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IN THE LAND COURT OF TONGA

NUKU'ALOFA REGISTRY

LA 16 of 2020

**BETWEEN** : **MALESELA MAFUA**

- **Plaintiff**

**AND** : **TONGA TAULAKI PUAFISI**

- **Defendant**

**BEFORE HON. JUSTICE NIU AND ASSESSOR TU'IFUA**

**Counsel** : Mr Viliami Latu for plaintiff

**Hearing** : Formal Proof on 9 February 2021

**Ruling** : 9 February 2021

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# RULING

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## Formal proof hearing

[1] This is a formal proof hearing of the claim of the plaintiff because the defendant had not filed any defence to the claim after it was served upon her on 19 November 2020 up to now. Notice of this hearing was served upon the defendant on 5 February 2021 and counsel, Ms Alyssa Kafoa, attended this hearing on her behalf, although she could not, and she did not, speak during the hearing, in Court this morning.

[2] The plaintiff gave sworn evidence and she produced and read aloud a brief of her evidence and she produced and explained copies of documents in support of her claim including a family tree showing the relationship between her and the defendant.

## Relevant facts

[3] Siosifa and Penelope had the 5 children of whom the eldest is a daughter, 'Elenoa, who had the defendant born illegitimately by her. The fourth of the 5 children is the plaintiff.

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- [4] Noble Fielakepa, the estateholder of Haveluloto, gave Siosifa and Penelope a piece of land at Haveluloto for them to live on in the early 1970s. It could not be registered as a town allotment because it was only 18.5 perches in area, and Siosifa already had his own town allotment at Ha'apai.
- [5] Siosifa and Penelope then built a house on the piece of land in 1979 and they lived in it with their 5 children. By 1990, the house needed repairs and extension and the plaintiff, who is the 4<sup>th</sup> of the 5 children paid for and she carried out the repairs and extension of the house to have a kitchen, verandah and carport, because all the other 4 children were married and had left. She then continued to live with their parents and looked after them in the house.
- [6] In the early 1990s, the parents went to the U.S to the children there whilst the plaintiff remained in the house with her children and 2 children whom she had adopted.
- [7] In 1999, the plaintiff went to the US with her children whilst her 2 adopted children remained and looked after the house, together with another relative Sione Lemeki. In 2000, the defendant and her family moved into the house without the permission of the plaintiff or of the adopted children and claimed that she was concerned that the two adopted children were drinking and partying in the house. The plaintiff contacted her to leave the house but she did not. The adopted children had to leave the house because of her instead. So did Sione Lemeki.
- [8] The father died in 2000. The plaintiff returned to Tonga in 2003 and told the defendant to move out but she did not. The plaintiff then had to live elsewhere as a result.
- [9] In 2007, the mother returned from the US and had to stay with the plaintiff as a result of the defendant occupying the house. She and the plaintiff went and saw the defendant to move out and the defendant asked them to let her stay there while she would look for a place to move to. The plaintiff and the mother agreed and waited. The plaintiff repeatedly followed up and asked but the defendant told her that she was still looking.
- [10] The mother returned to the US in 2014 and she wrote that the land be registered in one of the plaintiff's adopted sons. The estateholder, Noble Fielakepa, told the plaintiff that it would be better that it be registered in her own name as a lease. She agreed and she therefore applied for the lease on 15 October 2014 with the consent of the estateholder and it was duly granted and registered by the Minister of Lands on 10 March 2015, as lease no.8634. The lease is for 50 years at \$50 rent per year.

- [11] The mother died in 2015 in the U.S. In 2016, the plaintiff saw the defendant about her effort to move out, and the defendant told her that she was not moving out at all. The plaintiff then saw counsel Ms Lesina Tonga and she wrote and informed the defendant that the plaintiff had leased the land and demanded that she vacate it within 1 week. The defendant did not move out.
- [12] In about December 2018, the plaintiff took a letter from the Ministry of Lands to the defendant which stated that the plaintiff was the lessee of the lease no.8634 and that the lease would run from 10/3/2015 to 9/3/2065. Again the defendant continued to refuse to move out.
- [13] On 6 November 2020, the plaintiff filed her present claim and it was served on the defendant on 19 November 2020. It was seeking an order to evict the defendant from the land of the lease within 21 days of the order.
- [14] The defendant did not file any defence at all to the claim.

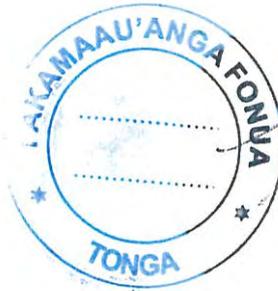
### **Consideration**

- [15] I consider that the defendant entered and stayed on this land and house without any consent from persons who had the lawful interests in the land and the house, namely, the father and mother and the children, and in particular the plaintiff in whom the care and possession and control of the house laid.
- [16] The defendant was a trespasser and squatter.
- [17] She was such until 2007 when the plaintiff and the mother allowed her to remain but only for the purpose of looking for other accommodation for her to move to. By 2014 she had had 7 years to move out. She had had more than reasonable time to do so. Her presence had become unlawful. She confirmed that in 2016 when she told the plaintiff that she was not moving out at all.
- [18] I consider that the lease no.8634 was lawfully granted to the plaintiff and because it has been duly granted and registered, the plaintiff has, as from the date of registration, 10 March 2015, the lawful title to the land of the lease.
- [19] I consider that the defendant has no lawful justification to continue to be on the land of the lease and so there is no reason to refuse the claim of the plaintiff.

## Orders

[20] I therefore make the following orders:

- (a) There be judgment for the plaintiff.
- (b) The defendant, Tonga Taulaki Puafisi, and her spouse or partner and her children and all persons presently occupying and living on the land and in the house situated thereon, namely the land of lease no.8634 shall forthwith, and by no later 21 days from today, vacate the said land and house.
- (c) The plaintiff shall cause a sealed copy of this Ruling and Orders to be served upon the defendant personally, and to file a certificate of that service in Court.
- (d) The defendant shall pay the costs of the plaintiff in these proceedings, to be taxed if not agreed.



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**J U D G E**

**Nuku'alofa: 9 February 2021**