Ongosia v Tu'inukuafe and Minister of Lands

Privy Council
Appeal No 1/1985

Land - ownership - proof of ownership - registration is not conclusive, nor is lengthy occupation, nor is the fact that claimant's name is written on plan in Ministry of Lands.

Registration of land - not necessary for, or conclusive of, ownership.

Ongosia claimed to be entitled to an area of land adjoining his tax allotment. He based his claim upon the fact that the Minister of Lands had orally agreed to grant the land to Ongosia's father; that he and his father had occupied the land for 30 years, and that a plan of the land in the office of the Ministry of Lands had the names of his father and himself written on it. No formal application for a grant of the land had been made, nor had any grant been registered.

The Land Court held that the facts relied upon by the plaintiff were not sufficient to support his claim that the land had been granted to him or his father. The plaintiff appealed to the Privy Council.

HELD:
Dismissing the appeal.

(1) Registration of a grant was strong evidence of a grant of land, but was not necessary to prove a grant;
(2) The evidence as to the statements made by the Minister was not sufficient to establish a grant, nor was the lengthy occupation of the land, nor was the fact that the names of the plaintiff and his father were written on a copy of the plan of the land at the office of the Ministry of Lands.

Cases considered
Tokotaha v Deputy Minister of Lands and Vea II Tongan LR 99, 159
Manakotau v Vahai II Tongan LR 121

Counsel for Appellant : Mr Niu
Counsel for First Defendant : Mr Koloamatangi
Counsel for Second Defendant : Mrs Taumoepeau

Judgment

This is an appeal against the decision of Harwood J. in the Land Court in which he rejected the Appellant's claim to an area of 2 acres 2 roods at Kolofo'ou which he wished added to his adjoining tax allotment of 3 acres 3 roods 20 perches.

The Appellant based his claim on three grounds:

1. That the additional area had been granted to his father in 1948 by the Minister of Lands in office in that year.
2. That he and his father had occupied the 2 acres 2 roods for approximately 30 years up the end of 1978 when they were told to vacate because the land had been granted to the first Respondent as a tax allotment.
3. That on a "copy" plan held in the Ministry of Lands' office the names of the Appellant and his father had been written across the area in question indicating a grant to them.

The evidence of the Appellant's father (who is 75) on the first ground was that he saw the Minister of Lands in 1948 and told him that he was applying for a grant of the 2 acres 2 roods and was told that that would be "alright". That Minister died, and the father then went to see his successor at a time when the first Respondent's family was also in the process of seeking a grant.

The father said that he and the lawyer for the Tu'inukuafe family saw the Minister together, when the Minister told the lawyer that the would have to seek an alternative area as the 2 acres 2 roods was to be added to the Appellant's father's allotment. The father said that at that time the plan was marked to indicate that he held the grant. No formal application for the grant was ever made and there was no registration of it.

Harwood J. described the father's evidence as "vague and inconclusive" and said he was far from satisfied that the Minister had agreed to a formal grant as distinct from an informal consent to use and cultivate the land.

As to the second ground of appeal there was no real dispute that the Appellant and his father had had the use of the land for many years, but Harwood J. did not see that as a basis for concluding that the land had been granted. As for the "copy" plan it appears that the name of the Appellant or his father do appear on it but they do not appear on the Minister's "master" plan. Harwood J. considered the Appellant's and his father's account of how the name came to be on the "copy" plan as "unsatisfactory", and the evidence "confused and unreliable". The father's evidence as to how his name came to be written on the plan is, to say the least, curious. He said that he went to see the Minister and asked if his name could be written on the plan to show that he was the owner, whereupon the Minister called his clerks and told them to do whatever the father told them "because he was right". One might have expected the Minister to have required a formal application, to be followed by registration and the issue of a deed of grant if it had been his intention that the father was to become the owner.

In the course of his judgment Harwood J. said:-

> "I am satisfied that, in law, the Plaintiff's reliance upon the (factually doubtful) verbal grant in 1948 is misplaced. Such a grant was not of itself sufficient, in my judgment, to confer any title whatsoever on Mosese to the additional 2A 2R. In the absence of any registration of a Deed of Grant in his favour it seems to me that the present Plaintiff is in an even worse position than the unsuccessful plaintiff/appellant in the case of Folau Tokotaha v Deputy Minister of Lands

and Sani Vea reported in Volume II, Tongan Law Report, at pp. 99 and 159. I regard that case as an entirely relevant and guiding authority for the purposes of this case."

Harwood J.'s reliance on the Folau Tokotaha case has been challenged by Mr Niu, and we believe there is substance in his submissions. What Harwood J. appeared to be saying was that a Plaintiff claiming an allotment could only succeed if he could prove registration and the issue of a grant. There is ample authority to the contrary, including at least one decision of this Council, but it is only necessary to refer to this passage from judgment of Hunter J. in Fifita Manakotau v Vaha'i (Noble) 2 Tongan L. R. 121 at page 123:

"Although registration is very strong evidence of ownership I can find nothing in the Act to say that a person claiming an allotment must be able to show he is registered as the holder of that allotment. Nowhere does the Act make registration the test of ownership. The intention of the Act is that registration will be a method of proof, nothing more. This was the view taken by the Privy Council in Tu'i'afitu and Anor. v Mesui Moala (Privy Council 25.1.57). The Privy Council in the course of their judgment said: "It was one of the main contentions of the Appellant both in the Land Court and on the hearing of this appeal that the Respondent was not entitled to succeed in his claim because of his failure to become registered as the holder of these allotments. The learned trial judge held that the Respondent had taken all steps required by the Land Act Section 76 and that whilst registration is evidence of ownership it is not always necessary to prove registration before ownership can be established. With this statement of the law we agreed."

Where claim is made to an allotment each case must be decided on its own facts, and the Folau Tokotaha case can be distinguished on its facts. In that case the Plaintiff relied solely on the fact that he had been registered as owner, although was not issued with a grant. Occupation over a long period was not a factor, and at some stage his registration had been endorsed "regranted: this allotment was wrongly registered". The Defendant on the other hand had been registered as owner and issued with a grant. The one had a complete title and the other an incomplete one. It was in the light of those facts that Hunter J. said at page 101:

"Although the Act does not say so in express terms I have no doubt that before a person can acquire a good title to an allotment his application must be approved by the Minister and this approval must be evidenced by a deed of grant delivered to the applicant and an entry in the Register. Both are necessary before the title is complete."

And further:-

"In view of the above it is clear that the Defendant's title must be preferred to that of the Plaintiff and the Defendant must be regarded as the Registered holder of the allotment in question."

Although Harwood J. may have erred in relying on the Folau Tokotaha case we are satisfied that his findings of fact preclude relief for the Appellant. He regarded the Appellant and his father as unsatisfactory witnesses, doubted that there had been a verbal grant, and, with justification, felt it unsafe to draw any conclusions from the markings on the "copy" plan which had not been carried forward to the "master" plan. That left "occupation", which Mr Niu conceded would not be enough.

The appeal is dismissed with no order for costs.