Vai v 'Uliafu & Other

Land Court Case No.6/1988

4 October, 1989

Land - allotment holder estopped from evicting person in occupation
Estoppel - allotment holder estopped from evicting person in occupation
Land - registration - invalidity of registration

The plaintiff was the holder of a town allotment part of which the first defendant, Vaiola 'Uliafu, in 1980 occupied as a result of an allocation by the estate holder. The first defendant built a house upon that part in 1981 and had lived there without the consent from the plaintiff until 1985. In 1985 the plaintiff registered the whole allotment in his name and then sought to evict the defendants.

HELD

Dismissing the plaintiff's claim.

(i) The estate holder and the first defendant were estopped and prevented by acquiescence from denying the first defendant's right to occupy the half of the allotment on which he had erected his house;

(ii) The registration of the whole allotment in the name of the plaintiff was invalid as it was based upon wrong principles and was made under a mistake;

(iii) Accordingly the plaintiff's claim must be dismissed and the register of land allotments rectified to restrict the allotment of the plaintiff to the part not occupied by the defendants.

Cases considered

O.G. Snaft v Tonga Tourist Development Co Ltd
Appeal Case No.2.1981 [1981-1988] Tonga L.R.
Mokena v Sitani Land Court Case No.13/1985
To'ofohe v Minister of Lands (1958) II Tongan LR 157
Ma'asi v 'Akau'ola (1956) II Tongan LR 107
Hema v Hema (1959) II Tongan LR 126

Statutes considered:

Land Act, ss 7, 43
Evidence Act, s.103

Counsel for plaintiff	:	Mrs Palelei and Mrs Vaihu
Counsel for first defendant	:	Mr L. Niu and Mr 'Etika
Counsel for second defendant	:	Mrs Taumoepeau and Mr Whitcombe

Webster J

Judgment

The Plaintiff Kemueli Kolotina Vai is the registered holder of a town allotment at Tokomololo known as Sailoame, being Lot 33 with an area of 1 rood 24.2 perches. He was registered on 31st May 1985 under reference D/G 279/2.

The Plaintiff seeks the eviction of the First Defendant Vaiola 'Uliafu from one half of the allotment where the First Defendant has built a house.

These facts are agreed between the parties.

In his defence the First Defendant said that he received a verbal allocation of his plot as a town allotment from the estate holder, Hon. Ma'afu, through his representative in 1980 and built his house on it in 1981. He says that the Plaintiff raised no objection until after the written grant was made to the Plaintiff in 1985 and that the Plaintiff is thus estopped from denying the Defendant's right.

The First Defendant further says that the registration by the Second Defendant, the Minister of Lands, is unlawful because the land was not available or vacant and the Second Defendant was misled about this by the Plaintiff or the estate holder.

The Second Defendant stated in his Statement of Defence that the whole of Lot 33 was vacant when the Plaintiff applied for registration.

The witnesses for the Plaintiff were his father Tali Makoni Vai and the estate holder's present representative 'Emosi 'Alatini. Tali said that he was allowed to occupy the whole plot in 1974 by the then holder 'Alipate Palauni (who gave up his claim to the land) and built a house on one half of it in 1978. He fenced off the other half but did not use it. In 1979 he received a letter from the estate holder's then representative Taufa Tokomololo advising him to vacate the plot but he saw Ma'afu who told him to remain on the land. Taufa then brought in another family of a person Pale to the other half of the plot (now occupied by the First Defendant) but they left after a year. In 1981 Taufa told the First Defendant to move onto the same land, where Vaiola built a house and has occupied it since 1983. Tali did not stop Vaiola building the house because he did not think he had any right to the other half until the allotment was registered. In 1985 Tali said that Ma'afu rang him to ask why he had not registered the land, so he got Ma'afu's formal consent to formal registration of the whole allotment in nmae of his son, the Plaintiff. He said that he told Ma'afu that Vaiola had built a house on one half: Ma'afu checked with the Minister of Lands that nobody had any legal interest in the land and so told Tali to go ahead and register the whole plot. This was confirmed by the application form for registration dated 2nd May, 1985 which was produced in Court. Tali said that the then Town Officer of Tokomololo, Na'a 'Ahokona (now deceased) went with him because the Ministry required a letter fromthe Town Officer there is a note on the application form that this letter was produced.

'Emosi's evidence was that he became the estate holder's representative in 1984 but was not advised of the registration of Lot 33 until after the event. Later Vaiola's wife came to him and Ma'afu instructed him to tell her and and Vaiola to move to another plot of the

same size within 100 yards, but they did not do so.

The first Defendant Vaiola gave evidence that in 1975 he had applied to the estate holder's representatives for a piece of land. In 1980 when he was in New Zealand his wife told him that the estate holder's representative Saia Palavi (otherwise known as Taufa Tokomololo) had granted them land. In December 1983 he returned to Tonga and completed the building of a timber house on a concrete footing costing around $4,000, which had already been started. He also put up a fence on 2 boundaries (including the road), the common boundary with Tali having been fenced already. He had also planted more than 10 trees in 1984. Nobody had tried to obstruct him or stop him in doing these things and he and Tali were very friendly and lived as good neighbours. When he left for Australia in October 1984 they parted as good friends, though since 1985 they were not so close. He had never at any time approached the estate holder Ma'afu himself about the land or registration of it

Vaiola's wife Feauini also gave evidence confirming the evidence of her husband. Taufa did not tell her the whole area was the Plaintiff's. Tali had never told her the land was his until she asked him after it had been announced in a fono in 1985. Then Tali advised her not ot move out immediately but to see Ma'afu. Tali had promised that if Ma'afu gave him the final say he would divide the plot and give them half. She had seen Ma'afu who had said there had been a mistake and spoke of subdivision but later told 'Emosi to look for a plot for them: this was done and she obtained and application form but was then told to return it. There had also been a court case alleging trespass on the land but she had been found not guilty. She was related to the Plaintiff's wife and her father had suggested to Tali and his wife that they should be able to settle the matter out of Court as a case would take a lot of money. However Tali declined to subdivide, as if that were done Ma'afu would not give him another piece of land in exchange.

The First Defendant also led evidence from Saia Palavi Manavahetau, Ma'afu' estate representative at Tokomololo since 1973 or 1975, and also known by the name Taufa Tokomololo given to him by Ma'afu. A copy of his letter of authority by Ma'afu dated 3rd June 1975 was produced, giving him all authority over the land of Tokomololo to allocate land to the people. He explained that, although this was his authority, his arrangement with Ma'afu was that when a person approached him for land, each time he would discuss it with the noble, or if a person went direct to Ma'afu he would send him to Taufa. He was also advised of applications for registration and it was part of his duty to check that the land was vacant before the application was lodged. He and Ma'afu had an understanding that town allotments at Tokomololo would be 30 perches each. Taufa said Ma'afu had replaced him as estate representative in 1982.

Taufa said that he had allocated the plots of land to the Plaintiff and to the Defendant. The Defendant's was vacant land. He had informed them both that their plots were 30 perches. In 1979 Ma'afu's son had brought him a letter from Ma'afu's wife Tu'imala requesting him to find a piece of land for Tali as he was uncle of Ma'afu's son. Taufa denied that the reason for the letter was because he had ordered Tali to leave the land. Taufa said that when the Plaintiff came with the application to register the land he checked the position and informed him that Lot 33 (meaning the whole 1 rood 24 perches) was free with nobody occupying it. He said that he did not notice any buildings on the land. Nobody had been registered as holder of Lot 33 before the Plaintiff. However although this was his evidence it is at least doubtful from his own evidence whether he was still the

estate holder's representative at that time, so this part of his evidence in unreliable.

Finally the estate holder, Hon. Ma'afu, gave evidence for the First Defendant. He confirmed that he allowed his estate representative to distribute land but he must be told before registration (but not necessarily before a person was put onto the land). He confirmed the arrangement with his representatives to allocate plots of only 30 perches in Tokomololo. Only he himself signed applications for registration. He confirmed that he had signed the Plaintiff's application for registration of the whole 1 rood 24 perches. When he did so he knew that the First Defendant was on part of the allotment but believed that was none of his concern. It was because he found out about what had happened earlier about this allotment that he replaced Taufa as his representative. Subsequently the First Defendant had been shown another place to go to but had not wanted to go there. If the Plaintiff would give up half the allotment and the First Defendant applied for registration, Ma'afu would be prepared to allow it, as to Ma'afu there was no difference between the two of them.

The Second Defendant led no evidence

The Counsel for the First Defendant Mr Niu submitted that according to the case law the Court could cancel a registration of an allotment only on the grounds of fraud (which was not alleged here) or mistake or that registration had been made on wrong principles. On the latter point section 50(a) of the Land Act set out that allotments were to be taken out of land available for allotments but Mr Niu submitted that as there had been a verbal grant to the First Defendant and he could not therefore be evicted, the land he occupied was not available. In adition registration had been made under a mistake of fact, as the Minister of Lands was led to believe that the land was all vacant while half was actually occupied by the First Defendant. The Plaintiff was also estopped under section 103(3) of the Evidence Act from evicting the First Defendant as he had allowed the First Defendant to build his house on the plot in question without ever raising any objection.

Counsel for the Second Defendant, Mr Whitcombe, submitted that there was no clear evidence of any verbal grant by the estate holder to the First Defendant; that in section 50(a) "available" means land not already allotted by deed of grant; and that with reference to estoppel under section 103(3) the First Defendant could not have believed that the conduct of the Plaintiff amounted to any representation of facts about the allotment as he admitted in evidence that he knew and accepted that he was running the risk of not getting a legal title.

Counsel for the Plaintiff, Mrs Vaihu, submitted that there was not estoppel as neither the Plaintiff nor the First Defendant had any legal title until 1985. Estoppel could only operate after 1985 and there was no evidence of any representations by the Plaintiff since then. In the absence of registration she submitted that the land had been vacant and as the Plaintiff had been registered after complying with the legal requirements, the land had been rightly granted to him. She submitted that the Plaintiff was therefore entitled to an order for the eviction of the First Defendant.

The heart of this case concerns the effect of an allocation of an allotment by an estate holder or his representative without formal application to the Minister for registration of the allotment. The learned Assessor confirmed that this is a frequent practice and properly happens in most cases. The expectation is that in due course the person on the land will make formal application for registration.

Indeed the counsel for the Minister, Mrs Taumoepeau, indicated in the Statement of

Defence and in cross-examination that it is the Minister's practice not to register a town allotment unless he receives confirmation that the applicant is in occupation and a house has already been built on it.

Although there was dispute about the legal results, there was no significant conflict in evidence over the essential facts.

Originally the Plaintiff's father occupied the land by authority of the then holder 'Alipate (possibly without the agreement of the estate hodler or his representative). He built a house on it in 1978. Then in 1979 the representative told him to vacate the land but Ma'afu countermanded his order. So by 1979 the Plaintiff had been allocated the allotment by the estate holder, who told him to register it.

Whether the Plaintiff was allocated the whole allotment or only the half where he built his house is not entirely clear. He said that he was given the whole allotment but gave evidence that he fenced off one half and settled in it as his town allotment with the other part of use as crops, though there were no crops when the First Defendant moved onto it. This was confirmed by the First Defendant's wife's evidence. It certainly seems unusual now for a person to confine himself to 30 perches if he had more available. When asked why he had not objected to the First Defendant occupying the land and building a house, the Plaintiff's father explained that as the land had not been registered he felt that he had no right to stop the First Defendant, but this does not seem to be consistent with his claim to have been allocated the whole plot. If he had been allocated the whole plot you would have expected him to see and complain to the estate holder or his representative Taufa that the estate holder's policy and practice for many years had been to grant allotments of 30 perchers only at Tokomololo, so it would hardly have been consistent for the Plaintiff to have been given the whole allotment of 1 rood 24 perches, even though he had a slight family connection with the estate holder.

I therefore find on the balance of probabilities that the Plaintiff originally was only allocated half of the allotment, but this is no critical. This is because if he did have any right to the whole plot before registration he took no steps at that time to enforce it against the First Defendant, as mentioned above, and the doctrine of acquiescence would operate to protect the First Defendant as explained later.

The First Defendant's route to the land was more orthodox. He applied to the representative in 1975 and was given the allotment in 1980 and went ahead and built a house on it in 1983-84. He believed he had a legal right to the land because the representative had allocated it to him, but recognised that without registration he ran the risk of not getting a legal title. He had returned overseas before he got round to registration.

So by 1984, when the First Defendant had built his house, both he and the Plaintiff were in the same position in law. They had both legitimately been allowed onto their plots of land by the estate holder or his representative. The representative was acting as the agent of the estate holder and had his written authority to allocate land, so his actions in name of the estate holder bind the estate holder. At that stage neither the Plaintiff nor the First Defendant had a legal title to any part of the allotment.

The matter of a verbal grant of an allotment was raised by counsel for the First Defendant, Mr Niu, but probably since 1927, and certainly under the present Land Act in The Law of Tonga 1967, it is not possible for there to be a verbal grant by the estate holder prior to formal grant by the Minister of Lands. Section 7 makes clear that a grant of a two

allotment is to follow "application as aforesaid" that is "application on the prescribed form to the Minister of Lands" and is "subject to the provisions of this Act.".
This is reinforced by section 43 (2) -

"(a) The grant shall be subject to the provisions of this Act and shall be made in accordance with the following rules -

(a) the applicant shall make an application on the prescribed form to the Minister;

(b) ....."

The prescribed form (Vol.III p.1545) again makes it clear that it is an application to the Minister or his Deputy for the northern islands.

While there are a number of precedents saying that a town allotment might be granted verbally, these all concern grants before 1927 e.g. Tu'uhetoka v Malungahu (2 TLR 53), Tu'i'afitu & Halalilo v Moala (2 TLR 104 & 153, Manakotau v Vaha'i (2 TLR 121), Minister of Lands v Kamoto (2 TLR 132) and Tekiteki v Minister of Lands & Kalaniuvalu (3 TLR 34).

In relation to post - 1927 grants, in Tu'iono v Tulua (2 TLR 36) it is stated that -

"A noble cannot confer legal titles to land, and cannot grant either town or tax allotment valid as such in law".

and this Court believes that is an accurate statement of the present law. This is confirmed by the view on the application of the provisions of the Act taken by the Privy Council in Tokotaha v Deputy Minister of Lands (2 TLR 99 and 159).

Therefore in the present case neither the Plaintiff nor the First Defendant had by 1984 received any grant, written or verbal, to their respective halves of the piece of land.

At that stage the estate holder through his representative had put each party onto the land an had allowed them each to build a house in the expectation that if each applied for registration of their respective plots as town allotment the estate holder would agree to the grant. By his action in doing so the Court, with the advice of the learned Assessor, believes that the estate holder had so conducted himself as to represent that he would nto evict either of them nor grant their plots to others provided they occupied the land and applied for registration within a reasonable time. On the faith of this, each party spent money and built a house on his plot, so committing himself to considerable expense. Certainly the First Defendant said that he believed that he then had a legal right to the land.

In terms of section 103(3) of the Evidence Act the estate holder is therefore estopped from denying that the facts were as represented, that is that in the case of each of them he would agree to the grant of that piece of land to that person as a town allotment. It has to be noted that, contrary to English Law, estoppel under section 103(3) does not appear to be simply a procedural or evidential device for use only in litigation: it will operate in general terms even if the person estopped is not a party to the litigation. A court can take into account the procedural law which would apply to a person if litigation was to take place.

Even if this view is not correct, then the doctrine of acquiescence will apply, as stated in Halsbury's Laws (Fourth Edition) Vol.16 paragraph 1475 -

"The court will also protect a person who takes possession of land ..... under an expectation, created or encouraged by the owner, that he is to have an interest in it, and, with the owner's knowledge and without objection by him, expends money on the land. The protection may take the form of requiring repayment of the money,

or the refusal to the true owner of an order for possession, or of holding the person expending the money entitled to a charge or lien, or of finding a contructive trust".

There are good reason why acquiescence should apply. The Privy Council in the case of Sanft v Tonga Tourist Development Co Ltd and others (Appeal 2/'81) [1981 - 1988] Tonga LR made it clear that because no provision is made in the Land Act -

"for matters which clearly arise under the estate or interest of leasehold once a lease has been validly granted in accordance with the Act ... equitable principles may apply except to the extent that any express Tongan statutory provision may affect any particular type of lease."

and went on to apply paragraph 1475 from Halsbury quoted above.

However in its judgment the Privy Council also stated -

"In respect of Tongan land, the Land Act is a complete code which, subject to the Constitution, rigidly controls by its express terms all titles and claims to any interest once they have been created in accordance with the provisions already referred to. With that exception there is no room for the application of any rule of equity-all claims and titles must be strictly dealt with under the Act. No estate right, title or interest can be created except in accordance with the provisions of the Act."

"However, once a leasehold interest has been validly created, the Land Act quite clearly departs from its strict control of titles to land."

"The Privy Council wishes to emphasise that equitable principles can apply only to leasehold interests after they have been validly granted. Such principles have no application to any other title, claim or interest in any other Tongan interest in land."

But that case only concerned leasehold interests. As Martin CJ pointed out in Mokena v Sitani and Others (Case No.13/'85) in this Court with reference to the Sanft case -

"A careful reading of that judgment shows that it decides only that no title can be created by the operation of equitable principles; in other words that Tongan law does not recognise equitable titles except in relation to leases."

What is important about that case (Sanft) is that is established one application of the principles of equity in relation to land in Tonga, not that it appeared to exclude other applications: that was not part of the principle of the case. What the Privy Council said about the non-application of equitable principles in relation to other interests in land can therefore only be obiter dicta and does not bind this Court with respect to the application of equity to other interests in land.

Sections 3 and 4 of the Civil Law Act (Cap.14) are a clear direction to this Court to apply the common law of England and the rules of equity but "only so far as no other provision has been, or may hereafter be, made by or under any Act ...." Lex posterior delegat priori - a later Act overrules an earlier one.

Now no Act can possibly hope to express within the four corners of its pages all the law applicable to any matter falling within its scope. Even if an Act appears to be totally comprehensive it still relies on the general principles of law and must be seen in the context of the field of law to which it relates. An Act rarely stands alone. There is a presumption against unclear changes in the law -

"in the absence of any clear indication to the contrary Parliament canb e presumed not to have altered the common law further than was necessary to remedy the mischief".

Lord Reid in Black-Clawson International v Papierwerke Waldhof-Aschaffenburg AG (1975) 1 All ER 810, 815 (HL).

In a court of law or equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication. Lord Watson in solomon v Solomon & Co (1897) AC 38 (HL).

There is nothing in Part III or elsewhere in the Constitution, or indeed in the Land Act, which shows either expressly or by necessary implication that the general principles of law or equity are superseded except where there is specific provision to the contrary. No suggestion of this was made in King George Tupou I's speech to Parliament in 1875 before the granted the Constitution (2 TLR 1). The long title of the Land Act is simply "An Act relating to land" with no suggestion that it is comprehensive or a complete code to the extent of exclusing general principles of law or equity.

How is a male Tongan's right to a tax and town allotment in clause 113 of the Constitution and section 7 of the Act to be construed if not by reference to the general principles of law?

This Court and the Privy Council have often over many years drawn on other principles of law, as in Fielakepa and Fifita cited below.

The application of acquiescence in this case will not cut across any of the provisions of the Land Act. It will nto achieve a grant of an allotment to the First Defendant, but it does out of fairness prevent the estate holder from validly allocating the land as an allotment to the Plaintiff or anyone else. Nor does anything in the Act suggest that registration is across anct or above other considerations of law, as the Privy Council case of To'ofohe and the cases if Ma'asi and Hema (all referred to below) demonstrate.

The effect of acquiescence in this case in relation to the First Defendant is that the Court would protect him by refusing the true owner an order for possession of the First Defendant's part of the allotment, which could not then be said to be available for grant to another person.

Unfortunately matters developed in 1985 differently from what the First Defendant planned. The estate holder rang up the Plaintiff to ask why he had not registered the allotment and then, despite being told by the Plaintiff that the First Defendant had built a houe on one half of Lot 33 (a fact which the estate holder acknowledged in evidence), the estate holder signed the application form for the Plaintiff for the whole of Lot 33. The estate holder had according to the Plaintiff first checked with the Minister of Lands that nobody had any legal claim or interest in the land, but naturally this did not disclose any restriction on the estate holder arising from his own representative's actions in relation to the First Defendant. As for the First Defendant's presence on the land, the estate holder said in evidence that it was none of his concern.

However while an estate holder has a very wide discretion in whether to agree to an application for an allotment or not, under the Land Act it is not an absolute discretion (e.g. section 34) and must be exercised in a proper manner. The estate holder must take into account any legal restrictions placed on him by estoppel or acquiescence or general legal principles.

Mr Niu for the First Defendant submitted strongly that by 1985 the land occupied by the First Defendant was not then "land available for allotment". Mr Niu did so on the basis that a verbal grant had been made, but the Court finds as a fact that the land was not

available, not for this reason (as explained above about verbal grants) but because a house had been built on the land. In addition the estate holder or his representative on his behalf had put the First Defendant onto the land and allowed him to build a house there. So as well the estate holder was estopped in relation to the First Defendant from agreeing to the land being granted to any other person.

The Court believes that the submission of Mr Whitcombe for the Second Defedant and Mrs Vaihu for the Plaintiff that "available" has to be contrued strictly to mean "not already allotted by deed of grant" goes too far in light of the previous approach of this Court to a reasonable interpretatio of the Land Act and the application of legal principles in e.g. Fielakepa v Minister of Lands (3 TLR 2) and Fifita v Minister of Lands and Fakafanua (3 TLR 45).

In its normal meaning "available" means accessible, obtainable or usable. A neat description which is also appropriate to the circumstances in this case is that accommodation "available" for a traveller means "capable of being used" (Rowan v McNally (1941 SASR 200, cited in Stroud's Judicial Dictionary (Fourth Edition) Vol. 1 page 236).

It would be unreasonable to interpret "available" strictly to exclude only land already registered as allotments. Where would that leave leased land? While it may be one thing to consider as 'available' land which a person is occupying as a squatter without any form of leave, it would not be right to include in 'available' land plots occupied by people with leave of the estate holder or his agent. To do so would, in the words of the Privy Council in Fifita, lead to manifest injustice.

It therefore follows that the grant to the Plaintiff of the half of Lot 33 where the First Defendant had built his house cannot be valid because -

(a) it was made on wrong principles (on which see To'ofohe v Minister of Lands and Afeaki (2 TLR 157) in that as a matter of fact the land was not completely available as an allotment adn also as the estate holder was estopped or prevented by his acquiescence from agreeing to grant it to anyone but First Defendant;
and/or

(b) it was made under a mistake (as in Ma'asi v 'Akau'ola and Deputy Minister of Lands (2 TLR 107) and Hema v Hema and Minister of Lands (2 TLR 126) in view of the estate holder's declaration on the application form "that there is no impediment to prujedice this grant" so that the Minister was not aware that the land was not completely available as an allotment.

The Plaintiff therefore does not have legal rights as an allotment holder over the part of Lot 33 occupied by the First Defendant and so the Court cannot grant the Plaintiff's prayer for an order for the First Defendant to vacate that part.

The Plaintiff bases his claim solely on his legal rights as registered holder of all of Lot 33. Although before 1985 the Plaintiff did not stop the First Defendant, there was no evidence of him doing anything after 1985 other than requesting the First Defendant to move so there cannot be any question of estoppel of the Plaintiff as submitted by Mr Niu. As the Plaintiff wa□ not the holder of the allotment when the First Defendant built his house he cannot in law have acquiesced in it. The Plaintiff made the position clear to the estate holder. There was no evidence that he had made any promises to the First Defendant that he would not apply for the whole of Lot 33.

However if I am wrong in finding that the Plaintiff was only allocated half the plot,

and if he was allocated the whole plot, for the reasons given above I would therefore find that the doctrine of acquiescence operated against him to protect the First Defendant from being evicted.

On the authority of the above cases the Court further has power to rectify the Register of Town Allotments and will do so by ordering Lot 33 to be re-surveyed and subdivided and the Plaintiff's registration to be restricted to the area which he now occupies.

As the First Defendant has not yet made an application for registration the Court cannot order him to be registered as the holder of theother half of Lot 33, but in evidence the estate holder indicated that he would be prepared to allow registration of the First Defendant. The Court trusts that the estate holder will honour his word and register the First Defendant if he applies. In any event the Court believes that the estate holder is estopped and cannot during the lifetime of the First Defendant agree to the land being granted to any other person. This means that the estate holder cannot lawfully give possession or consent to registration of the First Defendant's part of the allotment to any other person and could not lawfully evict the First Defendant.

The decision of the Land Court has been made more difficult in this case because the practice followed in allocating and granting allotments, both by the estate holder and the Minister appears to differ significantly from the provisions of the Land Act. It is never right for administrative practice to be out of steop with statutory legal requirements, as this can cause great confusion and seriously mislead the ordinary people in their transactions. In the case of land the present practice - if the Court understands it correctly - appears to result in those wishing a town allotment to have to more onto the land and build a house there without any legal title and with the consequent risk of being dispossessed without any fault on their part, ans so the risk of losing large sums of money. While this may have been the custom in the past when Tongan fales could be built and moved cheaply, the situation now with permanent and costly houses is very different. It seems unreasonable to subject ordinary people to such risks and it is to be hoped that the Minister will take steps to amend the law to bring it into line with practice, and so provide protection for people who build on land allocated to them.

The Court therefore dismisses the claim by the Plaintiff and orders the Register of Town Allotments to be rectified as stated above.

Costs are awarded to the First Defendant against the Plaintiff.