

## SIOSEPA LIKILIKI v. LONI VEA.

(Civil Case. Higginson J. Nuku'alofa, 19th October, 1951)

Sale of lease — Registration of Transfer — Consent of Cabinet — Transmission of property not a transfer — Consent of Cabinet unnecessary — Appointment of Administrator — Duties of Administrator — Directions to Administrator — Power of Court — Contempt of Court.

The Plaintiff in her writ claimed from the Defendant delivery up of a document referred to in the particulars as Deed of grant No. 1610. The document was apparently a lease which the Plaintiff had purchased from S. Uili Vea for £500 in 1947. S. Uili Vea died on the 5th April, 1951 but up to the date of his death had not transferred the lease to the Plaintiff although she had paid the full amount of the purchase price and had gone into possession of the property. The lease was in the name of S. Uili Vea's wife — Sela Uili Vea who died on the 1st September, 1947. S. Uili Vea was appointed Administrator of her estate.

The defendant was appointed Administrator of S. U. Vea's estate on 18th April, 1951.

He refused or neglected to hand over the "Deed of Grant" and took no steps to have the lease registered in the Plaintiff's name. The facts sufficiently appear in the judgment.

HELD. Defendant ordered to hand over the lease to the Court forthwith. Failure on his part to do so to be treated as contempt of Court.

Finau appeared for the Plaintiff.

Defendant appeared in person.

C. A. V.

HIGGINSON J. Sela Uili Vea died on the 18th September, 1947 and Letters of Administration were granted to Sione Uili Vea on the 30th September, 1947. Among the list of her property declared by Uili Vea was lease No. 1610 valued at £70 and a house valued £300 which was on this lease.

In 1947 Willie Vea started to negotiate with Plaintiff and her husband with a view to Plaintiff taking a transfer of this lease in 1947 and on 3/11/47 Plaintiff paid the first instalment of £200 having agreed to pay a total of £500. The last payment was made on 29/6/48 and the receipt stated that it was the final payment and included the transfer of the lease to her name. In January, 1948 the Plaintiff entered on the lease at Willie Vea's suggestion and has lived there ever since.

From the above it is clear that the Plaintiff was in possession and that the purchase money had been paid in full and that all that remained to be done was to register the transfer.

Exhibit "B" is said to be a copy of a letter Willie Vea wrote to the Minister for Lands on 29/6/48 i.e., the date on which he received the final payment applying to transfer the lease to Plaintiff.

Plaintiff says Willie Vea gave this copy to her. But nothing further was done by Willie Vea towards the transfer. Plaintiff also saw the Minister for Lands who told her that the transfer would have to be made from Sela to Willie Vea and then from him to Plaintiff.

The Cabinet on 26/8/49 informed Willie Vea that it refused to transfer lease 1610 to Plaintiff until Willie Vea first applied for a transfer from Sela to himself and then he should apply to transfer from himself to Plaintiff.

This letter is important as it shows that Willie Vea was not only fully instructed what steps to take but it also made it quite clear that at the time Willie Vea received this letter he had no legal authority to dispose of the title to this lease in any way.

Willie Vea died on the 5th April, 1951 and up to the date of his death he had not transferred this lease.

The Defendant Loni Vea was appointed Executor of the Estate of Willie Vea. But no one has been appointed to administer Sela's estate. No administrator can by his will appoint an Administrator of an Estate. This can only be done by the Court, and an Administrator must be appointed to complete the winding up of Sela's Estate.

Willie Vea went to New Zealand in 1948 and returned in February or March, 1959, and died on 5/4/51. On the 8th April, 1951 and again on the 19th April, 1951 Defendant wrote to Plaintiff's husband stating that the Deed of Grant (presumably the Lease) was under Bond and that Defendant proposed to increase the purchase price by £20 to pay off this Bond and making various other demands and suggestions.

From this it appears clear that Defendant was intermeddling in both the Estate of Sela and also Willie's Estate without any authority at all as it was not until 1/6/51 that he was granted Probate of Willie's Estate and he has never been appointed Administrator of Sela's Estate.

The Defendant has elected not to give evidence. He probably had good reasons for doing so.

In his address Defendant has alleged that the "Deed of Grant" the lease, was deposited with one Richter of New Zealand by Willie Vea as security for £NZ366. Defendant says he has a letter from Richter to this effect but admits that the letter made no mention of the Deed of Grant. Defendant has also referred to a Bond but has produced no written document. Therefore we have only the Defendant's word, not even on oath, that this Lease cannot be produced and the transfer registered.

Since Willie Vea has never had this lease transferred to him as Administrator it would appear that he had no authority to deposit this lease as security. Nor had he any authority to misappropriate this £500 to his own use as would appear from the receipts which are signed by him in his own name and not as Administrator.

It would therefore appear that it is on Willie's own Estate will fall the responsibility for satisfying any legally payable debt necessary to procure the release of this Lease, provided of course Defendant's story has any truth in it.

A good deal has been said by both sides as to obtaining the consent of Cabinet to the transfer of this lease.

Form 3 in Schedule VIII of Cap. 27 is the form of lease and Form 8 is an additional clause forbidding the transfer of a lease without the consent of Cabinet first had and obtained. In the present case although the purchaser has paid the full purchase money and has gone into possession there has been no transfer because the Administrator of Sela's Estate up to the time of his death failed to take steps to effect the transfer although he was told by Cabinet what to do. The Cabinet have stated that the Administrator must first apply for leave to transfer from Sela's name to himself as Administrator, with this I do not agree.

In my opinion no such consent is necessary in this case as strictly it is not a transfer but a transmission. A transmission of property other than a transfer means a transmission by operation of law unconnected with any direct act of the party to whom the property is transmitted (Stroud). In the present case the Court by virtue of its powers under Cap. 7 appoints an Administrator of the Estate and so by operation of law the deceased's Estate becomes vested in the Administrator and the Administrator by virtue of his appointment and not by any direct act of his own becomes seized of the property.

When the transmission has been registered then before a transfer from the Administrator to the purchaser (Plaintiff) can be effected application must be made to Cabinet.

I place no faith in Defendant's story as to the whereabouts of the Lease and he has not given Court any satisfactory explanation for not producing this lease. On the other hand there is strong evidence that Defendant although at the time he had no authority to deal with either of these Estates, was attempting to blackmail the Plaintiff or her husband into paying a further £250 or else for Plaintiff to agree to a return of her money and abandonment of this lease so that Defendant could re-sell the lease for £1,000.

Had there been any truth in Defendant's story as to why he cannot produce the Lease he should have proved his case in the only way and that is by evidence on oath and production of all documents in support of his Defence. Instead of that he has refused to give evidence, has produced no documents and has been content to tell the Court a story which if true could have been proved but which as it stands is entirely unacceptable.

I order the Defendant to take immediate steps to produce this lease and hand it over to the Court.

I must remind Defendant that any irregularity by Willie Vea in dealing with this lease must be paid for out of Willie Vea's estate and not out of Sela's because any such irregularity as alleged by the Defendant has been for Willie Vea's own personal benefit and not for the benefit of Sela's estate.

If at any time it appears to this court that the Defendant has failed to carry out its order with due expedition and without unreasonable delay it will be open to the Court to call the Defendant before it with a view to committing the Defendant to prison for contempt or making such other Order as may be expedient.