IN THE LAND COURT OF TONGA
NUKU'ALOFA REGISTRY LA 9 of 2018

BETWEEN : SIUTI HAVEA SANTOS

- Plaintiff

AND : 'OLIONI MANOA

- Defendant

BEFORE HON. JUSTICE NIU

Counsel : Mr. Clive Edwards for plaintiff.
Mr. Siosifa Tu'utafaiva for defendant.

Trial : 22, 23 May 2019.

Submissions : Defendant on 7 June 2019.
Plaintiff on 21 June 2019.

Ruling : 25 July 2019.

RULING

The facts

[1] The following are what I have accepted as having been proved by the evidence as facts.

[2] One, Viliami Pahulu, was lawfully granted a tax allotment of 8 acres 1 rood 36.1 perches at Haveluloto, estate of Fielakepa. That grant was registered by issue and binding of a deed of grant Book 4 Folio 21 on 16 July 1929. Upon his death, his son and heir, Molisi Pahulu, succeeded to it on 29 March 1954. Upon his death, his son and heir, Feteleni Pahulu, succeeded to it on 25 January 2001.

[3] Whilst Molisi Pahulu held the allotment, he sub-divided part of the allotment into town allotments and he gave three of those allotments to his 3 sisters, 'Emeli, Mele'ofa and Suliana. A plan of the sub-division was drawn and it was dated 25 February 1992. That plan was produced in evidence as exhibit P9 Pg 20 in the Plaintiff's Production of Documents. The 3 allotments were next to each other and were numbered on the plan, from east to west, as 3, 4, 5. No. 3 to the east was Suliana's, No. 4 in the middle as Mele'ofa's and No. 5 to the west was 'Emeli's.

[4] That sub-division plan was only done in 1992 but Molisi had already permitted his 3 sisters and their husbands and families to have those respective pieces to occupy and to build on, and those 3 sisters and their husbands and children had built upon their respective lots as their's for many years before then.

[5] 'Emeli was married to Penisini Palu and they built their dwelling house on their lot, west lot, (lot 5). Mele'ofa was married to Suli Manoa and they built their dwelling house on the middle lot 4. Suliana (who was also called Kaufaki) was married to Lauaki and they built their dwelling house on the east lot 3.

[6] According to the defendant, 'Olioni Manoa, his mother, Mele'ofa Manoa, died in 1989 and sometimes afterwards, Molisi Pahulu tried to evict him from the lot they had built and lived on (lot 4), and in 1996, Molisi brought a land action against him (LA 946/96) to evict him but by consent an order was made on 28 April 1998 that the lot in the plan dated 25 February 1992 with an area of 30 perches with the name "Olioni Manoa" written on it, be registered as the town allotment of the defendant. A copy of that order was exhibited P.9 Pg 18 in the same production of the plaintiff. As can be seen in that exhibit, the Minister of

Lands was a party to that action, and the first defendant lodged his application for the lot ordered by the Court, in 1998 itself.

[7] In his evidence in cross-examination, the defendant stated, and I accept, that he went to Australia and worked in 1986 and that he went to Australia and worked again in 1991 and that he, together with his younger brother, built a two storey dwelling house in the middle of the allotment, lot 4.

[8] In about 1999 the defendant went to the United States to work and whilst he was away, he had the front part of the allotment, built upon with a two storey retail store which occupied the front of the lot facing the road except for the drive way into the allotment where the two storey dwelling house was, and is, situated. Those 2 two storey buildings are still on the allotment up to now.

[9] On the allotment given by Molisi to his sister, 'Emeli, 'Emeli and her husband, Penisini Palu had built their dwelling house on it and had occupied it. They had no children and they adopted a boy as their son and named him Penisini Palu as well. No step was taken however to have that lot surrendered by Molisi in order that it would be granted to Penisini Palu to hold as his town allotment. Both Penisini and 'Emeli have died and their adopted son continued to occupy the dwelling house until he and his family left and lived overseas. Molisi then leased the lot with the dwelling house on it, but only with an area of 20 perches, to one 'Alosi Hala'api'api for 20 years. That lease was numbered 6034 but no evidence was given as to when the 20 years began, or as to any use or occupation of the land or dwelling house thereon by the lessee, 'Alosi Hala'api'api, after the lease commenced, or as to any payment or default of payment of the annual rent thereof.

[10] In a savingram from the Minister to the secretary for lands dated 5 December 1997, he directed that the lease of 'Alosi Hala'api'api be surveyed and that a deed of lease be prepared for grant of the lease, and he attached to that savingram a plan of the required area. That savingram was produced as Exhibit P8 Pg17 of the Plaintiff's Production. The plan is shown to have been prepared on "7.4.95" and the proposed leased land to be surveyed is shown in

the plan with heavy lines drawn as its boundaries and the words "REQUIRED AREA 20P" hand written within the heavy boundaries. That required area appears to be part of the area of 30p which had been given by Molisi Pahulu to his sister 'Emeli (who was married to Penisini Palu), but that some 10p had been taken off it by Molisi on its west side for an access road for two lots at the back of 'Emeli's lot. That access road and those two lots are also drawn on the plan.

[11] It also shows on that plan that the shape of the lot (no. 4) in the plan drawn on 25 Feb 1992 which had the name "'Olioni Manoa" written it (and which had been given to his mother, Mele'ofa Manoa) was also altered, so that there is no longer any intrusion by lot no. 6 into lot 4, as it is shown in the plan of 25 Feb 1992.

[12] Feteleni Pahulu, the present holder of the tax allotment, stated in his evidence and it was not disputed, that he had spoken with the adopted son, Penisini Palu, in Australia, before he subsequently died, and Penisini Palu had agreed that Molisi Pahulu could have the dwelling house on the lot, that is, of his adoptive mother, 'Emeli Palu, because he did not want it anymore. Feteleni said that he himself was occupying and using the house up to 2010 until the defendant returned from the US and chased him out of it. He said that the defendant came to the house with a machete and was nailing up the house and he was so frightened that he had to get out and left by the back of the house. He said that the defendant then lived in the house. The defendant stated that he was living in the house from then up to when the plaintiff and his workmen came to it on 8 June 2018.

[13] In February 2015, the plaintiff and Feteleni Pahulu agreed that the plaintiff lease the land which 'Alosi Hala'api'api had leased in lease no. 6034. Feteleni informed the plaintiff that she could pull down and remove the dwelling house built by Penisini Palu from it. That lease of the plaintiff was approved by Cabinet at the same time as the cancellation by Cabinet of the lease no. 6034 of 'Alosi Hala'api'api on 5 April 2015. The plaintiff's lease, no. 8715, was granted by the Minister on 28 August 2015.

[14] No opportunity was given by the Minister to the defendant to be heard before he granted the lease of the plaintiff to the plaintiff.

[15] A deed of grant had been prepared and had been signed by the Minister of Lands at the time, Noble Fielakepa, but it was not and is not dated up to now and it has not yet been dated and issued to the defendant as the deed of his town allotment as ordered by the Court, by consent, in 1998. Noble Fielakepa was the Minister of Lands from about 2000 to 2006 or thereabout. The reason that it is not dated or issued is because the defendant, upon his return from the US in 2010, refused to accept it. He claimed and still claims that the land it contains is not the land that was ordered by the Court. That deed was produced in evidence as exhibit.

[16] The witness, Semisi Moala, registrar of lands of the Ministry of Lands, said in his evidence that the land contained in that deed of grant is and was the exact same land which the defendant had occupied in 1998 because the surveyors who planted the survey pillars shown in the deed were only demarcating the actual area already occupied and maintained by the defendant as his town allotment at that time, but that the total area did not exceed 30 perches in its size.

[17] That appears to have been acknowledged and accepted by Molisi Pahulu and he accordingly redrew the allotments of 'Emeli (lot 5) and of Mele'ofa (lot 4) as shown in the plan (dated 7. 4. 95) which was attached to the lease application of 'Alosi Hala'api'api as referred to in paragraph 10 above. In pursuance of that lease application, survey pillars were planted demarcating the boundaries of 'Emeli's lot (lot 5). Two of those pillars, nos. 84489 and 84493, demarcated the common boundary between 'Emeli's lot and Mele'ofa's lot, and those two pillars are the same two pillars that are shown as the west boundary of the defendant's town allotment as drawn in his deed of grant which was produced in evidence as exhibit D1.

[18] On 8 June 2018, the plaintiff, together with workmen whom she had hired entered the land which she had leased under lease no. 8715, for the purpose of

erecting a fence thereon so that she could remove the building thereon and commence her own construction thereon. The defendant, who had not known and had not been told about the plaintiff's lease, stopped the plaintiff and her workmen from entering or doing any work on the land. There is disagreement as to what the defendant did and say and I will come to that later. But the plaintiff had to seek and I granted an injunction against the defendant on 12 July 2018 so that the plaintiff could and she did enter with her workmen and construct the fences and removed the building from the land. She has not however begun construction because of the claims of the defendant in his defence in this action.

The plaintiff's claim

[19] The plaintiff claims that she has a valid lease of the land (20 perches) and she seeks a permanent injunction against the defendant so she could build on and use the land for the duration of her lease. She also claims damages against the defendant for having obstructed her from her construction.

The defendant's defence

[20] The defendant raises the following defences:

(a) He says that the land leased to the plaintiff is part of his town allotment. (Refer paragraphs 2 and 6 of the defence).

(b) He submits that S.56 of the Land Act requires that the holder of an allotment must be a registered holder before he could grant a lease of or of part of it, and that the lessor (Feteleni Pahulu) was not and is not a registered holder of this tax allotment and that the plaintiff's lease is accordingly invalid.

(c) He submits that this lease is required by S. 126 of the Act to be registered before it is effectual, and that this lease has not been registered as is required by S.127 of the Act and is accordingly invalid.

(d) He submits that there are 3 impediments which prejudice the grant of this lease of the plaintiff:

(i) the defendant was occupying the house on the land to be leased but that he was not afforded any opportunity of being heard by the Minister of Lands before he granted the lease to the plaintiff;

(ii) the Minister registered only about 20 perches of the 30 perches which the Land Court had ordered to be registered in the defendant's name, and added another 10 perches (to make up the required 30 perches) out of the adjoining lot to the west which is unacceptable to the defendant;

(iii) the land (20p) leased to the plaintiff had been leased to 'Alosi Hala'api'api and that lessee had died but no probate or letters of administration have been granted in respect of that lease, such that the lease is still vested in the Supreme Court as provided in S.11 of the Probate Act, up to now.

I shall deal with each of those defences.

Leased land part of the defendant's town allotment?

[21] In paragraph 2 of the plaintiff's claim, she says that the defendant is a neighbour of her leased land. In respect of that, the defendant says in paragraph 2 of his defence that the leased land of the plaintiff is on lot 5 which is the registered town allotment of the defendant. The defendant is wrong about that. The lot which has been registered in the defendant's name (by deed of grant Book 376 Folio 39 issued by Minister of Lands Fielakepa) is numbered 5 in the plan drawn on that deed of grant, but it was lot 4 in the plan drawn by Molisi Pahulu on 25/2/1992. The lot that was lot 5 in that plan of Molisi was the lot to the west (or left) of lot no. 4 – the lot for 'Emeli & Penisini Palu – and which is now lot 4 as shown on the plan of the area leased to the plaintiff (refer P.2 Pg 8 in the plaintiff's production). They are still two separate lots but the numbering has been reversed. Semisi Moala has clarified that in his evidence and in his letter which was produced in evidence. The lot which is now lot 5 was the same lot that was numbered 4 and the lot that was lot 5 is now lot 4. There cannot be any confusion about which lot is which because the

lot which was meant for the defendant's mother, Mele'ofa, is now the same lot which is now registered in the defendant's name. And the lot which was meant for 'Emeli is the one of which 20 perches is now leased by the plaintiff.

[22] It is therefore not correct that the land which is leased by the plaintiff is part of the defendant's town allotment. The common boundary between them confirms that they are exclusive of the other.

Lessor not a registered holder of the tax allotment?

[23] The defendant says the lease is invalid because Feteleni Pahulu was not a registered holder of the tax allotment. The relevant part of S.56 of the Land Act provides as follows:

> "56. The registered holder of a town or tax allotment may grant a lease over the whole or part of his town or tax allotment, provided that – ..."

This Court and the Court of Appeal have held in the case of *Lopeti and Lopeti v Lopeti and Minister of Lands, and Lopeti v Lopeti & Lopeti & Minister of Lands* (AC 15/2017, 26 March 2018) that a holder has to be a registered holder of the allotment before he can grant a lease or part of it to someone else.

[24] In the present case, the only holder who was a registered holder was the initial holder of the tax allotment, Viliami Pahulu, when he was issued the deed of grant Book 4 Folio 21 on 16 July 1929. No other (subsequent) holder, including the present holder, Feteleni Pahulu, was a registered holder of the tax allotment. This is because S. 122 expressly provides for the endorsement on the deed of grant by the Minister of Lands of a memorial that the present holder is registered as holder of the allotment together with the date of such registration. The deed of grant Book 4 Folio 21 produced in evidence in this trial does not show any such memorial having been endorsed thereon to show that the present holder, Feteleni Pahulu, is a registered holder.

[25] I therefore accept and I find that the holder, Feteleni Pahulu, was not, and is not, a registered holder of the tax allotment, and therefore was not entitled to

have granted any lease, in particular, this lease no. 8715 to the plaintiff. The plaintiff's lease is accordingly invalid.

Lease not registered?

[26] The defendant also says that the lease of the plaintiff, in any event, is ineffectual because it has not been registered in accordance with the requirement of the Land Act. He refers to SS. 126 and 127 of the Act, which provide as follows:

> "126. **All leases, etc, to be registered**
>
> No lease, sub-lease, transfer or permit until registered in the manner hereinafter prescribed shall be effectual to pass or affect any interest in land:
>
> Provided always that the requirements of Division III (B) or Part VIII as to the registration shall not apply to a sub-lease not exceeding a term of 3 years from the making thereof.
>
> 127. **Method of registration of lease**
>
> Registration of a lease or of a permit as the case may be shall be effected by the Minister filing one original thereof in the register of leases in his office and by endorsing the other with the following memorial of registration:
>
> Registered the ..... day of ..... 20.....
>
> Register of Leases (or Register of Permits *as the case may be*)..... Book: ..... Folio: .....
>
> ..... Signature of Minister.

The lease (or permit as the case may be) endorsed with the memorial of registration shall be delivered by the Minister to the person entitled thereto".

[27] The deed of lease of the plaintiff has been produced in evidence on P2 Pg 6-8. That deed does not show the Book number and Folio number which is required by S.127 as the evidence that it has been registered by being bound in the book of that number and it is to be found in that book by the Folio number stated on the deed. Instead this deed simply has a registered number (8715) which is not what S. 127 requires.

[28] On the face of the deed, which is the evidence, this deed of lease has not been registered according to the requirement of S. 127 and I therefore find that it is not registered and that it is ineffectual to pass any interest in the land to the plaintiff, as S. 126 so provides.

Defendant not heard?

[29] The defendant also says that he was not afforded any opportunity of being heard before the Minister granted the lease of the land he was occupying to the plaintiff. He gave evidence that he was living in the house on 'Emeli's lot from 2010 on and Feteleni Pahulu said that the defendant chased him out of the house in 2010. The defendant said that in 2012, he spoke with Siulolo Pahulu (wife of the adopted son, Penisini) and she gave him a letter allowing him to look after their house for them. In paragraph 10 of his brief of evidence he says: "The house that is situated on this lot which has been leased to the plaintiff is a house of Siulolo and Penisini Palu and they authorised me in 2012 to look after the house because they were living in New Zealand. The house was damaged by the wind but I still stayed in the part of the house that was undamaged and continued to keep and look after it up to when the plaintiff and the workers came to tear down the house". He did not say which wind did the damage, but I believe he meant the Cyclone Gita of 12 February 2018 because that damage was still shown in the photographs which the plaintiff stated she took on 28 June 2018.

[30] Those photographs show that the houses were not maintained or looked after by the defendant or by anybody at all, and that they were not occupied or used by anybody either.

[31] That is supported by the evidence of the plaintiff. In her affidavit in support of her application for injunction dated 10 July 2018, she stated in paragraph 11 as follows:

> "These old rundown buildings were on this allotment at the time of the lease by 'Alosi Hala'api'api before I leased the allotment. The buildings are not capable of repairs and need to be completely demolished and removed. I have been given permission by the owner/ lessor of the allotment and buildings, Feteleni Pahulu, to remove and destroy what is on this site".

[32] In paragraph 6 of her brief of evidence she stated that at the time she was granted her lease no. 8715, there was an existing broken down house on the property. By that, I accept that she meant that no one was living it, otherwise she would have said so, and the defendant did not dispute that statement by putting to her that he was living in that broken down house at that time, but he did not.

[33] Also in her evidence, the plaintiff clarified that statement when questioned by counsel for the defendant. She said that she had asked 'Alosi's mother if she could lease the land which 'Alosi was leasing and the mother agreed to it and she wrote a letter to that effect and the plaintiff then stated: "The house was rundown and no one lived there". That was at the time the plaintiff was asking 'Alosi's mother if she could lease the land that 'Alosi had leased, and I accept that no one was living in the house.

[34] So that on the evidence, I find that the defendant was not in occupation of the house on the land for which the plaintiff applied to lease in 2015 and he was not an applicant either to lease the land or to have it granted as an allotment. He did not have a competing claim to the lease application of the plaintiff. He

was not the owner or user of the house on the land. He was not in any way an impediment to the grant of the lease of the plaintiff.

[35] Accordingly, I find that he was not entitled to be heard in objection to the application of the plaintiff to lease the land on which the house stood, and the Minister of Lands was not obliged to afford him any opportunity of being heard.

Minister took 10 perches from 'Emeli's lot to make up 30 perches for the defendant's allotment?

[36] The defendant says that the Minister, in surveying and granting him his town allotment as ordered by the Land Court in 1998, the Minister wrongfully reduced the 30 perches ordered by the Court to 20 perches only and then took off 10 perches from the adjacent lot (for 'Emeli) and added it to his 20 perches to make up the required 30 perches.

[37] I have to say that there is just no evidence of that at all. On the contrary, the evidence, as given by Semisi Moala of the Ministry of Lands, was that the area of 30 perches ordered by the Court was the area which the defendant had built upon and was maintaining as his town allotment in 1998, and that the surveyors planted the survey pillars to confirm that area, and, more importantly, to confirm that the remaining area of the tax allotment to its west boundary which was to be another town allotment of 30 perches (for 'Emeli) was itself of 30 perches, and which it was.

[38] It would appear that the defendant is only making this claim in this defence because of the fact that the only remaining area of 'Emeli's lot, and which has been leased by the plaintiff, is only 20 perches. He thereby claims that the missing 10 perches must have been added to his own lot to make up 30 perches. That is of course wrong because the 10 perches missing from 'Emeli's lot was removed by Molisi himself in 1995 to make the access road for the two lots behind 'Emeli's lot.

'Alosi Hala'api'api's lease (no. 6034) now vested in the Supreme Court?

[39] The final defence of the defendant is that the lease of 'Alosi Hala'api'api is still valid and because he has died and because no probate or letters of administration have been granted in respect of his estate, the lease is still vested in the Supreme Court as is provided in S. 11 of the Probate Act, which provides as follows:

> "11. From the death of an intestate until administration be granted his personal property shall be vested in the Court".

A lease is a personal property. The Court means the Supreme Court.

[40] I have to say that there was just no evidence given as to this defence at all. There was no evidence that 'Alosi Hala'api'api has died or when, if he has died, or that he had died intestate or that no probate or letters of administration have been granted. Had he died before his lease was cancelled by Cabinet in 2015? If he died afterwards, he had no lease when he died. But no evidence was given about all these.

[41] I therefore find that the defendant has not proved this defence at all.

[42] Even if I was to find that 'Alosi Hala'api'api had died before his lease was cancelled by Cabinet in 2015, I have to find that his lease (no. 6034) was invalid as well because it had not been registered in accordance with S. 127 of the Land Act. If it had been registered in accordance with S. 127, the lease would not have had no. 6034 but a book number and a folio number instead. So for the same reason I have found that lease no. 8715 of the plaintiff is invalid, I also find that lease no. 6034 of 'Alosi Hala'apiapi was and is invalid.

Result

[43] The result therefore which I have found is that –

(a) the lawful landholder, Feteleni Pahulu, is not a registered holder of this tax allotment, or what is left of it, as is required by S. 122 of the Act, and accordingly, is not entitled to grant a lease or part of it to the plaintiff; and

(b) the lease no. 8715 which has been granted by the Minister to the plaintiff is ineffectual as provided in S. 126 because it has not been registered in accordance with S. 127 of the Act.

[44] But I must add that –

(a) Feteleni Pahulu is entitled to be so registered as a registered holder of the tax allotment and may forthwith seek the due registration of his name by the Minister of Lands as the lawful registered holder of the allotment on the deed of grant Book 4 Folio 21 which was originally issued to his grandfather in 1929, and

(b) the plaintiff, Siuti Santos, is entitled to have her deed of lease duly registered by the Minister of Lands by entering thereon the book number in which the duplicate of her deed of lease has been bound and also the Folio number in that book in which her duplicate deed of lease is located. Upon such registration, her lease automatically becomes binding and effectual.

[45] The above stated two acts (a) and (b) shall be carried out by the Minister of Lands forthwith.

Damages

[46] The plaintiff seeks damages against the defendant in the sum of $10,000 for stopping her and her workers from proceeding with her work on the land. The plaintiff says that they had been there on the land for some time and that at about 10am, the defendant, who was on his own town allotment next door, noticed them on the land and he came running up to them with a kane knife and yelling at them to get off the property or else he would call his children to bring his gun. The plaintiff said the defendant did stop them from any further work and they called the police, who came, but they could not do anything. So the defendant was the reason that no work was done in that day and in all the subsequent days until this Court issued the injunction against the defendant on 12 July 2018, that is, some 34 days later.

[47] The defendant denies that he did that. He said that he only went up and picked up the knife off the ground and gave it to one man so they could leave, and that he never said anything about any gun. I do not believe the defendant. I believe the evidence of the plaintiff and it is supported by the witness, Laukaupo'uli Fetuli Vaka. He said he was digging the hole for the post for the fence they were erecting (which shows that they had been there for some time) when a co-worker called out for him to look out and he turned and saw the defendant lifting his kane knife to strike him with it and he asked him what was the problem. The defendant told him to get to the road. He then said to him he was not going because he was there to work for Siuti Santos who had leased the land. He said that the defendant then began to threaten to hit him with the knife. He said he then put down the spade he held and picked up his own kane knife and went towards the defendant. The defendant then shouted at them to leave or he would call his children to bring his gun. The witness then said that there were some 16 or so people standing on the road watching and he backed off and went to the road. I believe that evidence and I accept it.

[48] I find that the defendant acted wrongfully such as the witness has described and that he did cause unlawfully the stopping of the work of Siuti Santos and her workers. The fact that Feteleni Pahulu was not a registered holder of the land as his tax allotment is immaterial. He was at that time the lawful holder of the allotment and he could lawfully and he did authorise Siuti Santos and her workmen to enter upon and work on the land.

[49] The fact that Siuti Santos did not then have a registered lease or any valid interest in the land is immaterial. She was duly authorised by the lawful holder of the allotment to enter upon and carry out the work she was doing, and the defendant had no lawful justification whatsoever to stop her from doing it. But he did, for some 34 days, and it caused great inconvenience and financial loss to her and to her workers. That is a natural consequence of the act of the defendant and he did the act knowing that that consequence would occur.

[50] Now, some 12 months later, the defendant has failed to prove that he had a lawful ground for stopping the plaintiff on 8 June 2018. He never had any lawful title and his brother never had any lawful title or claim to it, despite the defendant's verbal claim to the plaintiff's counsel that the brother did on or about 9 June 2018.

[51] Neither the defendant nor his counsel made any submission or objection as to the sum of $10,000 claimed by the plaintiff as damages for the wrongful act of the defendant, except to say in his statement of defence (paragraph 18) that the claim for damages in paragraph 18 of the claim is disputed.

[52] I consider that the damage which is claimed by the plaintiff is general damage because it is not named as special or any other type of damage. General damage is the kind of damage which the law presumes, when a contract is broken or a tort is committed, to flow from the wrong done and to be its natural or probable consequence. The quantification of the damage in terms of money is a matter for the jury or for the judge acting as jury. In many cases no precise measure can be indicated, and general damages thus may often include compensation for damage which is incapable of exact allegation, proof or evaluation in money. That was laid down as long ago as 1870 when Martin B stated in *Prehn v Royal Bank of Liverpool* (1870) 1.R.5 Exch. 92, at99:

> "In this case general damages are such as the jury may give when the judge cannot point out any measure by which they are to be assessed except the opinion and judgment of a reasonable man".

(Refer Halsbury's, Laws of England, Third Edition, p. 217, para. 385).

[53] Having found no case authority in Tonga on the matter, neither counsel making any submission thereon, and considering the present circumstances prevailing in the Kingdom and the present low value of the Tongan pa'anga and the high costs of goods and services these days, I consider that the general damages of $10,000 claimed by the plaintiff is reasonable, considering that her purpose of building on the land is for commercial purpose (as approved by

Cabinet – refer P.6 Pg13) and that she has been so deprived of her right to carry on that business for a year.

Injunction

[54] As I have already stated above, both Feteleni Pahulu and the plaintiff are lawfully entitled to be registered by the Minister of Lands according to law, that is for Feteleni Pahulu to be registered as a registered holder his tax allotment, and that the lease of the plaintiff to be registered as required, mandatorily, by S. 127 of the Act.

[55] I also consider that, in light of the conduct and character of the defendant, namely, that he takes the law, or the kane knife, into his own hands rather than to bring his grievance to the Court in a peaceful and law abiding manner, and because, I believe for that same reason, the plaintiff has asked that the present interim injunction be made permanent, I agree that it be made permanent.

Costs

[56] I consider that the costs of the plaintiff in this action should be paid by the defendant. The defences which the defendant has raised are unsubstantial. They have given no right to the defendant to obstruct the occupation and use of the land by the plaintiff. The plaintiff has been successful in proving that the defendant has no such right.

Orders

[57] Accordingly, I make the following orders:

(a) The defendant and any person acting on his behalf shall continue to be restrained and is prohibited from interfering, intimidating, threatening or preventing the plaintiff and any person acting on her behalf and all persons lawfully entering from working on or entering the land which is the subject of these proceedings, until the further order of this Court.

(b) The Minister of Lands shall forthwith cause the name of the lawful holder of the tax allotment contained in deed of grant Book 4 Folio 21, Feteleni Pahulu, to be registered in accordance with S. 122 of the Land Act, on that deed of grant Book 4 Folio 21.

(c) The Minister of Lands shall forthwith cause the deed of lease presently numbered 8715 to be registered in accordance with S. 127 of the Land Act by having the book number in which the deed is bound and the folio number in that book in which the deed is found to be entered on both duplicates of the deed.

(d) A sealed copy of this ruling shall be caused to be served by this Court upon the Minister of Lands forthwith.

(e) Damages in the sum of $10,000 shall be paid by the defendant to the plaintiff.

(f) Costs of the plaintiff in these proceedings shall be paid by the defendant, to be taxed if not agreed.

NUKU'ALOFA: 25 July 2019.

FAKAMAAU'ANGA FONUA
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TONGA

L. M. Niu
J U D G E