

Falepapalangi v Tatofi

Land Court

Hill J

Land Case 17/1978

Land - allotment holder entitled to evict occupier whom he has encouraged to build a house on the allotment provided reasonable notice is given

10 *Land - reasonable notice for eviction of occupant who has been allowed to build a house on the land is two years*

Falepapalangi, had encouraged his nephew, Tatofi, to build a house on an allotment, of which he was registered as holder in July 1978.

Falepapalangi asked his nephew to leave the allotment, and when the nephew refused, proceedings were brought by Falepapalangi in the Land Court for an order for the eviction of his nephew.

20 **HELD:**

Upholding the claim

- (1) No legally enforceable contract had been proved to provide a legal right for the nephew to remain on the property
- (2) The plaintiff was entitled to possession upon reasonable notice to the defendant
- (3) Two years was reasonable notice for removal from land, and this should run from the date when the occupant definitely knew he had to move, which in this case was the date when the plaintiff received the registered title.

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Hill J

Judgment:

This is rather a sad case because the Plaintiff is the uncle of the Defendant. At one time they were very good friends; so much so that the Plaintiff encouraged the Defendant to build a house on the Plaintiff's land. And it is the Plaintiff's land because he has got a registered title to it. The only real question which arises is therefore: how long the Defendant should be allowed to stay there? Now there has been a great deal of evidence about an agreement between the Plaintiff and the Defendant. What the Plaintiff says is that there was an agreement that the Plaintiff should give half of the allotment to the Defendant and the Defendant give half of an allotment at Ma'ufanga to the Plaintiff. As it happens this agreement could not have been lawfully implemented because the allotments are too small to be subdivided. The Defendant denies that there was such an agreement and says that the Plaintiff offered him half of the allotment because he was grateful to the Defendant for looking after him in PangoPango. This was also the evidence of the Defendant's wife a lady called Temalisi who gave her evidence very clearly and very well. But of course if she is right there was no agreement - because there was no consideration: it was past consideration. Therefore I think that one does not need to pay attention to the agreement because it was either non-existent or incapable of performance. We therefore come down to the real point of the case. As I have said the Plaintiff encouraged the Defendant to build his house on the Plaintiff's land. So the Plaintiff can not just change his mind and say "get off my land"; he has got to give reasonable notice: and of course when it is a question of moving a house the time has got to be fairly long; because the person who is going to move will have to find another piece of land and the money required for moving. I think that two years is a reasonable time starting when the Defendant definitely knew he had to move. That really must, in this case, have been when the Plaintiff received the registered title: so the Defendant must have known he had to move on the 11th July 1978. Therefore I say that the Plaintiff must have possession of his land but is not to happen until 11th July 1980. This of course does not mean that he can not move earlier, I am just laying down the legal rights of both parties. Now I have been urged by Mr Vaipulu to make an order for monetary compensation but I am afraid I can not do that. One can not make a money order on a case like this, unless of course Plaintiff does something to deny the Defendant's rights but so far the Plaintiff has not done anything. Therefore my judgment is for the Plaintiff for possession but he is not to have possession until 11th July 1980. I want to make it clear that Plaintiff must not interfere with the Defendant's occupation until then. No order as to costs.