

IN THE LAND COURT OF TONGA
NUKU'ALOFA REGISTRY

Sean O'Connell

*Approved by
SPTD*

[Signature]
24/10/13

LA 21 of 2013

BETWEEN : 'ETUATE TAUFA TAHAAFE

- *Plaintiff*

AND : 1. KISIONE 'OFA HE MO'ONI TAUFA
2. MINISTER OF LANDS

- *Defendants*

O. Pouono for the Plaintiff

No appearance by the First Defendant

'A. Kefu S.C (Acting Attorney General) for the Second Defendant.

Before the President and Mr. Assessor Sinilau Tomo'ua

J U D G M E N T

[1] The writ was issued on 26 November 2013 and an amended Statement of Claim was filed on 15 January 2014.

[2] On 17 October 2003 the First Defendant applied to the Second Defendant for the registration of the tax allotment in question, "Pava" in Tofoa, following the death of his mother Finau Taufua in 2002. The application was approved and the land was registered in the First

Defendant's name in May 2012.

[3] The Plaintiff is the younger brother of the First Defendant and he based his claim that the land had been wrongly registered in the Second Defendant's name (rather than in his own) on the fact that in 1977 the Second Defendant had become a citizen of the United States of America.

[4] Prior to its amendment in 2007 Section 4 (1) of the Nationality Act (Cap 59) (as amended by Acts 7 of 1959 and 5 of 1961) provided:

"4(1) A Tongan subject who when in any foreign state and not under disability by obtaining a certificate of nationalization or by any other voluntary and formal act becomes naturalized therein shall henceforth be deemed to have ceased to be a Tongan subject".

[5] Exhibit A pages 31 to 35 are not disputed to be a certified true copy of naturalization papers filed in the name of the First Defendant and a grant dated 1 May 1977.

[6] On 14 August 2007 the Nationality (Amendment) Act 2007 received the Royal Assent. A new Section 17 was inserted into the Nationality Act as follows:

“17 Savings

(1) Any person who ceased to be a Tongan subject prior to the enactment of the Nationality (Amendment) Act 2007 may apply to the Minister of Foreign Affairs for a certificate of re-admission to Tongan nationality in the manner to be prescribed by regulations.

(2) to (5) -”

[7] The Nationality (Re-admission) Regulations 2007 were gazetted in January 2008. After setting out the requirements for an application for re-admission the Regulations include Form 2 which is a “Certificate [of] Re-admission to Tongan Nationality.”

[8] No Defence was filed by either of the Defendants and the matter was set down for formal proof on 24 June 2014.

[9] During the course of his opening statement Mr. Pouono received a document (Exhibit B) which was handed to him by one Angus Naupoto who, according to an affidavit filed on 5 December 2013 had been given a power of attorney by the Plaintiff on 29 November 2013. The document (in Tongan) was accepted to be a copy of a certificate in Form 2 of the Regulations to the effect that the First Defendant was re-admitted to Tongan nationality on 25 August 2011.

[10] Order 6 Rule (3) of the Land Court Rules provides that when a defence has not been filed formal proof of the Plaintiff’s claim shall be heard:

“The defendant shall be notified of and may attend such hearing but shall not be allowed to be heard.”

In the present case, as has been seen, it was the holder of a power of attorney from *the Plaintiff* who supplied Exhibit B. In the circumstances I adjourned the hearing and invited Mr. Pouono and Mr. Kefu to file written submissions. These were filed on 24 July and 14 August respectively.

[11] It appears that both the Plaintiff and the First Defendant applied for registration of the land in 2003 following their mother’s death. A copy of an application by the Plaintiff is P3 and 4. A letter from the First Defendant dated 12 May 2003 contains an admission that he had taken U.S. citizenship. According to P22 and 23 the Minister decided, in May 2012, to approve registration in the Plaintiff’s name based on an application by him dated 17 October 2003. No copy of this letter was produced however it is clear that on that date the Plaintiff was no longer a Tongan citizen. In those circumstances he could no longer inherit the land and the heir, by operation of law, became the Plaintiff, the First Defendant’s next younger brother.

[12] It is agreed both by Mr. Pouono and Mr. Kefu that a re-admission to Tongan nationality does not operate to restore the rights of inheritance enjoyed by the subject before they were lost as a consequence of the loss of Tongan nationality. What the First Defendant acquired by his re-admission in 2011 was the right conferred by Section 43(1) of the Act, not the right held by virtue of Section 82 prior to his loss of Tonga nationality.

[13] I do not agree however with Mr. Pouono's suggestion that upon re-admission the First Defendant only acquired the limited rights of a naturalized Tongan subject. A re-admitted subject is not the same thing as a naturalized subject.

[14] In my opinion it is plain that the Minister acted under a mistake of fact when he approved the First Defendant's registration in May 2012. It seems clear that the dilatoriness with which this matter was handled by the Ministry between 2003 and 2012 was a substantial cause of the error which took place.

Result:

There will be a declaration that the registration of the tax allotment "Pava" in the First Defendant's name was based on an error of fact.

There will also be a declaration that the Plaintiff is entitled to have the tax allotment "Pava" registered in his name without further delay.

Plaintiff's costs against both Defendants to be taxed if not agreed.

DATE: 29 August 2014.

E. Takataka
21/8/2014

