

## Ministry of Lands v Kulitapa

Land Court

10 Hill J

Land Case 9/1979

*Land - allotment - cannot be made to a person who is not a Tongan citizen*

Kulitapa was on 26 January 1979 given a grant of an allotment by the Minister of Lands. Later, the Ministry of Lands discovered that since April 1977, at least, Kulitapa had been a New Zealand citizen, and it applied to the Land Court to have the grant cancelled.

20 HELD:

Upholding the application;

That a grant of land in Tonga could not be made to a person who was not a Tongan citizen.

Counsel for the Plaintiff : Mr Tupou

30 Statutes considered

Land Act s43(2)(b)

Hill J

**Judgment**

The Acts in this case are not in dispute. They are as follows:-

On the 29 day of April 1977 at the latest the defendant became a New Zealand citizen. The certified true copy of the decision of the New Zealand Ministry of Internal Affairs was produced and is Exhibit 1. The Minister of Lands, who is Plaintiff, says that, as a result, a grant of Land made to the Defendant in 1979 on the 26 January was invalid because no non-Tongan can receive a grant of Land in Tonga. Now it is absolutely clear that only a natural born Tongan is entitled to land in Tonga. What is not so clear is whether a grant can be given to a non-Tongan although of course as I have said a non-Tongan is not entitled to demand it. Mr Tupou for the Minister, the Plaintiff, referred me to a number of statutes of which I think the following are conclusive on the matter. The Land Act Section 43 2 (b) 'The applicant shall produce ... the receipt for Poll Tax for the current year'. The Poll Tax Cap 89 Section 3; this Act, when it was effective, for it is now repealed makes it clear that the Poll Tax was imposed only on male Tongans. The last paragraph makes it clear that paying the Poll Tax was a pre-condition to receiving a grant or inheriting land. A non-Tongan could therefore not comply with the requirements of Section 43 2 (b) because he would not pay Poll Tax and could not produce a certificate.

The question arose whether the defendant had perhaps received a grant before he became a New Zealander. The grant was not registered until 1979. However, on production of his application, it appears and it was not disputed, that he did not pay the required fees until 1979. There could not therefore have been a lawful grant before that date.

I am therefore satisfied that when the grant was made on the 26 of January 1979 the defendant was a New Zealand citizen and could not therefore lawfully be given a grant of Land in Tonga. Accordingly the plaintiff is entitled to the relief sought, namely that the Deed of Register in the Lands Office be amended by striking out the said grant.