

**IN THE LAND COURT OF TONGA  
NUKU'ALOFA REGISTRY**

*Solicitor General*  
14/06/16  
LA 9 OF 2015

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**BETWEEN: PENI TOLOA FILIMOEHALA**

**Plaintiff**

**AND: FOTOFILI FILIMOEHALA**

**First Defendant**

**PEAUAFI FILIMOEHALA**

**Second Defendant**

**BEFORE PRESIDENT PAULSEN AND LAND ASSESSOR**

**Hearing : 7 - 8 June 2016**

**Date of Ruling : 14 June 2016**

**Counsel : Mr. S. Tu'utafaiva for the plaintiff**

**Mr. S. Fonua for the second defendant**

**RULING**

*recd 14/06/16*

- [1] This ruling must be read with my ruling in the action under LA 28/2015.
- [2] The plaintiff is the registered holder of a town allotment at Ma'ufanga known as Kape. He commenced this action seeking to evict the first and second defendants and their respective families from the land and damages for loss of use of the land since he obtained his registration in 2011 in the sum of \$50,000 along with interest and costs. The first and second defendants filed statements of defence and counterclaims.
- [3] When this action first came on for hearing on 12 October 2015 I was advised that the plaintiff had settled with the first defendant and the plaintiff's claim along with the first defendant's counterclaim were withdrawn.
- [4] As far as the second defendant was concerned his Counsel gave notice of his intention to challenge the plaintiff's registration. This had not been pleaded. The trial of this action was adjourned. Subsequently the second defendant filed an action under LA 28/2015 against the plaintiff and the Minister of Lands seeking cancellation of the plaintiff's registration as well as seeking compensation (which replicates the counterclaim in this action).
- [5] At a chambers hearing on 26 February 2016 I set down both LA28/2015 and this action for hearing commencing 7 June 2016. I directed that this action would be heard immediately following

LA28/15 and it was expected that it would proceed on the same evidence as was presented in LA28/15. That is how the matter proceeded.

[6] I have set out the facts in my ruling in LA28/2015 dated 14 June 2016. I need not recount those facts here. In my ruling I dismissed both the second defendant's challenge to the plaintiff's registration of Kape and his claim for compensation.

[7] It has therefore been established in LA28/2015 that the plaintiff was lawfully registered as the holder of Kape. He is *prima facie* entitled to possession of his land subject to any matters the second defendant raises in this action.

[8] In his amended statement of defence of 17 August 2015 the second defendant pleads that the plaintiff is estopped from removing him and his family from the land for reasons that can be summarized as follows:

[8.1] The land was originally gifted by one Kelemete Tupouto'a to the second defendant's mother Vasitai for the second defendant; and

[8.2] The allotment had been the home of the second defendant and his family since 1952 and he has expended labour and spent money on improving the land; and

[8.3] The second defendant's father (and plaintiff's grandfather through whom the plaintiff inherited the land by succession under section 82 of the Land Act) Penisimani Filimoehala registered Kape in his name without the permission of Vasitai or the second defendant; and

[8.4] That when Penisimani registered the land he said that no one would ever remove the second defendant from the land; and

[8.5] That the plaintiff's father was aware that the land was to belong to the second defendant notwithstanding that it had been registered in Penisimani's name and he promised the second defendant that the allotment would be the second defendant's land.

[9] The submissions presented to me in support of the second defendant's defence were skeletal. There was no analysis of the law or application of the law to the facts of this case. All too often in land cases that come before the Court defendants plead estoppel as a defence to claims for possession of land without any consideration of legal principle.

[10] None of the matters raised by the second defendant give rise to an estoppel as against the plaintiff to prevent him from obtaining possession of his land.

[11] As I found in my ruling in LA28/2015 Kape was not gifted by Kelemete to Vasitai for the second defendant. Kelemete did not surrender any of his land. The evidence established that Penisimani applied for the land as his own town allotment in around 1952. When the land was registered in Penisimani's name the second defendant made no challenge to it.

[12] Whilst I accept that the second defendant did as a child do work on the land and may also, in around 1982, have given some money to extend the house the extent of such contributions were unproven and no more than the performance of his family obligations in any event. They did not create an interest in the land or any right to possession of Kape.

[13] The evidence fell well short of satisfying me that Penisimani said that no one would remove the second defendant from the land but even if that representation was made the plaintiff cannot be said to have relied upon it in any material way. The plaintiff moved off the land and left Tonga permanently in 1982. He moved to the United States and obtained citizenship there and he still has a home there. In any event such a representation could not bind the plaintiff who did not make it and has acquired his land by succession.

[14] Finally, I reject also that the plaintiff's father promised the second defendant that the land would be his. This is contrary to

the second defendant's evidence that he reached an agreement with the plaintiff's father to share the land between them.

[15] But even if he made such a representation the plaintiff's father was never the owner of the land and the plaintiff claimed the land as Penisimani's heir. The plaintiff's father had no right to make such a promise nor could he bind the plaintiff to it. In any event there is no evidence of detrimental reliance upon such a promise by the second defendant.

**The result**

[16] The second defendant's defence of estoppel fails. The plaintiff is entitled to possession of Kape and the second defendant is to vacate the land within 1 month of the date of this ruling.

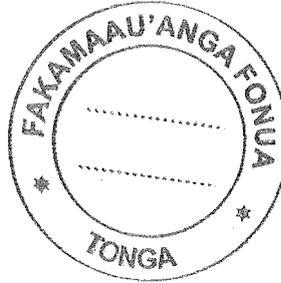
[17] The plaintiff produced no evidence of any loss resulting from the second defendant's occupation of the land nor did Mr. Tu'utafaiva pursue any such claim before me. I therefore make no order for the payment of compensation against the second defendant.

[18] The second defendant's counterclaim, which as I said was the subject of the claim in LA28/2015 and has been resolved in that proceeding, is dismissed.

[19] The plaintiff is entitled to his costs which are to be fixed by the Registrar if not agreed.

[20] The plaintiff provided security for costs which is to be released by the Registrar to the plaintiff forthwith.

**NUKU'ALOFA: 14 June 2016**



O.G. Paulsen

**PRESIDENT**