

IN THE LAND COURT OF TONGA
NUKU'ALOFA REGISTRY

L.39/1997.

BETWEEN : 1. PAULA 'ALOFI - Plaintiffs;
2. SOSEFO 'ALOFI

AND : 1. 'INOKE FINE - Defendants;
2. PELE FINE

Date of Hearing : 12 & 13 January 1998.

Counsel : Ms Tonga for Plaintiffs
Mr Tu'utafaiva for Defendants.

Date of Judgment : 5 March 1998.

JUDGMENT OF FINNIGAN J

This is a claim by the registered owner of a tax allotment, and by his eldest son. The plaintiffs seek an order giving the first plaintiff possession of the tax allotment and evicting the defendants. The defendants seek to have that claim dismissed and a determination that the plaintiffs are estopped from seeking the order sought.

The facts of the matter are disputed to a degree, but in essence they are these : many years ago the first plaintiff allowed the brother of the first defendant, i.e. Tevita Fine & his wife, to live on part of his tax allotment. After a time the first defendant came to live there. Tevita and his family eventually moved on and the first defendant remained. He married about 1983, and with his wife (the second defendant) lived on in the house which he had built there. He made many

improvements which he values at \$40,000. He claims the first plaintiff had told him that the piece of land concerned would be his. He had fenced it and done other work with that promise in mind. The plaintiff however claims that, while he had such a promise in mind, he wanted the first defendant to take care of his whole tax allotment for him because he lived elsewhere and did not convey that promise to him. To the contrary, he became dissatisfied with the first defendant's care of the property and told him to leave. The two defendants have refused to leave. They want to stay there and enjoy the improvements that they have built up during the last 15 years, and if they are to go they want to be compensated for what they must leave behind. The second plaintiff says he wants to inherit the whole tax allotment, and will not consent to that.

The submissions of counsel have been detailed, particularly as to the disputed facts. As stated by Ms Tonga on behalf of the plaintiffs, the proof of legal ownership which the plaintiffs gave (through the Registrar of Lands) is by itself enough at law to create an unanswerable case for eviction unless, on the facts, the first plaintiff is estopped by his words and/or actions from claiming that legal right.

Mr Tu'utafaiva on behalf of the defendants made it clear at the hearing and in submissions that the defendants seek only dismissal of the claim to have them evicted, and an order that the plaintiffs are estopped from taking possession of that part of the tax allotment where they live.

That relief, if granted, is equitable relief. It would have the effect of suspending some of the provisions of the Land Act Cap 132 that govern this piece of land, and for an indefinite period.

What would be the period? There are no submissions about that. As for the Land Act, Ms Tonga submits that it is a complete code. Mr Tu'utafaiva however relies on a decision of the Privy Council, No.3/1988 which makes it clear that estoppel is available in claims under the Land Act. Estoppel by representation is governed, Mr Tu'utafaiva submits, by S103 of the Evidence Act Cap 15 and he submits that the evidence establishes an estoppel by representation.

The decision of the Privy Council, Matavalea v Uata No.3/1988, 24 February, 1989, upheld the application of S.103 of the Evidence Act in a claim under the Land Act, but in doing so declared that nobody can acquire title to land by estoppel. The only effect of an estoppel in such a case is to impose a personal restriction on the person estopped, but that person still has a legal title to the land.

Thus, at law, an estoppel would restrict only the first plaintiff while he is owner of the land. What happens then would be for future consideration.

In the facts of that case the estoppel was raised, and was upheld, by the facts (among others) that the land-holder, a widow with a life tenancy under S74, had offered to register a lease if given some money, and money had been paid; the occupiers did substantial construction work not unlike that in the present case; and the original grantor of permission to occupy (the widow's husband) had allowed occupation for 15 years then for 3 years then until his death, a further 3 years later-a total of 21 years.

There are similarities between that case and the present. In both, the unregistered occupiers were invited to occupy, with a view to assisting them. In both the occupation could have terminated but the plaintiff land holder allowed it to continue. In both the occupier did substantial construction work including building a house and related earth-works. The only substantial differences are (i) that in the former case the widow took money on a promise to register a lease then did nothing, whereas in the present case the plaintiff did no such thing and there is a dispute about whether he promised registration or not ; and (ii) that in the present case the heir has not consented.

Each case where equitable relief is sought must be carefully considered in itself to see where justice lies ; but similar cases should be taken into account so that the law is consistent.

After carefully considering the facts of the present case I am of the opinion that the first plaintiff made to the first defendant a representation that if he cared for the whole property he would be rewarded, by being given the part on which he lived. That is a clear inference from the conduct of both parties. There is however no evidence from either party about how the land would become his or

for how long. To me the evidence suggests that the first plaintiff was willing to have the defendants occupy part of his land so long as it was his, and he had stopped short of offering registered title. He now feels that he has not had what he wanted from the bargain because the other part was not well cared for.

This in my view is insufficient reason for disturbing the long occupancy which he allowed to the defendants, particularly in view of their contribution to the part where they live.

In my opinion the first plaintiff is estopped by his representation from disturbing the present well-established situation, i.e. from evicting the defendants off his tax allotment. The orders which he seeks are therefore declined.

The second plaintiff in my view has only limited standing in this case. He is not bound by any estoppel under S103 of the Evidence Act. The defendants have no equitable rights against him for occupancy. When he succeeds to title he will inherit the whole tax allotment. The defendants will have no rights to occupy, and if those rights are not granted to them under the Land Act they will have to leave. They may wish to make some claims of their own at that time against the second plaintiff and the parties may wish to prepare some agreement about that.

The plaintiff's claim for relief is declined.

NUKU'ALOFA, 10th February 1998.



Dinnigan

(JUDGE)