

IN THE COURT OF APPEAL OF TONGA
LAND JURISDICTION
NUKU'ALOFA REGISTRY

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06/09/19
AC 5 of 2019
[LA 8 of 2019]

BETWEEN: FALAKIKO SAVELIO MA'AFU KULI

- Appellant

AND: 1. 'ETIMONI MAILE
2. MINISTER OF LANDS

- Respondents

Coram : Whitten P
Handley J
Blanchard J
White J

Counsel : Mrs Loupua Pahulu-Kuli and Miss Sisikakala Vaipulu
for the Appellant
Mr Maile (First Respondent) – self represented
Mr Sione Sisifa SC for Second Respondent ✓

Date of Hearing: 3 September 2019

Date of Judgment: 6 September 2019

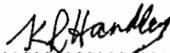
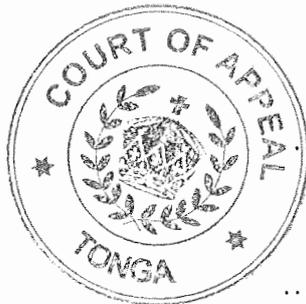
JUDGMENT OF THE COURT

- [1] This is an appeal by the Plaintiff from the decision of Niu J in the Land Court who dismissed his claim to have the registration of his neighbour's Deed of Grant Book 453 Folio 64 set aside. This was sought to enable a fresh survey to be undertaken and a fresh grant made excluding encroachments by the land and buildings occupied by the Plaintiff.
- [2] The Plaintiff's statement of claim was served on the first Defendant and the Minister but the First Defendant did not appear in the Land Court to contest the claim.
- [3] The Plaintiff proceeded to a formal proof hearing before the Judge.
- [4] The first Defendant's Deed of Grant was issued on 26 November 2018 but the Judge accepted evidence from an officer of the Lands Office, and made the following findings. The first Defendant applied for town allotment Lot 206 at Lapaha, Tongatapu on or about 9 March 2002. The lot had already been surveyed and pegged.
- [5] On 22 March 2002 the Minister granted the application and on 3 June 2002 he directed the Secretary for Lands to prepare a Deed of Grant. It was finally issued as book 453 folio 64 on 26 November 2018.
- [6] The Judge also found that when the Lot was surveyed in the early 1990's, when the first Defendant applied for the grant, and when the Minister decided that the grant should be made, the Lot was vacant and no one was in adverse possession.
- [7] He held that an allotment is lawfully granted when the Minister makes his decision to grant it applying *Lisiate v Eli* [2012] Tonga L.R. 31. The deed of grant when issued later is only evidence of the earlier grant: *Moala v Tu'i'afitu* [1956] Vol II Tonga L. R. 104.

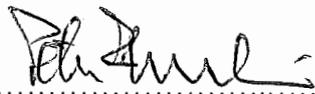
- [8] The fact that the Plaintiff may by then have been in adverse possession of part of the Lot, and this was not known to the Department, cannot invalidate a grant made 16 years earlier.
- [9] The Plaintiff claimed in evidence that in 2007 he and his siblings erected the dwelling house on that part of the Lot which he now occupies with other land, for the accommodation of his parents.
- [10] His parents migrated to Australia in 2010 and “gave” the house and the adjacent land they had occupied to the Plaintiff, who, with his family, has been in occupation ever since.
- [11] The Plaintiff’s possession and that of his parents’ may have been adverse and the first Defendant’s right to possession may be time barred under s.170 of the Land Act but the first Defendant has not made any claim to possession and has not been heard on that question.
- [12] The relief sought in the statement of claim depended on the grant being invalid.
- [13] The grant being valid and there being no other claim for relief the appeal fails and is dismissed. The appellant must pay the costs of the Minister.



Whitten P



Handley J



Blanchard J



White J