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KAPETI MAKA v. MINISTER OF LANDS AND
VILIAMI 'ASIPA.

(Land Court. Hunter J. 'Etoni Tonga, Assessor. Nuku'alofa,
15th, 16th and 19th November, 1956).

Registration of Allotments — Minister's discretion — Registration con-
clusive in absence of mistake etc. — Disagreement between Judge and
Assessor — Law must prevail over sympathy.

The facts are set out in the judgment. The Minister refused the
plaintiff's application for an allotment on the ground that he was a tax-
payer in another district and that he should first apply for an allotment in
that district. The Minister registered the defendant as the holder of the
allotment in dispute.

JIELD: That the Minister had properly exercised his discretion and that
his decision should not be upset even though the learned Assessor took
the opposite view.

Verdict for the defendant.

Finau appeared for the plaintiff.

Kinalhoi (Clerk) appeared for the Minister.

Koloamatangi appeared for the second defendant.

C.A.V.

HUNTER J.: I have discussed this case with the learned
Assessor and unfortunately our views differ. I understand that
in his opinion right is with the plaintiff and he should succeed.
It appears to me, however, that the law is clearly on the side of
the defendant and whatever the merits of his case may be the
Court's duty is to administer the law. The Court cannot allow
sympathy to sway its judgment and even if a seeming injustice is
brought about, that is not a matter which the Court can take into
consideration if the law governing the position is clear.

The Plaintiff is claiming a tax allotment known as Tou'one,
or part of Tou'one, of which the Defendant is the registered hol-
der. As I have said in this Court before the Court should not
upset a registration made by the Minister unless it is clear that
the Registration has been made by mistake, fraud, or without juris-
diction or for some similar reason. The Minister has a discretion
as to whom of several applicants a grant shall be made and unless
it be shown that this discretion has been improperly exercised or
that the grantee is not legally entitled to the allotment, then the
Minister's discretion should not be overruled by the Court.

The facts are as follows: the allotment in question forms
part of a larger area of land which had been in the possession of
the Plaintiff's family for many years. It was originally held by
his grandfather and I have no doubt on the evidence that the
family (including the Plaintiff) cultivated and improved this land
and planted it with coconut palms.

The area was subdivided into three $8\frac{1}{2}$ acres allotments, now
known as Tou'one 1, 2 and 3 and in 1937 Paula Maka, the Plain-
tiff's elder brother, was registered as the holder of one of these
allotments. Another is now registered in the name of a man

called Kutu and the third (the one in dispute) was registered in the name of the Defendant on 10th September, 1952.

In 1947 the Defendant in this case brought an action against a man named Salesi Kautoke claiming an allotment from him from an area of land originally held by one Sulio Malupo. The Judgment of the Court was that this land be divided in three allotments of statutory area, that the Defendant in that case (Kautoke) was to retain the allotment for which he was already registered, and that the Plaintiff (the present Defendant) be given 8½ acres from the remainder. I am satisfied that this land is not the land involved in the present case.

On the 29th August, 1951 the Plaintiff in this case duly applied for an allotment described by him as Tou'one. He said, and I believe him, that it was understood by the Minister that the application referred to the land now in dispute. On the 19th February, 1952 the Defendant applied for the same piece of land.

The Plaintiff's application (Exhibit A) bears the following endorsement: "The applicant is a tax payer of Tatakamotonga and he should have his allotment in that district." There is no indication as to who made this endorsement. I should say here that the land in question is in the Fatumu district, on Crown Land.

On the Defendant's application (Exhibit B) appears the following endorsement: "In view of the Judgment of the Land Judge in case No. 101/47 on 27/1/48 the Minister of Lands has agreed this day (10/9/52) that no. 3 be registered by V. 'Asipa. Ordered both by 'Akau'ola and Tu'ipelehake." This is signed by 'Akau'ola on 10/9/52. 'Akau'ola was then the Minister for Lands.

On the 10th September, 1952 the Defendant was registered as the holder of the land in dispute.

It is contended by the Plaintiff that this registration was made by mistake, as the Court had directed that a different piece of land altogether should be given to the Defendant and that the Minister had no authority to grant him Tou'one 1 and that therefore this Court should now cancel this registration.

Even if this is correct, I do not think that it helps the Plaintiff. The Minister had considered his application and refused it, apparently on the ground that he was a tax payer in another district and, in accordance with Section 48 of the Act, should first apply for an allotment in that district. This is a perfectly valid reason for refusing the application and one with which this Court cannot interfere.

That ends the matter. Whether the Defendant was or was not properly registered as the holder of this allotment does not effect the present issue, as I have said above. It appears that the Minister's decision that the Plaintiff's application be refused was a decision he was quite entitled to make. I therefore grant a verdict for the Defendant.

EDITOR'S NOTE: The Plaintiff appealed. On 12.12.58 the Privy Council dismissed the appeal. See page 155.