

BETWEEN: **SIONE TAUFAKALOLO PUA'A**

- **Appellant**

AND: **LOFI GOODWIN LAVEMAI**

- **Respondent**

Coram **:** **Handley J**
 Blanchard J
 Randerson J

Counsel **:** **Mr. S. Tu'utafaiva for the Appellant**
 Mrs. L. Pahulu-Kuli for the Respondent

Date of Hearing: **10 April 2019**

Date of Judgment: **17 April 2019**

JUDGMENT OF THE COURT

- [1] This is an appeal from the judgment of Niu J in the Land Court who ordered the appellant to vacate the plaintiff's town allotment 312/18 at Haveluloto and awarded damages for trespass of TOP\$12,000 and costs.
- [2] Mr Tu'utafaiva, who appeared for the appellant, argued that the plaintiff's claim first accrued in 1990 when he was registered as the holder of the allotment and the defendant's parents and their children, including the defendant were in occupation.
- [3] He also attempted to challenge the Judges' award of damages for lack of any evidence to support it. However during a pre-trial directions hearing before the Lord Chief Justice, Mr Tu'utafaiva had expressly agreed that the only issue in the pending trial would be the limitation defence under s 170.
- [4] In these circumstances there could be no other challenge to the damages awarded by the trial Judge.
- [5] In 1992 the plaintiff's wife 'Ana Malia asked the defendant's mother Lausiva when they would move out of the allotment. Lausiva asked if they could stay until her daughter finished her studies at the USP. 'Ana Malia agreed.
- [6] In 2002 'Ana Malia agreed to a further extension sought by Lausiva to enable her and her husband to build a house on their allotment at Tofoa.
- [7] In 2008 'Ana Malia asked Lausiva what had happened to their house at Tofoa and Lausiva asked if they could be allowed to finish it they would then move out and leave the house there in appreciation for her kindness. 'Ana Malia agreed.
- [8] In 2014 'Ana Malia agreed to a further extension to enable Lausiva and her husband to stay on while they built on their land at Tofoa. Construction began soon

afterwards and finished in 2015. The defendant's parents then moved out but he and his family stayed on.

- [9] In 2015 'Ana Malia asked the defendant to vacate but he refused. 'Ana Malia's request and the defendant's refusal marked the end of his licence to remain in the property. From then on his possession was adverse to the plaintiff, the plaintiff's cause of action accrued and time began to run under s 170 of the Land Act.
- [10] In 2017 the plaintiff's lawyer wrote to the defendant demanding that he vacate the property within 6 months. The defendant ignored the letter and the plaintiff sued for possession in March 2018.
- [11] Niu J found that the defendant had lived on the allotment with the permission of the plaintiff until 2015. 'Ana Malia had given permission as agent for the plaintiff, and although she gave them to Lausiva they covered her husband and their family as well including the defendant.
- [12] These findings are clearly correct and cannot be disturbed.
- [13] Since the defendant's possession did not become adverse until 2015 the plaintiff's action for possession was well within time and the appeal fails.
- [14] The appeal is dismissed with costs to be taxed if not agreed.



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Handley J

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Blanchard J

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Randerson J