

Fakatava v Koloamatangi and Fakatava

10 Supreme Court
Roberts CJ
Civil Case 425/1973

27 March 1974
land - estoppel as defence to claim for possession
Estoppel - defence to claim for possession of land

20 The first defendant built a house on the land held by the plaintiff with the knowledge and acquiescence of the plaintiff. Later, after the parties quarrelled, the plaintiff brought proceedings for possession of the land.

HELD

Dismissing the plaintiff's claim:

That the plaintiff, having acquiesced in the building of the house on his land by the first defendant, was estopped from asserting his right to possession of the land occupied by the house.

30 Roberts CJ

Judgment

40 I rule that this case, which arose from tenure of Land and sub-division, is properly within the jurisdiction of the Land Court in so far as it relates to tenure or sub-division. In so far as this relates to the house, 1/3rd of which has been built on plaintiff's land, I hold that as Plaintiff did nothing to stop 1st Defendant from building this house i.e. he took no legal action in the way of injunction, he allowed by implication the house to be built. A quarrel has since arisen. As the house cannot be moved without being virtually destroyed - being a stone house - any order I might make would cause undeserved loss to the 1st Defendant. He is however, protected by the Law of estoppel. In relation to the claim of plaintiff with regard to the House, therefore, I give judgment for Defendants.

With costs and lawyers fees of \$20.