

The Moçambique Rule in the New Zealand Court of Appeal

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On 5 December 2019, the New Zealand Court of Appeal released a significant decision on jurisdiction over land in cross-border cases.

In *Christie v Foster* [2019] NZCA 623, the Court overturned the High Court's decision that the *Moçambique* rule (named after *British South Africa Co v Companhia de Moçambique* [1893] AC 602) required that a dispute over New Zealand land be heard in New Zealand (for a case note on the High Court's decision, see here). The plaintiff sought to reverse her late mother's decision to sever their joint tenancy, the effect of which was to deprive the plaintiff of the right to inherit her mother's share by survivorship. The Court found that the in personam exception to the *Moçambique* rule applied, since the crux of the plaintiff's claim was a complaint of undue influence against her sister (for procuring their mother to sever the tenancy), and because any claim in rem arising out of the severance was precluded by New Zealand's rules on indefensibility of title. As a consequence the Court declined jurisdiction and referred the whole case to Ireland, which was otherwise the appropriate forum.

In the course of its decision, the Court resolved a number of important points of law, some of which had not been addressed in any Commonwealth decisions:

First, it resolved a dispute that had arisen between High Court authorities about the scope of the in personam exception, resolving it in favour of a broad interpretation. In particular, the Court disagreed with High Court authority (*Burt v Yiannakis* [2015] NZHC 1174) that suggested an institutional constructive trust claim was in rem and thus outside the exception.

Second, it held (reversing the High Court) that the *Moçambique* rule does not have reflexive effect. The rule prevents the New Zealand court

from taking jurisdiction over claims in rem involving foreign land out of comity to the foreign court, but does not *require* the New Zealand court to take jurisdiction over cases involving New Zealand land. Although New Zealand will often be the appropriate forum for a case involving New Zealand land, the court is free to send it overseas if the circumstances require, even if the claim asserts legal title in rem.

Third, the Court confirmed that there is a second exception to the *Moçambique* rule - where the claim arises incidentally in the administration of an estate. *Dicey, Morris and Collins* had suggested the existence of this exception for many editions, but it had to be inferred from earlier cases without being properly articulated. The Court expressly found such an exception to exist and that it would have applied in this case.

In the course of its analysis, the Court expressed sympathy for the arguments in favour of abolishing the *Moçambique* rule entirely. Although the Court did not go that far, it reinforced a trend of the courts restricting the application of the rule and suggested that in the right case, the courts might be prepared to abandon it entirely.