

Latu v Moala, Kalaniuvalu and Minister of Lands

Land Court

Martin J

Land Case 26/78

4 August 1988

10 *Land - subdivision of excessive allotment - should not be ordered in respect of allotments granted before coming into force of Land Act i.e. 23 August 1927*

Land - grant - undisputed occupation and cultivation is evidence of grant

20 Prior to 1927 Latu's grandfather occupied a piece of land comprising 1 acre 1r.3 5p which was registered on 28 November 1927 as a town allotment. After the death of the grandfather and his widow, Latu's father applied in 1954 for the land to be registered in his name. The Minister ordered that the land be subdivided since it was larger than the area permitted for a town allotment by the Land Act. Three of the subdivided allotments were granted to Latu, Latu's father and Latu's son, but the fourth allotment was granted by the Minister to Moala, who was not a member of the family.

Latu brought proceedings in the Land Court challenging the grant made by the Minister to Moala.

HELD

Upholding the plaintiff's claim.

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- (1) The evidence of undisputed occupation and cultivation was sufficient to prove that an oral grant of the full area of land occupied by the grandfather had been made;
 - (2) The provisions of the Land Act limiting the size of town allotments did not apply to allotments existing before the Act came into force on 23 August 1927;
 - (3) Accordingly the area should not have been subdivided and the grant to Moala must be set aside and the registration cancelled.
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Statutes considered

Land Act, ss7 and 49

Cases considered

Minister of Lands v Kamato II Tongan LR 132

Tekiteki v Minister of Lands [1962-1973] Tongan LR 34

Tu'uhetoka v Malungahu II Tongan LR 53

50 Martin J

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Judgment

Limoni Latu claims a town allotment on the estate of Hon. Kalaniuvalu, now occupied by Salesi Moala.

The Facts:

The allotment forms part of a much larger allotment which was occupied before 1927 by the Plaintiff's grandfather, Tomasi Tangatafilia. On 28.11.27 the whole area was registered as one town allotment in the name of Tomasi. No area is shown in the register, but the plan shows an area of 1 acre 1 rood 3.5 perches.

Tomasi died on 16 March 1939. His widow Salome Latai Tangatafilia took a life interest under s 74 of the Land Act which was registered on 12 December 1939. Salome died on 18 June 1954. The heir was the plaintiff's father, 'Emeliano Tangatafilia. On 14 September 1954 'Emeliano applied for the land to be transferred to him. The register of applications records:

"Subject

Applies to transfer the allotment to him, the lawful heir, of Town and tax allotments in Hamula, which have areas in excess of that prescribed by law."

"Minister's Decision

1. The heir is to keep the town and tax allotments.
2. Transfer deferred so that request can be made to surveyor to subdivide, then transfer may be effected."

There was a very long delay. On 14 September 1966 the Acting Minister of Lands instructed the Chief Surveyor to subdivide the plot into 4, "... so that 1r. 24p can be given to Limoni Latu". Nothing was said about who should be given the other plots.

The survey was finally completed in 1971. The old allotment was divided into 4. On 1 September 1975 one allotment of 1r 6p was registered in the name of 'Emeliano. On 6 October 1975 a second allotment of 1r 24.1p was registered in the name of Limoni Latu. The third allotment was granted to Limoni's son Nikola Vafahulu Manu in 1977. The fourth allotment was not allocated to any member of the family.

The forth plot was treated by the estate holder and the Minister of Lands as vacant and available for grant. On 12 May 1977 it was registered in the name of Salesi Moala. The plaintiff's father brought this action a few months later. He sought to have the grant to Salesi Moala set aside, so that the land can be given to one of his family.

Since the action commenced 'Emeliano has died and his son Limoni Latu was substituted as Plaintiff. Limoni has transferred his original plot to a son and has taken over 'Emeliano's land. These transactions do not affect the outcome of this action. Limoni's interest is the same as his father's.

The Law

The Land Act 1927 came into effect on 23 August 1927. Before that there was no limit on the size of a town allotment. Sections 7 and 49 of the 1927 Act made a new grant of more than the statutory area invalid. But if a person had already been granted a larger area he was entitled to keep it. And his heirs could successively inherit the whole area. (see, e.g. *Minister of Lands vs Manase Kamoto II* Tongan L.R. 132)

Before 1927 a valid grant of any area of land could be made orally and without registration (*Tu'uhetoka vs Malungahu II* Tongan L.R. 53 *Simi Tekiteki vs Minister of Lands III* Tongan L.R. 34) [1962-1973] Tongan L.R. 34

The effect of Subdivision

If Tomasi did not have a valid grant of the whole area before 1927, the first registration was a grant of an area in excess of the Statutory maximum and therefore was invalid. If so the Minister was entitled to take away the excess and allocate it to others. If this were the position the land was available for grant and the grant to Salesi Moala was valid.

If there was a valid grant to Tomasi before 1927, his heir 'Emeliano was entitled to inherit the whole on Tomasi's death. He was entitled to request subdivision under s. 51 of the Land Act. s. 51 (1) provides that a Landholder may request the Minister to subdivide an allotment larger than the statutory area between such relatives specified in the section as he may appoint. Any new allotments so created may be granted to the appointed relatives. Any part of the original allotment not so allocated remains in the ownership of the original landholder.

s. 51 (2) permits a landholder to surrender part, but only if he has none of the specified relatives. In this case 'Emeliano had no shortage of qualified relatives and no application was made to surrender any part of the original allotment.

If Tomasi, and through him 'Emeliano, was entitled to the whole, the fourth plot was not available for grant and the grant to Salesi Moala was invalid.

The evidence of what happened before 1927 is understandably sketchy. It may be summarised as follows:

1. The plan, dated 1925, shows Tomasi in possession of 1a 1r 3.5p. It is evidence only of occupation, not of a grant.
2. Sione Taufu was born in 1914. He said that ever since he could remember Tomasi and his family occupied the whole area. They built 2 houses on it and grew the usual trees found on town allotments. He was town officer when the area was resurveyed.
3. Sione Tekiteki was born in 1915. He said that his family owned the allotment opposite. He confirmed that Tomasi used the whole area, including the area now occupied by Salesi Moala.
4. No objection was made by anyone when the full area was registered in 1927.

With the advice of the learned assessor and on the evidence of undisputed occupation and cultivation, I find on a balance of probabilities that an oral grant of the whole area was made to Tomasi or his predecessor, before 1927. It follows that the land granted to Salesi Moala was not available for grant.

I order that

- (i) The grant to Salesi Moala dated 12 May 1977 be set aside and the registration cancelled.
- (ii) Limoni Latu be registered as holder of the land
- (iii) Salesi Moala do vacate the land within 3 months.

I make no order as to costs.