

SG/ALEAMSTUA

14/05/19

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IN THE LAND COURT OF TONGA
NUKU'ALOFA REGISTRY

LA 5 of 2019

BETWEEN : SCHUMWAY MATAELE

- Plaintiff

AND : MINISTER OF LANDS C/- Solicitor General Attorney
Attorney General Office, Nuku'alofa, Tongatapu

- Defendant

BEFORE HON. JUSTICE NIU AND ASSESSOR TU'IFUA

Counsel : Mr. T. Fakahua for plaintiff.

Hearing : Formal proof hearing on 8 May 2019

Ruling : 13 May 2019.

RULING

[1] This was a formal proof hearing of the claim of the plaintiff against the defendant Minister of Lands because the defendant filed no defence to the claim. Notice of this hearing was given to the defendant and the Solicitor General, Mr. Sione Sisifa, attended the hearing but not to speak or raise any defence for the Minister.

rec'd 14/05/19
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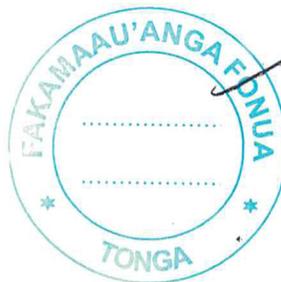
- [2] The plaintiff gave evidence, as contained in a brief of evidence read aloud and produced in Court, that he had applied for lot no. 92 in 'Utulau, estate of Noble Tupouto'a, as his tax allotment, with the signed consent of the estate holder, Tupouto'a. The Registrar of Lands, Mr. Semisi Moala, also gave evidence and stated that at the time of that application, the lot was available to be granted. The plaintiff was directed to pay the survey fees and he paid them, as required by law, although the lot had already been surveyed in 1926. The Minister then directed that a deed of grant be drawn up for the plaintiff and a deed of grant was duly drawn up with all particulars, including the plan of the allotment being drawn on the deed showing the name of the plaintiff and of the book number (no. 436) and page or folio number of that book in which this deed was already bound (no. 72). All that remained was for the Minister to sign and date his signature and affix his seal of office thereto to complete the registration of the grant of the tax allotment to the plaintiff.
- [3] Subsequent to the plaintiff's application, another man, namely, 'Uluaki-'o-Vaiola Manu, applied for the same tax allotment, lot no. 92, to be his tax allotment, and the estate holder, Noble Tupouto'a, signed his consent thereto as well. That was some two months after he had signed his consent to the grant of that same tax allotment to the plaintiff.
- [4] The Ministry wrote to the estate holder that he cancel his consent to the plaintiff's application so that 'Uluaki-'o-Vaiola Manu's application could be processed instead. The estate holder wrote back and asked that the application of 'Uluaki-'o-Vaiola Manu be proceeded with and to defer the application of the plaintiff so that he could deal with it later.
- [5] The Ministry complied with that and proceeded to require said 'Uluaki-'o-Vaiola Manu to pay his survey fees which he did, and the Minister directed that a deed of grant be prepared for him and that was carried out.
- [6] On 2 August 2018, the Minister signed his signature to the deed of grant book 452 Folio 16 of 'Uluaki Manu and affixed his seal thereto, and it was issued to 'Uluaki Manu on 3 August 2018.

- [7] It is unfortunate that the Minister did not file any defence to the plaintiff's claim, to at least say that the estate holder had changed his mind and that he, the Minister, had already granted and registered this tax allotment in 'Uluaki-'o-Vaiola Manu's name. If he had done that, the plaintiff, or this Court, might have joined that man and the estate holder as parties to this action in order that they would be heard before any decision was made by this Court.
- [8] It is also unfortunate that the Minister did not reply to the letter of the plaintiff's counsel dated 3 January 2019 in which he had asked the Minister to issue the deed of grant which he had directed in 2016 to be prepared for the plaintiff, and to inform him that he had already granted this tax allotment to 'Uluaki-'o-Vaiola Manu in August 2018. Had he informed counsel of that, counsel would have properly advised the plaintiff to join that man and the estate holder as well as the Minister as first, second and third defendants respectively, in order that every party who has an interest in this tax allotment is afforded an opportunity of being heard before a decision can be made on the plaintiff's claim.
- [9] But because, that was not done by the Minister, the plaintiff has been misled into thinking that the only defendant required was the Minister and he accordingly brought his claim solely against the Minister.
- [10] Now that this Court is aware of the interests of these other two parties, it must join them as defendants as well in order that they are afforded an opportunity of being heard.
- [11] Accordingly, I make the following orders:
- (a) Mr. 'Uluaki-'o-Vaiola manu is joined as first defendant.
 - (b) Noble Tupouto'a is joined as second defendant.
 - (c) The Minister of Lands is re-cited as third defendant.
 - (d) The plaintiff shall amend his statement of claim to include all the said defendants and to plead therein the facts pertaining to each defendant

and the appropriate prayers he seeks, and file and serve the same within 28 days from today.

- (e) The defendants shall file and serve their defences, if they so wish, within 28 days of service of the amended claim on them.
- (f) The plaintiff shall file his reply to the defences within 14 days of service of the defence on him.
- (g) This matter will be called in chambers at **9:00am 29 July 2019**.
- (h) The Minister of Lands shall pay the costs of the plaintiff up to the date of these orders, to be taxed if not agreed.

NUKU'ALOFA: 13 May 2019.



L. M. Niu
J U D G E