

Vaka'uta v Vaka'uta and Minister of Lands

Land Court

Hill J

Land Cases 14/74, 51/76

22, 23 February, 1977

Land - barring of claim which is brought after time prescribed by statute regardless of lack of knowledge of claimant

Land - claim to allotment must be supported by evidence of grant and registration - registration alone not sufficient

- 10 *Limitation of proceedings - claim in respect of land barred although claimant unaware of grant*

Two claims were brought in the Land Court in respect of the same town allotment on the island of 'Eua. In the first claim, 14/74, Lilo Vaka'uta sued his uncle Sione Vaka'uta for a declaration that any allotment of the land to the uncle was void, and alternatively for an order for subdivision of the land between them. In the second claim, 51/76, the uncle sought an order for possession of the land which was occupied by Lilo.

HELD:

- 20 Dismissing the claims:

- (1) The first claim must be dismissed because it was brought outside the period permitted by s148 Land Act, notwithstanding the fact that the claimant was unaware that the land had been registered in the name of his uncle, and also because the Court had no power to order subdivisions;
- (2) The second claim must be dismissed because there was no evidence that a grant of the allotment had been made to the claimant, and evidence of registration was not sufficient.

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Case referred to

Minister of Lands v Manase Kamoto II Tongan Law Report 132

Tokotaha v Deputy Minister of Lands and Ve'a II Tongan Law Reports 159

Counsel for the Plaintiff : Mr Manu

Counsel for the First Defendant : Mr Finau

Counsel for the Second Defendant : Ms Oldroyd

Hill J

Judgment:

In this case 14/74 the Plaintiff does not allege that he has been given a grant of the Town Allotment the subject matter of this action the area of which is shown on both the Ministry plan and an agreed sketch which was placed before the Court. The Allotment is in the village of Pangai on the island of 'Eua. He merely seeks a declaration that any allotment to the Defendant is void.

Alternatively he seeks an order for subdivision.

His case is that in 1965 he went on a trading venture to PangoPango taking agricultural produce. He says that he made T\$5,000 profit after he had come back to Pangai and paid off the farmers who had supplied the produce. He says that he built a house and shop on the allotment and operated it until 1972 when he went to Australia. When he returned from Australia in 1974 there had been a family quarrel. The shop was empty. There were outstanding bills that he paid. His uncle (the Defendant) told him that he had a grant of the land. This incidentally is presumably why he brought this action.

As to the claim that the Court should order subdivision, I do not think that it has power to do this. In my view Town Allotments can only be subdivided on the application of the holder as provided by Section 51 of the Land Act. The Plaintiff makes no claim to be the holder, and in any event has not applied to the Minister for subdivision. This is the view taken by Justice Hunter in Minister of Lands -v- Manase Kamoto Vol.11 Tongan Law Report Page 132 at Page 135 and I agree with and follow him. This part of the claim therefore also fails. I now turn to the second action. 51/76. Here the Plaintiff (Sione) claims possession of the allotment against the Defendant (Lilo) who is at present in possession in that he lives there with his family and runs a store and probably other businesses as well from there.

His case is that he is the allotment holder by reason of an entry in a book produced by a clerk in the Ministry of Lands and which certainly contains an entry in respect of this allotment with the Plaintiff's (Sione) name and the year 1949.

The circumstances in which this entry came to be made are obscure. There are no other documents available and the only witness who could have given any evidence about the matter was not called.

It has been expressly decided by the Court which was upheld on appeal to the Privy Council that for the title to an allotment to be completed there must be both a grant and registration see Folau Tokotaha -v- Deputy Minister of Lands and Sani Vea. Vol 11 Tongan Law Report Page 159 at Page 160.

There is no evidence that a grant of this allotment was ever made to the Plaintiff (Sione). He therefore has no title at present and this is sufficient to decide this case.

The Privy Council in the case just cited suggests that the Register in the form produced does not comply with the statute. However it is not necessary to decide what effect this would have in a case where a grant could be proved and I expressly leave this point open.

The Plaintiff's (Sione) claim for possession must therefore fail.

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Lilo Vaka'uta has indirectly claimed the house but I make no order in respect of it, because I am not satisfied that he is the owner. I think the owner is a firm called Vaka'uta Brothers of which he is a member.