Vaea v Minister of Lands and Fetu'ufuka

Privy Council
Appeal Case 3/1973

12 February 1974

Land - applications for grant of allotment not to be determined solely by date of application

Land - applicant for grant of allotment cannot succeed if land is part of royal estate

The holder of an allotment died without heir and the appellant submitted an application to the Minister of Lands on 1 November 1955. Six months later, on 2 April 1956, the second respondent submitted an application and was granted the allotment by the Minister.

The appellant appealed to the Land Court, but his appeal was dismissed, and he then appealed to the Privy Council.

HELD:
Affirming the decision of the Land Court:

That the fact that the appellant's application was earlier in time than that of the second respondent did not in itself give it priority, and if the land concerned was in a royal estate that also would prevent him receiving a grant.

Privy Council

Judgment

This is an appeal against the decision of the Land Court rejecting a claim by the appellant to an allotment of 1rd. 24pchs, at Kolomotu'a. The former holder of the allotment was one Keiasi who died without direct heir. Two applications were made to the Minister of Lands for the allotment; one by the appellant on the 1st November 1955, and the other by the second respondent on the 2nd April 1956. The Minister of Lands registered the allotment in the name of the second respondent.

Appellant's argument was based mainly on two grounds:

(i) that his application was prior in time to that of second respondent and should therefore have been preferred;

(ii) that the allotment is situated on a Royal Estate upon which the Minister of Lands has no jurisdiction to make the grant of an allotment..

On the first ground it is necessary to say only that priority in date of making application confers in itself no right to preference over a later application. All the factors relevant to the claims of the parties must be considered and taken into account. In the present case, the learned trial judge held as a fact that the Minister exercised his discretion and acted according to proper principles. With this finding, we are unable to disagree.

The second ground does not assist the appellant. In the Court below the appellant's claim was specifically for the grant to him of the allotment in question. To succeed in this appeal, it would be necessary for him to show substantial grounds for the grant of the allotment to himself. This could not be done by showing that the land concerned is not Crown land but part of a royal estate. Appellant has not established a right to the allotment.

For these reasons, the appeal is dismissed. Appellant will pay the costs of the second respondent, which we fix at 40 dollars.