



discovered that Tevita had sworn an incorrect affidavit in order to have the land registered in his name. The plaintiff claims he is entitled to the land as the heir of his father, the original holder's heir.

The defence raises two objections to the claim. The first is that it is statute barred under section 170 of the Land Act and the second is that the matter has already been decided by the court and is now res judicata.

Section 170 provides;

"170. No person shall bring in the Court any action but within 10 years after the time at which the right to bring such action shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims then within 10 years next after the time at which the right to bring such action shall have first accrued to the person bringing the same."

The plaintiff claims through his father, Siasoi Tupoulahi, and any right to claim it from Tevita accrued to his father when Tevita's mother Latu died, the time when Tevita had the land registered in his name.

Mr Tonga for the plaintiff asks the Court to find that the right accrued to the plaintiff only when he first discovered it had been registered by Tevita because of the sworn statement that wrongly claimed Tevita was the heir. That discovery, the plaintiff told the Court, was only made in 1994. Even if that were a correct statement of the law, and I do not consider it is, the plaintiff would fail because I simply did not believe his evidence that he only realised in 1994. I am satisfied he clearly knew of Tevita's title and the basis upon which it must have been made, long before 1994. I am satisfied he has given that date in order to try and bring himself within the restriction imposed by section 170.

However, as I have stated, I do not accept the basic proposition. I have no doubt that the plaintiff's right arose at the time his father's right accrued and that was in 1971 upon the death of Latu, well outside the period of 10 years.

The claim that it is res judicata arises from an attempt by the plaintiff's father, Siasoi Tupoulahi, to challenge this when his right first accrued.

In 1972 he brought a claim; Siasoi Tupoulahi Cocker v Tevita Cocker and the Minister of Lands, number 10 of 1972. This was a claim against the registration of the land in the name of Tevita based on Siasoi's claim to be the rightful heir. It was listed before Judge Roberts and his minute shows that, on 19 April 1973, he reserved judgment for 30 days to allow the parties to try and reach an amicable settlement. The next entry in the judge's minute book is dated 24 April 1973 and reads:

"Manu for defendant and plaintiff and defendant 1 in person.

Manu: Plaintiff has withdrawn his claim and binds himself and successors (sic) not to henceforth make any claim to the lands in question.

Plff: The letter that I produce herewith dated 24 April 1973 is signed by me and I ask that the case be withdrawn....

Court: The case is withdrawn.

H Roberts J"

The letter referred to in that note was dated the same day and pointed out that Siaosi Tupoulahi Koka was "claiming my right as an heir to the town and tax allotments of my father which was illegally transferred by the 2<sup>nd</sup> defendant Minister of Lands to be held by the first defendant Tevita Koka my younger brother on the 22/9/1971. This case was heard on the 19/4/73 and was adjourned for finalisation and you ordered the case to be adjourned for 30 days for us to discuss. We have therefore reconciled our differences and I agree to withdraw this case for good and it will not be proceeded again in future either by myself or my descendants, it will just be left for my younger brother Tevita Koka and his children to occupy and their descendants now and in the future.

Yours faithfully obedient servant

Siaosi Tupoulahi Koka"

It is clear that the earlier case was on exactly the same issue as is now raised by the present plaintiff. The plaintiff points out that the principle of res judicata does not necessarily bind other parties. Whether the undertaking of the plaintiff's father is binding on his descendants, as he clearly intended it to be, is not a matter I have to decide.

The significance of that earlier case is that it shows the actual cause of action arose when the land was registered in the name of Tevita and was taken up by the plaintiff's father. He based his claim on the suggestion that the land was illegally transferred to Tevita.

The plaintiff cannot now claim the limitation period only starts to run in his case in 1994 because he did not realise the illegality of the registration until then.

The claim is statute barred as being well outside the limitation period imposed by section 170 and it is dismissed with costs to the defendants.

NUKU'ALOFA: 22 June, 2001

