



- [2] The plaintiff's parents were Siupeli Lauaki (Siupeli) and 'Amelia Lauaki ('Amelia). In 1929 Siupeli was granted a large town allotment of 3R 10.2P called Loto'api at Lapaha (Register of Town Allotments, Book 5 Folio 199/85) and a tax allotment at Toafa (Blk 78/97 Lot 31). Siupeli died on 18 March 1978.
- [3] 'Amelia claimed and was granted Siupeli's town and tax allotments. She subsequently subdivided the town allotment and from that a town allotment of 1R 24P was granted to Sovea 'Iongi Siupeli (Sovea). Sovea is the eldest son of Siupeli and 'Amelia. 'Amelia retained the balance of the town allotment for herself.
- [4] 'Amelia died on 4 December 2002. On 22 August 2003, the plaintiff (Vakautapola) lodged a claim to the town and tax allotments as Siupeli's heir. He stated that –
- a. he was the heir to the allotments;
  - b. he was the registered holder of a town allotment at Hoi, Tongatapu;
  - c. he elected to register the town allotment at Lapaha and that his town allotment at Hoi be transferred to his son, Sione Fotu Lauaki.
- [5] The Minister accepted Vakautapola's claim on 2 September 2003 and he was granted the town and tax allotments although at the present time he has not been issued with deeds of grant.
- [6] Vakautapola commenced this action against the defendants in April 2016 to remove them from his town allotment. For present purposes it is sufficient to say that the defendants have been living on the land for many years and claim that permission to do so was given by Siupeli. The defendants opposed Vakautapola's claim and sought cancellation of

his grant of the town allotment. They also challenged the subdivision of Siupeli's town allotment and the grant to Sovea but Sovea was not joined as a party to this action.

[7] During the hearing it was established that Vakautapola was not Siupeli's heir. Siupeli's heir is the second son of Siupeli and 'Amelia by the name of Lopeti Lauaki 'Iongi. Vakautapola is the third son. Vakautapola had believed he was the heir because he was the first son born during his parent's marriage. However Siupeli and 'Amelia had two sons before him. The eldest son, Sovea, was born while Siupeli was married to his first wife and was illegitimate. The second son, Lopeti, was born in 1944 prior to his parent's marriage but after Siupeli had divorced his first wife. Consequently although born illegitimate Lopeti became legitimated upon his parents' marriage in September 1948 by operation of the Legitimacy Act. Vakautapola was therefore wrong to claim Siupeli's town and tax allotments as heir.

[8] In light of this development and following the conclusion of the hearing Mr. Tu'utafaiva, wrote to the Court advising that this matter could be disposed of on the basis that Vakautapola's registration of the town allotment in dispute be cancelled or revoked, that the matter be referred back to the Minister to hear the parties before any decision is made to re-grant that land and that costs be awarded to the first and second defendants to be taxed if not agreed. On receipt of this letter I saw all Counsel in Chambers and they confirmed the parties' consent to orders being made in these terms.

### **Result**

[9] Accordingly I make the following orders by consent:

[9.1] The plaintiff's claim is dismissed and there is judgment for the first and second defendants.

[9.2] The first and second defendants' counterclaim is allowed to the extent that the grant to the plaintiff of the balance of the town allotment at Lapaha formerly granted to Siupeli Lauaki is set aside. Before re-granting the land the Minister should hear from the plaintiff and the defendants along with any other person who may wish to apply for the land.

[9.3] The first and second defendants are awarded the costs of the action to be fixed by the Registrar if not agreed.

[10] There are two final comments I should make. Although the defendants challenged Sovea's grant he was not made a party to the action and the Court could therefore never have made the orders that the defendants sought in respect of his land. Secondly, the plaintiff's entitlement to Siupeli's tax allotment was not in issue in this action and I make no orders in respect of that land.

**NUKU'ALOFA: 11 September 2017**



A handwritten signature in black ink, consisting of a large loop at the top and a wavy line extending to the right.

**O.G. Paulsen**  
**PRESIDENT**