

IN THE LAND COURT OF TONGA
NUKU'ALOFA REGISTRY

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LA 7 of 2014
11/07/14

BETWEEN : PENITO'A MOKOFISI - Plaintiff
AND : MINISTER OF LANDS - First Defendant
AND : TONGA FALEOLA TONGA - Second Defendant

S.T. Fonua for the Plaintiff

T. Fakahua for the Second Defendant

No appearance by the First Defendant

DECISION

- [1] There are two Applications before the Court brought by the Second Defendant. The first is an application to strike out the claim on the grounds, inter alia that it discloses no reasonable cause of action and that it is time barred. Affidavits were filed in support of the applications and in opposition.
- [2] In paragraphs 5, 6, 7 and 10 of the Statement of Claim it is pleaded that the allotments in question Ha'akuma and Konga Nualei were registered in the name of the Plaintiff's great grandfather 'Esafe Tonga on 3 August 1907. 'Esafe and his wife Seini had six children, their eldest being Mokofisi Tonga, the Plaintiff's grandfather.

- [3] After 'Esafe's death, Selni acquired a widow's life estate in the allotment however she herself died in 1929.
- [4] According to paragraphs 6 and 7, Mokofisi Tonga, though the eldest male child and therefore the heir apparent to the allotments did not have them registered in his name; instead his younger brother 'Olive was registered as the holder in 1929. After 'Olive's death the allotments devolved upon his heir and then his descendants.
- [5] In paragraph 10 it is pleaded that:
"The allotments are now incorrectly registered in the name of [the Second Defendant] because of the failure of the deceased lawful male holder, Mokofisi Tonga to register the allotments in his name in 1929".
- [6] In *Motuiiki v Namoa & Ors* 1981-88 To. L.R. 141 the Land Court explained that the effect of Section 148 of the Land Act (now Section 170) is that a claim derived from ancestor's rights will itself be barred if those rights have been lost. In *Kilifi & Anor v Heimuli* [1996] To. L.R. 31, 34 the Court pointed out that a son (and therefore by implication a later descendant) could not have a better claim to the allotment than his father. In the present case the basis of the claim is that Mokofisi was legally entitled to registration rather than his brother. Assuming that to be the case, Mokofisi had ten years in which to seek to have the registration in favour of his brother reversed. He did not do so and his claim therefore became statute barred. Since the Plaintiff's claim ultimately depends on Mokofisi's claim being upheld, it too has become statute-barred.

- [7] Mr Fakahua pointed out that although the Plaintiff suggested that the registration in 'Olive's name was irregular, there was nothing to show that it was the result of fraud, mistake or want of natural justice; accordingly, the presumption is that the registration in 'Olive's name was correct (see *Finau v Maamakalafi* [2003] To. L.R. 284).
- [8] In answer to these objections, Mr Fonua suggested that "at this stage of the proceedings" all that was being sought was an order that the First Defendant Minister examine his books to establish whether there had in fact been a mistake made when the land was registered in 'Olive's name in 1929. In my opinion this submission faces two difficulties. The first is that it is doubtful whether the Land Court (despite O.6 r1(4) of the Land Court Rules) has any jurisdiction to issue prerogative writs such as mandamus sought by the Plaintiff. Secondly, even if an error were to be detected, it could not assist a Plaintiff whose claim to the land had, by effect of law, been extinguished.
- [9] For the above reasons I am satisfied that the Plaintiff has no reasonable cause of action against either Defendant. The Statement of Claim must be struck out.
- [10] In the circumstances I make no Order on the second application, for security for costs. The application will not, however, be dismissed and may be restored if the Plaintiff decides to take the matter further.

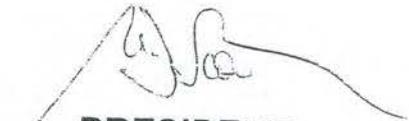
Result

The Plaintiff's claim is dismissed with costs to the Second Defendant to be taxed if not agreed.

DATED: 27 June 2014.

N. Tu'uholoaki
27/6/2014.




PRESIDENT