

LOPAMI TAUFELUNAKI v. SIONE PANUVI (representative of the Tu'ipelehake).

(Land Court. Richardson J. Vava'u, 12th March, 1948).

Tax allotment in excess of statutory area — Subdivision of allotments — Provisions of Land Act must be complied with — Surrender of allotments — Adultery of female holder — Steps to be taken — Cap. 27 (1928 Laws) SS. 27, 32, 69, 71, 73, 75, 81 — 85, 145.

This was a claim by the plaintiff against the representative of the Tu'ipelehake alleging that he had wrongfully taken part of his allotment back into the estate. The facts are fully set out in the judgment.

HELD: That the defendant had acted contrary to the law and that the plaintiff was the rightful holder.

Havili appeared for the plaintiff.

Mafua appeared for the defendant.

RICHARDSON J. : Plaintiff's claim is for the return to him of part of a very large tax allotment originally known as "Maluhola" on the Estate of Tu'ipelehake at Ha'atalafale in Vava'u.

"Maluhola" was originally held many years ago by one 'Isileli Fika. On the death of his father 'Isileli Fika elected under Section 73 of Cap. 27 to take his father's allotment and "Maluhola" passed to 'Isileli Fika's eldest son, Kalani, under the provisions of Section 75 of Cap. 27. Thus far the facts are not disputed.

Kalani died in 1918 and as to what exactly happened to "Maluhola" after this Plaintiff and Defendant disagree.

Plaintiff alleges that on the death of Kalani the whole allotment as it then stood passed to his widow, one Hifo, under Section 69 of Cap. 27, and evidence has been given by the widow herself to this effect and the registration of an allotment known as "Maluhola" in the name of the widow in 1919 has been proved. Shortly afterwards Hifo re-married leaving two small children — a boy and a girl named Tiueti and Tapi respectively. Plaintiff now alleges that in accordance with Section 71 (iii) of Cap. 27 Tiueti inherited the whole allotment but as he was then still a minor Plaintiff himself was appointed Trustee. Tiueti then died before reaching majority and Plaintiff alleges that he himself was then granted in his own right the whole of this allotment, there being no further heir entitled under Section 71 of Cap. 27. Some confusion then arose as when Plaintiff came to register this allotment in his own name in 1923 he registered not just "Maluhola" as before but "Maluhola 'Uta". The reason he gives for this is that his father who was still alive at that time already had a town allotment known as "Maluhola" and that he added to his the name "'Uta" in order to distinguish the two names. A little later, having secured for himself this allotment he says that he set

aside for Kalani's surviving daughter a portion thereof for her to live in and obtain her livelihood from whilst unmarried, and that she has been living there until recently when Defendant on behalf of the Tu'ipelehake has attempted to take this area back into the estate. It is this area that Plaintiff is now claiming back as part of his legal allotment.

Defendant's story however is very different. He says that so far as he has been able to ascertain what happened after the death of Kalani was as follows: on the death of Kalani, 'Isileli Fika who was himself at that time the representative in Ha'atalafale of the Tu'ipelehake, took it upon himself to divide the large allotment then known as "Maluhola" into two portions which became known thereafter as "Maluhola 'Uta" and "Maluhola Lala". Thereafter, he says, "Maluhola 'Uta" was granted to Plaintiff and it was this that Plaintiff in fact registered in 1923. "Maluhola Lala" however was the portion which the widow Hifo inherited after the death of her husband Kalani, and on her re-marriage this area was inherited by the son of Kalani, the young boy Tiueti, and on his death some time later it then passed by right of inheritance to the daughter Tapi who, Defendant alleges, has enjoyed possession as her tax 'api ever since. He then goes on to say that he has resumed possession of this portion known as "Maluhola Lala" from Tapi because she has committed adultery: there have been no Court proceedings under Section 71 (iv) of Cap. 27 because, as he says, she agreed to surrender the allotment voluntarily. Nevertheless Defendant further admits that there has been no legal surrender in accordance with Sections 60 — 62 of Cap. 27, and wishes to say that the surrender to him was merely verbal.

After consideration of the evidence before me and the appropriate sections of the Law which bear upon this case I find that I cannot accept the submission of Defendant for the following reasons:—

- (i). The alleged action of 'Isileli Fika in dividing the allotment into two portions on the death of Kalani was not legally possible. Any such division by the tofi'a holder or his representative could only have been done in the event of the allotment reverting at some stage to the Tofi'a and being re-issued. This quite clearly did not happen on the death of Kalani as there were obvious claimants under Sections 69 and 71 of Cap. 27. Any such attempted action on the part of 'Isileli Fika must therefore have been contrary to the provisions of the law.
- (ii). Whether or not it was competent under the law for females to inherit land at all in 1923, the daughter Tapi could not have inherited the tax allotment under Section 71 of Cap. 27. On the re-marriage of the widow Hifo, the son Tiueti inherited the allotment in accordance with

Section 71 (iii) and although he was only a minor and a trustee had to be appointed, nevertheless he became the rightful holder. On his death he left no heirs because he was too young to do so and there is no provision under any of the subsections of Section 71 of Cap. 27 whereby his sister, Tapi, could possibly have inherited the land.

(iii). Even had it been possible for Tapi to inherit this land as her own tax allotment, Defendant is showing a complete disregard of the law in attempting to disposses her without reference either to the Court or the Cabinet. If the facts as alleged by him were true he should have brought action for ejection under Section 71 (iv) to prove the adultery, or if she wished, as he alleges, to surrender the land voluntarily there are provisions in the law whereby such surrender can be legally affected. In attempting to disposses her of the land without observing provisions of the law he has clearly committed a breach of Section 32 of Cap. 27.

I do however accept the story of Plaintiff as being a substantially true account of what probably happened to the land. Quite clearly, on the death of the young son Tiveti, there was clearly no further heir and under Section 71 (vii) of Cap. 27 the allotment reverted to the Estate. I further believe that a re-grant was made to Plaintiff at this juncture: the only point in issue is the precise extent of the new grant to Plaintiff, and in the absence of direct evidence to the contrary I accepted the submission that the grant to Plaintiff was of the same area of land as that previously held by Tiveti before his death and I accept Plaintiff's explanation of the change in name of the area when he registered it in 1923 as being a reasonable one.

I find therefore that the area legally registered by Plaintiff in 1923 was the same as that previously held by "Isileli Fika and included both the areas referred to as "Maluhola 'Uta" and "Maluhola Lala", and that consequently Plaintiff secured in 1923 a legal title to the whole of this area. Furthermore he has been undisturbed in possession of this area, on which he has permitted Tapi to live, since 1923 and Defendant is debarred from disputing that possession by Section 145 of Cap. 27. Plaintiff is therefore legally entitled to the area to which Defendant refers as "Maluhola Lala" in addition to the remainder of the land which he now holds; in attempting to take it away and return it to the estate Defendant has acted in contravention of Section 32 of Cap. 27.

I therefore order in accordance with Section 32 of Cap. 27 that Defendant shall immediately restore this area to the Plaintiff as part of his legally registered tax allotment. I do not impose any fine as provided for by Section 32 of Cap. 27 but Plaintiff is at liberty to institute a civil suit against Defendant to recover any damages that he may have suffered through Defendant's unlawful action. Defendant must pay £3 costs to Plaintiff in this case.

Defendant has raised the further point that the area to which Plaintiff has now established title is very much in excess of the statutory $8\frac{1}{4}$ acres of a tax allotment. That may well be so but the law provides at Sections 81 to 85 of Cap. 27 for dealing with such a position, and Defendant must observe the provisions of the law: he may not act executively in such a matter, and it must be remembered that if the Deputy Minister of Lands does see fit to give notice of his intention to divide the land under Section 81 (1) the provisions of Sections 81 (2) and 82—85 must equally be observed and Plaintiff must be given a fair chance of obtaining a lease of the excess area if it is not required for other members of his immediate family in accordance with custom.
