MINISTER OF LANDS v. MANASE KAMOTO.

(Land Court. Hunter J. Assessor S. F. Kaho; Nuku'alofa, 8th, 11th and 12th June, 1962 and 18th and 22nd June, 1962).

Town allotments — Unregistered holder before 1927 — Posthumous registration of heir — Life estate of widow — Evidence of ownership — Registration not essential — Grant of allotment in excess of statutory area before 1927 — Order for subdivision — Minister has no power to order subdivision of Town allotments — Reopening case for further legal argument — Power of Court — Land Act (Cap. 15) Sections 7, 49, 51, 76 — 1903 Laws Clause 452, 466.

In this case a town allotment had been in possesion of the Kamoto family for many years prior to 1927. The original Manase Kamoto although he held the allotment prior to 1915 was never registered. In 1915 his widow (grandmother of the defendant) was registered, and on her death the defendant was registered. This allotment was in excess of the area laid down in the Land Act 1927. The Minister submitted that the registration of the defendant was made in error because on the death of his grandmother the allotment reverted to the Crown. After giving judgment the Court ordered the case to be put back into the list for argument as to whether the order that the allotment should be subdivided was correct. The decision on this further point is also reported below.

HELD: The registration of the defendant was valid and he was the legal holder of the allotment.

HELD further: that neither the Minister nor the Court has power to order the subdivision of a town allotment.

Hale Vete for the Plaintiff.

Tu'akoi for the Defendant.

C.A.V.

HUNTER J.: The Minister of Lands is claiming that the Defendant has no right to a town allotment known as "Navosa", although his name was registered as the holder by the Minister himself on 17. 2. 55. The Minister claims this registration was made in error without a proper consideration of the Law or the facts.

I am satisfied this allotment has been held by the Kamotos for many years. 'Etoni Tonga who is 89 years of age said in evidence that he knows that it "belonged" to the Kamoto family before 1900. There is no record of registration of this allotment in the books of the Lands Department until 1915 where it is shown as registered in the name of Lu'isa Nau Kamoto — the Defendant's grandmother. The original plan of town allotments of the area shows Manase Kamoto's name written on the allotment in question. There was no evidence of the date of this entry. The widow died on the 21. 12. 57, and on the 17. 2. 58 the 'api was registered in the name of her grandson — the present defendant. The Minister alleges that this registration is invalid as there was no evidence that the original Manase Kamoto — the husband of Nau — was ever entitled to the allotment.

This Court held in the case of Fifita Manakotau v. Hon. Vaha'i (31. 3. 59) that although registration is evidence of ownership it is not necessary to prove registration to establish ownership. A similar view was taken by the Privy Council in the case of Tu'i-'afitu v. Mesui Moala (25. 1. 57). In my view there is sufficient evidence here to show that the grandfather of the Defendant was the lawful holder of this allotment. This is supported by the finding of the Minister on the 17. 2. 58 that the defendant was the legal heir as he was the grandson of the original Manase Kamoto. In any case the failure of the original Manase Kamoto to effect registration (and it must be remembered that he held the 'api long before the Land Act Cap. 45 was enacted) does not matter in view of the proviso added in 1949 to S. 76 of Cap. 45. If the Minister is satisfied that the deceased person was the lawful holder he may effect posthumous registration at the request of the heir. This he has done and therefore he must have been satisfied that Manase Kamoto deceased was the lawful holder.

The point taken by the Minister that as the registration of Nau Kamoto was a posthumous registration, she held only a life estate and on her death the 'api reverted to Crown does not arise as the defendant's title is now perfected by the Minister's Registration in 1958, and I express no opinion on this point.

One question remains : this 'api is in excess of the statutory area. Section 49 of Cap. 45 provides that a grant of an allotment in excess of the statutory area is null and void. Whether the registration of the defendant in 1958 is to be regarded as a grant of the allotment or merely a transfer from the previous holder my view is that the Minister should subdivide the allotment into areas of one rood and twenty four perches (Section 7 of Cap. 45) and grant to the defendant one of such areas. The defendant should be allowed to choose which area he prefers. The balance will revert to the Crown, if it is Crown land, otherwise to the Tofi'a holder.

The case was put back for further argument on the question of subdivision and on the 22nd June, 1962 the Court delivered this further judgment.

HUNTER J. : On the 12. 6. 62 the Court gave judgment in this case and decided that Manase Kamoto was legally entitled to the town allotment in question and gave judgment for the defendant but added a rider that as this allotment was greater in area than allowed by Section 7 of Cap. 45 the allotment should be divided into areas of 1 rood 24 perches and that the defendant should take only one of such areas.

After giving this decision I did not feel satisfied that this rider could be supported legally and as the question had not been argued I felt that the case should be restored to the list for argument on this point.

The case came on for further hearing today and the Court has heard the submissions of both Counsel.

Hale Vete took a preliminary objection that the Court was functus officio and that the decision must stand as given. I over ruled this objection. The Court has an inherent right to call for further argument on a point of law which it feels was not sufficiently argued or not argued at all at the hearing and then, if necessary, give an amended judgment.

I have carefully listened to the arguments of both Counsel and reconsidered the law on this point and I am now satisfied that the Court was in error in ordering a subdivision of the allotment and I feel that the Minister has no power to make such a subdivision.

As I stated when giving judgment I was quite satisfied that this allotment had been held by the Kamoto family for many years prior to the Land Act of 1927 and that the Defendant's grandfather (Manase Kamoto) although not registered was the legal holder. The only registration of the allotment is a registration in the name of Nau Kamoto — Manase Kamoto's wife, and although it is not so stated in the register this must have been a registration for an estate for life, as a woman could not hold an allotment except she were a widow when she took a life estate. Counsel for the Crown submitted that if the estate Nau held were a life estate, then on her death the allotment reverted to the Crown. But this is not so. Clause 466 of the 1903 laws provided that if a person died without heirs his widow took a life estate in his tax allotment (town allotments are not mentioned in the section) and that on her death the allotment reverted, but only in case of a holder dying without heirs.

However town allotments were hereditary, see Clause 454 of the 1903 laws, and although in those days there appears to have been no provision for the registration of town allotments, tax allotments were registerable though failure to register would not invalidate a title, and the onus of registering an allotment appears to have been placed on the Minister and not on the allotment holder (see Clause 454 of the 1903 Laws).

How Nau Kamoto's name appears on the Register has not been explained, but whatever the reason be the heirs to Nau's husband were entitled to this town allotment, notwithstanding the registration of Nau's life estate. The present defendant is the direct heir of the Manase Kamoto who held the allotment prior to 1915.

The foregoing is irrelevant to the question as to whether this allotment should now be subdivided but as it was raised by Hale Vete in this further argument I thought I should express my views on it.

Section 7 of Cap. 45 limits the size of a town allotment to 1 rood and 24 perches and any grant of a town allotment in excess of this area which is made after the Act came into force (23rd

August, 1927) in null and void. Such a provision could only refer to grants made after the act, otherwise it would be in conflict with Clause 20 of the Constitution.

The town allotment under consideration is admittedly in excess of the statutory area but this allotment was granted long before the coming into force of Cap. 45. It was held by Kamoto, at least prior to 1915. Counsel for the Minister suggests that when the Minister registered the present defendant in 1958 this was a grant of an allotment, void because it was in excess of statutory area. But this is not so, it is not a grant of an allotment, but a transfer of an already existing allotment. The defendant said that he paid the fee demanded 5/–. This is the fee for the transfer of a town 'api. On the grant of a town 'api the fee is 10/–. See Schedule IV to the Act.

The only provision in the Act relating to the subdivision of town allotments is to be found in Section 51. This provides that the holder of a town allotment may apply to the Minister requesting him to subdivide an allotment of a specified size. Nowhere in the Act is the Minister given power to subdivide a town allotment without an application of the holder nor is any power given to the Court to order such a subdivision.

The result is therefore that the order made on 12. 6. 62 regarding the subdivision of the 'api must be deleted, all the rest of the order to stand.