

IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

C.P. 298/93

BETWEEN: AUSTRALASIAN CONFERENCE ASSOCIATION LTD a duly incorporated company having its registered office in Sydney, New South Wales, Australia and Apia:

Plaintiff

A N D: OLO SAU, LOLO IOANE, MANUSAMOA FAASOPO, FAGALILO FILIFILI, FUIMAONO ANAUA, Samoan Matais, all of Salani and FUIMAONO LUIOMAU of Salani, Falealili, Minister of Justice:

Defendants

Counsel: R Drake for plaintiff
L S Kamu for defendants

Hearing: 3 October & 21 November 1995

Judgment: 28 February 1996

JUDGMENT OF SAPOLU, CJ

The Australasian Conference Association Limited, which is the plaintiff in the present proceedings, is the name by which the Seventh Day Adventist Church is registered. The land which is the subject of the dispute in the present proceedings is land owned by Government and is situated at Salani, Falealili. It consists of two parcels of land comprising a total area of two hundred and fifty four acres two roods and twenty perches (254a. 2r. 20p.). The first parcel

is parcel 46 containing an area of two hundred and nineteen acres one rood (219a. 1r. 00p.) being part of Pt Parcel 44 and Pt Court Grant 220 Flur XVIII Upolu and is part of the land registered in Volume 6 Folio 151 of the Land Register. The second parcel is parcel 47 containing an area of thirty five acres one rood and twenty perches (35a. 1r. 20p.) being part of Pt Parcel 44 and Pt Court Grant 220 Flur XVIII 6 Folio 151 of the Land Register. The aforesaid parcels 46 and 47 are shown on plan 4166 deposited in the office of the Director of Lands.

By deed of lease dated 20th May 1987, the then Land Board a statutory body empowered to grant leases of Government owned lands, granted a lease of the land in dispute to the plaintiff for a term of 20 years with a right of renewal for one further term of 20 years. Under the provisions of the lease, the plaintiff as lessee is not permitted to transfer, sublease, mortgage or otherwise dispose of its interest in the leased land without the consent in writing of the Land Board as lessor. The plaintiff had set up a boarding school which was generally known as Kosena College on the land. When that boarding school was closed down the plaintiff sought the consent of the Land Board for the lease to be assigned to a third party for the unexpired term of the lease. By letter dated 19 November 1987, the Secretary of the Land Board advised the plaintiff that the Land Board had no objection to the requested assignment of the lease provided that the plaintiff obtained the approval of the Falealili Land Committee and the assignment of the lease was done on the basis stated in the deed of lease.

It is clear that there is no express provision in the lease which requires the approval of the Falealili Land Committee before an assignment of the present lease can be effected. However it appears from the letter of 19 November 1987

from the Secretary of the Land Board that the approval of the Falealili Land Committee was made one of the conditions of the Land Board's consent to the assignment of the lease as requested by the plaintiff. But that does not mean that the Land Board was bound under the provisions of the lease to seek or obtain the approval of the Falealili Land Committee to the assignment of the lease as the plaintiff requested.

The Falealili Land Committee as the evidence in this case clearly suggests is not a registered body. It appears from the report of the Commission of Inquiry which was set up in 1973 to inquire into claims by the people of Falealili to Government owned lands at Falealili that the Falealili Land Committee had been in existence well before 1973. After the aforesaid Commission of Inquiry, it appears that a new Falealili Land Committee was selected. The evidence given by Tofuailofoia Fiso and Fuimaono Lotomau show that the new Committee comprised of Meleisea Folitau, Tuatagaloa Siaosi, Fuimaono Dan Phineas, Taveuveu Papa, Tofuailofoia Fiso, Teo Fetu and Fuimaono Mimio. The last two named members of the new Committee were members of the Committee by virtue of their being the two Members of Parliament for the Falealili territorial constituency. According to the evidence of Tofuailofoia Fiso whoever were the Members of Parliament for Falealili were also by virtue of that fact members of the Falealili Land Committee. It is clear that the new Committee was comprised of the paramount matais of the district of Falealili and representative of the whole district.

When the plaintiff requested the consent of the Land Board in 1987 for the assignment of its lease to a third party, the composition of the Falealili Land

Committee had changed: Meleisea Folitau and Tuatagaloa Siasosi had died. It appears Taveuveu Papa had also died by that time. Teo Elia had left the district for a number of years and had ceased to take part in the affairs of the district. Fuimaono Lotomau who became a Member of Parliament for Falealili in 1988 seems to have also become a member of the Falealili Land Committee. Teo Fetu who had ceased to be a Member of Parliament appears to have continued his membership of the Falealili Land Committee under the paramount title Tuatagaloa. So it appears that as of 1987 or 1988 the members of the Falealili Land Committee were Tuatagaloa Fetu, Fuimaono Dan Phineas, Tofuaiiofia Fiso, Fuimaono Lotomau, Fuimaono Mimio and Teo Elia who had left the district for years. As I have already said, the Falealili Land Committee is not a registered body. There is no provision as to how its decisions are to be made, that is, whether it is to be by unanimous or majority agreement of its members. There is also no provision as to how any meeting of the Committee is to be convened and in fact it is clear from the evidence that the Committee and its successive members selected after the Commission of Inquiry in 1973 has hardly if ever convened a formal meeting.

So when the Land Board required the plaintiff to obtain the approval of the Falealili Land Committee to its request for assignment of its lease, Pastor Ripine Rimoni the president of the Seventh Day Adventist Church approached each of the five current members of that Committee (except Teo Elia who had left the district for a number of years) for his consent. All of them gave their consent by signing the document given to each of them individually by Pastor Ripine Rimoni. On the basis of that signed document, the Land Board agreed to the assignment of the lease as requested by the plaintiff.

At that time all the defendants were cultivating parts of the land in dispute with crops. Fuimaono Lotomau subsequently indicated his objection to the assignment of the plaintiff's lease after he had signed the document given to him by Pastor Ripine Rimoni. I will come back to this aspect of the evidence. In 1992 when the defendants were still cultivating parts of the disputed land, the plaintiff's solicitor wrote to the pulenuu of Salani village concerning the defendants' continuing use of the disputed land. Following that letter in 1992 the defendants Fuimaono Anaua, Fagalilo Filifili and Lolo Ioane vacated the land. So the plaintiff's claim against those three defendants was withdrawn in the course of the present proceedings.

In 1993 Pastor Ripine Rimoni sought the assistance of the Minister of Lands, Survey and Environment who is also the chairman of the Land Board in respect of the defendants Fuimaono Lotomau, Olo Sau and Manusamoa Faasopo who were still cultivating crops on the disputed land. By letter dated 16 February 1993, the Minister of Lands wrote to Fuimaono Lotomau to vacate the land in order to effect the assignment of the plaintiff's lease to a third party. When the defendants did not vacate the land pursuant to the letter by the Minister of Lands, Pastor Ripine Rimoni sought a meeting with the Prime Minister and Fuimaono Lotomau. It appears that the outcome of that meeting was to refer this matter to Court for a decision.

Now there is a conflict between the evidence of Pastor Ripine Rimoni and Fuimaono Lotomau as to the circumstances in which Fuimaono Lotomau signed the document that was given to him by Pastor Ripine Rimoni. According to the evidence of Pastor Ripine Rimoni, he met Fuimaono Lotomau in Apia near the Fish

Market and explained to him the document for which his signature was required for the assignment of the plaintiff's lease. Fuimaono Lotomau then signed the document indicating his consent to the assignment of the plaintiff's lease. The evidence by Fuimaono Lotomau is that Pastor Ripine Rimoni did not explain the document to him or tell him that the effect of the document was to transfer the lease of the disputed land to a third party. He did not even read the document as it was in English and he signed the document as he was catching a bus to go to Falealili.

Whichever of the two conflicting accounts given by Pastor Ripine Rimoni and Fuimaono Lotomau is right, it is clear that the majority of the Falealili Land Committee had consented to the assignment by the plaintiff of its lease. There is nothing to show that decisions to be taken by the Falealili Land Committee are to be unanimous. It is important for this case that the majority of the members of the Falealili Land Committee have agreed to the assignment of the plaintiff's lease. Fuimaono Lotomau is the only member who has expressed dissent. But as already stated the disputed land is owned by Government. There is no provision in the lease which requires the consent of the Falealili Land Committee for a valid assignment of the lease between the Land Board and the plaintiff. However as a matter of prudence, it appears that the Land Board had required the approval of the Falealili Land Committee to the assignment of the plaintiff's lease because of past disputes between Government and the district of Falealili over the land in question. Save for Fuimaono Lotomau, all the other members of the Falealili Land Committee have agreed to the assignment of the plaintiff's lease.

There was some suggestion that the Falealili Land Committee referred to in the letter dated 19 November 1987 from the Secretary of the Land Board meant the original Falealili Land Committee which was set up after the Commission of Inquiry in 1973 and included whoever were the two Members of Parliament for Falealili from time to time. I am unable to accept that suggestion. It is clear from the report of the Commission of Inquiry in 1973 that the Falealili Land Committee had been in existence well before the Commission of Inquiry in 1973, and its composition did not remain constant at all times but varied over the years. The Falealili Land Committee referred to in the letter of the Secretary of the Land Board must mean the Committee at the time of that letter. Even if that is not so, it is still clear that the majority of the members of the Committee selected after the Commission of Inquiry in 1973 and who were surviving at the time of the plaintiff's request for assignment of its lease had agreed to that assignment. Those surviving members who have agreed to the assignment of the plaintiff's lease were Fuimaono Dan Phineas, Fuimaono Mimio and Tofuaiofoia Fiso. Tuatagaloa Fetu who was a member of the Committee selected after the Commission of Inquiry in 1973 and was one of the paramount title holders of the Falealili district had also given his agreement to the assignment of the plaintiff's lease.

In all then, this Court has come to the conclusion that judgment be given for the plaintiff, and the three defendants who are still cultivating crops on the disputed land must vacate that land and remove their crops. They are given six weeks to do so. Failing to do so the plaintiff may bring this matter again before the Court for further orders.

For general damages claimed, I award \$500 to the plaintiff. For costs I award \$750 to the plaintiff.

I hope that the defendants will see their way clear in this matter so that further Court proceedings will not be necessary.

Tom Sapshe
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CHIEF JUSTICE