

Fotu v Minister of Police & Minister of Lands

Land Court, Vava'u

10 Hampton CJ
L 950/96

6 May, 1998

Land - earlier judgment - lack of survey - Crown use

20 The Minister of Police, believing land in Leimatu'a to be vacant, built a Police Station on it. The plaintiff claimed that she had a widow's interest in the land and that another adjoining piece, which had been leased to her daughter, was part of the original block which contained both pieces (i.e. the piece the Station was now built on and the leased position). She claimed possession of it.

Held:

1. The lack of survey and of issue of Deeds of Grants aided confusion.
2. The solution lay in a decision of the Land Court made in 1948 which, when properly read, made it clear that two pieces had been subdivided off the original block; the first granted to the plaintiff's husband (the now leased land),
30 the second granted to another (Fine) and on which the Station was now; the balance to revert to the Estate of Fotu (to be at the disposal of the present or any further holder of the title).
3. The plaintiff must fail in her claim for possession. The land had not been granted to her husband.

Cases considered : Hafo'ou v Fotu (1948) 2 Tongan LR 60

Counsel for plaintiff : Mr Paasi
Counsel for defendants : Mr Cauchi

Judgment

The plaintiff claims that the Police Station at Leimatu'a, built in 1995, has been built on her land. She asserts that is so. It is for her to prove on the balance of probabilities. And I indicate that on the evidence I have heard, she has not so shown that this Police Station has been built on her land, the land to which she says she was a widow's interest. I have carefully reviewed the evidence over the last 12 days or so, since the case was heard in Vava'u, and I have looked with some care at the exhibits produced and at the judgment of Hafo'ou v Fotu (1948) 2 Tongan L.R. 60 (Richardson J. in this Court).

40 The plaintiff's claim for an Order for possession and for a Declaration as per the statement of claim (that is a Declaration that the resumption by the defendants of the allotment was illegal) must fail, and it will be dismissed.

I should say that I have a very unfavourable view of the credibility of the plaintiff and of her daughter (Lataisia) because the Court was misled by them in their concealing quite relevant factual matters from the Court. I am not here to decide if the plaintiff and her daughter were wrongly chased off a block of land (which I will describe as the lease land shown on the Plan Exh. 3 with the name Lataisia Fotu on it) or whether they were chased off there in early 1985 by Fotu Tangalao or Fotu Samiu or both. I am not here to
50 decide if the Police Station has been built wrongly on someone else's land, (for example, Fine who was variously known as, and is the same person as, Fine Kuma, Siaosi Fine Kuma, Siaosi Fine Hafo'ou).

The claim here that is to be decided, and is decided in favour of the defendants, so far as the plaintiff is concerned, is whether the Police Station has been built on her land and contrary to provisions of Part IX of the Land Act, particularly section 142.

The plaintiff claims a widow's interest extending over the land in question and that, after the death of her husband in March 1980 (that is 'Aisea Fotu, he being then the title holder Fotu), she registered her interest in December 1980 as per Affidavit Exhibit 1 and as shown in the Register Book Exh.2 and the predecessors of that Register Book.
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Certainly she did register a widow's interest but the question is, a widow's interest in what block of land? What land does it relate to? The lack of Deeds of Grant, for none seems to have been issued for Leimatu'a, does not help; has added to the confusion, as has the lack of any areas shown in the Register Book whether Exh.2 or the predecessor Registers, Exhibits 9 & 8.

If I look at the Plan, Exhibit 3, extending northwards from the six way intersection and encompassed within a large triangle are 3 blocks of land and, working northwards they are marked as Lataisia Fotu, 1 rood exactly; the second marked Fine, 1r 10.6p (where the Police Station, on everyone's evidence, and on the Court's view of the area, is now
70 built); and the 3rd furthest north marked Fotu, 2r 28.8 p (and it is on that area, on the view, and on the evidence, that the monument to the first Fotu has been erected and still stands. Mr Paasi for the Plaintiff claims that the widow's registration relates to the land 1r 10.6p shown as Fine on the Plan Exh.3.

Mr Cauchi for the defendants says no, that the widows registration relates to the area marked Lataisia Fotu 1r exactly i.e. the southern most area.

The solution in my view is to be found quite clearly in the judgment of Richardson J in the case I have mentioned which was brought between Fine Ha'afou and 'Aisea Fotu.

In conjunction with the reasons which I give there should be read the full text of
80 Richardson J's judgment, which is relevant to this matter, and particularly where he deals

with the area in the Township of Leimatu'a known as Funga Saione.

I just highlight 4 passages now and comment on them in this way.

First on page 60 the reference 2/3rd of the way down that page to the late Fotu who "promised that he would divide the area of Funga Saione into 2 portions, retaining the Southern portion for himself" (and I stress the word Southern Portion for himself) "and giving the northern portion which he named Ma'u-he-'Ofa to Plaintiff". The plaintiff being Fine Hafo'ou.

80 The second portion I highlight is on page 61 second paragraph on that page where the Judge makes reference to finding that the grant to the defendant (that was 'Aisea Fotu, the now deceased husband of the present plaintiff) "was legal and binding to the extend of a statutory town allotment: The grant however cannot purport to convey to defendant more than the statutory area and rest must remain for the time being in the estate." That is the Estate of the title holder Fotu.

The statutory town allotment (the Statutory area referred to) was in the terms of measurement in those days, no greater than 1r 24p and no less than 30 p.

The third extract is from the next paragraph where at the bottom of that paragraph the Judge went on "that therefore plaintiff has a right to a portion of the area known as Funga Saione, such portion being that which was referred to as Ma'u-he-'Ofa".

100 I pause there. That relates to the first extract I read out, where Ma'u-he-'Ofa was described as being the northern portion.

Then in the last paragraph on page 61 the Judge directs that the whole of the area of Funga Saione be surveyed," and that there be first demarcated therein the town allotment of defendant " (that is 'Aisea Fotu)" which shall be of the normal statutory area and that defendant shall register this allotment so surveyed as his town allotment, that the registered name thereof shall be Funga Saione. When this has been done I do direct that the survey shall continue over the balance of the old area Funga Saione and that the balance thereof up to a maximum of the statutory area "(again I stress those words)" of 110 a town allotment shall be demarcated and shall be known as Ma'u-he-'Ofa and that the plaintiff shall be entitled to register this area as his town allotment in that name". I pause there, that means the first area to 'Aisea Fotu to be known as Funga Saione, second area, Ma'u-he-'Ofa to Fine.

The Judge went on "Should there be any further portion of the former area of Funga Saione remaining over after the demarcation on these two statutory town allotments it shall revert to the Estate of Fotu and shall be at the disposal of the present or any future holder of the title". I stress the reversion to the Estate of Fotu.

120 Following that Judgment, and as shown as the register book Exh. 8 (then followed by Exh. 9 and that followed by Exh. 2) 'Aisea Fotu was registered in October 1948 as the holder of Funga Saione and Siao Si Fine Hafo'ou was registered on the same date, 26 October 1948, as holder of Ma'u-he-'Ofa.

On the evidence I have heard, I conclude that what is in fact shown on the Plan Exh. 3 would indicate that the southern most area of Funga Saione was surveyed off into 1 rood exactly and went to 'Aisea Fotu, that is the area now marked with the name Lataisia Fotu.

That is consistent with the Judgment of Richardson J and consistent with the law as to the size of town allotments. That was what was then surveyed off.

130 The next allotment, which is that shown of the Plan Exh. 3 with the name Fine on it, of 1r 10.6p, is again consistent with the Judgment of Richardson J and with the law as to

the size of town allotment.

The remainder of the land, the 2 r 28.8p which was then left, reverted to the Estate of Fotu and is the area marked with the name Fotu on the Plan Exh.3.

That area of 2r 28.8 p is too large to support Mr Paasi's claim in submissions made today that area marked Fotu on the Plan Exh. 3 , 2r 28.8p , was in fact Fine's town allotment. That would be not only outside the law as to the size of town allotment, but also would be outside, and in direct contravention of, the quite explicit orders and direction of Richardson J of March 1948.

140 Those are the conclusions as to the division of land, and where land was and is to be held, that all the evidence, including the exhibits, lead me to.

Occupation of land, and land holding, may well be two different things. It may well be, and it is a very long time ago now, that after the 1948 Judgment the then Fotu, the second Fotu, Fotu Nehumi (the father of 'Aisea Fotu) continued to reside and did reside in a variety of houses on the land, the middle allotment, the allotment marked Fine, and that he in fact continued to stay there until his death in 1978.

150 It may well be that Fine allowed Fotu Nehumi to continue to reside there. Fine it would seem (and there may well have been some family arrangement) continued to occupy a house or houses that had been build on the Fotu land, the land that remained in the estate of Fotu near where the monument is that is on the 2r 28.8p area.

Eventually, and a short time before Fotu Nehumi's death (and these events may well be related), in 1976 or thereabout, 'Aisea Fotu built a substantial 2 storey house on the 1r area Southern-most area (the area shown a Plan 3 with the name Lataisia Fotu on it.)

160 That I suggest is important. Nearing the death of his father he chose to build on this other area a house for himself his wife and his daughter. He shifted from the Fine land. It (the Fine land) was fenced off from the Lataisia Fotu marked land. The house on the Fine land, after the death of his father (Nehumi), was allowed to fall into disrepair and ruin and was eventually dismantled. Somewhere between that time and 'Aisea Fotu's death in 1980, a start was made to build a community hall on the Fine marked land. It got no further than a foundation and possibly a stage. It stopped there. Nothing else was done on that land.

On the evidence it seems to me that the interests of 'Aisea Fotu (when he was still alive) and then those of his widow and of his daughter were focussed on the Lataisia Fotu marked land and to secure the daughter an interest in the land, as their only child, 'Aisea Fotu arranged, quite lawfully as I am told, a lease of the land to her.

170 It seems to me quite clear from the evidence that in effect the widow and the daughter and the family paid no real attention to the Fine land from then on and that is in keeping with the conclusion which I have reach that the town 'api referred to by Richardson J in the Judgment in 1948 which was to go to 'Aisea Fotu is the area Southern most, the area with the name Lataisia Fotu on it, of 1 rood exactly.

It is for those reasons expressed shortly that I find that the plaintiff must fail in the claim that has been made by her.