

IN THE LAND COURT OF TONGA
NUKU'ALOFA REGISTRY

Solicitor General.
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LA 21 of 2012
17/10/14

BETWEEN : TEVITA 'ATUNAIISA TONGA

- *Plaintiff*

AND : VILIAMI SIKALETI

- *Defendant*

T. Fakahua for the Plaintiff

Ms M. Manavahetau for the Defendant

Before the President and Mr Assessor Blake

J U D G M E N T

- [1] The Plaintiff seeks an order for vacant possession of a town allotment at Popua Lot 7 Blk 3787 DG 277/42 of which he became the registered holder in June 1988.
- [2] It is not in dispute that the Defendant went into possession of the land in about 1983 with the consent of the Plaintiff's mother.
- [3] According to paragraph 10 of the Statement of Claim, the Plaintiff asked the Defendant to vacate the land in 2004 however the

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Defendant refused on the grounds that he had built a house on the land and planted useful trees.

- [4] According to paragraph 11 of the Statement of Claim, the Plaintiff again asked the Defendant to vacate the land in November 2012 but again the Defendant refused. This action was commenced on 18 December 2012.
- [5] The Statement of Defence asserts that the Defendant was approached by the Plaintiff's mother in 1982 and that he moved onto the land and constructed his house there after being assured that he could live on the land permanently and that eventually it would be registered in his son's name. The Defendant sought an order to this effect (and therefore, by implication, dismissal of the Plaintiff's claim).
- [6] On 15 October 2013, the first day of the trial, Mr Fakahua opened the case for the Plaintiff. He told the Court that although the land had been "allocated" to the Plaintiff in 1983 he did not occupy it. It appears that he may have been living overseas. Without his permission, his mother agreed to let the Defendant into occupation. In 1988 the land was registered in the Plaintiff's name and he then "told the Defendant to go". By this time the Defendant had already built his house there. Between 1988 and 2004 the Plaintiff several times told the Defendant to go but he refused. In 2004 Mr Fakahua wrote to the Defendant (Exhibit P4) giving him 3 months notice to quit. On 19 November 2012 the Plaintiff sent another notice to the Defendant requiring him to move in seven days. When he failed to comply with that request, the proceedings were commenced.

- [7] After listening to Mr Fakahua's opening, I raised Section 170 of the Act. I explained to Mr Fakahua that the Plaintiff had acquired an apparently unfettered right to vacant possession of the land after it was registered in his name in 1988. Acting in recognition of this right he had told the Defendant to leave, however the Defendant had not done so. Mr Fakahua submitted that Section 170 did not apply, inter alia, because the Defendant was not a squatter. I asked counsel to file written submissions. Both did so and I am grateful for their assistance.
- [8] In Mr Fakahua's submission the 10 year period should run from 2004, not 1988. Furthermore, even if it were held to run from 1988 then that could not have the result that the Defendant, or his son, would be granted the land; the Minister had not been joined and therefore could not be ordered to cancel the grant to the Plaintiff. Ms Manavahetau submitted that the Section applied and that the 10 year period commenced to run in 1988.
- [9] It will have been noted from paragraph 5 above that S170 of the Act was not pleaded. Although RSC O.8 R 3(2) is rather terse, it is accepted practice that a limitation defence should be pleaded. Where, however, this defence is overlooked "it is immaterial whether the parties wish the Court to try the action. It must disclaim Jurisdiction since to continue with the action would be contrary to law" (*Rothmans v Saudi Arabian Airlines* [1980] 3 All ER 360, 364).
- [10] Section 170 provides that:

“No person shall bring in the Court any action but within 10 years after the time at which the right to bring such action shall have first accrued ...”.

In my view the Plaintiff’s right accrued in 1988 and was lost in 1998. Motive, such as a desire to keep the peace, is in my view immaterial to the running of time.

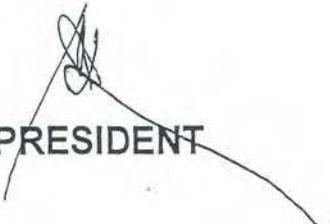
[11] I agree with Mr Fakahua that the loss of the Plaintiff’s rights as against the Defendant do not have the inevitable consequence that the land becomes registered in the Defendant’s name, let alone in the name of his son. Without deciding the matter or hearing argument on the issue, it seems that the effect of the operation of Section 170 will be that the land will revert, as if surrendered by the Plaintiff, and will then become available for re grant.

Result:

The plaintiff’s claim is dismissed with the defendant’s costs to be taxed if not agreed.

10 January, 2014.




PRESIDENT