvement of portions thereof under allotments heretofore made under the rules and regulations of said Hui Kuai

Aina o Haena and otherwise;

5. That said Commissioners, having due regard for the Orders and Decrees of this Court, and after having made a detailed investigation of transactions affecting the titles of said lands, set forth in list form what they believe to be the true ownership of interests of said lands and said Hui;

6. That said Commissioners prepared and presented with said Report, and as a part thereof, maps of the proposed division of said lands showing in detail the well, tank and chlorinator sites and easement areas appurtenant thereto heretofore conveyed by the Commissioners to the County of Kauai and the various allotments proposed by them and further presented, as a part of said Report, metes and bounds descriptions of all such awards and of the roadways and rights of way as well as of certain easements of utility lines and also a statement of their expenditures and receipts to date;

That upon the filing of said Report, maps and exhibits, this Court made its order, setting the same for hearing on Thursday, May 25, 1967 at 10:00 o'clock a.m. in the Courtroom of this Court at the Courthouse at Lihue, Hawaii and ordered notice thereof to be given by publication in The Garden Island, said publication to be made once a week for three weeks; that publication was made as ordered commencing April 19, 1967, and in addition thereto counsel for plaintiffs

sent copies of said notice by mail to all parties having interests in said Hui lands and all counsel of record and posted copies of said notice on three conspicuous locations on said land; that said Commissioners filed Supplemental Reports on May 9, 1967 and May 23, 1967 amending their Report in certain particulars;

That no parties have appeared to contest any of the recommendations of the Commissioners in any particulars save and except on May 19, 1967 by Juliet R. Wichman and Charles R. Wichman (whose suggestions were incorporated in the Commissioners' Second Supplementary Report, as to a portion thereof, and withdrawn as to the balance), and except on May 23, 1967 by Wai Chu and William Chu who requested an area or areas of land within Limahuli or Manoa Valleys in lieu of one or more parcels recommended by the Commissioners to be awarded to them; that said request was made only two days before the hearing and after said two shareowners had previously indicated their preferences to the Commissioners and had been granted same; that the Court granted two recesses of said hearing in the hope that said matter could be amicably resolved by private discussion, without avail; that to shift or exchange lands (other than where the parties concerned are fully in accord) at such a late stage would have precipitated other requests or contests, that a complicated partition of the nature here involved, where all the parties have placed requests with the Commissioners who have tried to carry out all requests as much as reasonably possible, is akin to assembling a jig-saw puzzle, and to maneuver parcels about at the present

time comes too late and would conceivably unravel much of what the Commissioners have put together;

That on May 18, 1967, the State of Hawaii filed a motion to dismiss said proceedings as to the State; that the State appears to be concerned only in two particulars or areas, the location of the common boundary of Haena and the State-owned land of Hanakapiai to the West and the location of School Grant 41, Apana 8; that it appears to the Court that the fixing of these boundaries would be a relatively simple matter; that it further appears that those being awarded the lands abutting these State-owned lands are agreeable to almost any reasonable location, at the relative option of the State; that it would be helpful and appropriate and lend stability to these proceedings if the State were to cooperate and agree upon the location of said boundaries; that this Court prefers to keep said motion in abeyance in the hope that the State can and will determine said boundaries;

That three matters developed at said hearing at variance or supplemental to the Commissioners' said Report, as amended:

(a) Charles Wichman and Juliet Wichman withdrew their requests as to Lots 147 and 42 as set forth as item Fourth in the Commissioners' Second Supplemental Report, thus re-instating the Commissioners' recommendations as to these lots as set forth in their original Report;

(b) Dora Rice Wallis stated that she had agreed

to a change in the area of Lot 48 upon the misunderstanding that a portion of said Lot was needed by the Commissioners to accommodate some other shareowner and requested restoration of said Lot 48 as shown on Exhibits "B" and "D" attached to the Report, thus re-instating the Commissioner's recommendations as to said Lot 48 as set forth in their original Report; and

(c) The County of Kauai requested the allotment to the County of Lots 131, 132 and 133 upon the understanding that shareowners would be permitted to use rock and other material thereon for fill purposes on their lots within the Haena Hui but subject to reasonable rules of the County relating to manner, time, nature, etc., of such removal of material; that the Commissioners recommended the granting of such request which the Court finds reasonable;

That four lots remain unawarded to any persons, being Lot 5, 6, 7 and revised Lot 42; that, after hearing expressions from the various shareowners and counsel, it appears to the Court that said lots should be offered at auction to shareowners only at upset prices as set forth in the tabulation of values set forth in said Report, as amended;

Evidence was adduced as to all expenses heretofore paid by the Commissioners and estimated future expenses to terminate these proceedings, including the drafting of deeds, drafting of exchange deeds, etc.; that evidence was also adduced as to the reasonable value of the services of the Commissioners herein and of the guardian-ad-litem appointed

herein and of counsel for plaintiffs in performing services of general value to all Hui shareowners and the Commissioners; that no objections to same were expressed by any parties or counsel present in Court, save that Arthur S. Komori, Esq., counsel for numerous shareowners entered an exception to the Court's denial of fees to him.

AND THE COURT, having fully considered all and singular the premises involved in and in connection with the entire proceedings from the initiation thereof to date and being satisfied that said Commissioners have in every respect proceeded according to law and the Orders and Decrees of this Court and that their Report as amended, and recommendations are fair and impartial and constitute a just and equitable basis for the partition of said lands in the manner contemplated by law, and other good cause appearing therefor:

NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED as follows:

I

That said Report of the Commissioners, as amended, and the maps and exhibits accompanying the same be and the same are hereby approved, confirmed and adopted in every respect by the Court as the basis for the division and settlement of the rights of the parties respectively, except for the following changes or addenda thereto:

(a) Pathway "V" and the easement to the sea in favor of the owners of the easterly half of L. C. Award 10941 shall be ten (10) feet wide rather than six (6) feet

wide;

(b) Pathway "T" ten (10) feet wide shall be located within Lot 101 running to the sea from a point close to "Pohakuloa" and adjoining the Swale shown on Exhibit "C" attached to said Report. Road J-1 will diminish in width from 20 feet to 12 feet and Revised Road J-1 and Road J-2 will become one road known as Road J, owned by the owner of Lot 102 and subject to an easement in favor of the owner of Lot 103.

(c) Items "Fourth" and "Sixth" in the Commissioners Second Supplement to their Report (concerning Lots 42 and 147 and concerning Lot 48, respectively) have been withdrawn by the Commissioners as recommendations and will be disregarded.

(d) Lots 131, 132 and 133 (merged into one lot with a value of \$300) shall be awarded to the County of Kauai as part of its shareowner interest in said Hui subject to the rights of the allottees of Hui lands to excavate and remove fill materials solely and exclusively for the filling and improvement of allotted Hui lands and subject to reasonable regulations of the County governing such excavation and removal.

(e) That there be no provision for defeasance as to the award to the County of Kauai as to Lots 44, 123, 128 and 129 and the heiau and hula grounds within Lot 121 but the deed or deeds therefor shall contain a condition prohibiting concessions or commercial activities on any of said lots.

(f) Easement "Z" (chlorinator site) shall be

designated as a separate lot rather than as an easement.

(g) The recommendations as to Roads B-2 and B-3 on page 36 of the Report shall be transposed.

(h) The recommendation as to Road N on page 38 of the Report shall include the owner of Lot 114-A as an additional owner of said Road N.

II

That the lands of the Hui Kual Aina O Haena (being the Ahupuaa of Haena, being also Royal Patent 3596, Land Commission Award 10613, Apana 6 to Abner Paki) are owned by the following named parties, as tenants-in-common (or as holders of lesser estate or interest therein), according to the specification thereof as to each party so interested as hereinbelow set forth (the figure opposite each name representing the number of shares, or fraction of one share, as the case may be, owned by each said party):

<u>SHAREOWNERS</u>	<u>SHARES</u>
Healani Aea, 2872 Kalihi St., Honolulu	.0500
John Gregg Allerton, Koloa	4.9487
Sam K. Apo, P. O. Box 297, Waimea	.0857
William V. & Patsy N. Asing, 1544 Kalaepohaku Pl., Honolulu	.0912
Adolph Bartels, 3409-B Wela St., Honolulu	.0150
George Bartels, 4064 Koko Dr., Honolulu	.0150
Rachel Malia Bickel, 184 Oxford St., Chula Vista, Calif.	.0556
Beryl M. Bruhn, 45-553 Keluka Pl., Kailua	.0286
Elizabeth Mahuiki Chandler, Hanalei	.0469

William & Kosalina Chandler, Hanalei	.9250
Charles Chu, 45-012 Mahalani Circle, Kaneohe	.3000
Chu Wai & William Chu, Kapaa	.6250
Mildred Maka Chung, P. O. Box 129, Hanalei	.1300
Dora Jane Cole, Lihue	1.0750
Jean Mary Moragne Cooke, 2629 Manoa Road, Honolulu	.1322
County of Kauai, c/o Toshio Kabutan, County Attorney, Lihue	2.0000
Bernice Davidson, 84-870-D Lahaina St., Waianae	.0500
Kamala Kanealii De Fries, Hanalei	.0208
Helen K. Ellis, 1511 Nuuanu Ave., Honolulu	.2600
Mary K. Ellis, Lihue	.4000
Michael L. Ellis, Lihue	.2600
Wayne E. Ellis, Lihue	.1250
Wayne E. and Helen R. Ellis, Lihue	.2600
Wayne R. Ellis, Lihue	.2600
Alexander Lindsay Faye, Jr., c/o A. L. Faye, P. O. Box 562, Lihue	.1000
Claire B. Follner, 32 First Ave., Apt. A, Daly City, Calif.	.1250
Hazel Apo Gross, 4033 Mississippi St., San Diego, Calif.	.0857
Joe & Dora Hashimoto, Hanalei	.5000
Gilbert S. Honda, 838 Tidball St., Schofield Barracks	.0500
David Huddy, 1207 Waimano Home Road, Pearl City	.0191
Dwight Huddy, 1207 Waimano Home Road, Pearl City	.0191
James Huddy, 4614 Underwood Way, Sacramento, Calif.	.0571
Marie Mahuiki Inouye, Hanalei	.0469
Ben Kanealii, 609 Naale St., Honolulu	.0208
David Kanealii, P. O. Box 752, Kapaa	.0208

Joseph I. Kanealii, Kwajalein	.0208
Michael Kanealii, 609 Naale St., Honolulu	.0208
Sam Kanealii, 609 Naale St., Honolulu	.0208
Elmer C. Keahi, 3619 McCorrison St., Honolulu	.0666
Joseph K. Keahi, 909 Alahaki St., Kailua	.0666
Norman K. Keahi, 717 Pahumele Pl., Kailua	.0666
Raymond M. Keahi, Kapaa	.0666
Alma Bartels Kealoha, 106-B Lexington Dr., Honolulu	.0150
Colleen M. Kela, 4050-AB Keanu St., Honolulu (Minor)	.0500
F. C. and Jenny Kling, 72 Dowsett Ave., Honolulu	.2675
Maria Laamea, Kapaa	.1250
John K. and Helen M. Lee, 3225 Hoolulu St., Honolulu	.1250
Victoria Lindsey, Puhi	.1250
Charla Huddy Lum, 94-047 Waipahu Depot St., Waipahu	.0191
Bernard Mahuiki, Hanalei	.0469
Donald Mahuiki, 1555 Pensacola Street, Honolulu	.0469
Jeremiah Mahuiki, P. O. Box 138, Hanalei	.0469
Lawrence Mahuiki, San Diego, California (Navy)	.0469
Ruth Mahuiki, 1555 Pensacola St., Honolulu	.0469
Samson Mahuiki, Hanalei	.0469
Murphy Maka, P. O. Box 23, Hanalei	.1300
Chris Makaila, 1649 Grant Ave., San Francisco, Calif.	.0833
Joseph Malia, 1624 Myers St., Honolulu	.0556
William K. Malia, Mst. Sgt. AF30113245 18th Supp. Sqd., Box 384, APO 239, San Francisco, Calif.	.0556
Harriet Bartels Mariani, 1344 Kinau St., Apt. 1, Honolulu	.0150

Henrietta Medeiros, 4050-AB Keanu St., Honolulu (Minor)	.0500
Maile Kanealii Montervon, 1444-B Lakona Walk, Honolulu	.0625
Howard H. and Mary May Moore, 2544 Alaula Way, Honolulu	.6400
Polly Moore, 2544 Alaula Way, Honolulu	.0556
Catherine Josephine Moragne, Lihue	.1322
Sally Ann Moragne, Lihue	.1322
William M. and Jean W. Moragne, P. O. Box 206, Lihue	.1324
William M. Moragne, Jr., Box 206, Lihue	.1322
Robert Morton, c/o Wayne Ellis, Lihue	.1250
— Caroline Malia Nakamoto, 1310 Nanakai St., Pearl City	.0556
Adeline Ogawa, Kalaupapa	.0833
Emma Ouye, Nawiliwili	.3335
Phyllis K. Pa Ragsac, P. O. Box 692, Kapaa	.1250
Charles A. Rice Est., c/o Patricia Rice, Executrix, Lihue	.0089
Edward and Martha Rice, Glenwood	1.2300
Paul G. Rice, 333 Lewers Road, Honolulu	.1514
— Paul I. and Joyce Rice, 4892 Kilauea Ave., Honolulu	1.2300
Richard K. Rice, 21 Craigsid P., Honolulu	.1700
William Harrison Rice, Army & Navy YMCA, Honolulu	1.0400
Alice Robinson Estate, c/o Est. of A. F. Robinson, Makaweli	6.9189
Eleanor Robinson, Makaweli	1.0000
Selwyn A. Robinson, Makaweli	1.0269
Winona Keahi Rosehill, 941 Kaloa St., Honolulu	.0666
Helena Maka Santos, Hilo	.1300
Patricia W. Sheehan, 17 Ala Kimo Dr., Honolulu	.3334

John Steelquist, 21 Craigsid e Pl., Honolulu	.2300
Helene Bartels Suga numa, 2343 Tantalus Dr., Honolulu	.0150
Marjorie Ann Teixeira, 4050-F Keenu St., Honolulu	.0500
Agnes Thronas, 300 Gonzalez St., San Francisco, Calif.	.0357
Fred Thronas, Kapaa	.0357
Samuel Thronas, P. O. Box 55, Kapaa	.0357
Bertha Tom, 107 Ulupa Street, Kailua	.0833
Francelia K. Veech, 72 Craigsid e Pl., Honolulu	.6400
Waioli Hui'ia Church, Hanalei	.2000
— Dora Rice Wallis, Lihue	1.0400
Charles R. Wichman, City Bank Building, Honolulu	.3000
Juliet A. Wichman, Lihue	3.1333
Gaylord Wilcox, Lihue	.3333
Winifred Willis, Kapaa	1.3333
Marjorie Maka Yokotake, Hanalei	.1300
Harriette Dias Yoshino, Lihue	.0286
— Hilda Maka Zaima, Lihue	.1300
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	38.0000

DOWER AND CURTESY RIGHTS:

Maile Kaapuni, 1207 Waimano Home Road, Pearl City (in .0476 owned by David Huddy, Dwight Huddy and Charla H. Lum);

Esther M. Keahi, Kapaa (in .3333 owned by Elmer, Joseph, Norman and Raymond Keahi and Winona K. Rosehill);

Rachel Mahuiki, 8-A Kaena Lane (off Nuuanu Ave.), Honolulu (in .3750 owned by Elizabeth M. Chandler, Marie M. Inouye and Bernard, Donald, Jeremiah, Lawrence, Ruth and Samson Mahuiki);

Myra Alapai Gloss, Box 233, Kilauea (in .2500 owned by

Mildred M. Chung, Murphy Maka, Helena M. Santos, Marjorie M. Yokotake and Hilda M. Zaima); that she has requested admeasurement of the value of her dower rights; that said interests have a value of \$652.95;

William C. Bartels, 1525 Young Street, Honolulu (in .0750 owned by Adolph and George Bartels, Alma B. Kealoha, Harriet B. Mariani and Helene B. Suganuma);

Fred Medeiros, 4050-AB Keanu St., Honolulu (in .3000 owned by Healani Aea, Bernice Davidson, Gilbert Honda, and Colleen Kela and Henrietta Medeiros and Marjory Ann Teixeira).

OTHER RIGHTS:

James L. Meriam, 3434 Rugby Road, Durham, North Carolina, 27707 holds an agreement of sale as to Lot 23.

William M. Moragne and Jean W. Moragne hold a lease for their lifetime covering Lots 36, 38, 39 and 40.

William Harrison Rice has conveyed his rights in Lot 109 to Howard H. Moore and Mary May Moore.

III

That said lands are hereby partitioned into the several lots, roadways, rights of way, easements, etc., shown upon the maps attached to said Report as Exhibits B and C, as amended by said Supplemental Reports, by reference hereby made a part hereof, and by this Order, and are hereby awarded to the several owners as set forth on Exhibit D and on pages 29 to 34, inclusive, of said Report, as amended by said Supplemental Reports and by reference hereby made a part hereof, and as further amended by this Order; that the Commissioners are directed to proceed with final surveys of said lands and staking of said lots and parcels and to report back to this Court with metes and bounds surveys of same; that all exchange deeds effected by the Commissioners with the owners of various

kuleanas in order to provide for, straighten and extend roadways are hereby confirmed and the Commissioners are hereby directed to record said exchange deeds, provided no survey amendments are required, recording fees to be a general expense of these proceedings;

IV

That the Commissioners are directed to sell the four unawarded lots (Lots 5, 6, 7 and 42) at auction at the entrance of the Courthouse in Lihue aforesaid at 10 o'clock Friday morning June 23, 1967 the upset price of same being the valuations set by the Commissioners, the bidding to be restricted to Hui shareowners only and no bidder to obtain more than one of said four lots; that the Commissioners shall advertise same by legal notice in The Garden Island once a week for two weeks commencing May 31, 1967, and mail a copy of same to each Hui shareowner; that following said sale the Commissioners shall render a report thereof to the Court for confirmation or other appropriate action; that all reasonable costs incident to same shall be paid from the proceeds derived therefrom; that the net proceeds shall be used to defray other approved expenses incurred in connection with this partition proceeding;

V

That the Commissioners be paid and awarded a total fee of \$17,500 for their services herein, \$7,700 to Henry C. Wedemeyer, \$7,300 to Yeiso Yamaura and \$2,500 to

Nicholas A. Akana; that Norito Kawakami, Esq., be paid and awarded a fee of \$750.00 for his services as guardian-ad-litem for minor respondents; that Messrs. Pratt, Moore, Bortz & Case be paid and awarded a fee of \$12,500.00 for services as attorneys herein; that the net sum of \$37,062.73 representing expenses already incurred by the Commissioners, the same including fees paid to appraisers, surveyors, etc. and for miscellaneous expenses necessarily and properly incurred in connection with these proceedings be and is hereby allowed (an itemization thereof being attached to said Report as Exhibits and by reference hereby made a part hereof); that additional expenses incurred and to be incurred, as itemized in Appendix "A" attached hereto, are hereby allowed; that said total of \$85,994.10 plus any other proper expenses as may hereafter be allowed (including expenses incident to said auction sale) are hereby taxed as costs against all of the parties listed herein as owning interests and pro-rated on a per-share basis (the share of Myra Gloss to be on a pro-rata basis as the value of her dower interest bears to the total value of her interests and those of the Maka family), the same to be deducted from the value of the respective interests of all shareowners in said Hui lands, thus leaving an adjusting payment to be made by them to the Commissioners or to be received by them from the Commissioners, as the case may be; that the plaintiffs, John Gregg Allerton and Paul G. Rice be credited as an offset against any sums ^{owed} ~~owed~~ by them in the amount of funds heretofore and as may hereafter be

advanced by each of them to the Commissioners from time to time and heretofore approved by this Court in order to defray running expenses incurred by the Commissioners;

VI

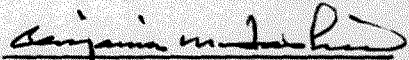
That where shareowners will owe adjusting payments, they shall have a period of sixty (60) days from the date of entry of the Final Order or Final Decree herein within which to pay same; that the Commissioners shall forthwith inform the various shareholders of the approximate sum payable by them, respectively, final sums to be resolved in said Final Order or Final Decree to be entered herein after said surveys have been completed and the lands marked by survey pins and metes and bounds descriptions obtained; that in the event any shareowner or group of shareowners shall fail to pay same the Commissioners shall report back to this Court for appropriate order; that the expense of recording all deeds ultimately executed herein and of federal or state revenue stamps thereon and other expense incident thereto shall be borne by the awardee or allottee in each case.

VII

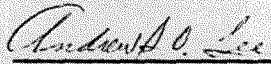
That the rights of County of Kauai as lessee of portions of the lands of said Hui, or interests or rights therein, including water rights, rights of way, etc., under lease dated in 1932 from the officers and members of said Hui shall cease and determine as of the date of entry of this Interlocutory Order or Decree; that water should continue to be furnished to

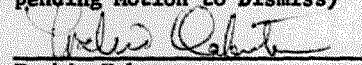
the County from Manoa Stream for domestic consumption to the owners of the Hui lands on the "First Flat" thereof at the rate of 500 gallons per day per acre of land reasonably useful for residential purposes; that there is a total of 74.57 acres of such land on said First Flat; that the County of Kauai therefore shall have the right to take surface water from said Stream into its distribution system (over and above such water as it may generate from its well or wells) in the amount of 37,285 gallons per day; that perpetual easements for existing utility lines are awarded to County of Kauai (Board of Water Supply), Hawaiian Telephone Company and Kauai Electric Company, Limited.


DATED: Lihue, Hawaii, ~~June~~ ^{July} 5, 1967. msj



 Judge of the above entitled Court


Approved as to form:

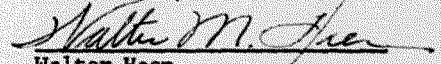

 Deputy Attorney General
 (without prejudice to pending Motion to Dismiss)



 Toshio Kabutan
 Attorney for County of Kauai

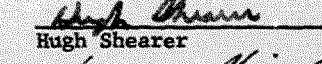

 Norito Kawakami
 Guardian-ad-litem and counsel for various parties

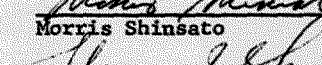

 Kinji Kanazawa
 Counsel for Mason family, owners of kuleanas

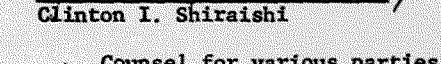

 Robert Brown

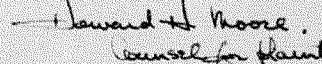

 Walter Heen


 Arthur S. Komori


 Hugh Shearer


 Morris Shinsato


 Clinton I. Shiraiishi
 Counsel for various parties


 Howard H. Moore
 Counsel for plaintiffs

Payments heretofore made (per Exhibits
"G" and "H" attached to Report):

By John G. Allerton	\$26,566.93	
By Paul G. Rice	9,462.80	
By Commissioners	1,033.00	
		<u>\$37,062.73</u>

Payments due:

to Surveyors (current bill to 5/25/67)	\$ 826.55	
to Pratt, Moore, Bortz & Case (per list attached)	393.60	
to Commissioners (per list attached)	583.42	
to Samuel M. Fuller, appraiser	724.08	
		<u>2,527.65</u>

Payments anticipated:

to Surveyor (contract price to finish partition work)	\$17,400.00	
Notary fees on Commissioners deeds (estimated 75 deeds)	225.00	
Recording final Decree, etc.	25.00	
Postage and miscellaneous	25.00	
		<u>17,675.00</u>

Fees awarded:

Commissioners	\$17,500.00	
Attorneys	12,500.00	
Guardian-ad-Litem	750.00	
		<u>30,750.00</u>

TOTAL -	\$88,015.38
---------	-------------

Less Receipts (per Exhibit "H" attached to Report)	<u>2,021.28</u>
----------------------------------------------------	-----------------

Cost of Partition, Exclusive of receipts from four lots to be sold:	<u>\$85,994.10</u>
------------------------------------------------------------------------	--------------------

EXPENSES INCURRED BY COMMISSIONERS
(Additional to those listed in Report)

Senda Photo Supply Co.	\$ 23.76
Postage	10.50
Stationery and envelopes	3.86
Rent, April and May	20.00
Telephone and tolls to May 25, 1967	64.07
Typewriter, cleaning and ribbons	21.35
Auto expense, two trips @ 70 miles each at 10¢ per mile	14.00
Lunches, meals	10.35
Estimated, three additional trips to complete partition work 210 miles at 10¢	21.00
Xerox charges by Lihue Plantation Co.	9.33
Legal ad, final hearing	349.44
Legal ad, notice of sale of four lots	35.76
	\$583.42
	\$583.42

EXPENSES INCURRED BY PRATT, MOORE, BORTZ & CASE

April, 1965	Blue Print Co.	\$ 1.28
	Phone call to Kauai	9.63
	Star-Bulletin, legal ad and reprints to send to shareowners	97.63
	Trip to Kauai with surveyor car rental and two nights lodging at Hanalei	94.99
May, 1965	Survey Office, copies of maps	2.00
	Postage, mailing notices	11.00
June, 1965	Star-Bulletin, legal ad	92.12
	Trip to Kauai	26.40
	Blue Print Co.	2.55
February, 1966	Phone call to Kauai	5.72
February, 1967	Phone call to Kauai	3.58
April, 1967	Postage	4.40
	Xerox copies of form letter to the shareowners	14.00
May, 1967	Trip to Kauai and motel	34.72
	Phone call to Kauai	3.58
		\$403.60
	Less: Payment for maps	10.00
		\$393.60

5th CIRCUIT COURT

CIVIL # 30 File 3

F O L L O W I N G

D O C U M E N T / S

I L L E G I B L E

Pg. 113

Affidavit of Publication

SENT BACK TO COURT

In the Circuit Court of the Fifth Circuit
STATE OF HAWAII

IN THE MATTER OF

CIVIL NO. 30

HAENA HUI

Affidavit of Publication

TO ALL SHAREHOLDERS OF THE HAENA HUI (The Garden Island, Kauai, State of Hawaii):—
The Fifth Circuit Court in its proceedings of the 1st day of June 1967, has ordered that the lots will be sold at auction at the Court House in Lihue, Hawaii, on Friday morning, June 23,

Lot No.	Area	Upset Price
5	2,382 sq. ft.	\$ 1,961.76
6	2,224 sq. ft.	\$ 1,777.92
7	1,024 sq. ft.	\$ 1,695.52
8	1,077 sq. ft.	\$ 3,613.61

Order of Court in said proceedings and the right to bid for the lots is restricted to the Shareholders of the Haena Hui, a list of said Shareholders being attached to the Report of the Commissioners filed on April 11, 1967.

Particulars apply to the under-lying lots in the rear of the Bank of Hawaii Building, Lihue aforesaid. Maps showing the lots are available for inspection at the office of the Clerk of said Court, Room of Joe Hashimoto, Esquire, at the Court House, Lihue, and at the office of R.M. Tamm, Esquire, 253 Merchant Street, Honolulu.

Full payment will be required at the time of sale in full must be made within thirty (30) days from date of sale. Stamps on deed, county fees and recording fees at the State Office, Lihue. Deed will not be furnished until the order of the Court partitioning the property has been filed.

May 26, 1967
HENRY C. WEDEMEYER
YEISO YAMAURA
NICHOLAS A. AKANA
Commissioners in Partition

(May 31, & June 7, 1967)

ss. _____
being duly sworn,
_____ is an employee of "The Garden Island,"
_____ County of Kauai, State of Hawaii;
_____ the entitled matter of which the annexed
_____ copy, was published two
_____ aforesaid, commencing on the _____
_____ day of _____, 19 67.
_____ day of _____ June _____
_____) to-wit: on _____
_____ day of _____, 1967.
_____ party to or in any way interested in the _____

Barbara Hashimoto
I and sworn to before me this _____
_____ day of _____ June _____ A. D. 19 67.

Barbara Hashimoto
Clerk of the Circuit Court of the Fifth Circuit.

FILED at 9:22 o'clock a.m.
JUN 11 1967
Barbara Hashimoto

In the Circuit Court of the Fifth Circuit

STATE OF HAWAII

IN THE MATTER OF

Affidavit of Publication

TO ALL SHAREHOLDERS OF THE HAENA HUI
(The Hui Lands at Haena, Kauai, State of Hawaii):—
Pursuant to order of the Fifth Circuit Court in
Civil No. 30, ~~Partition~~ proceedings of the Haena
Hui Lands, the following lots will be sold at auction
on the front steps of the Courthouse in Lihue, Ha-
waii, at 10:00 o'clock Friday morning, June 23,
1967:—

Lot No.	Area	Upset Price
5	24,522 sq. ft.	\$ 1,961.76
6	22,224 sq. ft.	\$ 1,777.92
7	21,194 sq. ft.	\$ 1,695.52
42	47,387 sq. ft.	\$ 3,613.61

Pursuant to the Order of Court in said pro-
ceeding said auction and the right to bid for
said Lots is restricted to the Shareholders of
said Hui Lands, a list of said Shareholders being
set forth in the Report of the Commissioners
filed in said proceeding on April 11, 1967.

For further particulars apply to the under-
signed at their office in the rear of the Bank
of Hawaii building at Lihue aforesaid. Maps
showing said Lots are available for inspection at
said office, at the office of the Clerk of said
Court, at the home of Joe Hashimoto, Esquire,
at Haena aforesaid, and at the office of R.M.
Towill Corporation, 233 Merchant Street, Hono-
lulu, Hawaii.

Terms of Sale:—No down payment will be re-
quired, but cash payment in full must be made
within thirty (30) days from date of sale. Stamps
on deed, notary fees and recording fees at the
expense of the buyer. Deed will not be furnished
until Final Decree of the Court partitioning the
Haena Hui Lands has been filed.

Dated Lihue, Hawaii, May 26, 1967

HENRY C. WEDEMEYER
YEISO YAMAURA
NICHOLAS A. AKANA
Commissioners in
Partition

(May 31, & June 7, 1967)

Madina Lamb
Clerk of the Circuit Court of the Fifth Circuit.

722
JUN 22 1967
Madina Lamb

In the Circuit Court of the Fifth Circuit
STATE OF HAWAII

IN THE MATTER OF

CIVIL NO. 30

HAENA HUI

Affidavit of Publication

State of Hawaii }
County of Kauai } ss.

Edith Tanimoto being duly sworn,

deposes and says, that she is an employee of "The Garden Island,"

a newspaper published in Lihue, County of Kauai, State of Hawaii;

that the NOTICE in the above entitled matter of which the annexed

is a true and correct printed copy, was published two

times in "The Garden Island" aforesaid, commencing on the

31st day of May, 1967,

and ending on the 7th day of June

1967, (both days inclusive) to-wit: on

May 31 & June 7, 1967

and that this affiant is not a party to or in any way interested in the
above entitled matter.


Edith Tanimoto

Subscribed and sworn to before me this
15th day of June A. D. 1967

Barbara Hamke

Clerk of the Circuit Court of the Fifth Circuit.

Need more information?
Want to make reservations?
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Just call United Air Lines
your Travel Agent.



Save enough for an extra day
on the Mainland!

for the
GRAD

WEAVE 65.00
ATS BY CLUBMAN 29.00
BY ARROW, CAPRI
and KENNINGTON

DRESS SHIRT

FILED of 9:22 o'clock
JUN 17 1967

Barbara Hamke
Clerk

CIVIL NO. 30

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

AT TERM

IN OPEN COURT
THURSDAY, MAY 25, 1967
COURT CONVENED AT 10:45 A. M.

Present: HONORABLE BENJAMIN M. TASHIRO, JUDGE PRESIDING
William Nestuk, Court Reporter
Tokiko Nakamura, Court Clerk

JOHN GREGG ALLERTON and PAUL G. RICE,)

Plaintiffs,)

vs.)

HEIRS OF HANAH K. AHI, et al.,)

Defendants.)

(hearing on report of commissioners' partition of Haena Hui lands and motion to dismiss)

Appearances: Howard H. Moore, Esq., (Pratt, Moore, Bortz & Vitousek) counsel for plaintiffs
Morris S. Sainsato, Esq., counsel for Mr. and Mrs. Wayne Ellis, Robert Morton and Winifred Willis
Clinton I. Shirahahi, Esq., counsel for the Maka Family and Fred Thronas
Toshio Kabutan, Esq., County Attorney, County of Kauai, State of Hawaii, for the County of Kauai
Hugh Shearer, Esq., (Anderson, Wrenn & Jenks) counsel for Juliet R. Wichman and Charles R. Wichman
Arthur S. Komori, Esq., counsel for certain defendants herein and also noting his withdrawal as counsel for Charles Chu, William Chu and Chu Wai
Walter M. Heen, Esq., counsel for Charles Chu, William Chu and Chu Wai
Norito S. Kawakami, Esq., guardian ad litem for William Chandler, Rosalina Chandler, Maile Montevon, the Makuiki family, the Bartels family and certain minors as a class - specifically Collete Medeiros and Henrietta Medeiros
Andrew S. O. Lee, Esq., Deputy Attorney General, appearing for the State of Hawaii
Alexander L. Faye, Sr., appearing for Alexander L. Faye, Jr.
William M. Moragne, Sr., appearing for himself and for his wife and family
Francelia K. Veech, appearing for herself and for her sons, John Steelquist and Richard K. Rice
Adeline Ogawa, appearing for herself as heirs of Esther Uo Makaila
Bertha Tom, appearing for herself as heirs of Esther Uo Makaila
Thomas Kekahuna, appearing for Mokihana dela Cruz
Selwyn A. Robinson, appearing for himself and for the Robinson family
Bernice K. Davidson, appearing for herself and for her brothers and sisters as heirs of Florence Medeiros
Howard K. Kinney, appearing for himself

Page 2.

Mr. Moore commented briefly on the Report of the Commissioners, stating that plaintiffs found the report to their satisfaction; that they join in the prayer of the Commissioners that said report be adopted.

Oral discussion by Mr. Moore and Mr. Lee on Motion to Dismiss filed on May 19, 1967, by the State of Hawaii.

The Court withheld ruling on the Motion.

The Court stated that the Commissioners had done an excellent job; that they were fair, reasonable and considerate to the shareholders; however, the Court noted certain objections had been filed.

Mr. Wedemeyer stated that Mr. Heen had filed Objections to the Report of the Commissioners on May 23, 1967, in behalf of his clients.

Mr. Wedemeyer further stated that the Objections to the Report of the Commissioners filed on May 22, 1967, by Hugh Shearer had been resolved.

Mr. Moore informed Court that the various geological and historical sites had been allotted to the County of Kauai with a defeasance clause that should the County fail to properly maintain these sites, that title would revert to Pacific Tropical Botanical Garden.

Argument by Mr. Kabutan.

Open discussion followed re appraisal value on the historic and park sites.

Mr. Heen informed Court that his clients were interested in acquiring land mauka of the highway rather than being restricted to the makai area.

Mr. Moore disclosed that the Robinson Family, in accepting lots some \$20,000.00 less in value had created a surplusage of land; that there still remain some unallotted lots; that the County has requested for three specific lots being Lot Nos. 131, 132 and 133 with the provision that rocks and loose dirt would be made available to Hui members from said lots provided that it be taken under the County's direction and supervision; that if this is done there still would be five unallotted lots - Lot Nos. 5, 6, 7, 42 and about 1/2 of Lot No. 48.

The Commissioners orally recommended that Lot Nos. 131, 132 and 133 be given to the County of Kauai.

Mr. Marcellino Correa was sworn at 11:15 A. M. Witness testified that he is a surveyor with R. M. Towill Corp.; that he has been paid for past services except for the last couple of weeks; that the final cost for survey work which will include all field work and final descriptions of all lots will come to \$17,400.00.

The Court recessed at 11:25 A. M., reconvening at 3:15 P. M.

The Court ruled that no defeasance clause be attached to the historical site granted to the County of Kauai; that there be restrictions as to its use for commercial purposes.

Objection by Mr. Heen re appraisal and allotment procedure.

The Court allowed the following as counsel fees:

Mr. Howard Moore	\$12,500.00
Mr. Norito Kawakami	750.00

Mr. Komori noted an exception to the Court's decision denying counsel fees be paid to all attorneys in this matter based upon the

the services rendered to the Hui members - Section 337-17, RLH 1955.

The Court noted the exception.

The Court awarded the following fees to the Commissioners.

Mr. Henry Wedemeyer, Chairman	\$7,700.00
Mr. Yeiso Yamaura	7,300.00
Mr. Nicholas Akana	2,500.00

The Court further allowed survey expenses of \$17,400.00

Mr. Moore informed the Court that during recess he had spoken to Mrs. Dora Wallis; that she stated she had yielded 1/2 of Lot 48 under the mistaken belief that it was needed by the Commissioners; that since this was not so she would like to have the full lot awarded to her. Mr. Moore further stated that it is proper that said lot be restored to her; that if this is done there still will be four unallotted lots.

The Court ordered the four lots (5, 6, 7 and 42) be sold to Hui members at an auction, at an upset price indicated in the Commissioners' Report, to be held on Friday, June 23, 1967, at 10:00 A. M., on the front steps of the Fifth Circuit Court Bldg.; that the purchase be restricted to one lot per person.

Upon Mr. Heen's request, the Court recessed at 4:00 P. M., reconvening at 4:10 P. M.

Mr. Heen withdrew his objections to the examination of the appraiser.

The Court disallowed and denied the Objections to the Report of the Commissioners filed on May 23, 1967, by Mr. Heen.

The Court adopted the recommendations made by the Commissioners in their final report, including the supplemental reports (except as otherwise noted at the hearing held on May 25, 1967).

Mr. Moore to draft a preliminary interlocutory decree.

Court adjourned at 4:15 P. M.

BY ORDER OF COURT:

Walter P. Johnson
Court Clerk