

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

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**LA 4 OF 2014**

*WJL/15*

**BETWEEN: FUKOFUKA MAAMA**

- **Plaintiff**

**AND: HON. MA'AFU**

- **First Defendant**

**AND 'ISILELI MAAMA**

- **Second Defendant**

**AND LATAI TAU (a.k.a. LATAI FATUI)**

- **Third Defendant**

**AND 'ILOA-HE-LOTU TAUMOEHA'APAI**

- **Fourth Defendant**

**AND NOBLE NUKU**

- **Fifth Defendant**

**BEFORE PRESIDENT PAULSEN**

**Hearing : 8 and 9 October 2015**

**Decision: 10 November 2015**

**Counsel : Mr. Clive Edwards SC for the plaintiff**

**Mr. S. Sisifa for the first defendant**

**Mrs. P. Tupou for the fifth defendant**

**No appearances for the second, third and  
fourth defendants**

*recd 10/11/15  
JLC*

**RULING**

**The nature of the dispute**

- [1] On around 18 November 2009 the Minister of Lands made a decision to grant to the fourth defendant a town allotment consisting of 1R.00P and being Lot 9 Registered Plan 2997 in the township of Kolonga ('the town allotment').
- [2] The plaintiff ('Mr. Maama') seeks to set aside the Minister's decision. The town allotment was previously granted to his father, the second defendant, although never registered. For that reason Mr. Maama, who is the second defendant's eldest son and heir, says that the town allotment was not available for grant to the fourth defendant. He also argues that the Minister's decision was otherwise unlawful, unreasonable and unjust.
- [3] Mr. Maama seeks a declaration that the Minister's decision is invalid and for an order directing the Minister to register the town allotment to the second defendant. He no longer seeks an order directing the Minister to register him as the owner of the town allotment.

- [4] The Minister and the fifth defendant ('Noble Nuku'), who is the estate holder, have defended the claim. Unusually, the other defendants, including the fourth defendant whose grant is challenged, have not done so. The Minister and Noble Nuku do not dispute that the town allotment was granted to the second defendant but say that registration was never completed. Furthermore, they say that in July 2009 the second defendant withdrew his application for the town allotment so that it became available for grant to the fourth defendant.

**The facts**

- [5] The facts were substantially uncontested and I find them to be as follows.
- [6] Mr. Maama is the fourth of six children of the marriage between the second defendant, 'Isileli Maama, and his wife Ma'ata Laota. They were married in January 1945. Mr. Maama is the eldest son of the marriage. He has three older sisters, a younger sister and a younger brother. The eldest child of the marriage between 'Isileli Maama and Ma'ata

Laota is 'Ilaisaane Taumoeha'apai (nee Maama) who is the mother of the fourth defendant. The third defendant is the second child of the marriage and it is the rift in the relationship between her and Mr. Maama that was the major cause of this litigation.

[7] Mr. Maama's family has been occupying land at Kolonga since around 1926. This family land was an area of approximately 3R.07P. In 1975 steps were taken to subdivide the land into three lots. The town allotment was to be registered to the second defendant. An adjacent lot was promised to Mr. Maama.

[8] Mr. Maama built a Tongan fale on his land and lived there between 1977 and 1982. In 1982 he moved to the United States, leaving his wife and two children remaining on the land. They joined him in the following year. He has lived in the United States ever since but has made a number of visits to Tonga, has provided money for his family here and has taken an active interest in the family land including building a house on the town allotment.

- [9] Mr. Maama intended to return to Tonga to build on his land. During 2004 he sent container loads of building materials to Tonga, only to discover that in his absence his land had been registered in the name of Raymond Maama. Raymond Maama is the illegitimate son of the third defendant. Mr. Maama was very disappointed at this turn of events but was told by his father that he could build his new house on the town allotment as he was the heir and would inherit that land. The third defendant was supportive of this proposal.
- [10] Whilst there would have been no doubt in the parties' minds as to the second defendant's ownership of the town allotment and of Mr. Maama's right to take the land as heir in due course, the second defendant was still not registered as the owner of the town allotment. This was despite the fact that the second defendant had applied for a grant of the town allotment on 8 July 1975. He paid the poll tax and survey fee on 13 December 1976 and 10 November 1977 respectively and produced his birth certificate to the satisfaction of the Ministry. On 14 November 1977 the Minister issued a direction that the town allotment was to be surveyed and registered in the name of the second defendant and a survey was subsequently completed. For

reasons that are not entirely clear no deed of grant was prepared. However, it was accepted by Counsel for the Minister, Mr. Sisifa, that the second defendant had done everything required of him to obtain registration of the town allotment save physically collecting a deed of grant and paying a nominal registration fee at the time of doing so.

[11] In May 2004, Mr. Maama began building a substantial two storey dwelling on the town allotment. He left Tonga to return to the United States in around September 2004, by which time the foundation work was completed. He gave the third defendant money to pay labour costs associated with the ongoing building work. Unfortunately matters did not progress smoothly from this point on. The uncontested evidence was that the third defendant took the money and removed building materials in an effort to stop the work. In 2006, Mr. Maama sent further containers of building materials and returned to Tonga to carry on the work. He erected the framework, the first storey and the roof. He then had to stop work to raise further funds. In 2007, Mr. Maama returned to Tonga but the third defendant again interfered and stopped the work and told him that he would never inherit or live on the town allotment. Mr. Maama said

that this was because she was "very bitter because she was not getting any money from me" and "She was jealous because she believed that I was giving money to people I was dealing with and she was not getting anything".

[12] By 2009 Mr. Maama had expended over \$200,000 on the dwelling. A considerable quantity of his materials had been stolen by his family and builders. Because they had caused deliberate damage to the dwelling Mr. Maama commenced proceedings against the third defendant and his younger sister, Kamela Soakai, in the Supreme Court. He obtained orders restraining them from entering, interfering with or damaging the dwelling and holding them to keep the peace. They subsequently ignored those orders and proceedings to have them imprisoned for contempt were taken but withdrawn in August 2009 on the sisters' undertaking not to commit further acts in breach of the peace and the payment of costs.

[13] Possibly as a result of a visit that Mr. Maama and his lawyer made to the Lands Office on 4 May 2009 to check on the status of the town allotment, the Minister of Lands issued a Savingram on 7 May 2009 to the Secretary of Lands

directing him to issue a deed of grant to the second defendant. The Savingram was headed "Re: Survey of the Town Allotment of 'Isileli Ultimo of Kolonga, Estate of Nuke" which reads:

Please survey the town allotment of the above named in accordance with the plan submitted with this letter.

This allotment was granted by the estate holder to the above named on the 08/07/1975 and he has already paid the survey fees under rec. 948504 – 10/11/1977 - \$17.50. Once you have completed the survey, prepare the map (Deed of Grant) and register.

[14] Also on 7 May 2009 Mr. Maama wrote to the Minister of Lands. In his letter Mr. Maama noted that he had been advised by Fataua at the Ministry that a deed of grant was to be prepared in favor of the second defendant for the Minister's signature. He also advised the Minister that he had built a two story dwelling on the town allotment. Importantly also, he advised the Minister that his father was 86 years old and was being ill-treated by his sisters and being forced "to come to the office to do what she wants done with the land". He also wrote:

There is real concern and I am asking for the registration of the town allotment in the name of [the second defendant] in accordance with the law in order to enable the law of succession to apply. I am fearful that my sisters, Latai and Kamela, will force the old man to register the allotment in someone else's name.

[15] As a result of this correspondence the Land Registrar prepared an internal memorandum to the Minister of Lands dated 29 May 2009. This memorandum notes that work had already been done to register the second defendant as owner of the town allotment. Foreshadowing the position the Minister and Estate Holder have taken in this proceeding, the memorandum states:

The registration of this allotment upon the completion of work to it, is based on the time Isileli thinks he will come and register it, and that will be the time Fukofuka Maama becomes heir....

Because I am aware this father and son are in conflict and I do not believe Fukofuka has anything to do with forcing his father to register this allotment. The only time Fukofuka will be associated is if 'Isileli surrenders this allotment upon it being registered.

[16] For completeness I should add that there was no evidence of any conflict between Mr. Maama and his father.

[17] On 15 May 2009 Noble Nuku wrote to Kuli Fehoko, who Mr. Maama had appointed to look after the dwelling, forbidding him to enter onto or carry out any work at the town allotment. As the Noble Nuku did not give evidence I do not know what prompted him to intervene in this way. There followed correspondence from Mr. Maama's lawyer, Clive Edwards, to Noble Nuku of 19 May 2009 in which Mr. Edwards advised Noble Nuku of the circumstances surrounding the building of the dwelling on the town allotment, the dispute between Mr. Maama and his sisters and the fact that Mr. Maama had authorised Mr. Kuli to look after and protect his property. Mr. Edwards stated "... if you have authority to prohibit Kuli and Fukofuka Maama from entering the place, please arrange for the service of an order from the Court". On 5 June 2009 Mrs. Tupou, acting for Noble Nuku, responded to Mr. Edward's letter of 19 May 2009. She asserted that as the town allotment was not registered in anyone's name "my client is the one who will have authority over such land" and "My client does not

dispute that the house belongs to your client but that certainly does not give him the right to the land."

[18] On 5 June 2009, Dr Halatuituia, who I understand is the Secretary of Lands, responded to Mr. Maama's letter of 7 May 2009 and confirmed that the Minister had directed for the town allotment to be registered to the second defendant, as follows:

Work has already been conducted for 'Isileli Maama's application for an allotment and is in the mapping division to prepare the map for registration.

The registration of this allotment will be upon completion of the work to it is a matter entirely up to 'Isileli Maama.

[19] The evidence was that a deed of grant was prepared in favour of the second defendant but that was never signed by the Minister nor was the second defendant's name ever entered in the Register of Town Allotments.

[20] On 7 July 2009 the Ministry received a letter which purported to be from the second defendant cancelling his application for the town allotment. Authorship of the letter

is disputed but for convenience I will refer to this as 'the second defendant's letter'. No reason was given for the second defendant wishing to cancel his application. Mr. Maama, in his evidence, said that his father had been compelled by the third defendant to cancel his application so that the town allotment could be granted to the fourth defendant. He also gave what appears to be contradictory evidence that the second defendant's letter was a forgery. He pointed to what he considered to be irregularities in the letter to support his position. For reasons that will become apparent, I am not required to make a finding as to whether the letter was a forgery.

[21] There is an absence of evidence as to what then happened. There is a notation, signed by the Minister, on the second defendant's letter and dated 9 July 2009 asking the Acting Secretary of Lands to "Please check". There is then a further notation by some unidentified person requesting the Land Management Division to action the Minister's instruction. There is then a further entry which reads as follows:

"Fataua

As directed

Signed

28/7"

[22] All of this is most unsatisfactory. There is no evidence of what the Minister was asking the Acting Secretary of Land to 'check' or what enquires were in fact made or what those enquires revealed. There is no written record either that the Minister accepted the request to cancel the second defendant's application for the town allotment.

[23] On 13 August 2009, the fourth defendant made an application for the grant of the town allotment. It appears that Mr. Maama was aware that the Ministry had received what purported to be a letter from his father cancelling his application for the town allotment but he was not aware that the fourth defendant had applied for the grant of that land. There was no evidence that anyone at the Ministry of Lands drew that application to his attention.

[24] There followed some correspondence from Mr. Maama's lawyer, Mr. Clive Edwards, to the Minister. On 21 August 2009 Mr. Edwards wrote:

The work for the building on the town allotment was authorised and permitted by the old man ('Isileli Maama) who is the father of Fukofuka. Because of the rift and differences between Fukofuka and his two sisters, it has caused the two sisters to compel their father to surrender the land and not complete the registration of the allotment in order that the construction carried out by Fukofuka may end up useless and of no value. The situation is becoming increasingly bad.

On Monday, 17/8/2009 Noble Nuku advised that the old man 'Isileli Maama has surrendered the allotment to him because it was never registered. This will enable the son of Latai Tau, the older daughter of 'Isileli Maama and sister of Fukofuka Maama to complete the arrangement.

I advised Nuku that what he is doing is wrong because this allotment was granted by his predecessor in office on 8/7/1975 for 'Isileli Maama to register. Also, the survey was carried out but the registration has not being carried out by your department and this should be corrected.

Request is hereby made to register the allotment and allow the dispute with the sisters to run its course.

[25] There was no response to that letter. There was no response either to a subsequent letter to the Minister of 27 November 2009 in which Mr. Edwards wrote:

I am writing this letter because you Ministry has not registered the town allotment of 'Isileli Maama....

When I came with the heir to talk to your department, it became apparent that 'Isileli Maama and his daughter Latai Tau came and tried to change the registration to the eldest son of Latai Tau and not the heir Fukofuka Maama...

The old man advised his son Fukofuka Maama that he is not agreeable to what his daughter, Latai Tau, is attempting to change or transfer the town allotment to her eldest son but he is afraid of Latai and Kamela because they beat him up.

[26] The Ministry's file reveals that on 19 November 2009 the Minister and the Noble Nuku met to discuss the fourth defendants' application. There is a note, made following that meeting, written on the fourth defendant's application as follows:

Appointment: 11:15am 18/11/2009 - Nuku and Minister  
Decision of the Minister of Lands today to proceed with this  
application and let the Court case follow later if they wish to  
proceed to Court because the Estate Holder agrees.

[27] This decision was not conveyed to Mr. Maama. He said that he was not aware of the decision to grant the allotment to the fourth defendant until just before this proceeding was commenced, which was in early 2014.

[28] The Ministry has not issued a deed of grant to the fourth defendant whilst this dispute is unresolved.

[29] There was no explanation as to why it took Mr. Maama until 2014 to issue his proceeding but nothing appears to turn on that.

**The arguments advanced for Mr. Maama**

[30] Mr. Edwards presented written and oral submissions. His submissions focused on what he said were the gross

negligence and improper conduct of Noble Nuku and the Minister.

[31] As far as Noble Nuku is concerned, Mr. Edwards submitted that he was aware of Mr. Maama's family connection to the town allotment, that Mr. Maama had an agent looking after the land for him and of his development of the town allotment. He argued that in those circumstances Noble Nuku acted improperly in consenting to the fourth defendant's application and in declaring wrongly on the fourth defendant's application form that there was no impediment to the grant. He submitted that it was "abundantly clear to Noble Nuku that the land was not available ... because it was occupied by the plaintiff".

[32] As far as the Minister is concerned, Mr. Edwards submitted that the Minister was in serious breach of duty in failing to register the town allotment in the name of the second defendant for over 34 years and that his decision to grant the town allotment to the fourth defendant when he was fully apprised of the fact of possession, the history of the town allotment and of Mr. Maama's development of it was

not only in breach of section 50 of the Land Act but also unreasonable and unjust.

[33] Mr. Edwards referred me to two cases on the issue of whether land is available for grant, which he argued were on point, namely *Tafa v Viau & Anor* [2006] Tonga LR 287 and *Mesui Moala v Tu'i'afitu and Foueti Halalilo* [1923-1962] Vol II Tonga LR 104.

[34] Mr. Edwards also submitted that there was no evidence that his father was the author of the second defendant's letter. He referred to the unchallenged evidence of Mr. Maama and two other witnesses, Finau 'Ofahulu and Kilisitina Manu, to support a submission that the second defendant would not have written such a letter and wanted Mr. Maama to succeed to the town allotment. He noted also that the third and fourth defendants and Noble Nuku had not called any evidence to support the alleged cancellation of the second defendant's application for the town allotment.

### **The Minister's position**

[35] In his statement of defence the Minister pleads that Mr. Maama's claim is inconsequential because the town allotment has not been granted or registered in the name of the fourth defendant or anyone else. Although this argument was not developed at the hearing I understand what is being advanced is that the claim is premature.

[36] In helpful oral submissions Mr. Sisifa submitted that the second defendant was never the owner of the town allotment and that his registration was subject to the requirements of section 43(2) of the Land Act and the payment of the prescribed registration fee. Mr. Sisifa sought to persuade me that I need not follow cases which have held that registration of land is not the test of ownership, such as *Lisiate v 'Eli* [2012] Tonga LR 30, 37, as those cases had not considered section 43(2) of the Land Act.

[37] Mr. Sisifa argued that it followed that the second defendant never had anything more than a license to occupy the town allotment which was invalidated when he withdrew his application for the land. Mr. Sisifa accepted that whilst the second defendant's application for the land was extant the town allotment was not available for grant. However, he

submitted that once the second defendant's license to occupy the town allotment terminated the land became available for grant and that Mr. Maama had no claim to it as his father's heir. He also submitted that Mr. Maama had no independent claim to the town allotment as he had never been in occupation of it so as to render it unavailable for grant as Mr. Maama was a resident of the United States and had been for over 30 years.

### **The Estate Holder's position**

[38] Mrs. Tupou also presented helpful written submissions for Noble Nuku. In reliance upon an extract from *Halsbury's Laws of England* Vol 37 para 211 (which I note was referred to in *Fakafanua v Fakafanua* [2008] Tonga LR 120) Mrs. Tupou argued that Mr. Maama does not have *locus standi* to bring this claim. She sought to persuade me that in an action for recovery of land the proper plaintiff is the person in whom the legal estate is vested. In this case, she submitted, that the legal estate in the town allotment is vested in the estate holder, Noble Nuku, as the land is not presently registered to anyone.

[39] Mrs. Tupou also argued that only the second defendant (and not Mr. Mamaa) can bring an action to have the land registered in this name but said that the second defendant had given up his claim to the town allotment and was not able to make a second application for the land because of section 44(1) of the Land Act.

[40] Mrs. Tupou maintained that the town allotment was available for grant to the fourth defendant when the second defendant had withdrawn his application for it and that there was no substance in the allegations made by Mr. Maama that the Noble Nuku had acted improperly in consenting to the grant. She distinguished the cases relied upon by Mr. Edwards, in support of the submission that the land was not available for grant, on their facts.

## **Discussion**

### *Locus standi*

[41] I do not accept that Mr. Maama does not have *locus standi* to bring this claim. The position that may prevail in England in relation to actions for the recovery of land, referred to by

Mrs. Tupou in her submissions, is not apposite given Tonga's unique system of ownership and succession to land.

[42] In *Skeen v Sovaleni* [2005] Tonga LR 298 an application was made by a defendant to strike out a claim by the plaintiff seeking cancellation of a deed of grant on the grounds that the plaintiff lacked *locus standi*. Ford J said, at page 300, that it was 'axiomatic' that before a plaintiff can challenge registration of any deed of grant he must have *locus standi* and that the "Land Court was not established as a forum for just any busybody". He also said:

Before any challenge can be made to registration of a deed of grant, a plaintiff must be able to establish proper standing before the Court. Where, as in the present case, a plaintiff claims entitlement to the land in question then the basis for his alleged entitlement must be apparent from the pleadings. Once that threshold is established then and only then do the pleaded grounds for setting aside the deed of grant become a relevant consideration.

[43] Mr. Maama is not a busybody unaffected by the Minister's decision to grant the land to the fourth defendant. His interests are clearly at stake. *Church of Jesus Christ of*

*Latter Day Saints in Tonga Trust v Fepale* [2009] Tonga LR 258. He has clearly pleaded the basis for his entitlement to the town allotment. He is challenging the grant of the town allotment to the fourth defendant because such grant will be deprive him of rights to succeed to the land as his father's heir in circumstances where, he says, his father has not withdrawn his application for the land and is not in a position to bring a claim himself. Not only that, he also challenges the grant to the fourth defendant because he says it was made without due consideration to the circumstances of his, albeit disputed, occupation and possession of the town allotment and the expense of over \$200,000 to develop the land. Mr. Edwards submitted that Mr. Maama was "compelled to issue these proceedings to protect his interest and his rights to his home and the land which he will inherit in the future" (paragraph 3.1 of closing submissions). I consider that Mr. Maama has *locus standi* on that basis.

*Is the claim premature?*

[44] I also reject the argument that the claim is premature. There is no dispute that the Minister has made a decision to grant the town allotment to the fourth defendant. There can be no question that, but for Mr. Maama's opposition to the

grant, registration will be completed. There is no reason why Mr. Maama should have to wait for the formality of registration to challenge the Minister's decision to grant the land to the fourth defendant.

*The Minister's decision to grant the land to the fourth defendant*

[45] The parties' submissions focused on the question of whether the land was available for grant to the fourth defendant. There will have been an expectation that the Court would resolve that issue. In previous cases the Courts have expressed a view that there will be an impediment to the making of a grant if land is not 'available' because, save in the case of trespassers, the land was in fact occupied. *Onglolea v Finau* [2003] Tonga L.R 147 and *Vai v 'Uliafu* [1989] 1989 Tonga L.R 56. But the Court of Appeal in *Finau v Minister of Lands & Anor* [2012] Tonga LR 127 at paragraph [16], left for determination in another case:

....whether the Act entrusts to the Minister the determination of the question of whether land is "available" as a matter of fact .... or whether "available" has a legal meaning to be determined by a Court in any challenge to a Minister's decision which would be

of general application or to be determined and applied by a Court on a case by case basis.

[46] In *To'a v Taumoepeau and anor* (Unreported, Land Court, LA 10/2012, 13 March 2015, Scott J) when referring to *Finau* Scott J said, at paragraph [60], that in light of the Court of Appeal's observations for the Land Court to attempt to arrive at a conclusion as to when the requirement that land be available had been satisfied was not a satisfactory approach. I agree, and like Scott J in *To'a* I do not feel that I am required to reach any conclusion on the issue to decide this case.

[47] Scott J further observed in *To'a*, at paragraph [61]:

While the responsibility for determining availability may not be clear what is beyond doubt is the responsibility of the Ministry to make proper enquiries to comply with the rules of natural justice and to avoid obvious mistakes *before* a decision is reached.

[48] As I have said in other cases (see for instance *Manu v 'Aholelei and anor* (Unreported, Land Court, LA 13/2014, 17 April 2015, Paulsen P) the Courts have recognised the application of traditional legal grounds of judicial review to

the administrative decisions of the Minister to make grants under the Land Act. The Minister must adopt a reasonable and fair process before he exercises that power. This includes the duty to take reasonable steps to ascertain the facts relevant to the exercise of the power. In *Tafa v Viau* [2006] Tonga LR 287, the Court of Appeal at paragraph [12] said:

Two aspects of the Minister's functions and duties, in a case such as this, combined to require him to take steps, which must be reasonable in the particular circumstances, to ascertain whether the land is in fact not subject to some other claim that might be an impediment to a grant or make it unavailable. In the first place, he cannot properly sign the declaration on behalf of the Crown that there is no impediment if the truth is that he simply does not know because he has made no sufficient inquiry. In the second place, the administrative decision to make the particular grant cannot properly be made in the absence of the same enquiry in any case where the Minister does not actually know whether the land is available, or whether any competing claim has been appropriately resolved. Of course, in both respects, the Minister does not have to make enquiries personally. He may rely on his officers, but if he does so, and they fail to perform the tasks properly, a person affected may have a remedy for that failure as if it were a failure of the Minister.

[49] A decision maker can be held to account if he fails to have regard to circumstances that he would have known had he acted reasonably and fairly. In *Tafa*, at paragraph [13], the Court said:

Where the knowledge would have imposed a duty to accord natural justice to some person ..... the Court must place itself in the shoes of the repository of the power to determine whether the procedure adopted was reasonable and fair.

[50] In *Finau* the Court of Appeal considered, at paragraph [15], that *Tafa* is authority that before making a grant a Minister must consider whether land is available and a failure to do so 'vitiates the grant'. See also *Hausia v Vaka'uta and anor* [1974 – 1980] Tonga L.R. 58; *Hakeai v Minister of Lands and ors* [1996] Tonga. L.R 142; *Cocker v Palavi and anor* [1997] Tonga L.R 203 and *Tafa*.

[51] In *Hakeai v Minister of Lands & Ors* [1996] Tonga LR 142, 143-144 the Court of Appeal said:

It is clear law that a person whose rights, interests or legitimate expectations are imperiled by an official's consideration of some

other person's application will generally be entitled to a fair opportunity to be heard before a decision adverse to him is made. This is what is known as natural justice...

Whenever the Minister has competing claims for the same land, he should be careful to ensure that both sides get a hearing - not of course as a court, but an opportunity to put each point of view before a decision is made.

[52] The requirements of natural justice will vary from case to case and are dependent upon the nature of the inquiry that is being conducted and the decision making power that is being exercised. In this case I have formed the very clear view that the Minister failed to handle the grant of the town allotment to the fourth defendant lawfully and in accordance with the requirements of natural justice in the following respects.

[53] First, I understand that the Minister and Noble Nuku accept that while the second defendant's application for the town allotment was extant the town allotment was not available for grant to the fourth defendant. They maintain that the town allotment became available for grant when the second defendant cancelled his application for the town allotment.

The second defendant's letter was dated 10 June 2009 but not received by the Ministry until 7 July 2009 and was seen by the Minister by 9 July 2009. The Minister was already on notice as a result of Mr. Maama's letter to him of 7 May 2009 of all of the following:

- [53.1] That Mr. Maama was the second defendant's heir who expected and wished to inherit the town allotment.
- [53.2] That Mr. Maama had since 2004, with the consent of the second defendant, built a two storey dwelling on the town allotment.
- [53.3] That the second defendant was elderly and that it was alleged he was being ill-treated by the third defendant.
- [53.4] That Mr. Maama was in dispute with the third defendant and another sister.
- [53.5] That the second defendant was being forced by the third defendant to take steps to have the town

allotment registered in the name of some other person other than the second defendant or Mr. Maama.

[54] On 21 August 2009, the Minister received a further letter from Mr. Maama's lawyer in which it was alleged that Mr. Maama's sisters had compelled the second defendant "to surrender the land and not complete the registration of the allotment in order that the construction carried out by Fukofuka may end up useless and of no value". The letter went on and advised that cancellation of the second defendant's application for the land would "enable the son of Latai Tau, the older daughter of 'Isilelei Maama and sister of Fukofuka Maama to complete this arrangement". Although not known to Mr. Maama, an application for the town allotment had, on 13 August 2009, been made by the illegitimate son of Mr. Maama's eldest sister.

[55] In the circumstances I have described, before making any decision to grant the town allotment to the fourth defendant the Minister was obliged to make reasonable enquires as to the circumstances under which the second defendant wished to cancel his application for the land. He should have sought

confirmation that the second defendant's expressed intention of doing so was freely made. The Minister did not give evidence and no other witness was called by or for the Minister to state what, if any, enquires were made. As I have noted, there is a notation written by the Minister on the second defendant's letter asking the Acting Secretary for Land to "Please check", but I cannot infer from this that proper enquires were made or what they revealed. In the absence of such evidence I must find that the decision to grant the land to the fourth defendant was made without sufficient enquiry.

[56] That is not the only reason, in my view, why the Minister's decision to grant the town allotment to the fourth defendant was made in breach of the principles of natural justice. When the Minister received the fourth defendant's application for the town allotment he was aware of Mr. Maama's competing claim to the land. He should have given Mr. Maama an opportunity to argue that the land should not be granted to the fourth defendant, and in my view also, to apply for the town allotment himself. *Hekeai v Minister of Lands*. There was no explanation for the Minister's failure to do so and, indeed, no explanation for what on the face of it

appears to be a capricious decision to grant the land to the fourth defendant and force Mr. Maama into Court. There was nothing to suggest that the Minister undertook any assessment of the merits of the claims of Mr. Maama and the fourth defendant and it would appear that the Minister was of the view that if Mr. Maama could not claim the land as heir there was no need to consider his position at all. That in my view was quite wrong.

[57] The successive errors of the Minister must lead to the result that the decision granting the town allotment to the fourth defendant is set aside. The matter must be referred back to the Minister, who in accordance with this judgment, must make proper enquires of the second defendant. Should it be the case that the second defendant makes no claim to the town allotment then the land should not be granted without first giving consideration to any contentions or competing application for the land by Mr. Maama.

[58] I do not intend to make the order that Mr. Maama seeks that the Minister be directed to register the town allotment in the name of the second defendant. Whether it is appropriate that the second defendant be registered as the owner of the

town allotment will depend on the outcome of the Minister's enquiries.

[59] For the avoidance of doubt, nothing in this judgment can be taken to imply that Mr. Maama must receive a grant of the town allotment. The finding of the Court is only that in the circumstances of this case the decision of the Minister to grant the town allotment to the fourth defendant was vitiated by breach of the requirements of natural justice. Should it be necessary for the Minister to determine competing applications for the town allotment as between Mr. Mamaa and the fourth defendant then those applications must, of course, be decided upon their respective merits.

### **The result**

[60] The decision of the Minister to grant the town allotment, being Lot 9 Registered Plan 2997, to the fourth defendant is set aside. The matter is referred back to the Honorable Minister of Lands for further consideration.

[61] I will receive any written submissions on costs within 21 days if there is no agreement.

**NUKU'ALOFA: 10 November 2015.**

   
**PRESIDENT**