

VILIAMI HEMA v. FATANI TAVAKE HEMA AND  
MINISTER OF LANDS.

(Land Court. Hunter J. Tongilava, Assessor. Nuku'alofa, 12th  
and 13th February, 1959).

Registration of tax allotment — Error in Registration — Error corrected —  
Registration altered.

The plaintiff alleged that he was the rightful holder of a tax allotment which was registered in the name of the defendant. He alleged that the registration was made by a clerk in the Department in error.

**HELD:** That although registration is *prima facie* evidence of ownership, if the Court is satisfied that the registration has been made in error the Court will order a rectification of the register.

Verdict for the plaintiff.

Tu'akoi appeared for the plaintiff.

Finau appeared for the first defendant.

The Minister appeared in person.

C.A.V.

**HUNTER J.:** The facts in this case, which are not in dispute, are as follows:

A tax allotment known as "Hae'ia" was originally in the possession of a man named Sateki Moala who had three sons — Stone Fifita, Kau, and 'Esafe Hema (who was the father of the Plaintiff). The defendant is the Plaintiff's younger brother. At some stage this allotment was divided into two allotments of equal size — No. 65 to the East and No. 66 adjoining 65 on the West. Whether this division was made during the lifetime of Sateki I am not sure, but probably it was after his death. No application by the heir to either of these allotments was ever made but the allotment to the East was occupied for some time by Kau and that to the west by 'Esafe Hema and his family, including the Plaintiff and the Defendant.

In 1938 'Esafe Hema and the Plaintiff saw the Minister and applied for a grant to the Plaintiff (Viliami Hema) of the allotment to the West. The Minister pointed out that as no application by the heir to succeed had been made within the statutory period a fresh application should be made and he told the Plaintiff and his father to return with a written application and the necessary fees. This was done but it was only the father 'Esafe who returned to the Minister with the written application and the fees. As both the Minister and 'Esafe are now dead we unfortunately do not know what transpired at this meeting. No record can now be found in the Lands Department of the Plaintiff's written application. The Plaintiff says he applied for No. 66, i.e. the Western allotment on which he and his father (and the Defendant also for some time) had been working. I am quite satisfied that the Plaintiff was speaking the truth about this and I

am quite satisfied that the application made by 'Esafe and the Plaintiff was for the allotment now known as No. 66, i.e. the western allotment, and I also feel sure that this is the allotment the Minister wished the Plaintiff to possess.

I am satisfied that an error was made by the clerk in making the entry in the register when he referred to the allotment as No. 65. For some reason the Plaintiff was not issued with a Deed of Grant but he received a Tax Allotment Certificate signed by the Minister, which stated that he was the holder of a tax allotment -- "Part of Hae'ia". This certificate contains no reference to any allotment number; it is dated 25.7.38. From that date up to the present the Plaintiff continued to occupy and to cultivate the Western allotment, No. 66, which he says, and I believe him, he thought was the allotment which had been registered in his name.

He never had any notice that the allotment for which he was registered was No. 65. If he had looked at the Plan or the Register he would have known but there was no duty on him to do this, nor any reason why he should do so; he was quite justified under the circumstances in relying on the certificate with which he had been issued.

On the 15.4.1952 the Defendant applied for a grant of that part of Hae'ia which he described as follows: "not already registered and which was occupied by Kau". This application was approved and the Minister registered him as the holder of No. 66 which according to the Register was then unregistered, but had never been occupied by Kau, at least not for many years.

The Defendant received a Deed of Grant dated 17.4.52 and although this deed clearly shows that the allotment registered in his name was No. 66 he went into occupation of No. 65 and it was not until October, 1958 that he wrote to the Plaintiff disputing his right to No. 66. Why the Defendant waited all this time before making a claim is not known as he himself has given no evidence.

I am quite satisfied that the reference to No. 65 in the Register and on the plan in connection with the Plaintiff was an error on the part of the clerk whose duty it was to make the entry and had it been brought to the notice of the Minister at the time it would have been rectified at once.

Under all the circumstances a grave injustice would be done to the Plaintiff were the Defendant allowed to profit by what I am sure was a clerical error. I therefore give a verdict for the Plaintiff and direct that the Register and plan be corrected by showing the Plaintiff as the registered holder of No. 66 and the Defendant of No. 65.

Verdict for Plaintiff.

No. order as to costs.

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