

of Town Allotments of Tongatapu" together with the date of entry and the area of the allotment and name of the allotment, which is, "Luaniva", no deed of grant was issued to him or was registered by being bound in a book called the register, as is required by S.121 of the Land Act.

- [2] Malakai was from Niuafou'ou and it is said that he was married and had no children with his wife but that he had an illegitimate son named Takai Tuita, who was married and had children, one of whom is Sione Takai (the first defendant).
- [3] Malakai had a wooden dwelling house on the allotment and he lived there. And it appeared that he assisted young people from Niuafou'ou who came to Tongatapu to attend colleges by having them stay with him at his house. One of those young people was Sione Takai, his grandson, who came and attended primary school at Ma'ufanga, then Tupou College at Toloa and then 'Apifo'ou College at Ma'ufanga, from about 1973 to 1979 or so. From 1983 to 1985 Sione Takai went and studied in Fiji, and in 1986 he returned and worked in the Ministry of Agriculture.
- [4] By the mid-1980s, Malakai was old and was living alone and was of ill-health. He heard that his second cousin, Soane Sisi, had come with his family from 'Eua where they were living and were staying at Petelo and 'Alo Tu'ipulotu's place at Ma'ufanga so that his children could attend college and school here in Tongatapu.
- [5] He went to Soane Sisi and asked that they come and live with him in his house and allotment where there was more room for them so that they would care for him as he had no one to care for him. Soane agreed and the male children went and lived in Malakai's house whilst Soane built another house at the back of the allotment into which he and the wife and female children moved when it was finished. They then lived on the allotment and cared for Malakai, and their children attended the primary school and 'Apifo'ou College at Ma'ufanga. That was in 1986.

- [6] Soane and his family lived with, and looked after Malakai until he died on 21 December 1997 and he also bore all burdens of his funeral as indeed he had to because he was his "brother". Before he died, Malakai told Soane that he and his family could have the allotment after he would die because he had nothing to offer them in return for their kindness to him in all the years they cared for him.
- [7] By that time, Malakai's house was very old and rotten and it was not worth saving. A few years later, the remains of the house were removed and Soane then renewed and enlarged his own house at the back of the allotment with money and material sent by his two sons who were overseas, one of whom was Davy Paul, who had been in New Zealand since the late 1980s. Soane and his family continued to occupy and use the allotment after Malakai died.
- [8] He also filled up the low lying and swampy part of the allotment with truckloads of soil over the years. That low area was the back part of the allotment, where their house was. By the end of the 1990s he had dumped and spread some 30 truckloads, and by the mid-2010s, another 20 truckloads were dumped and spread. In about 2018, Davy Paul sent the money and a shop was built on the front part of the allotment by the road, but it was never used as shop. It was used for the boys to sleep in. By then, only the son of Soane, Paula Miki, and his wife and their 5 children and 1 foster child were still living on the allotment.
- [9] Unknown to Soane and his family, Sione Takai, the grandson of Malakai, together with the representative of Fakafanua, the estate holder, who was his friend, asked Fakafanua for the allotment to be his town allotment and Fakafanua signed his consent to the grant of the allotment to him on his application form on 10 October 2007. He then lodged his application with the Minister of Lands together with a copy of his request to Fakafanua for the allotment and a letter which he said had been signed by Malakai dated 20 October 1993 in which Malakai left the allotment to him when he would die.

- [10] On 29 January 2008 the Minister of Lands directed that the allotment be surveyed and to prepare a deed of grant for Sione Takai so that the allotment be registered as his.
- [11] The survey was done, the deed of grant was prepared and it was granted to Sione Takai and was registered as Book 395 Folio 96 on 29 June 2010.
- [12] Not knowing that that had been done, Soane asked Fakafanua for the allotment to be his town allotment in 2014. He gave Fakafanua a gift of \$6,000. When the application was lodged with the Minister of Lands, it was discovered that Soane had already held a town allotment at 'Eua. It was then agreed that the son, Davy Paul, apply for the allotment. Davy Paul then came from New Zealand and gave Fakafanua another \$8,000 and Fakafanua agreed and signed his consent on his application in February 2015. Soon after that, Soane died in April 2015.
- [13] When that application was lodged with the Minister of Lands, it was then discovered, that the allotment was the same allotment that had already been granted to Sione Takai in 2010.
- [14] On 19 February 2020, Sione Takai signed his consent to an application by Xue Qi Zhang to lease the whole allotment for 50 years at \$200 rent per year. The application was lodged with the Minister of Lands on 19 February 2020.
- [15] On 16 April 2020, legal counsel for Sione Takai wrote to Paul Miki and his wife, who with their 6 children are the only ones still living on the allotment to vacate the allotment and to remove their house from it within 28 days.
- [16] But prior thereto, on 4 March 2020, the first plaintiff, Davy Paul, filed the present claim against Sione Takai and the Minister of Lands. The second plaintiff, Paul Miki, was added to the claim at the end of the evidence in this trial.

The claim

- [17] The plaintiffs claim that –

- (a) they had no notice of the application of the first defendant Sione Takai, for the allotment,
- (b) the allotment was not available to be granted as the town allotment of the first defendant, and
- (c) the second defendant, Minister of Lands, failed to make proper inquiries of the persons, the plaintiffs, occupying the allotment and to afford them an opportunity of being heard.

and seek orders for the Minister to cancel the registration of the allotment in the first defendant and to grant and register the allotment in one of the plaintiffs instead.

Defence of the first defendant

[18] The first defendant says that Malakai had already told Soane in 1993 that when he would die the allotment would go to his grandson, the first defendant.

[19] He also says that the land was available to be granted to him because it had reverted to the estate holder on the death of Malakai.

[20] He says that he properly complied with the requirements for application for the allotment and that the grant made to him was lawful.

Defence of the second defendant

[21] The second defendant says that

- (a) the plaintiff did not make any application for the allotment,
- (b) he did not know that the plaintiff was living on the allotment,
- (c) he did not have any obligation to notify the plaintiff or his father of the first defendant's application, and
- (d) he was allowed to rely on the documents and information submitted by the first defendant together with his application.

The issues

[22] All counsel addressed the issues in this case in their respective written submissions. They are as Mr. Fili listed them in his submissions:

- (a) Do the plaintiffs have locus standi to bring this claim?
- (b) Do the plaintiffs have rights to occupy the allotment?
- (c) Do the plaintiffs have the right to apply for grant of the allotment to them?
- (d) Does the Minister of Lands have a duty to check and make inquiries and to give notice to the plaintiffs before he grants the allotment to the first defendant?
- (e) Is the grant made to the first defendant unlawful?

Locus standi

[23] Mr. Fili submits that the first plaintiff (Davy Paul) does not live on the allotment anymore because he lives with his own family in New Zealand. As for the second plaintiff, he says that the second plaintiff understood that they were only staying there temporarily and that he had made no personal arrangement with Malakai to live on the allotment. He therefore submits that neither plaintiff has sufficient interest in the land to bring the claim.

[24] Ms. Sikalu for second defendant agrees with Mr. Fili that because the first plaintiff, Davy Paul, has lived in New Zealand permanently since 2001, he is no longer occupying the allotment and therefore does not have sufficient interest to bring his claim. She however concedes that the second plaintiff, Paul Miki, does have sufficient interest to bring his claim because he has lived on the allotment up to now. She refers to the case of *Sunia v Kava* [2020] TOLC; LA4/2018 (3 March 2020) which is a Land Court decision.

[25] I agree with that. The Court of Appeal had held that in *Kaufusi v Veatupu, Veatupu & Minister of Lands*, AC18/2018 on 17 April 2019. It stated that the plaintiffs (Veatupu & Veatupu) had an interest which the law can protect

in that they had been in possession of the leased land for at least 16 years. But what is more important is what the Court of Appeal went on to say:

“[12] The plaintiffs claim that they were in possession of the leasehold land with the permission of the lessee at the time of her death in 2001. The licence may have been personal and gratuitous and may have lapsed on the death of the lessee. If however it continued until revoked that would provide an additional ground for holding that they had standing, but in our judgement their possession alone was sufficient.”

[26] In the present case, the allotment reverted to Fakafanua at the expiry of 12 months from Malakai's death, that is, on 21 December 1997. Fakafanua could have evicted Soane and his family, including the plaintiffs from the allotment, but he did not.

[27] The licence which Malakai granted to Soane and his family, which included the two plaintiffs must necessarily have ended when Malakai died but the occupation, and possession, of the allotment by Soane and his family continued until it would be terminated by Fakafanua. And until it was so terminated, the occupation and occupation of the allotment by Soane and his family was lawful: ***To'a v Taumoepeau & Minister of Lands*** [2015] Tonga LR.62

[28] It is true that Davy Paul, the first plaintiff was not living on the allotment when Malakai died but he continued to send material and money for the renewal and extension of their house and the filling of the low lying area of the allotment. He thereby did not abandon his possession and occupation of the allotment. He even paid the money, some \$14,000 to acquire the title to the allotment. He was entitled to return to the allotment at any time.

[29] I consider that he still has the possession, jointly, with his younger brother, Paul Miki, and that he still has standing to bring this claim as well.

Do the plaintiff have the right to occupy the allotment?

[30] The second issue is whether the plaintiffs have the right to occupy the allotment. Mr. Fili says that they do not because Sione Takai, the first defendant has given evidence that it was agreed between Malakai and Soane and himself in 1993, that when Malakai would die, Soane and his family would move out and leave the allotment to him, and that that arrangement was confirmed in writing by Malakai when he signed his letter of 20 October 1993.

[31] That letter is in Tongan and it is to the following effect:

"To the Minister of Land, Survey
Nuku'alofa
20 October, 1993.

Sir,

I convey my respects in this letter and my wish concerning my allotment situated at Ma'ufanga already registered 1 rood 24 perches.

I Malakai Manu agree to surrender my allotment of 1 rood 24 perches to my grandson Manu Takai. He was the only one who lived with me since he was attending school up to his employment in the Agriculture Department.

Manu Takai was the only one who maintained me although he was allocated to various places. He only left this allotment in 1991 when he went and worked at 'Eua but he continued to send me money for my maintenance.

My wish, I Malakai Manu if a time shall come that I die, I wish to surrender my allotment to my grandson Manu Takai.

I believe you will accept this letter.

Yours respectfully,

Malakai Manu (Signed)

Witness thereto: - Malakai Manu (signed)
AKA - Manu Takai
- Sione Sailiese Takai (signed)."

- [32] That evidence of the defendant is denied by both plaintiffs in their evidence. They both say that they never saw the defendant at their home at all, in fact they never knew or heard of him until 2018 or so, and that their father never told them any such agreement with Malakai or the defendant.
- [33] I have listened and watched the two plaintiffs and the defendant give their evidence, and I find that I believe the evidence of the two plaintiffs rather than the evidence of the defendant. I also find that what the defendant claims happened did not accord with what happened afterwards. If Soane had agreed that he and his family were to vacate the allotment upon Malakai's death, such as the defendant claims, why did they not do so? Why did the defendant not force Soane then to keep to their agreement? But he did not.
- [34] Furthermore, he allowed and did not stop Soane from taking down Malakai's house, or what remained of it, and rebuilding his own house, that is, a bigger and better house on the allotment after Malakai died. He allowed Soane to build a shop towards the front of the allotment. I find that all those things were more consistent with what the plaintiffs say Malakai told Soane, namely, that he could have the allotment after he died, than with what the defendant says Malakai said, namely, that Soane was to vacate the allotment when he would die.
- [35] Also when the defendant was cross-examined by Mr. Edwards, the defendant said that Soane and his family were in fact allowed to remain on the land until Soane died and that that was why his lawyer wrote in 2016 for them to vacate the land. That contradicts his evidence already. The letter was addressed to "Soane Hupeto Sisi", and the only Soane in the family was Soane Sisi, the father. Davy Paul lists all names of the family from 1 to 11 in paragraph 2 (i) of his brief of evidence and the only one named Soane is "Soane Sisi", his father. It is therefore clear that the defendant was not aware that Soane had died in April 2015 and that he instructed his lawyer in 2016 to require Soane to vacate the allotment. That conflicts with his statement in his evidence under cross-examination that it was agreed that Soane and his family would continue to live on the allotment until he died.

[36] Mr. Edwards asked him where he got the name "Soane Hupeto Sisi" from to give to his lawyer and he said that he had asked the survey department as to who it was that had applied for the allotment and the department gave him the name Soane Hupeto Sisi. But the application of Soane as shown in P.7 of the Minister's documents, shows Soane's name as "Soane M.V. Sisi", which on his birth certificate produced was "Soane Malia Viena Sisi", and Davy Paul Sisi's application was in that name itself. So it appears that the defendant only made up that story that the survey office gave him the name.

[37] But what is most telling against the veracity of the defendant is his evidence about the purported letter of surrender that Malakai is said to have signed. I was not sure what actually happened and so I asked the defendant questions. He said that the 3 of them, Malakai, Soane and himself, talked together on the date of the letter, 20 October 1993, and that they all agreed that Soane and his family would live on the allotment until Soane died. He said that he did not tell Fakafanua or the Minister that, and he did not have it written down anywhere or have Soane sign the letter which he and Malakai signed. He said he did not give the letter to the Minister then because he had to return to Niuafou'ou in 1994. Why then could he not give the letter to the Minister and a copy thereof to Soane in the remaining months of 1993?

[38] He said that he no longer had any interest in the allotment after that until the representative of the estate holder, a Mr. Tuiaki 'Ofa, contacted him to come and apply for the allotment. He said that he and Tuiaki were friends since they were in Tupou College together.

[39] He said that he told Soane in 2010 that the allotment had been registered in his name and that he was not to build at the front but only at the back of the allotment, and that he told Soane's son in 2019 to move to the back of the allotment and to let the front of the allotment to him. That again conflicts with his evidence that it was agreed that all the family would vacate the allotment after Soane would die, and also he did not say anything about that in his evidence in chief.

- [40] Mr. Edwards again asked him, and he said that Malakai had written the letter himself but that the hand writing was unclear because he was old and so he rewrote it for him as the one exhibited, and that he had thrown away the letter that Malakai had written. He said that he wrote the letter in a "ledger" book and that Malakai signed the letter while it was still attached to the book and that he then photocopied the letter from the book and took it to Fakafanua in 2008.
- [41] He said that the letter was still in the book and I told him to bring the book to Court. He brought the book but the letter was not there. He said he had in fact torn out the page of the letter and had given the original page to the representative, Tuiaki 'Ofa and that Tuiaki gave it to Fakafanua. He indicated in the book the remain of the page he had torn off and that was entered marked as an exhibit P.18. He said that he has since seen the original of the letter in the Land Office.
- [42] I asked him and he said that Malakai had written his letter on a piece of paper and that he rewrote it (in the book) because Malakai's hand writing was not clear and that he signed it twice. He said that Malakai then kept the letter he has written and he was wrong to have said that he, the defendant, threw it away.
- [43] The land officer, Warrick Vea, gave evidence for the Minister and he produced the original of the letter. When put up to the remains of the torn page exhibited as P.18, it did not match at all.
- [44] The defendant was asked about it and he said that the letter must have from another book and asked to look for it. When he returned he said that his son who is in New Zealand said that the correct book had been destroyed during Cyclone Gita in 2018.
- [45] I find the evidence of the defendant, Sione Takai, unreliable and unconvincing. The book which he brought to the Court to show where he had written Malakai's letter in 1993 was a book which had been used by the Ministry of Agriculture to record the amounts which were used under each

sub vote of the annual budget approved for the Ministry for the financial year 2006-2007. That book could not have been used or was around for him to have used in October 1993.

[46] But what is most telling as I have said, is that the two signatures of Malakai on the letter are in very smooth and clear handwriting itself. First, it does not look like the two signatures were those of an old man. Second, they were very clear handwriting. I therefore do not believe that Malakai would have written his letter in unclear handwriting at all. I am sure that if he had written a letter at all he would have written it as clear as his purported signatures. I therefore do not believe the defendant's evidence that Malakai had written any letter, or that he had signed the letter which the defendant has produced as his letter of 20 October 1993.

[47] I do not accept that Soane knew about any such letter or that there was any meeting by him and Malakai and the defendant or that he had agreed to vacate the allotment upon Malakai's death, or that his family would vacate the allotment upon his, Soane's death, such as the defendant has alleged.

[48] I therefore find and I am satisfied that there was no condition on the approval or licence which Malakai gave to Soane and his family to live on his land that they had to vacate it after Malakai would die or after Soane would die.

[49] Accordingly, I find that Soane and his family continued to occupy and possess the allotment lawfully after their licence to occupy the allotment ceased upon the death of Malakai, as is the law as was stated in the *To'a Case* referred to above.

Do the plaintiffs have the right to apply for the allotment?

[50] Mr. Fili argues that the plaintiffs and their father had had ample time to apply to be granted the allotment but they did not, because he says they had agreed that they would vacate the allotment after Malakai died.

[51] I have said that I do not accept that there any such agreement. I accept the evidence of the plaintiffs that Soane had wanted them, the children to go

overseas and work and save the money to give Fakafanua for the allotment. I accept that that was why they did not apply right away after Malakai died. It was only in 2014 that \$6,000 was earned and it was then paid to Fakafanua together with Soane's application for the allotment.

Does the Minister have the duty to check and inquire?

[52] Mr. Fili says that the Minister did not have a duty to check or inquire as to whether any person was residing on this allotment because of the letter of Malakai which he produced to the Minister. That letter clearly stated that the land was to go to him, the defendant, and that any person who was staying on the land had no right to continue to stay on it. He refers to the statement of the Court of Appeal in the case of *Tu'alau v Tu'alau* [2021] TOCA 2 (AC5/2020):

“... there may in some circumstances be an obligation by the Minister to undertake an inspection of the land in issue. However, this Court has held there is no requirement that such an inspection must always be carried out and the extent of any inquiry will depend on the circumstances of each case.”

[53] He therefore says that the circumstances of this case did not require the Minister to make any inspection or inquiry.

[54] Ms. Sikalu does not disagree with that and refers to *Finau v Finau* [2017] TOLC 5 where Paulsen LCJ stated:

“It is now well established that the Minister must make such inquiries as are reasonably necessary in view of the information before him to determine if land is or may be subject to some other claim that might be an impediment to a grant or make it unavailable.”

[55] She says that there was no information before the Minister in the present case that required him to make any inspection or inquiry because the documents provided by the first defendant did not put him on alert as to any

impediment to the grant. She says that there was nothing before him to indicate that there were people occupying the allotment.

[56] Mr. Edwards disagrees with that. He says that the first defendant himself had informed the Minister that there were families who had occupied the allotment and that they were also vying for the allotment in his letter to the estate holder accompanying his application to the Minister.

[57] I agree with Mr. Edwards. That letter was dated 10 October 2007 and the defendant had his address on the letter as "Angaha, 'Eua". That meant that the defendant was not residing at Ma'ufanga, or on the allotment which is at Ma'ufanga, at that time. It read in Tongan as follows:

"Angaha
'Eua
10 October 2007.

Honourable Estateholder Noble,
Noble Fakafanua
MA'UFANGA

HIGH BORN ONE FAKAFANUA

Please forgive this interruption made in supplication for some part of your love. It is because of an allotment of one MALAKAI MANU who has passed away.

MALAKAI MANU was of Angaha, Niuafou and of Ma'ufanga Tongatapu. Your Honour loved him and gave him a town allotment. But he has passed away on 20 December 1997 at Ma'ufanga. Nothing has been done about this allotment because I know it is your property.

I SIONE SA'ILI TAKAI am the legitimate son of TAKAI TUITA. He is the son of MALAKAI MANU. He has returned to Niuafou after his father MALAKAI MANU passed away. And I was busy travelling around and attending to my duties in the Agriculture Department up north. And that was why the matter has been

left and I could not come to seek that I may receive your love as well. There were also families who were residing on this allotment. They also tried to the Town Officer to be given this allotment. And word was received that the allotment was lost and that is why this supplication is made, if the man, my father, had been of any small help to you in your estate, may I please also have your love so that I would continue the responsibilities of your wish.

And if your love be granted to me, I will faithfully obey you and make the allotment a refuge for all the people of Niuafu'ou who come to Tongatapu.

Hoping you will accept my request for the land which you had granted to my grandfather. I will gladly accept your decision.

Your respectfully,

STakai (signed

SIONE SA'ILI TAKAI

(Grandson of MALAKAI TAKAI)."

[58] That letter of the defendant greatly misrepresented the position of occupation of the allotment at the time of his application. He knew that at least Paul Miki and his family were occupying the allotment at that time, yet he stated in his letter that "there were families who had resided on the allotment" meaning that they were no longer residing there anymore.

[59] But the point is the Minister would have been aware that Malakai may have lived on the allotment since the time it was registered in his name, 1948, that is nearly 50 years and it might be possible that he has a dwellinghouse situated on the allotment, and that the families who were said to have resided on it after he died might have been living in his dwellinghouse. The Minister ought to have wondered what that dwellinghouse was like and who it lawfully belonged to after Malakai died. Were there Letters of Administration granted in respect of such house? Why did not Malakai's son, Takai Tuita, claim the allotment as heir after Malakai died? Why has the defendant only come to

apply for the allotment after 10 years of Malakai's death? Who was living on the allotment in the meantime?

[60] Those, I consider, are reasonable and necessary questions which the Minister ought to have asked and to require his officers to ask and to find out the answers to them, and in particular, to inspect the house in which Malakai had lived, because, if no Letters of Administration had been granted, the house was still lawfully vested in the Supreme Court pursuant to section 11 of the Probate Act, which provides:

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

A house is personal property under the laws in Tonga.

[61] I am satisfied that there was information that was placed before the Minister which required the Minister to determine to see if the allotment "is or may be subject to some other claim that might be an impediment to a grant or make it unavailable," as Paulsen LCJ had stated.

[62] Furthermore, I consider that the Minister has a more fundamental responsibility when he comes to make a grant of an allotment which would necessarily require him to make inquiries before he makes a grant of an allotment.

[63] Section 19 (2) of the Land Act provides:

"(2) He shall grant allotments to Tongan subjects duly entitled thereto by law."

That means that he can only make the grant if the law entitles the Tongan subject to the grant.

[64] Other than the procedural requirements which S.43 provide for, S.50 provides for the rules which entitle an applicant to be granted an allotment out of the lands of the Kingdom. It provides as follows:

“50 Rules for taking lands for allotments

Land for allotments shall be taken from the hereditary estates in accordance with the following rules -

- (a) an applicant for an allotment lawfully resident in an hereditary estate shall have his allotments out of land available for allotments in that estate;
- (b) where there is no land available in the estate in which the applicant is resident, then the allotment shall be taken out of some other estate held by the noble or matapule in one of whose estates the applicant is resident;
- (c) if no land is available in any hereditary estate held by the noble or matapule in one of whose estates the applicant is resident then the allotment shall be taken out of the hereditary estate of any other noble who is willing to provide such allotment;
- (d) if no land is available under rule (c) then the applicant may have his allotment from Crown Land;
- (e) an applicant for an allotment to be granted out of Crown Land shall have his tax and town allotments from such particular portion of Crown Land as the Minister may decide:

Provided that an applicant already resident on Crown land shall where possible be granted the allotments from the particular area of Crown Land in which the applicant is resident.

[65] Because the allotment in the present case is in an hereditary estate, the Minister ought to inquire whether the defendant was “lawfully resident” in the estate of Fakafanua of Ma’ufanga as is required under S.50 (a). Secondly, the Minister ought to have inquired whether the land in that estate was

“available” for allotment. The fact that the estate holder, Fakafanua, has signed the declaration on the prescribed application form “that there is no impediment to prejudice this grant” does not remove the duty of the Minister to ascertain that the Tongan subject, the defendant, was entitled to the grant of this particular piece of land, in accordance with the rules laid down in S.50 of the Act for the grant of allotments, and that the allotment was available.

[66] According to the defendant’s letter of 10 October 2007 to Noble Fakafanua, he was resident in Angaha, ‘Eua, and he was requesting Fakafanua to give him the allotment in Fakafanua’s estate in Ma’ufanga, Tongatapu. He was therefore not “lawfully resident” in Ma’ufanga. That alone would have disentitled the defendant from applying for the allotment.

[67] Also the Minister ought to have seen that the defendant was resident in Angaha, ‘Eua, which is Crown Land, and S.50 (e) provides for that. His allotment is to be granted out of Crown Land as the Minister may decide.

[68] All the provisions of S.50 apply If land is available to be granted to an applicant in an hereditary estate or Crown Land. The question of availability of an allotment to be granted is a question of fact and I consider that it is the responsibility of the Minister to ensure that the allotment is not subject to any claim or possession or occupation of any other person. The reason for that is because the Minister would not know if the allotment is available to be granted unless he himself, via his officers, can confirm that it is. And that his officers can only confirm that if they have made appropriate inquiries about it. That would entail inspection of the allotment and inquiries of persons who would be likely to know.

Is the grant to the first defendant unlawful?

[69] Is the grant to the first defendant unlawful? The answer is yes. The grant was made without appropriate inspection and inquiries having been made. The grant was and is unlawful because the allotment was lawfully occupied by the plaintiffs and their parents at the time.

Conclusion

[70] For the foregoing reasons, I have come to the conclusion that the grant of the allotment by the second defendant Minister of Lands to the first defendant, Sione Takai, was unlawful and I give judgement for the plaintiffs.

[71] The plaintiffs pray that I order that the allotment be granted to and be registered in the first plaintiff, but I do not think that I can properly say that he **is** "lawfully resident" in the estate of Ma'ufanga to be eligible under S.50 (a), like the second plaintiff is, and I cannot order that the allotment be granted to the second plaintiff because has not applied in the prescribed form as required by S.43.

Orders

[72] Accordingly, I make the following orders:

- (a) There be judgement for the plaintiffs.
- (b) The second defendant Minister of Lands is directed to cancel the deed of grant Book 395 Folio 96 of the first defendant Sione Sa'ili Takai and the registration thereof forthwith.
- (c) The defendants shall jointly and severally pay the costs of the plaintiffs, to be taxed if not agreed.



A handwritten signature in blue ink, appearing to be "Niu J", written over a horizontal line.

Niu J

J U D G E

Nuku'alofa: 3 December 2021.