

## KALANIUVALU (Noble) v. MINISTER FOR LANDS.

(Land Court. Ragnar Hyne J. Nuku'alofa, 15th, 18th, 25th August, 1937, 15th, 29th September and 12th October, 1937).

The Tu'i Tongas — Tu'i Kanokupolu — Tu'i Ha'atakalaua — The Constitution 1875 — Land Commission 1917 — findings invalid.

This was a claim of the Noble Kalaniuvalu against the Minister for Lands alleging that the villages of Hoi, Nukuleka and Makaunga formed part of his estate by reason of his descent from the Tu'i Tongas.

HELD: The Plaintiff not entitled to the said lands.

Verdict for the Defendant.

M. Finau for the Plaintiff.

Minister (Ata) in person.

C.A.V.

RAGNAR HYNE L.C.J.: This is a claim by the Noble Kalaniuvalu, noble of Lapaha that the villages of Hoi, Nukuleka and Makaunga are part of his hereditary estates.

For the claimant many witnesses were called from each of these villages to show that rent and homage had been paid to the Tu'i Tonga and his descendants.

In the case of Makaunga, it was also contended that it was part of the Tu'i Tonga's tofi'a, by reason of the fact that Manu-mataongo was sent there to live by the Tu'i Tonga, Laufilitonga, from whom he differed in religion. Manu Mataongo was the son of Laufilitonga, and a secondary wife Latu Niua. It was also contended that the land belonged to the Tu'i Tonga, because of a Langi there.

As to Nukuleka, witnesses for the Claimant, notably Tevita Leka and Fesia Oho, testify that the village was given to Leka by the Tu'i Tonga, Leka being the Tu'i Tonga's fishman given this land for his services and for the carrying on of his occupation.

They, in common with others, say they continued to pay rent to Fakaua and Sioeli Pangia, and only recently paid rent to the Government.

The Rent Register, produced, shows, however, that from 1908 to 1918, at any rate, the people of the three villages paid rent to Government.

A very intelligent witness for the Claimant says Makaunga was not the Tu'i Tonga's town when Manu Mataongo went to live there. I refer to the witness Litea Malukava.

Another very intelligent witness, the wife of Fakaua, and herself the daughter of a noble, says that her husband ruled over Lapaha, Niutoua and the three villages in dispute, but she says that Kalaniuvalu succeeded Laufilitonga, not as Tu'i Tonga, but as a noble. The Tu'i Kanokupolu she says succeeded to all the powers of the Tu'i Tonga, and dispossessed him. She admits further that when asked by the King to submit particulars of his

tofi'a, Kalaniuvalu only, submitted Lapaha. This is explained by her as being due (i) to the fact that the chiefs were not particularly concerned as to the boundaries of their tofi'as, and (2) because he thought he would be given all other lands belonging to his tofi'a without specifying them.

The Claimant produced a genealogical table, proving his descent from Laufilitonga, through his mother. He also produced a receipt book showing that in 1929, certain rents in respect of Nukuleka, were paid to Sioli Pangia.

The claimants representative, himself, in evidence, quoted from a copy of a speech made by the King (George Tupou I) at the opening of Parliament, in 1875, in which the King said, "The Estates really belonging to the Chiefs of our Land shall be theirs, and they and their descendants shall hold them for ever."

To this evidence, a good deal of which is hearsay, but admitted by the Court as being in accordance with practice in tofi'a evidence cases, the Minister replied by putting in numerous records and documents. It is not proposed to traverse this evidence in detail. It will be referred to in the judgment of the Court.

It is essential to preface the judgment with a brief historical review as gathered from the evidence. Tonga was originally ruled by the Tu'i Tonga, who was lord of the land and the people.

In the fifteenth, or early sixteenth century, he delegated certain powers to his brother who, as Tu'i Ha'atakalaua was responsible for the civil government. The Tu'i Ha'atakalaua in the early seventeenth century, in turn delegated certain powers to others, and notably to the Tu'i Kanokupolu who became lord of western Tongatapu. Gradually, the Tu'i Kanokupolu increased in power, until he ultimately became the ruler of United Tonga, and, as the witness Fusi Fakaua stated, he dispossessed, and obtained all the powers of the Tu'i Tonga.

Even the separate title of Tu'i Tonga ceased with the death of Laufilitonga in 1862.

It is not disputed that it was King George Tupou I who as Tu'i Kanokupolu, became lord of all Tonga, and he it was who dispossessed and obtained all the powers of the Tu'i Tonga.

In 1875, he granted the Constitution to the people of Tonga and in his address to his first Parliament, he used the words above referred to viz "The Estates really belonging to the Chiefs of our Land shall be theirs."

The claimant, descended from Laufilitonga, the Tu'i Tonga, contends among other things that the villages claimed are his by reason of this pronouncement by the King. But, at the close of this Parliament the King said as follows:—

You all remember that at the meeting in Vava'u, these two titles were conferred upon me.

1. The Tu'i Tonga.
2. And the Tu'i-Ha'atakalaua in addition to my own title of Tu'i-Kanokupolu.

And therefore, it is my desire to appoint the foremost chiefs of those two tribes, and the Ha'a-Ngata Tupu also. I therefore appoint them now as hereditary titles.

1. Tungi with his descendants as the head of the Ha'atakalaua forever.
2. Kalaniuvalu with his descendants as the head of the Kauhala'uta (landward side of the road) forever.
3. Tupoutoutai with his descendants as the head of the Ha'a-Ngata Tupu forever.

It appears quite clear from this that the titles Tu'i Tonga and the Tu'i-Ha'atakalaua had been merged in the King, but the King, wishing perhaps to conciliate the heads of these large families, made Tungi the head of the Ha'atakalaua, and Kalaniuvalu, the son of the Tu'i Tonga Laufilitonga, the head of the Kauhala'uta.

These were merely titles. No grant of land was made to them at this stage. I do not think, for a reason which I shall give later, that the words concerning the Estates of the chiefs uttered by the King at the opening of Parliament can apply to the lands of the Tu'i Tonga.

Kalanieuvalu was succeeded by Fakaua (trustee for Sioeli Pangia) and in 1882 his tofi'a is defined as Lapaha, with its districts. It has been argued that the words "with its districts" means Hoi, Nukuleka and Makaunga. It is difficult to accept this, and particularly so in the case of Makaunga, which is many miles from Lapaha.

In Gazette No. 31 of the 8th January, 1890, there is published an Act called "An Act to Regulate, the Hereditary Lands of Nobles." In Section 2, it is enacted that "to the King belongs all the land soil inheritances and premises," and the Section then goes on to say that the King has been pleased to grant to the nobles and other Chiefs hereditary lands, and that the Act has been passed to regulate the inheritances.

In a Schedule of lands, published in this Gazette at the end of the Act above mentioned the tofi'a of Kalaniuvalu (Fakaua) is described as consisting of Lapaha, but not to include Hoi or Nukuleka or Ha'amene'uli but to include Hamula and Toloa.

It has been contended for the plaintiff that the villages Hoi, Nukuleka and Makaunga belong to his tofi'a because the people of these villages paid homage and rent to Kalaniuvalu and Fakaua. This the people doubtless did, but I think it can reasonably be held they did so, as the old traditional homage and payments to the Tu'i Tonga, from whom Kalaniuvalu and Fakaua were undoubtedly descended.

It has also been contended that the tofi'a was confined to Lapaha because this was all Kalaniuvalu "returned" as his when asked by the King to give particulars of his tofi'a. I do not think this argument can be sustained, for he was, in fact, given more than Lapaha. He was also given Hamula and Toloa.

In Gazette To. 5 of 1919, it is clearly reiterated that the tofi'a is limited to Lapaha, Hamula and Toloa. Hoi and Nukuleka are again expressly excluded.

To revert to the question of rents. In 1904, the then Minister for Lands was asked to furnish a list of Villages which were in the Government tofi'a. The villages of Hoi, Nukuleka and Makaunga are all in this list.

A Rent Register produced shows that from 1908, rents were paid to the Government by the people of these villages.

In 1917, an Act (No. 2 of 1917) was passed, constituting — a Land Commission. The Commission appointed under this Act, found that Hoi, Nukuleka and Makaunga belonged to Sioeli Pangia. They were held to be his until 1932. It was during this period that rents were paid to Sioeli Pangia, as certain receipts butts tendered on behalf of the Claimant show.

In 1932, however, the validity of the "Lands Commission Act 1917" was challenged; and the Land Court, in an action brought by the Minister for Lands against Sioeli Pangia for the recovery of the villages given him by the Lands Commission, held that the findings of the Commission were of no effect, the Commission being contrary to the Constitution, as amended by Law No. 25 of 1916.

With this decision I entirely agree. The Commission was not the Land Court contemplated by the Act of 1916.

There can be no doubt that the finding of the Lands Commission is the reason for the inclusion of Hoi, Nukuleka and Makaunga in the tofi'a of Sioeli Pangia as set out in Schedule I of the Land Act of 1927, for as above indicated, the finding of the Commission was not challenged until 1932.

Apart from the decision of the Land Court in 1932, however, I should find it difficult to come to the conclusion that the villages belong to the claimant. I cannot accept the argument that Nukuleka is part of the tofi'a because the Tu'i Tonga's fisherman lived there. As the Minister for Lands pointed out the Tu'i Tonga had fisherman at other places than Nukuleka, and it is not contended that these are part of claimants' tofi'a. Nor can I accept the contention that Makaunga must be a part of the tofi'a because Manu Mataoongo, with some of the Tu'i Tonga's matapules went to live there. I find it equally difficult to regard this village as part of the tofi'a, because there is a "langi" there. There are langis in many places in Tongatapu, and this is not disputed.

The position as I see it, is that the descendant of the Tu'i Tonga had, at the time of the granting of the Constitution lost all claim to any land, and lost all claim to the title of Tu'i Tonga. This latter had been granted to King George Tupou I, while as to the land, the Tu'i Tonga had, as a witness for the claimant stated, been dispossessed by the Tu'i Kanukupolu, i.e. by King George Tupou I. I am of the opinion therefore, that Kalaniuvalu was not like other chiefs, in possession of either land or title at the time, which could be confirmed to him. The King accordingly conferred a title as noble on Kalaniuvalu, doubtless because of his high descent, and he made him a grant of land for a tofi'a. This was, however in my opinion a new title with a new grant of land, and this land consisted of Lapaha, Hamula and Toloa. The schedule published in Gazette No. 31 of 1890 expressly excludes Hoi and Nukuleka. For reasons above given, I think too, it was never intended that Makaunga was to be part of the tofi'a.

In view, of all the foregoing, therefore, I am of the opinion that the plaintiff is not entitled to the lands claimed, and accordingly give judgment for the defendant, the Minister for Lands.