Vea and Fotofili v Finau

Privy Council
Appeal No 6/1985

21 April 1986

Land - cancellation of registration on ground that Minister's decision made on wrong principles

In 1964 Finau was given possession of a tax allotment by the estate holder who promised that when copra was harvested the allotment would be registered in Finau's name. Finau cultivated the land, and when the estate holder died in 1968, and his successor was reminded of his predecessor's promise, he stated that the allotment would be registered in Finau's name now that copra was being produced.

Nothing was done to carry out this promise and in 1983 a grant of the allotment was made to Vea, and in June 1983 this grant was registered. Finau brought proceedings in the Land Court to have the registration of the grant cancelled, and an order to this effect was made by the Land Court on the ground that the decision of the Minister had been made on wrong principles.

HELD:
Dismissing the appeal.

That the Minister's decision to register the grant to Vea had been made on wrong principles, because of the witholding of important facts from the Minister, and the registration must be cancelled.

Cases considered
To'ofohe v Minister of Lands and Afeaki II Tongan LR 157

Counsel for First Appellant : Mr Afeaki

Privy Council

Judgment

This is an appeal against the judgment of Harwood J. in the Land Court in which he ordered the cancellation of the registration of a tax allotment granted to the Appellant 'Epalahame Vea, and directed that the Minister reconsider applications which are to be made for the grant of the allotment by both Vea and the Respondent.

The allotment in question has an area of 8 acres 39.27 perches and is situated on the estate of the Second Appellant. The Appellants did not give evidence in the Land Court, and the only evidence of the background to this matter was given by the Respondent and one 'Ahio, who had acted as the Respondent's Faleafa or spokesman in his dealings with the estate holder. Harwood J. accepted their evidence, describing the Respondent as being "an utterly truthful man doing his best to give accurate evidence."

The Respondent said that in 1964 he was given possession of the allotment by the former estate holder Noble Kalaniuvalu with instructions to look after it and cultivate it. He held out the promise that when copra was harvested the allotment would be registered in the Respondent's name. The Respondent did cultivate the land and to some effect for his unchallenged evidence was that he planted between 500 and 1000 coconut trees and breadfruit, tava, mango and vegetable crops. Unfortunately for the Respondent Noble Kalaniuvalu died in 1968 before the coconut trees bore fruit. The Respondent said that about a year later the Second Appellant, who had succeeded to the title to the estate, was told of his father's promise. For the next 14 years the Respondent continued to work the land, fulfilling his obligation to the estate holder by supplying crops and animals. Harwood J. described him as "humble and hardworking, loyal and obedient to the estate holder as he had been to Noble Kalaniuvalu". In 1980 the Respondent engaged 'Ahio and went to see the estate holder. He was reminded of his father's assurance. The result was that the Second Appellant told the Respondent to check with the Minister of Lands that the 'api was free to be granted and to then go to the Noble's lawyer who would deal with the matter. The Respondent did that. He gave the lawyer an application form and the survey fee after ascertaining that the allotment was free to be granted.

Sometime later the Respondent returned to the estate holder and enquired about the grant. He was told to be content because "everything had been dealt with". The truth of the matter was that the lawyer had done absolutely nothing about obtaining a grant, and in 1983 the Respondent was ordered to vacate because a grant had been made to the Appellant. It was registered in June 1983.

In the Land Court the Appellants argued that as the First Appellant had a registered title with issue of a grant that was the end of the matter. Harwood J. disagreed, and, applying the principles enunciated in Makalofi To'ofone v Minister of Lands and Paula Afeaki 2 Tongan L. R. 157, concluded that the Minsiter's discretion to make the grant had been exercised on wrong principles so that the grant had been exercised on wrong principles so that the Court was entitled to interfere. Harwood J. made it clear that there was no blame attributable to the Minister. It was a case where important facts relevant to the exercise of his discretion to make the grant to Vea had been withheld from him by the estate holder.

Before this Council Mr Afeaki relied on the same ground of objection as was raised in the Land Court, namely, that the First Appellant had followed the statutory procedure to obtain a grant and had obtained it in exercise of the Minister's discretion. There can be no suggestion that the Appellant was in any way to blame. The fault lay with the estate

holder who withheld from the Minister the Repondent's long term association with this land and the assurances he had been given concerning it.

There is no merit in the appeal and it is dismissed with no order for costs.