

'ILAI SAANE VUNIPOLA v. THE MINISTER OF  
LANDS AND ANOR.

'ILAI SAANE VUNIPOLA v. THE MINISTER OF  
LANDS.

(Land Court. Hunter J. S. F. Kaho, Assessor. Nuku'alofa 12th  
and 13th June, 1962).

Transfer of allotments to widow — Affidavit not necessary — Claim alone  
sufficient — Land Act (Cap. 45 Section 51, 81.

These two cases were heard together. One was a claim by a widow  
for a tax allotment, the other a claim for a town allotment. The Minister  
objected that she was not entitled to be registered because when making  
her claim under Section 81 of Cap. 45 she omitted to file an affidavit.

HELD: An affidavit is not necessary as long as a claim is made. The  
Plaintiff was entitled to be registered.

Tu akoi for the Plaintiff.

S. Holani (Clerk to the Minister) for the Defendant.

C.A.V.

HUNTER J.: By Consent of the parties these two cases  
were heard together. One is a claim for a town allotment and  
the other a claim for a tax allotment. The facts in each case are  
identical.

Vunipola, the husband of the plaintiff was registered as the  
holder of these two allotments on the same day in June, 1928.  
Vunipola died on 19. 1. 51.

The Plaintiff's case is that within a month from her husband's  
death she and her son — Paula Ma'afu — attended at the office  
of the Minister of Lands and applied for the transfer of these  
allotments to her as the widow. She was asked by a clerk in the  
Minister's office to swear an affidavit and was given the usual form.  
She took the form that day to the Magistrate, made the affidavit  
and, according to her and her son, returned straightaway with the  
affidavit to the Minister's Office, and left the affidavit there. If  
she is correct in saying that the affidavit was returned to the Minis-  
ter of Land's Office it must have been lost there, because no trace  
of it can be found. However a certified copy produced from the  
Magistrate's Court was tendered. (Exhibit A) this affidavit is  
dated 8th February, 1951 and bears out the plaintiff's story that  
she applied for a transfer of the allotments well within the twelve  
months period referred to in Section 81 of Cap. 45. The allot-  
ments have not yet been transferred to the Plaintiff and the Town  
allotment has now been subdivided and a portion of it transferred  
to the second defendant.

The Defendants admit that the Plaintiff and her son attended  
the office of the Minister of Lands on the date they allege but sub-  
mit that as she filed no affidavit, there has been no claim within  
the twelve months as required by Section 81.

Paula Ma'afu said that as well as subdividing the town allotment in question a portion of his allotment has also been cut off and added to the part now registered in the name of Latukefu. He says that he was induced to sign a letter requesting the subdivision, by Latukefu who was then Clerk in the Minister's office saying to him that "we had already lost the allotment and the only way to retain part was to sign the letter." This letter was not produced. Ofcourse Paula Ma'afu had no authority to request that the town allotment in question be subdivided as he was not the holder. (See Section 51 of Cap. 45).

The whole question here is does Section 81 of Cap. 45 mean that as well as lodging a claim within twelve months the widow must also file an affidavit. The section says nothing about an affidavit I can find no rule nor any section of the act requiring an affidavit. No doubt it is a wise practice that the Lands Department has adopted requiring an affidavit to be lodged with a claim, but there is no statutory authority for it. All that Section 81 requires is that a claim should be lodged within the twelve months. Whether the Plaintiff at the same time lodged an affidavit, it is unnecessary to decide, though I am inclined to think she did. She certainly lodged a claim and in my opinion has done all that can be required of her and she should be registered as the holder of the two allotments in question. I am fortified in this opinion by the case of Taulango Latu v. Minister of Lands (No. 8/53). In that case Mr. Acting Justice Gavin decided that if a claim be made, the failure to file an affidavit can not affect the applicant's rights.

The result of this is that there must be a verdict for a Plaintiff in both these cases and I do find and direct that her name be entered in the Register as the holder of both these allotments for an estate for life, and that the subdivision of the town allotment be cancelled. What is to happen to the people occupying the subdivided parts of the town allotment is not directly in issue in these cases but they are trespassers there and the Plaintiff is at liberty to take action to have them removed.