

KAIANUANU v. FULIVAI (Noble).

(Land Court. Hunter J. Tu'ilakepa, Assessor. Vavai'u, 1st, 2nd, 5th, 6th April, 2nd May, 1960).

Hereditary titles — Adopted sons — Inheritance to be traced from noble appointed by Tupou I in 1880 — Constitution Clause 107 — Gazette 1880, No. 1. Vol. II, No. 6 Vol. II.

This was a claim by the Plaintiff to the estates and title of Fulivai. The plaintiff was a descendant of Sioflisi Kaianuanu who was the person appointed to the title by Tupou I in 1880 when he proclaimed certain chiefs hereditary nobles. Sioflisi was an adopted son of Kemoe'atu. The defendant was descended by blood from Kemoe'atu.

HELD: That as the Plaintiff was the direct descendant of Sioflisi who had been appointed an hereditary noble by Tupou I the estate must descend to his heirs and that the plaintiff was therefore the rightful holder.

Verdict for the plaintiff.

Finau appeared for the plaintiff.

Fakalata and Pasoni appeared for the defendant.

C.A.V.

HUNTER J.: The Plaintiff, Sioflisi Tevita Kaianuanu, is claiming the title of Fulivai and the estates pertaining thereto.

The present holder of the title, Talo Lakepa the defendant was appointed in 1957, subsequent to the death of the previous Fulivai, Tevita Ului who was the plaintiff's father.

Tevita Ului acceded to the title by a virtue of a decision of the Land Court which was confirmed on appeal by the Privy Council in 1927. That was a case in which Ului claimed the title from 'Iki who had been appointed by Her Majesty Queen Salote in 1919. 'Iki traced his descent from Kemoe'atu, the person marked No. 3 on Defendant's Exhibit 1, which was admitted by the Plaintiff to be correct. Tevita Ului was the son of Sioflisi Kaianuanu, No. 4 shown on the exhibit, who was an adopted son of Kemoe'atu marked No. 3.

The defendant by his Council submitted that the Plaintiff can not succeed as his descent is traced through an adopted son and in accordance with the Amendment made to Clause 107 of the Constitution by Act No. 15 of 1953 the title must now go to blood descendants of the original holder. As this Court said in the case of Leone 'Etu v. Nuku, confirmed by the Privy Council on appeal in 1958, this Amendment to the Constitution applies only to cases of adoption after the 27th June, 1954 as Clause 20 of the Constitution forbids the passing of laws which affect rights or privileges retrospectively, and therefore this objection to the Plaintiff's claim is not sound.

Apart from this however, my view is that the hereditary title of the Noble Fulivai in accordance with the Constitution was established in 1880, when Tupou I by letters patent under the great

Seal appointed certain Chiefs Hereditary Nobles of the kingdom "in accordance with the revised Constitution Act of Tonga" 1880. The names of ten chiefs so appointed as hereditary nobles are set out in a proclamation issued by His Majesty on 2nd August, 1880. (See Government Gazette No. 1 Vol. II) and among those names appears Siofilisi Fulivai, Vava'u". There is no doubt that the noble so referred to is identical with Siofilisi Kaianuanu — No. 4 on Defendant's Exhibit 1. This man was the adopted son of Kemoc'atu. See also the King's Speech on the prorogation of the Legislative Assembly in 1880. (Government Gazette No. 6 Vol. II) in which he referred to his appointment of the Fulivai as an hereditary Noble of the Land. It is true that the name Fulivai was in existence before this but it was not until 1880 that the Chief, Fulivai was created an hereditary noble according to the Constitution, and it is from this man, it matters not whether he was adopted or not, that the title of the noble Fulivai must be traced. That being so it should have descended to Kaianuanu's son Ului (which it did in a roundabout way) and from him to his eldest son — the Plaintiff.

I find a verdict for the Plaintiff, and direct that he is the proper heir to the Fulivai appointed since the Constitution and that he succeeds to the Tofi'a of the Fulivai's.

I reserve the question of costs until the Court hears the submissions of Counsel.

EDITOR'S NOTE: The defendant appealed. On 18.8.61 the Privy Council (Hammett C.J.) upheld the appeal. See page 178.