

FOLAU TOKOTAHA (Appellant) v. DEPUTY MINISTER OF LANDS AND SANI VEA (Respondents).

In the Land Court (Hunter J.) in Vava'u the Appellants' claim to a town allotment named Tu'amaama was dismissed. He appealed. The Privy Council (Hammett C.J.) dismissed the appeal. The judgment is reported as it contains some important observations upon Section 98—101 of the Land Act (Cap. 45) and the requisites necessary for the proper registration of an allotment.

On 12th December, 1958 the Privy Council delivered the following judgment :

This is an appeal from the decision of the Land Court dated 19th October, 1956, whereby the Plaintiff's claim for a town allotment called "Tu'amaama" at Fungamisi was dismissed.

Many of the material facts are not seriously disputed and are as follows.

In 1938 the Plaintiff applied to the Deputy Minister of Lands, Vava'u, for this town allotment called "Tu'amaama". He paid the fee of 10/- on 3rd June, 1938, and his name was entered in the register. No deed of grant was however issued to him.

At some time unknown, the entry of this grant in the register was endorsed in red ink "Vide page 11 : No. 19 : regranted : this allotment was wrongly registered." No one knows who made this entry nor by whose authority it was made.

In 1946 the Defendant applied for the allotment and he was registered as the holder of it on 15th April, 1947. He was issued with a deed of grant in respect of it on that date.

There is no suggestion or evidence that the Defendant or the Deputy Minister of Lands in 1947 acted in bad faith in this matter.

The Plaintiff heard that the Defendant was in possession of the allotment at about this time but he did not issue his summons in the Land Court until 1952.

The learned trial Judge with justification made a number of critical comments on the inefficient manner in which the register was kept and the applications were dealt with in this case. It is certainly difficult to understand why no deed of grant was issued in 1938. He did however reach the conclusion that the title to an allotment is not complete until the holder's name is both entered in the Register and a deed of grant is issued to him. From this he held that the Plaintiff's title was incomplete since no deed of grant had ever been issued to him however, since, the Defendant's name had been entered in the Register and a Deed of Grant had been issued to him, his title was complete and the Plaintiff's claim to the allotment must fail.

We have considered all grounds of appeal in the case and are of the opinion that the learned trial Judge could not properly have come to any other conclusion.

The provisions in the Land Act (Chapter 45) concerning the registration of Allotments and the issue of deeds of grant in respect of them by the Minister of Lands are contained in Section 98 to 101.

It is clear that formal registration consists of the registration "of the deed of grant." Registration is not complete until the deed of grant is prepared and a duplicate signed by the Minister and handed to the applicant and the original "registered" and bound up. Since no deed of grant was ever issued to the Plaintiff in this case his "registration" was informal and incomplete.

For the title of an allotment holder to be complete it is necessary for him to be issued with a deed of grant and for that deed of grant to be registered. The Plaintiff's title in this case was never complete.

In these circumstances the appeal must be dismissed with £5/- costs.