

Foreword

This land registry handbook is a practical, user-friendly and informative guide for registry staff when accepting and processing Land Court applications.

It comes in two parts:

1. Common applications, which includes legislative references, guidelines, forms and fees; and
2. Registry procedures, which outlines procedures with more detailed explanations.

The manuals will serve as a written record of existing procedures and used to support registry staff training.

I gratefully acknowledge the initiative and commitment on the part of the Pacific Justice Sector Programme (PJSP) to produce this handbook, and the financial backing by the New Zealand Government through the Ministry of Foreign Affairs and Trade. I particularly commend the outstanding work of Tiara Tukuniu (Deputy Registrar, Department of Justice, Niue), Janine Ford and Delwyn Te Moni from the PJSP team who spent many hours collaborating to prepare and produce this handbook.

This joint effort has resulted in a manual for staff of which we can all be proud and which will go towards improving the standards and quality of services provided by the registry.

Chief Justice Craig Coxhead

Common Land Court applications

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Chapter 1: Rules for applications

1.1 Legislative references

- Land Act 1969, ss [10](#), [11](#), [14](#), [16](#), [22](#), [34](#), and [47](#)
- Land Court Rules 1969, r [4.1](#), [4.2](#), [12.1](#), [12.5](#), [12.6](#), [12.13](#), [Schedule 1 Forms](#), [Schedule 2 Fees](#)

1.2 Purpose

These rules apply to almost all Land Court applications in the High Court and include applications filed in the civil, criminal and land divisions of the High Court.

Guidelines have been established for:

- ss [10-11](#) application for determination of title
- s [14](#) appointment of Leveki Magafaoa
- s [16](#) change/joint/remove/appoint Leveki Magafaoa
- s [22](#) confirmation of leases
- s [34](#) partition
- s [47](#) injunction

and these need to be explained to all applicants.

1.3 Forms

Prescribed forms are set out in [Schedule 1](#) of the Land Court Rules 1969.

Where no form is specifically prescribed, the existing forms may be used and modified as necessary.

Any form directed by a Judge or approved for use by a registrar shall be sufficient. An equivalent form in Niuean may be used. Approved forms are referenced under each application and included as appendices.

Applications must be completed in legible handwriting or typed, and all questions must be answered.

1.4 Fees

Prescribed fees for any application are set out in [Schedule 2](#) of the Land Court Rules 1969. NCT of 12.5% must be added.

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 2: Application for determining title to and interest in Niuean land

2.1 Legislative references

- Niue Amendment Act (No 2) 1968, s [22](#)
- Land Act 1969, Part 2 (ss [10-16](#))
- Land Court Rules 1969, rr [12-14](#), and [Schedule 2](#)

2.2 Purpose

The Land Court shall have exclusive jurisdiction to investigate the title to Niuean land. Parties may apply to the court to determine relative interests in Niuean land as far as those interests can be ascertained by the court.

2.3 Forms

Give the applicant the following form to complete in either Niuean or English. Applications must be completed in legible handwriting or typed, and all questions must be answered:

- Application for determination of title

Note

This application is usually accompanied by an Application for Leveki Magafaoa. To ensure the applications are heard together when the case goes to Court, please file this application and the accompanying Leveki Magafaoa application together on the same file.

2.4 Evidence needed to support application

The applicant must make a submission in writing to go with the application for determining title to and interest in Niuean land. The submission must explain the following where relevant to the claim:

- the reason the claim is being made
- the boundaries of the portion of the land being claimed
- the applicant's genealogical tables. These will show the applicant's descent from the ancestor/s through whom title is claimed, down to and including all persons the claimant admits are entitled with the claimant under their claim
- the names and the approximate location of cultivations, villages, and burial places (with names of relatives of the claimant and persons included in their claim who have been there, and any other places or marks of historical interest)
- evidence/record of discussions with adjacent landowners
- any other proof or signs of occupation of, or connection with the land, by the claimant and other persons included in their claim.

2.5 Fees

The filing fee for any application to determine title and interest is set out in the fees schedule – refer to Land Court Rules 1969, Schedule 2. Item [3.1](#) sets the fee at \$10, plus 12.5% NCT.

2.6 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- ensure the application fee has been paid and a receipt given
- register the application
- set up the file.

2.7 Related topics

If you are new to this task, refer to related handbook topics for registration of the application and setting up a land file and to the guidelines:

- Registering an application
- Setting up a land file
- Guidelines Land Court applications

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 3: Application for appointment of Leveki Magafaoa

3.1 Legislative references

- Niue Amendment Act (No 2) 1968, s [47\(1\)](#)
- Land Act 1969, ss [14-16](#)
- Land Court Rules 1969, [Schedule 2](#)
- Niue Land Court Bench Book, [Chapter 4, Section 2](#)

3.2 Definition

- **Leveki Magafaoa** means a trustee or guardian of a family having any right, title, estate, or interest in Niuean land – [Niue Amendment Act \(No 2\) 1968](#).

3.3 Purpose

A Leveki Magafaoa makes significant decisions on behalf of the members of the Magafaoa and has the power to control the occupation and use of the land under Niuean custom, and the power to alienate the land.

When the ownership of any land has been determined, an application may also be made for an order appointing a Leveki Magafaoa of that land. The court has exclusive jurisdiction to appoint a Leveki Magafaoa.

A Leveki Magafaoa application is used:

- in conjunction with the **Determination of title and interest application** when land is surveyed for the first time
- when a Leveki Magafaoa is replaced, removed or one or more additional Leveki Magafaoa are added.

3.4 Who may apply

- any member of the Magafaoa who is 21 years or older
- an appointed agent on behalf of a disabled person

3.5 Forms

Give the applicant the following form to complete in either Niuean or English. Applications must be completed in legible handwriting or typed, and all questions must be answered:

- Application for appointment of Leveki Magafaoa

Note

This application is usually accompanied by an Application for determining title to and interest in Niuean land. To ensure the applications are heard together when the case goes to Court, please file this application and the accompanying application for determining title to and interest in Niuean land together on the same file.

3.6 Evidence needed to support application

- consent of the Leveki Magafaoa for the new appointment (unless the Leveki Magafaoa are deceased)
- written consent from Magafaoa for the appointment of the Leveki Magafaoa
- minutes of meetings approving the Leveki Magafaoa
- statement and/or supporting submissions by the applicant including the grounds for the application
- any relevant supporting evidence

This documentation is needed before the application can progress through to court.

3.7 Fees

The filing fee for a Leveki Magafaoa is set out in the fees schedule – refer to Land Court Rules 1969, Schedule 2. Item [3.2](#) sets the fee at \$5, plus 12.5% NCT.

3.8 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- ensure the application fee been paid and a receipt given
- register the application
- include this application with the application for determining title to and interest in Niuean land.

3.9 Related topics

If you are new to this task, refer to related handbook topics for registration of the application and setting up a land file and to the guidelines.

- Registering an application
- Setting up a land file
- Guidelines Land Court applications

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 4. Application to change Leveki Magafaoa

4.1 Legislative references

- Land Act 1969, s [16](#)
- Land Court Rules 1969, [Schedule 2](#)
- Niue Land Courts Bench Book, [Chapter 3](#)

4.2 Definition

- **Leveki Magafaoa** means a trustee or guardian of a family having any right, title, estate, or interest in Niuean land – [Niue Amendment Act \(No 2\) 1968](#).

4.3 Purpose

An application to change a Leveki Magafaoa is used when a Leveki Magafaoa is replaced, removed or one or more additional Leveki Magafaoa are added.

The court has exclusive jurisdiction to appoint a Leveki Magafaoa and the process is the same as an application to appoint a new Leveki Magafaoa.

4.4 Who may apply

- any member of the Magafaoa who is 21 years or older
- an appointed agent on behalf of a disabled person

4.5 Forms

Give the applicant the following form to complete in either Niuean or English. Applications must be completed in legible handwriting or typed, and all questions must be answered:

- Application for appointment of Leveki Magafaoa.

4.6 Evidence needed to support application

- consent of the Leveki Magafaoa for the new appointment (unless the Leveki Magafaoa are deceased)
- written consent from Magafaoa for the appointment of the Leveki Magafaoa
- minutes of meetings approving the Leveki Magafaoa.
- statement and/or supporting submissions by the applicant including the grounds for the application.
- any relevant supporting evidence

This documentation is needed before the application can progress through to court.

4.7 Fee

The filing fee for a Leveki Magafaoa is set out in the fees schedule – refer to Land Court Rules 1969, Schedule 2. Item [3.2](#) sets the fee at \$5, plus 12.5% NCT.

4.8 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp

- check all the necessary documentation has been provided
- ensure the application fee been paid and a receipt given
- register the application
- include this application with the Application for determining title to and interest in Niuean land.

4.9 Related topics

If you are new to this task, refer to related handbook topics for registration of the application and setting up a land file and to the guidelines:

- Registering an application
- Setting up a land file
- Guidelines Land Court applications

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 5. Application for confirmation of alienation of land - including applications relating to leases, sales and security charges

5.1 Legislative references

- [Niue Amendment Act \(No 2\) 1968](#)
- Land Act 1969, s 2, Part 3 (ss [17-46](#)), s 23
- Land Court Rules 1969, [Schedule 2](#)
- Niue Land Courts Bench Book, [Chapter 4](#)

5.2 Definition

- **Alienation:** "... a contract of sale of timber, minerals, crops, or other valuable things attached to or forming part of any Niuean land, or being the produce of it, shall be deemed to be an alienation of that land, unless the thing so sold or agreed to be sold has been severed from the land before the making of the contract."
- **Alienation includes:** "... the making or grant of any transfer, sale, gift, lease, licence, easement, profit, mortgage, charge, encumbrance, trust or other disposition, whether absolute or limited, and whether legal or equitable; and includes a contract to make any such alienation; and also includes the surrender or variation of a lease, licence, easement, or profit and the variation of the terms of any other alienation as hereinbefore defined"

5.3 Purpose

All instruments of alienation of Niuean land must be confirmed by the court and registered before they take effect.

5.4 Who may apply

- a party to an instrument of alienation may make an application to the court for confirmation of that instrument
- the registrar, if Crown land is leased or if the Government is leasing Niuean land from the land's Magafaoa
- the Leveki Magafaoa for all leases with parties leasing land from the Magafaoa
- the manager of the Niue Development Bank initiates the application for a charging order or a variation of a charging order or a discharge of a charging order

Note

This application is usually accompanied by an Application for determining title to and interest in Niuean land. To ensure the applications are heard together when the case goes to court, please file this application and the accompanying application for determining title to and interest in Niuean land together on the same file.

5.5 Form

There is no prescribed application form. Give the applicant the following form to complete in either Niuean or English. Applications must be completed in legible handwriting or typed, and all questions must be answered:

- Application for confirmation of alienation

5.6 Fees

The filing fee for an application for confirmation of alienation of land is covered in the fees schedule for an unspecified application – refer to Land Court Rules 1969, Schedule 2. Item 5 sets the fee at \$10, plus 12.5% NCT.

5.7 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- check the application fee has been paid and a receipt given
- register the application
- set up the file

5.8 Related topics

If you are new to this task, refer to related handbook topics for registration of the application and setting up a land file and to the guidelines:

- Registering an application
- Setting up a land file
- Guidelines Land Court applications

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 6. Application for the appointment of a receiver

6.1 Legislative references

- Land Act 1969, s 33
- Land Court Rules 1969, [Schedule 2](#)
- Niue Land Courts Bench Book, [Chapter 5](#)

6.2 Purpose

The court may enforce a charge or security charge by appointing a receiver in respect of the land or interest charged.

The receiver's role is to take possession of the land and receive all rents and profits associated with the land, so that the terms under the charge may be satisfied.

6.3 Who may apply

- The holder of a security charge (the Crown or Niue Development Bank)

6.4 Form

There is no application form for appointing a receiver. Follow the process set out under [Rules for applications](#).

6.5 Evidence needed to support application

- Proof of the default of the terms of the charge

6.6 Fees

The filing fee for an application for appointment of a receiver is covered in the fees schedule for an unspecified application – refer to Land Court Rules 1969, Schedule 2. Item 5 sets the fee at \$10, plus 12.5% NCT.

6.7 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp.
- check all the necessary documentation has been provided
- check the application fee has been paid and a receipt given
- register the application
- set up the file

6.8 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 7. Application for occupation order

7.1 Legislative references

- Land Act 1969, s [31](#)
- Land Court Rules 1969, [Schedule 2](#)
- Niue Land Court Bench Book, [Chapter 6](#)

7.2 Purpose

An occupation order enables the personal use of the land in question by a person or persons for their lifetime or for a specified term.

7.3 Who may apply

- the Leveki Magafaoa
- the member of the Magafaoa desiring the order
- an appointed agent on behalf of a disabled person

7.4 Form

Applications must be completed in legible handwriting or typed, and all questions must be answered. Give the applicant the following form to complete in either Niuean or English:

- Application for an occupation order

7.5 Evidence needed to support application

- a description of the area to be occupied
- a plan of the area to be occupied
- written consents of members of the Magafaoa **or**
- minutes of meetings approving the application

7.6 Fees

The filing fee for any application to determine title and interest is set out in the fees schedule – refer to Land Court Rules 1969, Schedule 2. Item [3.1](#) sets the fee at \$10, plus 12.5% NCT.

7.7 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- check the application fee has been paid and a receipt given
- register the application
- set up the file

7.8 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 8. Application for order of partition

8.1 Legislative references

- Niue Amendment Act (No2) 1968, s [44](#)
- Land Act 1969, ss [34-39](#)
- Land Court Rules 1969, rr [12](#) and [13](#), [Schedule 2](#)
- [Niue Land Court Bench Book, Chapter 4, part 7](#)

8.2 Purpose

Partition is the division of the land to create new titles or blocks. Partition may be required if a member of the Magafaoa wants the land to build a personal residence. The Land Court may make a partition order under sections [34-39](#) of the Land Act.

8.3 Form

Applications must be completed in legible handwriting or typed, and all questions must be answered. Give the applicant the following form to complete in either Niuean or English:

- Application for partition

8.4 Evidence needed to support application:

- consent to the partition by Leveki Magafaoa if not deceased, or
- consent to the partition by the Magafaoa and for the appointment of Leveki Magafaoa
- the Magafaoa meeting minutes and supporting signatures
- statement and/or supporting submission by applicant including grounds
- relevant supporting evidence and attachment, including the certificate of title of the land to be apportioned

8.5 Fees

The filing fee for an application for appointment of a receiver is covered in the fees schedule for an unspecified application – refer to Land Court Rules 1969, Schedule 2. Item [5](#) sets the fee at \$10, plus 12.5% NCT.

8.6 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- check the application fee has been paid and a receipt given
- register the application
- set up the file

8.7 Related topics

If you are new to this task, refer to related handbook topics for registration of the application and setting up a land file and to the guidelines:

- Registering an application
- Setting up a land file
- Guidelines Land Court applications

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 9. Application for exchange order

9.1 Legislative references

- Niue Amendment Act (No2) 1968, s [44](#)
- Land Act 1969, s [40](#)
- Land Court Rules 1969, r [16](#), [Schedule 2](#)
- [Niue Land Court Bench Book, Chapter 4, part 7](#)

9.2 Purpose

Any interest in Niuean land may be exchanged for an interest in any other Niuean land or in Crown land.

9.3 Who may apply

- any Niuean claiming to be interested in Niuean land
- any person authorised by Cabinet on its behalf
- an appointed agent on behalf of a disabled person

9.4 Form

There is no application form for appointing a receiver. Follow the process set out under [Rules for applications](#).

9.5 Evidence needed to support application:

- consent to the exchange by the Magafaoa
- consent to the exchange from the Minister for any exchange of Crown land
- the Magafaoa meeting minutes and supporting signatures
- statement and/or supporting submission by applicant including grounds
- relevant supporting evidence and attachments.

9.6 Fees

The filing fee for an application for appointment of a receiver is covered in the fees schedule for an unspecified application – refer to Land Court Rules 1969, Schedule 2. Item [5](#) sets the fee at \$10, plus 12.5% NCT.

9.7 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- check the application fee has been paid and a receipt given
- register the application
- set up the file

9.8 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 10. Selling Niuean land to the Crown

10.1 Legislative references

- Land Act 1969, s [43](#)
- Land Court Rules 1969, r [43](#), [Schedule 2](#)

10.2 Purpose

Niuean land cannot be bought or sold, except by the government for public purposes, and then only subject to the consent of the titleholders.

10.3 Who may apply

- any Niuean claiming to be interested in Niuean land
- any person authorised by Cabinet on its behalf
- an appointed agent on behalf of a disabled person.

Note

This provision will not be used often as the Crown prefers to take the land by warrant and then compensate the Magafaoa.

10.4 Form

There is no application form for Niuean land to the Crown. Follow the process set out under [Rules for applications](#).

10.5 Fees

No fee shall be payable on any application by the Crown, the Minister, Cabinet, or the Registrar.

The filing fee from an applicant other than the Crown for an application for appointment of a receiver is covered in the fees schedule for an unspecified application – refer to Land Court Rules 1969, Schedule 2. Item [5](#) sets the fee at \$10, plus 12.5% NCT.

10.6 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check the application fee if required has been paid and a receipt given
- register the application
- set up the file

10.7 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 11. Application for a reservation order

11.1 Legislative references

- Land Act 1969, ss [44–46](#)
- Land Court Rules 1969, [Schedule 2](#)
- [Niue Land Court Bench Book, Chapter 4, part 9](#)

11.2 Purpose

Land may be set aside as a reservation for the common use of the Magafaoa for such purposes as a burial ground, fishing ground, village site, landing place, place of historic interest, source of water supply, Church site, building site, recreation ground, bathing place or any other purpose.

11.3 Who may apply

- the Leveki Magafaoa (with the majority of the members' consent)
- any Niuean claiming to be interested in Niuean land
- any person authorized by Cabinet on its behalf may apply for the revocation or variation of a reservation order
- an appointed agent on behalf of a disabled person

11.4 Form

There is no application form for a Reservation order. Follow the process set out under [Rules for applications](#).

11.5 Evidence needed to support application

- consent to the reservation order by Leveki Magafaoa if not deceased, or
- consent to the reservation order by the majority of the Magafaoa who are ordinarily resident in Niue
- confirmation that the members of the Magafaoa who are not ordinarily resident in Niue will not suffer undue hardship as a result of the proposed order
- Magafaoa meeting minutes and supporting signatures
- statement and/or supporting submission by applicant explaining the purpose of the reservation
- An outline of the boundaries of the land to be included in the reservation

11.6 Fees

The filing fee for an application for appointment of a receiver is covered in the fees schedule for an unspecified application – refer to Land Court Rules 1969, Schedule 2. Item [5](#) sets the fee at \$10, plus 12.5% NCT.

11.7 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- check the application fee has been paid and a receipt given

- register the application
- set up the file

11.8 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 12. Application for an order vesting land for church purposes

12.1 Legislative references

- Niue Amendment Act (no 2) 1968, s [26](#)
- Land Court Rules 1969, [Schedule 2](#)
- [Niue Land Court Bench Book, Chapter 4, part 10](#)

12.2 Purpose

Leveki Magafaoa or landowners may apply to have land that has been given or set aside for religious purposes to be vested in any body corporate to hold and administer for the church.

12.3 Who may apply

- The Leveki Magafaoa (or where there is none the owners of the land)
- An appointed agent on behalf of a disabled person

12.4 Forms

There is no application form for a vesting order. Follow the process set out under [Rules for applications](#).

12.5 Evidence needed to support application

- All records, instruments, reservations and generally all acts of authority relating to the giving or setting aside of land for church purposes in force at 1 November 1969
- A statement from the applicant confirming:
 - The land has been at any time given or set aside by the Leveki Magafaoa or - where there is no Leveki Magafaoa - by the owners exclusively for church purposes for the benefit of its adherents; and
 - The church is a Christian church; and
 - The Leveki Magafaoa or owners are willing that the land be exclusively used for an unlimited period of time; and
 - No sufficient alienation or disposition of the land by way of lease or otherwise has been made to give effect to the gift

12.6 Fees

The filing fee for an application for appointment of a receiver is covered in the fees schedule for an unspecified application – refer to Land Court Rules 1969, Schedule 2. Item [5](#) sets the fee at \$10, plus 12.5% NCT.

12.7 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- check the application fee has been paid and a receipt given
- register the application

- set up the file

12.8 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 13. Application for an easement

13.1 Legislative references

- Niue Amendment Act (No 2) 1968, s [47](#) and [89](#)
- Land Court Rules 1969, [Schedule 2](#)
- [Niue Land Court Bench Book, Chapter 4, part 11](#)

13.2 Purpose

An easement is a right held by a person or persons over land owned by another. The court may declare any land be subject to an easement. This allows another person to travel over the land to gain access to other land, subject to any conditions it prescribes.

13.3 Who may apply

- Any Niuean claiming to be interested in Niuean land
- Any person authorised by Cabinet on its behalf
- An appointed agent on behalf of a disabled person

13.4 Forms

There is no application form for an application for easement. Follow the process set out under [Rules for applications](#).

13.5 Evidence needed to support application

The applicant must make a submission in writing to go with the application for an easement. The submission must explain the following where relevant to the claim:

- the reason the claim is being made
- the boundaries of the portion of the land being accessed
- the names and the approximate location of cultivations, villages, and burial places (with names of relatives of the claimant and persons included in their claim who have been there, and any other places or marks of historical interest)
- evidence/record of discussions with adjacent landowners

13.6 Fees

The filing fee for an application for appointment for an easement is covered in the fees schedule for an unspecified application – refer to Land Court Rules 1969, Schedule 2. Item [5](#) sets the fee at \$10, plus 12.5% NCT.

13.7 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- check the application fee has been paid and a receipt given
- register the application
- set up the file

13.8 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file

Remember

If the applicant does not have all the necessary information with them, or the correct fee, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 14. Application for an order vesting land from a closed road to owners of adjoining land

14.1 Legislative references

- Niue Amendment Act (No 2) 1968, Part 7, Section [90](#)
- Land Court Rules 1969, r [43](#)
- [Niue Land Court Bench Book, Chapter 4, part 12](#)

14.2 Purpose

Where any road has been closed under s 90 the Land Court may vest the whole or any portion of the closed road in the Leveki Magafaoa or owners of any adjoining land that was Niuean land at the time the road was constituted: s [90\(2\)](#) Amendment Act.

14.3 Who may apply

- Applications for the order may be made by Cabinet. To date there have been none.

14.4 Forms

There is no application form for a vesting order. Follow the process set out under [Rules for applications](#).

14.5 Fees

No fee shall be payable on any application by the Crown, the Minister, Cabinet, or the registrar.

14.6 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- register the application
- set up the file.

14.7 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file

Chapter 15. Application for an interlocutory injunction

15.1 Legislative references

- Niue Amendment Act (No 2) 1968, s [47](#)
- Land Court Rules 1969, [Schedule 2](#)
- [Niue Land Court Bench Book, Chapter 4, part 13](#)

15.2 Definition

- **Ex parte** - The term ex parte is a Latin phrase meaning "something made in the interests of one side only". So an ex parte application is on the application of one side only and the other parties are not informed.
- **Interlocutory** – provisional, step in the proceedings.

15.3 Purpose

An interlocutory injunction can be granted before or during proceedings. The purpose of an interlocutory injunction is to keep the existing state of affairs until a decision is given on the substantive merits of the case.

Common situations where injunctions are sought are to prevent another person from clearing land for planting crops or further planting on land that has been cleared for that purpose, or to prevent the burial of a deceased person on a particular piece of land.

15.4 Who may apply

- Any Niuean claiming to be interested in Niuean land
- Any person authorised by Cabinet on its behalf

15.5 Mode of application

An interlocutory application may be made ex parte (without notice to the other party) in cases of urgency and if the applicant would otherwise suffer harm to proceed on notice.

The applicant must satisfy the judicial officer that it is in the interests of justice to proceed ex parte.

Because of the urgency, the application is referred to a judge immediately.

Where possible the application should otherwise be made on notice. If the applicant is not in Niue, the application can be emailed to the court or a family member can file it on their behalf.

15.6 Forms

Give the applicant the following form to complete in either Niuean or English. Applications must be completed in legible handwriting or typed, and all questions must be answered:

- Application for an Injunction

15.7 Evidence needed to support application

- under the ex parte process, the applicant must make full disclosure to the court of all known relevant circumstances

- statement and/or supporting submission by the applicant, including specific grounds and section of the law
 - site plan and location of area affected by the application – title or not
- the nature of the order sought by the applicant
- serving of notice mode whether the applicant or the Land Court.

15.8 Application process

Under the on notice process, the application is served upon respondent.

Staff will write a letter to the respondent setting out the grounds for the application. The letter advises the other party that they must desist until the application is determined by the court.

The registrar will determine who has jurisdiction to hear the application in court – whether it is a judge or a resident land commissioner.

If there are ongoing disputes arising from the application, a judge's help is sought. Registry staff will email the judge in New Zealand for direction. Attach the application and supporting documents provided by the applicant and outline the dispute. Ask for the judge's directions.

The judge will give directions about what the parties should do until the case is decided in court.

15.9 Where the resident land commissioners determine an on notice interlocutory application

Follow the same process as above to serve the application and issue a letter to the other party.

A response is needed from the respondent and land commissioners are called to hear the application.

15.10 Fees

The filing fee for an application for an interlocutory injunction is covered in the fees schedule for an application that may be filed ex parte – refer to Land Court Rules 1969, Schedule 2. Item [1](#) sets the fee at \$10, plus 12.5% NCT.

15.11 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- ensure the application fee has been paid and a receipt given
- register the application
- set up the file.

15.12 Related topics

If you are new to this task, refer to related handbook topics for registration of the application and setting up a land file and to the guidelines:

- Registering an application
- Setting up a land file
- Guidelines Land Court applications

Chapter 16. Ex parte applications

16.1 Legislative references

- Land Court Rules 1969, rr [12\(12\)](#), [16\(1\)\(a\)](#), [17\(1\)](#), [20](#), [29\(1\)](#), [Schedule 2](#)
- [Niue Land Court Bench Book, Chapter 4, part 14](#)

16.2 Definition

- **Ex parte** - The term ex parte is a Latin phrase meaning “something made in the interests of one side only”. So an ex parte application is on the application of one side only and the other parties are not informed.

16.3 Purpose

An interlocutory application may be made ex parte (without notice to the other party) in cases of urgency and if the applicant would otherwise suffer harm to proceed on notice, or where there is no prejudice to the other party.

Ex parte applications are an efficient way to address administrative matters like issuing a witness summons.

16.4 Forms

Refer the applicant to the prescribed [Form 1](#) (Ex Parte) Application to the High Court found in the schedule of the Land Court Rules 1969. The form may be completed in either Niuean or English. Applications must be completed in legible handwriting or typed, and all questions must be answered.

16.5 Evidence needed to support application

- the application must be marked “ex parte”
- the applicant must clearly state the grounds for their application.
- state the statutory provision, section of the Act and rule that is relied upon to make the application
- the nature of the order sought by applicant.

If in the opinion of the Registrar, an application is not properly made, they may refuse to accept it. All ex parte applications to date have been dealt with by Judges.

Judges sometimes determine that the matter should not be ex-parte. In some cases, they direct the application to be served on the parties and follow the usual on notice process.

16.6 Fees

The filing fee for an application for an ex parte application is covered in the fees schedule for any application that may be filed ex parte – refer to Land Court Rules 1969, Schedule 2. Item [1](#) sets the fee at \$10, plus 12.5% NCT.

16.7 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- ensure the application fee has been paid and a receipt given
- register the application
- set up the file.

16.8 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file

Chapter 17. Applications from—and relating to—the Registrar

17.1 Legislative reference

- [Land Act 1969, s 52](#)
- [Niue Land Court Bench Book, Chapter 4, part 15](#)

17.2 Purpose

The registrar may state any case or reserve any question for the consideration of the court.

Any person aggrieved by a decision of the registrar may appeal to the court, which may confirm, quash or vary any decision made by the registrar.

17.3 Who may apply

- Any person aggrieved by a decision of the registrar

17.4 Forms

There is no application form relating to a registrar's decision. Follow the process set out under [Rules for applications](#).

17.5 Evidence needed to support application

- Any information relating to land or to any interest in land
- If the applicant has the custody or control of any duplicate instrument concerned, they must bring it into the Land Registry to be endorsed, cancelled, amended, inspected or otherwise dealt with as the case requires.

17.6 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- register the application
- set up the file.

17.7 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file

Chapter 18. Application for adoption orders

18.1 Legislative references

- [Niue Amendment Act \(No 2\) 1968](#), ss 92-93, 95, 97, 98 and 100
- [Adoption Act 1955](#)
- [Niue Land Court Bench Book, Chapter 4, part 16](#)

18.2 Who may apply

- Any person may make an application, whether living in Niue or not (note: spouses can make a joint application)

18.3 Forms

There is no application form for an adoption order. Follow the process set out under [Rules for applications](#).

18.4 Evidence needed to support application

The applicant must provide evidence to satisfy the court that:

- The child to be adopted was under 21 years old when the application was filed
- The applicant—or at least one applicant in a joint application—is 25 years or older and is at least 21 years older than the child, or is the mother or father of the child
- An unmarried applicant is at least 30 years older than the child
- Where the child is a girl and the sole applicant is male, the applicant is the father of the child, or there are special circumstances which justify the order
- The child, if over 12 years, consents to the adoption

The court will also seek a report from Cabinet or a Cabinet nominee confirming the above and testifying to the applicant/s fitness to adopt the child.

18.5 All living parents of the child must consent in writing to the adoption unless

- The child has been deserted by that parent; or
- The parent is unfit to have the care and custody of the child; or
- The consent of that parent should be dispensed with for any other reason

The applicant must make the reasons for not requiring consent clear.

18.6 Consent must be witnessed by one of the following

- A Commissioner of the High Court
- A solicitor of the High Court of New Zealand
- The Registrar [or Deputy Registrar] of the High Court
- A postmaster
- The financial secretary

- A medical officer

Where the application is made by either a husband or wife alone, their spouse must consent to the application. If the couple is living apart, they must provide evidence to satisfy the court they are living apart and that separation is likely to be permanent.

18.7 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- register the application
- set up the file.

18.8 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file

Remember

If the applicant does not have all the necessary information with them, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.

Chapter 19. Varying or discharging adoption orders

19.1 Legislative references

- [Niue Amendment Act \(No 2\) 1968](#), Part VIII, ss 100 (1)-(5)s
- [Adoption Act 1955](#)
- [Niue Land Court Bench Book, Chapter 4, part 16](#)

19.2 Purpose

Parties may apply to the court to discharge an adoption order only if the adoption order was made by mistake caused by a misrepresentation made to the court or any person concerned.

19.3 Who may apply

The adoptive parent/s or child if:

- the adopted person is under the age of 18 and
- the adopted person is living and domiciled in Niue and
- every living adoptive parent is domiciled in Niue

It does not matter if the adoption was made in or outside Niue.

19.4 Forms

There is no application form for discharge of an adoption order. Follow the process set out under [Rules for applications](#).

The application is made in writing by the adoptive parent or the adopted child.

19.5 Final checklist

- ensure all the papers are signed, dated and date stamped with the court stamp
- check all the necessary documentation has been provided
- register the application
- set up the file.

19.6 Related topics

If you are new to this task, for registration of the application and setting up a land file refer to guidelines for:

- Registering an application
- Setting up a land file

Remember

If the applicant does not have all the necessary information with them, tell them what is needed. Explain that the application cannot progress through the Land Court until all the information is provided.