

**Taiala v Kafalava**

Privy Council

App 1/1975

21 February 1978

*Land - subdivision of allotment - can only be made in favour of certain family members i.e. sons, grandsons, brothers, nephews.*

Paula Kafalava was registered as the holder of a town allotment and applied to the Minister of Lands to subdivide the allotment into three lots under s51(1) Land Act. This application was granted and the land subdivided, but one of the persons to whom a subdivided lot was awarded, Salesi Kafalava, the heir of Paula Kafalava, brought proceedings in the Land Court claiming that the other two grantees were not within the degrees of relationship permitted by s51(1) Land Act.

The Land Court initially held in favour of the other two grantees, but before judgment was entered further evidence and legal argument was heard and the Land Court held that the grant to one of the grantees, Tevita Taiala, was not permitted by s51(1) Land Act, and judgment was given against him. Taiala appealed to the Privy Council.

**HELD:**

Affirming the decision of the Land Court

- (1) A case is not concluded until judgment is entered, and so, provided parties are given a full opportunity to be heard, a case can be reopened after a decision is announced but before judgment is entered, and further evidence and legal argument can be presented;
- (2) A subdivision of an allotment is only permitted by s51(1) Land Act to be made in favour of certain family members (i.e. sons, grandsons, brothers, nephews) specified by the section, and since Taiala did not fall within these specified categories the grant of the subdivided lot to him was not lawful.

Statutes referred to

Land Act s51(1)

Cases referred to

Minister of Lands v Kamoto II Tongan Laws Reports 132

Privy Council

**Judgment:**

This was a claim by Salesi Kafalava for a portion of town allotment situated at Kolofo'ou and fronting Mateialona Road. There were three defendants Paula Kafalava, Tevita Taiala and Siosifa Tu'iketeki Pule. The Minister of Lands was also a defendant. Appellant is thus one of the original defendants. The allotment in question was registered in the name of Paula Kafalava. On July 24, 1967 he applied to the Minister of Lands for the allotment to be subdivided into three lots so that two lots could be given to Salesi's younger brothers and so that Salesi Kafalava, as Paula Kafalava's heir, would take the third allotment. In the action Salesi Kafalava claimed that the grant of allotments to Tevita Taiala and Siosifa Tu'iketeki Pule were illegal because they were not within the degrees of relationship set out in Sec.51 of the Land Act (Cap. 63). The Land Court found that the grant to Pule was valid and this grant is not now in question.

The case took an unusual turn. The Court first found in favour of all 3 defendants which meant that the grant to Tevita Taiala was upheld. Before judgment was entered a question arose as to the correctness of the understanding of Paula Kafalava. The case was restored to the list and further evidence was heard and further legal argument was offered. Counsel for Tevita Taiala first objected to the procedure but withdrew his objection and took apart in the further hearing. By this time Tevita Taiala had left the Court. A precedent for this course is found in the case of Minister of Lands and Manase Kamoto Vol.II Tongan Law Reports page 132. A case is not concluded until judgment has been entered. So long as a party is not prejudiced and is given a full opportunity to be heard the exercise of such a discretion to re-open a case will not be overturned on appeal. No such ground has been made out in its present appeal so the further hearing will be upheld.

The result of re-opening the case was that the Court held that the evidence showed that Tevita Taiala was not related to Paula Kafalava. Tevita Taiala was therefore held to have no right to hold the lot in his name and it was awarded to Paula Kafalava. By this appeal Tevita Taiala seeks to have his name restored as the holder of the allotment previously in his name.

Sec.51(1) of the Land Act (Cap.63) provided as follows:-

\* Where a town allotment is not less than two-fifths of one acre in area the holder thereof may apply to the Minister requesting him to subdivide the allotment between such sons, grandsons, brothers or nephews, of the applicant, being more than sixteen years of age, as the applicant shall appoint, but the Minister shall not grant an allotment less than thirty perches in area."

The evidence established that Paula Kafalava was registered holder of the said land and that he had the right to apply to the Minister for it to be subdivided. It was accordingly subdivided but the evidence proved, and this has not been contested, that Tevita Taiala does not come within the degrees of relationship of Paula Kafalava which would qualify him under Sec.51 to take an allotment on subdivision so he is not entitled to hold said

allotment. We have dealt with the points in issue and do not need to advert to the other grounds of appeal. They do not appear to be relevant. The judgment of the Land Court is affirmed.

The appeal is dismissed. No order as to costs.