IN THE COURT OF APPEAL OF TONGA

CASE NO. 2/1988

BETWEEN	:	SIONE K. VELEIKA	- Appellant;
AND	:	DEPUTY MINISTER OF LANDS HON. LAUAKI 'ESAU FIFITA	- Respondents.
CORAM	:	Mr Justice Roper Mr Justice Ryan Mr Justice Morling	
HEARING	:	16 June 1993	
COUNSEL	:	Mr Niu for Appellant Solicitor General for Minister Mr Paasi for Fifita	
JUDGMENT	:	23 June 1993	

JUDGMENT OF THE COURT

This is an appeal against the Land Court's refusal to confirm the Appellant's entitlement to a town allotment at Masilamea in Vava'u.

In 1981 the father of the Respondent Lauaki (who was not represented at the appeal) having received from the Appellant the customary gifts of food, a pig and money ($200) granted him the right to occupy a town allotment in the Lauaki hereditary estate. The Appellant was aided in his application for land by the estate holders agent, who was commonly known by his matapule title of Ma'u. The Appellant and Lauaki signed the application form for registration and it was duly lodged with the Deputy Minister of Lands in Vava'u together with the survey fee. The Appellant moved onto the land and built a small house. It was nothing

elaborate for one estimate of its value was $300.

In 1983 the Appellant did a very unwise thing. He made one of Ma'u's young daughters pregnant. Ma'u was furious and evicted the Appellants family from the land at a time when the Appellant was away from home. There was some dispute in the evidence as to whether Lauaki supported the eviction by Ma'u. The Trial Judge thought he probably had but concluded that in any event Ma'u as the estate holders agent had authority to manage the estate which would include ostensible authority to evict occupiers in appropriate cases.

On the 1st August 1983, which was after the eviction , the Appellant went to the Deputy Minister of Lands to complete the registration of his allotment. He paid the registration fee and the allotment was registered in his name but at that stage no deed of grant could be issued. However, he took no steps to return to or reclaim his land and indeed in early 1984 dismantled his house, which was starting to deteriorate, and took the building material to his mother in law's property. The Appellant claimed that he did not return to the land because he had had a fight with Ma'u and the police had advised him to move elsewhere.

Shortly after that the whole area was surveyed and few if any of the final allotments corresponded with those originally granted.

In February 1984 the Respondent Fifita applied for an allotment and was given one which the Trial Judge concluded was substantially the same as that formerly occupied by the Appellant although smaller in area. Fifita built a substantial house which cost $8500 nearly ten years ago and has a present value of about $10,000. The Trial Judge accepted that Fifita entered onto the land and accepted a grant in good faith and with no knowledge of the Appellant's earlier occupation. A final grant of the land to Fifita was made on the 19th May 1988. The Appellant said he was unaware of Fifita's house until the building was completed. It appears that that would have been in about 1985.

The Appellant did not issue his proceedings until May 1988.

The Trial Judge held that the Appellants purported registration

of the land could not prevail over Fifita's grant on two grounds:

First, because no deed of grant was issued to the Appellant and secondly, because the area of land in respect of which the Appellant registered his application exceeded the area permitted by law for a town allotment. S.49 of the Land Act provides that it is unlawful to grant an allotment in excess of the area specified in the Act and that the grant shall be null and void.

The specified area for town allotments is 1618.7 sq. metres with a small variation permitted for survey reasons. It seems that the area the Appellant originally occupied exceeded that. On appeal Mr Niu submitted that the grant of a greater area than authorsed by statute only rendered the excess null and void not the whole grant. The Solicitor General agreed with that submission and there is clear authority for Mr Niu's submission on this matter in the Privy Council case of Mele Fifita v. Minister of Lands 1962-1973 TLR 45.

We turn now to the real issue in this appeal. Was the lower Court right in determining that failure to complete the registration formalities was fatal to the Appellant's case?

Mr Niu submitted that there was an effective grant to the Appellant and that it was not necessary for there to be registration or the issue of a deed of grant before a person could lawfully hold an allotment.

The starting point is S.29(1) of the Land Act which reads:-

> "Upon the boundaries of any allotment having been determined in the manner prescribed by this Part of this Act the holder shall forthwith register his holding in the office of the Minister for the district in which such allotment is situated and the Minister shall grant such holder a deed of grant in the form in Schedule V."

SS.120 and 121 of the Act specify the form and content of deeds of grant and how they shall be registered.

In the Privy Council case of Tokotahi v. Deputy Minister of Lands and Sani Vea Vol II T.L.R. 159 (which was relied on by the Trial Judge in the present case) is the following:-

> "It is clear that formal registration consists of the registration of the deed of grant. Registration is not complete until the deed of grant is prepared and a duplicate signed by the Minister and handed to the applicant and the original "registered" and bound up. Since no deed was ever issued to the Plaintiff in this case his registration was informal and incomplete".

Mr Niu submitted that the Tokotahi case was wrongly decided and that in fact there were literally hundreds of families in Tonga occupying lands who could not produce a registered deed of grant. We do not doubt that that is so, and we also accept that the decided cases support the proposition that in certain circumstances the right of a person to occupy land will prevail although he has no deed of grant. Lisiate Afu v. Falakiko Lebas Vol II T.L.R. 167 is such a case. All that Tokotahi decided was the requirements of a completed title.

Indeed, in the present case the Trial Judge said that had the Appellant came to the Court promptly it is possible that he would have recovered possession, but his delay made it unjust to disposses Fifita. We agree with that comment. Fifita has now been in possession for almost 10 years and it was some four or five years after Fifita took possession that the Appellant filed his proceedings.

It is also a relevant consideration that the estate holder was and still is prepared to grant the Appellant another allotment and in the lower Court an order was made that that allotment (Lot 10) be registered in his name.

The appeal fails and is dismissed. We award costs to the Respondent Fifita in the sum of $300.