

'ALAMONI TU'IPULOTU v. DEPUTY MINISTER OF
LANDS AND S. P. VEIKOSO.

(Land Court. Hunter J. Molofaha, Assessor. Vava'u, 12th
and 15th October, 1956).

Applications considered simultaneously — Minister's discretion — Decision
by throwing dice — not a proper exercise of Minister discretion.

On the 26th October, 1948, the plaintiff submitted an application to the Estate Holder who signed it in the usual way. On the same day the application was submitted to the Minister for approval. The Minister deferred it pending survey and noted it himself to that effect. On the 15th November, 1948, the defendant submitted an application (signed by the Estate Holder) to the Minister for the same allotment. On the 16th November, 1948, the Minister considered both these applications and as both the applications had been signed by the Estate Holder and were in order directed that the matter be decided by throwing dice. The defendant won and was then registered as the holder.

HELD: The Minister has a discretion but it is a judicial discretion and must be exercised properly. Making a decision by chance is not a proper exercise of this discretion.

Verdict for the plaintiff.

Mafua and Pousima appeared for the plaintiff.

The Deputy Minister appeared in person.

Tafolo appeared for defendant Veikoso.

HUNTER J.: This is an application on behalf of the Plaintiff that a direction be given to the Minister that a tax allotment known as Huihui be granted to the Plaintiff and that the Register be rectified by deleting the name of the defendant Sione Peluvalu Veikoso and inserting in place thereof the name of the Plaintiff.

I find the following facts:

(1) On the 26.10.48 the Plaintiff's father, acting as his agent, submitted an application in usual form signed by the Plaintiff to Fotu the Estate Holder for his approval of the grant of Huihui. Fotu approved the application and signed it on the same day.

(2) On that day the application was submitted to the Minister for his approval. The Minister deferred the matter pending survey. This is evidenced by a notation on the Application (Exhibit A) which is in the Minister's handwriting.

(3) On approximately 15.11.48 the defendant submitted an application to the Minister for the same allotment, approved by Fotu but dated the 9th October, 1948. The Plaintiff's father says that this date is a mistake and should be 9th November, 1948. Whether that be so or not is immaterial in my view as the important date is the date of submission of the application to the Minister.

(4) On the 16th November, 1948 both the applications were considered by the Minister and he, feeling himself in a dilemma since the Estate Holder had approved of both applications, directed that the matter be determined by throwing dice. This was done and the defendant declared the winner. The allotment was granted to him and registered in his name. Section 34 of the Land Act is the section which controls the granting of allotments from an hereditary estate. It will be noted that the Estate Holder is bound to grant an allotment to an applicant whose application the Minister has approved. This is subject to the Estate Holder's right to have the matter reviewed by the Court within three months.

It is clear that the Minister is the Authority to grant or refuse an application, not the Estate Holder.

The Minister has a discretion, but that discretion must be properly exercised. My view is that once the Minister has properly exercised his discretion then his decision should not be upset by the Court, even if the Court feels that it would have come to a different decision.

In this case however the Minister never exercised his discretion at all. He let the matter be decided by mere chance and did not address his mind properly to the question which was before him i.e. which of these two applications should be granted. He was bound to make up his mind on this question and this he failed to do.

According to the evidence both the applications were in order and both the applicants complied with all the requirements of Act. In these circumstances the application which was first submitted to the Minister must be preferred and therefore the allotment should have been granted to the Plaintiff.

I give a verdict for the Plaintiff and order that the Register be amended by deleting the name of Sione Peluvalu Veikoso as the holder of Huihui and inserting therein the name of the Plaintiff. No order as to costs.

EDITOR'S NOTE: The defendant appealed. On the 25th January, 1957, the Privy Council (Hammett C.J.) upheld the appeal. See page 151.