

IN THE LAND COURT OF TONGA LA15,16,17,18,19 & 20 OF 2009
NUKU'ALOFA REGISTRY

BETWEEN : TEVITA TATAFU VAKAMEILALO - Plaintiff

AND : 1. SIONE SISI Defendant (LA15/2009)
AND : 2. PAULA KUPA TU'IVAI Defendant (LA16/2009)
AND : 3. SIO FIFITA Defendant (LA17/2009)
AND : 4. LONI FAPIANO Defendant (LA18/2009)
AND : 5. VEIMAU SONGA'IMULI Defendant (LA19/2009)
AND : 6. 'ISI TU'IFUA Defendant (LA20/2009)
AND : 7. MINISTER OF LANDS Third Party

BEFORE THE PRESIDENT

W. Edwards for the Plaintiff

S. Tu'utafaiva for the Defendants

A. Kefu (Solicitor General) for the Third Party

J U D G M E N T

[1] This judgment should be read in conjunction with my judgment in LA14 of 2009 in which I endeavoured to set out and deal with the fundamental issues between the Plaintiff and the Defendants. This judgment will only deal with matters specific to these Defendants which have not already been addressed.

LA 15 OF 2009

- [2] There is no significant difference between the Plaintiff's claim in this case and that advanced in LA 14 of 2009. The Defence of the Third Party is also essentially the same.
- [3] The Defendant's case is that "the land which I am currently occupying was given by [Tau] in 1989 to my family. [Tau] was the lawful heir of [Katoa] who was the last registered holder of the tax allotment in question. That as a pledge of that giving away of the land, Tau requested that my younger son, Tauleka Lopeti be named after him. So Tauleka was named after his intending for the land to be registered under Tauleka's name once he becomes of age."
- [4] The Defendant pleads that the portion of the land occupied by him and his family "was not available to be granted" by the Minister to the Plaintiff.
- [5] It has already been noted that Katoa did not die until 1999. In my view, Tau whose only interest in the land was as heir apparent to his father had no standing to make any binding promises in respect of the land and had no power to alter the statutory rules governing the devolution of the property after his father's death. While it seems clear that both Katoa and Tau were content to allow this Defendant to reside on a portion of the land while they were still alive, I can find nothing to suggest that the permission to reside was not merely a licence which was terminated upon Tau's death. In my view, this Defendant has not shown that the Plaintiff is bound by any undertakings entered into by Tau, the nature of which I find, in any

event, to be quite imprecise and unclear. There is nothing before the Court to show that the developments made to the land (which of course do not include the erection of a house which is not part of the land) were not the usual improvements designed to make occupation of the land more productive and enjoyable. The Defendant does not claim to have paid any rent since 1989 and cannot have paid anything to Tau since his death in 2000.

- [6] In my view the Plaintiff is entitled to vacant possession of that portion of the land occupied by the Defendant and his family in 42 days from the delivery of this judgment. The Plaintiff and Third Party's costs are to be taxed if no agreed.

LA 16 OF 2009

- [7] No defence was filed by this Defendant who has therefore not discharged the onus placed upon him by the rule in *Havea v Tu'i'afitu & Ors* [1974-80] To L.R.55. There will be an order for possession of that portion of the land occupied by him in 42 days. The Plaintiff's costs are to be taxed if not agreed.

LA 17 OF 2009

- [8] Sio Fifita states in his defence that he has been residing on a portion of the land since the mid 1990's and that he was given permission to lived there by his nephew Viliami Fifita who is at present residing overseas. This Defendant relies on the fact that Viliami Fifita's name appears on the survey plan already referred to.

[9] In paragraphs 12 and 21 of my judgment in LA14/2009 I explained the background to the insertion of Defendants' names on the survey plan. The appearance of these names is evidence of occupation in fact and possible future intention. They are not evidence of registration or of a right to continue to occupy after the death of the last registered holder.

[10] There is no reason to doubt that the Defendant has occupied a portion of the land for over 10 years but I am not satisfied that he has shown that he holds a continuing right to occupy against the Plaintiff.

[11] There will be an order for possession against this Defendant in 42 days. The Plaintiff and the Third Party's costs are to be taxed if not agreed.

LA 18 OF 2009

[12] According to this Defendant:

“the land in question is under the name of my father, Satuka Fapiano. My father has passed away. The land in question was given to him by [Katoa] in about 1975. Unfortunately, such giving of the land has not yet been formalised by the office of the Minister of Land.”

[13] As already pointed out, the holder of an allotment, in this case Katoa, was only allowed to part with possession of part of his land

as provided for in the Act [see e.g sections 51, 53(1) & 54). Informal gifts of land are not allowed, not least because such gifts curtail the rights of the heir. While there is no reason to doubt that Katoa received some consideration from the various defendants and their families for allowing them to remain on the land, there is no acceptable evidence that any estoppel was created and that the licence to occupy the land did not end with the death of Katoa, or alternatively, his son Tau. The fact that the assurances were said to have been made to the Defendant's father who has since died, further weaken this Defendant's case.

[14] I am not satisfied that the Defendant has shown that the Plaintiff, as registered owner is not entitled to vacant possession of the land and accordingly it will be an order for possession in his favour of that portion of the land occupied by this Defendant in 42 days. The costs of the Plaintiff and the Third Party are to be taxed if not agreed.

LA 19 OF 2009

[15] This Defendant in this case avers that the portion of land being occupied by him and his family:

“was given by [Tau] in 1993 to my stepson Vili Taufo'ou.”

“I and my family used to look after [Tau] by feeding him, give him smokes and money also.”

[16] In 1993 Tau was not the registered holder of the land and could therefore give no assurances as to its future disposition. He had no

power to give the land outside the provisions of the Act. While this Defendant was clearly accepted as a licensee living on the land, I am satisfied that he has failed to discharge the onus resting upon him of restricting the Plaintiff's right to unencumbered possession of the whole of the land inherited by him following Tau's death.

[17] There will be an order for vacant possession of this part of the land occupied by this Defendant in 42 days. The costs of the Plaintiff and the Third Party are to be taxed if not agreed.

LA 20 OF 2009

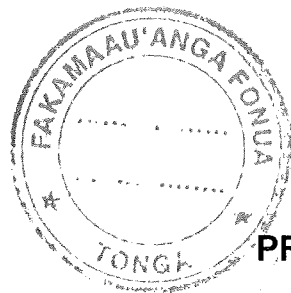
[18] This Defendant did not file an affidavit in answer to the application for summary judgment. His defence as pleaded is that he has occupied a portion of the land since 1982 with the approval of Katoa who did not "bring any action.... to evict the defendant." By way of alternative defence the Defendant pleads:

"the right to occupy with the expectation to have the said piece of land registered were bought by the defendant's brother-in-law Saia Tu'ipulotu 'Ilai from the former registered holder Katoa Vakameilalo."

[19] The first defence does not suggest any more than a licence was granted by Katoa. The alternative defence suggest an arrangement in breach either of section 12 or section 13 of the Act or both. In my view neither of this Defendant's defences gives rise to an estoppel binding on the Plaintiff and accordingly there will be an order for

possession in 42 days. The Plaintiff's costs are to be taxed if not agreed.

NUKU'ALOFA: 4 February 2013




PRESIDENT

T. Piei
30/01/13