Minister of Lands v Kulitapa (No.2)

Court of Appeal
Lewis CJ, Burchett & Tompkins JJ
App.4/98

29 July & 8 August 1998

Land - when available - required for government
Evidence - whether land required.

Facts are in the 3 preceding judgments.

Held:

1. On us of proof lay on Government to prove that the 'api was required i.e. was reasonably needed or reasonably necessary for government purposes.
2. That onus was not satisfied, and the letter from the Minister of Lands was an unsatisfactory means of endeavouring to discharge the onus.

Counsel for appellant : Mr Cauchi
Counsel for respondent : Ms Tonga

Judgment

The respondent, the plaintiff in the Land Court, applied to that Court at Ha'apai for an order directing the appellant, the defendant in the Land Court, as Minister of Lands, to register a town allotment in Pangai, Ha'apai in his name. The application was opposed. Following a hearing in the Land Court at Ha'apai, Hampton CJ, in an oral judgment delivered on 12 March 1997, made an order directing registration of the allotment in the name of the respondent forthwith.

From that judgment the appellant appealed to this Court. In a decision delivered on 20 June 1997, this Court confirmed the findings of the former Chief Justice that the application by the respondent for this town allotment was properly made in 1967, and that the proceedings were not statute barred. The order directing registration of the allotment in the name of the Respondent was quashed. The issue whether the allotment was available to be granted to the respondent, which depended upon the Land Court's finding on whether the land was required for Government purposes, was referred back to the Land Court for determination.

That issue came before Finnigan J in the Land Court at Ha'apai on 13 March 1998. In an oral judgment delivered on 14 March 1998, the Judge held that he could not find it proved, even on the balance of probabilities, by the evidence before the Court, that the 'api in question was needed by the Ministry of Agriculture and Fisheries, i.e. was required for

Government purposes. He therefore made the order sought by the respondent in the same terms as the order made by the former Chief Justice on 12 March 1997.

From that decision the Minister has appealed.

Background

The factual background is set out in detail in the judgments of the former Chief Justice of 12 March 1997 and of this Court of 20 June 1997. The following is a brief summary.

At the time of the first hearing in the Land Court the respondent was aged almost 65. The town allotment the subject matter of the claim was registered to Sateki Palatea Kulitapa Senior on 10 November 1925. He died on 14 September 1940 leaving no issue. No claim to the allotment was made at or about that time by any person on behalf of the respondent, he being eight when his great uncle died, so the allotment reverted to the Crown in about 1941.

In 1967 the respondent applied to the then Minister of Lands in writing for the grant to him of the 'api. It was then, and had been for some time before, occupied, apparently informally, by what was then the Ministry of Agriculture, Fisheries and Forestry, now the Ministry of Agriculture and Forestry ("MAF").

The former Chief Justice found that the respondent approached the then Minister to have the 'api registered, but was told that he would have to wait for registration until MAF moved out and then he would be registered. He found that the then Minister told the respondent in about 1967, and on many occasions subsequently, that the respondent should wait until MAF moved out and found other land. The grant would then be made to the respondent. This finding has, as we find later, a direct bearing on the issue now before the Court.

The statutory provisions

Section 87 of the Land Act (Cap 132) provides, inter alia, that, if no claim to a tax or town allotment has been lodged within 12 months from the death of the last holder, the allotment, if situated on Crown land, "shall revert to the Crown."

Section 88 provides:

> "88. Where any tax or town allotment shall revert to the Crown under the preceding provisions of this Division, such allotment unless required for Government purposes shall be granted out by the Minister in accordance with such regulations as may be made under this Act."

In this Court's judgment of 20 June 1997, it held, after referring to these provisions, that the former Chief Justice had made no express finding whether, at the time of the hearing, the land was required for Government purposes. It rejected a submission by Ms Tonga founded on s 138 of the Act. It held that it is a question of fact to be determined by the Minister, or, on application to the Land Court, by that Court, whether the land is required for Government purposes. If it is, the land cannot be granted out under s 88. If it is not, it is clearly appropriate, having regard to the history of this 'api, that it be granted to the respondent.

Finnigan J held, we agree, and Mr Cauchi accepts, that the onus of proof rested on the Minister to establish, as a matter of fact based on acceptable evidence placed before the Land Court, that the 'api is now and is likely in the future to be required for Government purposes. What the appellant was required to prove in this case was that the 'api was

It was not sufficient to show that the 'api had been used by MAF in the past. To discharge the onus of proof, the appellant needed to show that the 'api was reasonably required by MAF now and in the future.

The evidence before the Land Court

Mr Cauchi, who appeared as counsel for the Minister at the hearing before Finnigan J in the Land Court at Ha'apai, called only one witness, Makafilia Taungatu'a, an Assistant Registrar of Lands. He said that the 'api is commonly used as the office for MAF. He was unable to say for how long the Ministry had used and occupied the land. By referring to the register, he gave the Court the history of the 'api. He referred to another piece of land occupied by MAF on which it has new offices. He did not know whether MAF was about to vacate the land subject to the hearing before the Court. This is not surprising since he is not a MAF official. No doubt for the same reason, he did not give any evidence on the crucial issue of whether the land was required for Government, that is for MAF, purposes.

When this evidence had been given, Mr Cauchi tendered to the Court a savingram dated 30th September, 1997 signed by Hon. Fakafanua as Minister of Lands, Survey and Natural Resources. It was addressed to the Solicitor General. It reads;

> "I refer to your savingram No.JC599/97 SG/C.19 on the 10th September 1997. The land in question is required by His Majesty's Government to be retained (for a Government Office and a Market Place) in accordance with section 88 of the Land Act.
>
> I do hope ths will give evidence to the Court that the land in question is required for Government Purposes'.

The letter alone, without any further evidence either from the Minister or from any official from MAF, was an unsatisfactory means of endeavouring to discharge the onus of proof on the Minister to establish that this 'api was required for Government purposes. We recognize, as did Finnigan J, that a formal letter executed by the Minister should be accorded respect and can be given some evidential weight. But its probative value, without any supporting evidence, is slight. The letter does not in any way elaborate on why the 'api is so required by explaining what is the nature of the requirement, and why this 'api is necessary to satisfy that requirement. This may well be because the letter was written by a Minister who was not the Minister of the Ministry for which the 'api was claimed to be required.

Mr Cauchi accepted that there is no statutory provision relating to the evidential value of a letter signed by a Minister. Section 94 of the Evidence Act (Cap 15), concerning the mode of proof of particular documents, does not aid the appellent, as none of the categories of documents set out in the section includes a letter signed by a Minister.

The lack of any such evidence is all the more significant in the light of the findings of the former Chief Justice to which we have already referred. He found, as we have set out above, that former Ministers had told the respondent in or about 1967 and on many occasions subsequently, that the respondent would be granted theland when MAF had moved out and found other land. This history strongly suggests that, at least at that time, the land was not going to be required for Government purposes in the future. There was no evidence placed before the Land Court that this situation had changed.

Finnigan J viewed this 'api and the other currently occupied by MAF. That view is something that the Judge was entitled to take into account. He noted that for MAF's Ha'apai office, there seemed to be room on the other 'api for a small new office building

if one of the existing building could not accommodate the office. All or most of the other MAF functions in Pangai appeared to be on the other 'api; there is a training centre, a machine shed and a residence. The market could remain on this other site.

Mr Cauchi submitted that the Judge was in error in taking into account the Government use of the other 'api. We do not accept that submission. Particularly in view of the paucity of evidence tendered on behalf of the Minister, it was appropriate for the Judge to take the view, including what he saw of MAF activities on the other 'api, into account as explaining the evidence when deciding whether the respondent had satisfied
160 the onus of proof resting on him.

Mr Cauchi also submitted that the Judge was in error in not having regard to the residence which is on the 'api, the subject of these proceedings. Mr Cauchi informed this Court, and no doubt the Judge observed as it is referred to in his judgment, that there is a residence there and that it is occupied on an occasional basis by employees of MAF. There was no evidence concerning this residence and the extent to which it is regarded as important to the Ministry. Significantly, the letter from the Minister makes no reference to the 'api being required as a residence for MAF personnel. The Judge was right to place little weight on this aspect.

170 **Conclusion**

Finnigan J was correct in his conclusion that the evidence before the Land Court failed to establish that the 'api was required for Government purposes. The appeal is dismissed with costs.