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LA 17 of 2020 02/03/21

**IN THE LAND COURT OF TONGA  
NUKU'ALOFA REGISTRY**

**BETWEEN : SIOSIFA MOALA TAUMOEPEAU**  
- **Plaintiff**

**AND : 1. HON. MINISTER OF LANDS  
2. DR. FILIMONE MAKAMEONE TAUMOEPEAU**  
- **Defendants**

**BEFORE HON. JUSTICE NIU IN CHAMBERS**

**Counsel :** Mr D. Corbett for the plaintiff.  
Mrs. P. Tupou for the first defendant.  
Ms. 'E. 'Akau'ola for the second defendant.

**Hearing :** Application by First Defendant to strike out the plaintiff's claim  
Heard in chambers but in Courtroom today.

**Ruling :** 25 February 2021.

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# **RULING**

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- [1] I have orally given my ruling on the first defendant's application in chambers this morning, namely, to dismiss the application.
- [2] My reason for doing that is because the plaintiff has made his claim for the town allotment in question upon the ground that he is the lawful heir to the

allotment – he being the son of the brother of Matei who had held the allotment until his death in 2005, and he, the plaintiff, holding no allotment of the same kind. He says that his claim as heir was lodged with the office of the Minister within 12 months of Matei’s death.

- [3] The Minister granted the allotment to one To’a in 2011 instead, and the second defendant claimed the allotment from him in an action he brought in 2012. The Land Court held on 13 March 2015 that the grant made to To’a was unlawful, and it ordered the Minister to grant both To’a and the second defendant a fair hearing in respect of their respective application for the allotment and then decide who to grant the allotment to.
- [4] The first defendant, Minister, granted the allotment to the second defendant. The plaintiff has therefore brought this claim against both defendants upon the ground I have stated.
- [5] The plaintiff claims that the grant made to the second defendant is unlawful because –
- (a) the plaintiff is the lawful heir to the allotment and that he had lodged his claim for the allotment within 12 months of the holder’s (Matei’s) death, and secondly,
  - (b) the second defendant had already been granted his own town allotment at Ngele’ia prior to his application to be granted this allotment in question.
- [6] The first defendant has based his present application to strike out the plaintiff’s claim on the provisions of Order 8 Rule 8 (1) (a) of the Supreme Court Rules which provides:

**“O.8 Rule 8 Striking out pleading.**

- (1) The Court may at any time order that any pleading or part thereof be struck out if:

- (a) It discloses no reasonable cause of action or defence, as the case may be; or
- (b) ... or
- (c) ... or
- (d) ...

and may order the action to be stayed or dismissed or judgement to be entered accordingly.”

[7] He states in his notice of application: Take Notice that counsel for the first defendant will move this Honourable Court as soon as counsel may be heard on a motion for orders that the plaintiff’s claim against the first defendant be struck out on the basis that it discloses no reasonable cause of action against the first defendant and for costs and such other orders as may be necessary. He then attaches an affidavit by a land officer, Warrick Vea, who says that the first letter of claim of the plaintiff for the allotment was a letter by him dated 12 November 2015.

[8] However, counsel overlooks the provisions of Sub-Rule (2) of Order 8 Rule 8 which provides as follows:

“(2) No evidence shall be heard on an application under paragraph (1) (a).”

That means the application must solely be based on the pleadings alone. If the claim does not disclose any reasonable cause of action it must not be struck out.

[9] I must therefore not look at or consider the affidavit of the land officer at all. I must only look at the statement of claim of the plaintiff. In his claim, the plaintiff says that he is the son of a brother of Matei, the last holder of the allotment, and that when Matei died leaving no children of his own, he, the plaintiff, was the heir to the allotment because his own father had died and that he duly had his claim as heir lodged at the office of the Minister of Lands

within 12 months after the death of Matei. He also says that he had no allotment of the same kind himself.

- [10] I have to assume that the plaintiff will prove that those statements are true. If they are true, and I have to assume that they are, the plaintiff was lawfully entitled to succeed as heir and that upon the lodging of his claim as heir within the 12 months, he was, and he is, lawfully entitled to be the holder of the allotment and that the Minister was wrong to have granted it, firstly to To'a in 2011, and then to Makameone (the second defendant) in 2015 or so.
- [11] The plaintiff also claims that Makameone (the second defendant) was already the holder of another town allotment at Ngele'ia when he was granted this allotment in question. If that is true, and I have to assume it is true, then the grant of this allotment to him in 2015 was null and void as is provided in S.48 of the Land Act.
- [12] As to the claim by the first defendant that the claim by the plaintiff is time barred in that he has brought his claim after 10 years from the death of Matei in 2005, Order 8 Rule 8 makes no provision about the raising of a defence to the claim, but giving the provision a wide interpretation to allow the consideration of that defence, in order to consider the cause of action of the plaintiff "fully", that is to see if it would still hold up in light of the defence raised, I consider that the right of the plaintiff to bring this action did not accrue to him, as is required by S.170 of the Land Act, until the Minister made the grant of the allotment to To'a in 2011. That was the time the Minister made the wrongful grant to To'a. That was when the cause of action (of the plaintiff in the present case) accrued to him. He has therefore brought this action within 10 years from 2011. He filed his present claim on 13 November 2020, that is before 2021, when the 10 year limitation would expire.
- [13] That is why I have ruled that this application cannot be sustained and I accordingly dismissed it. As to costs, I however order that the costs of this application be costs in the cause.

[14] Upon hearing counsel thereafter, I made the following directions:

- (a) The first defendant shall file and serve his statement of defence by 18 March 2021.
- (b) Any reply to that defence shall be filed and served by 25 March 2021.
- (c) There be discovery of documents by all parties by 8 April 2021.
- (d) The briefs of evidence and production of documents of the plaintiff shall be filed and served by 22 April 2021.
- (e) The briefs of evidence and productions of documents of both defendants shall be filed and served by 6 May 2021.
- (f) The trial of this matter will held at **9:30 am on 28 and 29 June 2021.**

**Nuku'alofa: 25 February 2021.**



The image shows a circular official seal of the FAKAMA'AU'ANGA FONUA (Tonga) with a signature written over it. The seal contains the text 'FAKAMA'AU'ANGA FONUA' at the top and 'TONGA' at the bottom, with two stars on either side. The signature is in blue ink and appears to be 'Niu J'.

Niu J  
**J U D G E**