

IN THE LAND COURT OF TONGA  
NUKU'ALOFA REGISTRY

LA 25 of 2018

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BETWEEN : KOSEMA 'EIKI PEVALE

- Plaintiff

AND : FOKIKOVI LAKI LATU

- First Defendant

MINISTER OF LANDS

- Second Defendant

BEFORE HON. JUSTICE NIU AND ASSESSOR TU'IFUA

Counsel : Mr. 'A. Pouvalu for plaintiff.

Hearing : Formal proof hearing on 10 May 2019

Ruling : 13 May 2019.

RULING ON FORMAL PROOF HEARING

[1] This was a formal proof hearing of the claim of the plaintiff because neither defendant filed a defence to it and both defendants were notified of this hearing and the Solicitor General, Mr. Sione Sisifa, attended to hear but not to speak or raise any defence to the claim.

- [2] The plaintiff gave evidence by confirming that the contents of his brief of evidence were true. The brief was in English but counsel, Mr. Pouvalu, read it to him correctly in Tongan, sentence by sentence, and he agreed with it all. He is 89 years old and knew no English.
- [3] He said that in 1969, he asked the town officer of the village of Hoi, for a piece of land to live on. The town officer of a village in an estate of the Crown was and is the person to see about land to live on or to cultivate crops. At the time, the town officer was Siua Tava and Siua Tava told him to live on this particular piece of land. He cleared the bush on it and built a Tongan fale on it and he began living and maintaining it as his town allotment up to now.
- [4] In the same year, 1969, he married a woman, Siale Lolesio, who had 4 children already. That was his second marriage. He had been married previously and had 4 sons from that marriage. And from this second marriage to Siale Lolesio, he had 2 daughters.
- [5] In 1972, he replaced the thatch roof of the Tongan fale with corrugated iron sheets. In 1992, he moved the Tongan fale to one corner of the allotment and replaced its thatch walls with hardboard sheets, and built a timber house 24 feet by 16 feet with concrete floor and corrugated iron roof where the Tongan fale had been.
- [6] He gave the Tongan fale (with the iron roof & hardboard walls) to his wife's eldest illegitimate son, who is the first defendant, as his to live in, while he and wife and rest of children lived in the new wooden house. Later on he built an extension shelter to that house. He also built another but smaller house on the allotment for occupation by the children of his wife.
- [7] He said that over the years he had been asking 4 different town officers, namely, Siua Tava, Petelo Sifa, Kuluka and Sanaila Kaufusi to have his town allotment registered but they all kept telling him that they had no time and that they would do it some other time. It was and is the practice that an application for a town or tax allotment in the estate of the Crown has to have the support

of the town officer, and that was why the plaintiff had to seek the support of the town officer.

- [8] Unbeknown to the plaintiff, the first defendant (eldest son of his wife) applied for this town allotment. He had a letter written by the town officer, Sanaila Kaufusi, to the Minister of Lands dated 18 January 2012, in which he stated as follows:

“Sir,

I have the respect to inform you that LAKA LATU of Hoi is the applicant for allotment in the estate of the Crown.

He is of the Pentecostal Church, married and has 5 children and it is now 25 – 30 years since he has occupied and maintained this land and has carried out the village obligations to the country and the church.

Hence this request for the future of the family.

Hope this will help you.”

- [9] That letter was lodged together with the application form signed by the first defendant and his birth certificate. The survey fee of \$46.00 was also paid on the same day.
- [10] On 13 February 2012, the Minister of Lands signed his consent as estate holder to the grant of the town allotment to the first defendant. Part of that consent is a statement by the Minister that “there is no impediment to prejudice this grant”.
- [11] On the same day, 13 February 2012, the Minister wrote to the secretary of the Ministry and directed that a deed of grant be prepared for the first defendant in respect of this town allotment. That deed of grant was duly prepared and signed by the Minister on 18 May 2012, and it was issued to the defendant on 11 March 2014.

[12] In 2014, no doubt after the first defendant received his deed of grant, his wife told the plaintiff that the first defendant had had the allotment registered and that he, the plaintiff had to move out of it with his children. The plaintiff refused to move out and he continued to live there. His wife, Siale Lolesio, died in August 2017. In 2018, after Cyclone Gita had hit in February 2018, he came to Havelu to her daughter to look after him as he was ill. He is still there. He filed this claim on 7 December 2018.

[13] The Registrar of Lands of the Ministry of Lands, Mr. Semisi Moala, was subpoenaed and he gave evidence and produced documents which confirmed what I have referred to above, as well as the brief which was drawn up for the Minister dated 31 January 2012 which stated that

- the title search was OK.
- the due diligence was OK.
- the site inspection was OK.
- the area was 1517m<sup>2</sup>.
- the lot had not been allocated or registered in anyone.
- and attached the supporting letter of the town officer of the village.

It also contained the recommendation of the briefing officer that the grant be made to the applicant.

The Minister indicated "Approved" and signed it.

He also produced the deed of grant Book 405 Folio 67 which was issued to the first defendant on 11 March 2014 but which the Minister had signed on 18 May 2012.

[14] In his evidence, Mr. Moala stated that there had not been any site inspection carried out at all and that the Ministry had simply relied upon the letter of the town officer. He frankly admitted to a question from Mr. Pouvalu that the

Minister had made the grant to the first defendant upon the wrong information contained in the letter of the town officer, and that that was a mistake on their part. He admitted that the registration of the allotment in the first defendant was by mistake. I accept that evidence.

[15] The plaintiff confirmed in his evidence that he had been occupying this allotment for 45 years and has built 3 buildings on it and has planted fruit and edible trees on it. Yet he was not consulted or given any opportunity to be heard before the grant was made to the first defendant. I accept that evidence.

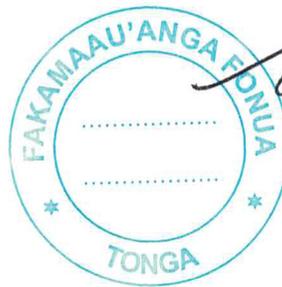
[16] This Court and the Court of Appeal have consistently held that the Minister, who alone has the statutory authority to grant allotments, must satisfy himself, especially where he himself is the estate holder, that there is no impediment to prejudice a grant which he is requested to make. I need only refer to *Tafa v Viau* [2006] Tonga LR 287. The fact that the plaintiff had occupied and had maintained and had built 3 dwelling houses on this town allotment for 42 years, during which time he had repeatedly asked the town officer to have the allotment registered in his name was an impediment. The town officer, Sanaila Kaufusi, who supported the first defendant's application, was aware of the interest of the plaintiff because the plaintiff said he had asked that same town officer to register the allotment in his name but the town officer told him to do it some other time.

[17] Accordingly, I find that the plaintiff has proved his claim in this Court and I make the following orders:

- (a) The second defendant, Minister of Lands, shall forthwith cancel the deed of grant book 405 folio 67 dated 18 May 2012 in the name of the first defendant, Fokikovi Laki Latu.
- (b) The plaintiff shall attend at the office of the second defendant Minister of Lands and complete and sign his application form for the same town allotment, and to produce his certificate of birth and pay the survey fee and registration fee for the same.

- (c) Upon compliance by the plaintiff with said direction in order (b) above, the second defendant Minister of Lands shall forthwith grant this town allotment to the plaintiff by issue to him of a deed of grant duly registered according to law.
- (d) The defendants shall jointly and severally pay the costs of the plaintiff in these proceedings, to be taxed if not agreed.

NUKU'ALOFA: 13 May 2019.



L. M. Niu  
JUDGE