

'ETONI MA'ASI v. 'AKAU'OLA AND THE DEPUTY  
MINISTER OF LANDS.

(Land Court. Hunter J. Fevaleaki Tupou, Assessor. Vava'u,  
31st October, 1956).

Court bound by entries in Register — Right to election — Fraud to be  
proved strictly.

The plaintiff asked that the Register be amended by deleting his name as registered holder of an allotment known as "Ongea" and registering him as the holder of "Maliunga". He suggested that the entries had been made by mistake or by fraud on the part of the Deputy Minister.

HELD: That an entry in the Register was conclusive evidence of ownership unless it be shown to have been made by mistake or fraud. If fraud is alleged it must be strictly proved. As there was no evidence of mistake or fraud there must be a verdict for the defendant.

Mafua appeared for the plaintiff.

Fiinau appeared for the defendant.

Piutau (Governor's Clerk) appeared for the Deputy Minister.

HUNTER J.: In this case the Plaintiff is asking that the Register of tax allotments be amended by inserting his name as the Registered Holder of an allotment known Maliunga Fakalahi ki keila and deleting his name as the holder of Ongea.

It appears by the Register that on 13. 12. 27 the Plaintiff was registered as the holder of Maliunga and part of Keila. Against this registration is a notation (undated) "Elected for the allotment of his father P. 130 No. 3" And the allotment Maliunga so shown as "Reverted to the Estate Holder".

P. 130 No. 3 of the Register shows against the allotment Ongea "Transferred from 'Esipili Moala to 'Etoni Ma'asi Moala on 26. 3. 36.

'Esipili Moala was the father of the Plaintiff 'Etoni, who was the eldest son.

The Plaintiff's evidence is that on the death of his father he in company with his wife saw the Deputy Minister 'Akau'ola (who was the holder of the Estate in which Maliunga is situated) and elected for Maliunga, in accordance with his rights under S. 73 of the Act. He says he asked the Minister to grant Ongea to a nephew of his, Sione. This, according to the Plaintiff the Deputy Minister refused to do but told him to occupy "Ongea and pay the rents to the Crown, but that as long as he lived he could also continue to occupy Maliunga. The Plaintiff says he told the Minister that he did not agree with this and although he does not say so in so many words he suggests that he insisted on his right of election for Maliunga.

In 1953 the Plaintiff received written notification from 'Akau'ola's representative that he must cease occupying Maliunga, and

the Plaintiff says that it was then for the first time that he knew that his name had been deleted as the Registered Holder of Maliunga and entered as the holder of Ongea by transfer.

His wife was called who supported this evidence. She was present at the conference with the Deputy Minister and agrees with the Plaintiff's account of it. 'Akau'ola is now dead; and the Defendant's counsel called no evidence.

If the Plaintiff's evidence be correct then he should be registered as the holder of Maliunga and the alterations in the Register have been made illegally and should be disregarded by the Court.

As I have said before, the Court is bound by the entries in the Register, unless it can be shown that they have been made by fraud, mistake, or without jurisdiction etc. Until it is shown to the contrary the Court must presume that the Register is correct. If the Plaintiff's submission is correct then it would probably mean that the Deputy Minister and Estate Holder has been guilty of willful fraud in making these alterations in the Register. Fraud is a serious charge and the Court is unwilling to find fraud unless it is strictly proved. Here there is no evidence to support such a charge and I do not accept it. The Plaintiff's case depends on a conversation that took place twenty years ago and I feel that it is quite likely that both the Plaintiff and his wife have forgotten exactly what was said and done at this conversation. Were idle speculation of any value, what probably happened was this: The Plaintiff saw the Deputy Minister and said he wished to elect for Maliunga and that Ongea be granted his nephew Sione. The Minister then pointed out that under Section 75 of the Act even if the Plaintiff refused his father's allotment it could not be granted to Sione; and advised him to elect his father's allotment, otherwise it would revert to the Crown. It is possible that 'Akau'ola said if you do this I will allow you to occupy Maliunga for the rest of your life. The fact that the Plaintiff has since, been regularly paying the rent for Ongea lends support to this suggestion. Unfortunately for the Plaintiff 'Akau'ola changed his mind.

However, be that as it may, no evidence has been put before the Court sufficient to justify it in saying that the Register is wrong.

Verdict for the Defendants.

Plaintiff to pay costs assessed at £10.10.0. Costs to be paid into Court on or before the last day for appealing.