

Tukuafu v Kongaika and Tafea

Privy Council
Appeal Case 1/1973

12 February 1974

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Limitation of actions - fraudulent inclusion of property in letters of administration - time runs from grant of administration

Probate and Administration - limitation period runs from date of grant of letters of administration even in cases of fraud

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On 14 October 1958 the first defendant obtained a grant of letters of administration of certain property of a deceased, which included a house, which he sold to the second defendant in April 1972. In 1972 the plaintiff brought proceedings claiming that the house belonged to him and had been fraudulently included by the first defendant in his application for the grant of Letters of Administration.

The Supreme Court held that the plaintiff's action was barred by s15 Supreme Court Act since it was brought more than 5 years after 14/10/1958. The plaintiff appealed to the Privy Council.

HELD:

Affirming the decision of the Supreme Court:

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Time limitation under s15 Supreme Court Act commenced to run from the grant of Letters of Administration on 14 October 1958, and not from the time when the plaintiff became aware of the contents of the Letter of Administration or of the sale of the house in 1972.

Statutes considered:

Supreme Court Act, s15

Privy Council

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Judgment:

This appeal presents some difficulty in that it is not easy to ascertain exactly what is the basis of the appellant's claim. There are no findings of fact in the judgment appealed from, and that judgment shows that the Court below was left in some confusion as to precisely what had been proved by the evidence. It is necessary first to look to the original claim filed by the appellant. This was for a liquidated sum of money representing inter alia the value of a house which appellant asserted was his property, and which first respondent "underhandedly included amongst the items in a Letters of Administration No. 61.1958 at Vava'u". The Statement of Claim then proceeds to allege that the house
50 was sold by first respondent to second respondent. The date of sale was not there stated, but at the hearing it was said to be April 1972.

There are thus two possible causes of action on which appellant's claim was originally brought

- (1) the inclusion of the house in the assets of the estate of the deceased 'Aisake Tukuafu, of which first respondent obtained a formal grant of Letters of Administration on 14.10.1958;
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- (2) the sale of the house to second respondent in April 1972.

The judgment in the Court below makes it clear that the learned trial Judge accepted (1) as forming the basis of the appellant's claim. As an action to set aside the grant of Letters of Administration, or for an order that the house in question was the property of the appellant and not an asset in the estate, could have been taken at any time after 14.10.1958, the present claim was statute-barred under sec. 15 of the Supreme Court Act:

70 "It shall not be lawful to sue any person for debt or damages after the expiration of five years from the date on which such liability was incurred, nor to sue for property which has been in the undisputed possession of any person for more than five years".

On that basis the judgment of the Supreme Court cannot be challenged.

However, Counsel for the appellant made two submissions at the hearing of the appeal: first, that time under sec. 15 started to run only from the date when the appellant became aware of the inclusion of the house in the Letters of Administration; second, that
80 the time would run from the sale of the house.

To succeed in the appeal the appellant would have to satisfy this Council that the learned trial Judge was wrong in holding that the time under sec. 15 must be calculated from 14.10.1958. This he has failed to do. The wording of the original Statement of Claim indicates that he was claiming damages for the alleged fraud of the first respondent in wrongfully including the house in the assets of the estate. The sale of the house was certainly mentioned later in the claim, but on the face of it did not form the basis of his action for damages. We cannot accede to Counsel's argument that time began to run only
90 after the appellant became aware of what was included in the Letters of Administration.

The grant of administration is not a secret document, and the appellant could have taken steps at any time after October 1958 to ascertain its contents.

For these reasons we hold that the judgment of the Court below has not been shown to be wrong, and the appeal is accordingly dismissed. There will be no order as to costs.