

IN THE LAND COURT OF TONGA
NUKU'ALOFA REGISTRY

NW
(1) Copy to land judgments file *kefu*
(2) Check if we have LA 26/08 file.
(3) Inform to report to land the file *15/02/11.*
is stayed/cloned.
15/02/11. LA 9 of 2008
[AC 29 of 2009]

BETWEEN : PULILEKA MATENI - Plaintiff
AND : PALETASALE PULILEKA - First Defendant
AND : TAULUPE TU'UNGAHALA - Second Defendant

AND

LA 26 of 2008
[AC 29 of 2009]

BETWEEN: TAULUPE TU'UNGAHALA - Plaintiff
AND : PULILEKA MATENI - First Defendant
AND : MINISTER OF LANDS - Second Defendant

BEFORE THE LORD PRESIDENT

DECISION

1. For the avoidance of confusion I shall refer to Pulileka Mateni as *the claimant* (represented by Mr Fifita) Taulupe Tu'ungahala as *the occupier* (represented by Mr Tu'utafaiva) and Paletasale Pulileka as *the registered owner*. The land in question is known as "Utu'one" (the land).

rec'd 14/06
HHC

2. The claimant commenced proceedings in March 2008 (LA 9/2008). He claimed that he had a valid lease over the land, that he had given the occupier notice to vacate but that he had refused to go. Among other reliefs he sought immediate possession.
3. On 10 December 2008 the occupier also began proceedings (LA 26/08). His case was that he was the heir to the land through his uncle, the registered owner, since the registered owner had no son. In an attempt to prevent the land's devolution to him, the registered owner and the claimant had together fraudulently arranged to have the land leased to the claimant.
4. On 2 September 2009 after a two-day trial the Land Court upheld the occupier's claim that the lease had been obtained by fraud and dismissed the claimant's claim for possession.
5. An appeal against the judgment was filed by the claimant in October 2009. In June 2010 the appellant sought leave to adduce fresh evidence at the hearing of the appeal. The effect of the evidence was said to be that the occupier was illegitimate and could not, therefore, inherit the land.
6. On 14 July 2010 the Court of Appeal made the following orders, by consent:
 - “1. The application for leave to call fresh evidence is granted and, as a consequence the appeal is allowed and the judgment of Andrew J dated 2 September 2009 is set aside pending further order of the Land Court.
 2. The case is referred back to Andrew J for re-hearing in the Land Court. Unless the judge after hearing submissions from counsel otherwise directs, the de novo hearing will be confined to oral and documentary evidence relating to the issue of the legitimacy of the [occupier].
 3. -”
7. Mr Justice Andrew left Tonga shortly after and in due course the case file was placed before me.
8. On 6 April 2011 counsel agreed that the sole remaining question was the legitimacy of the occupier and the consequences that might flow from a determination of that issue. Counsel for the claimant

told me that he would only call the Registrar of Births Deaths and Marriages. Counsel for the occupier told me that he would only call his client. Half a day was allocated for the hearing.

14. On the morning of the hearing I was advised by counsel for the occupier that it was conceded that the occupier was and remains illegitimate. Accordingly, he is unable to inherit the land. The question is what consequences flow from that concession.
15. In cases such as these, the fact that a judgment in favour of a party has been set aside does not entail the result that judgment will be entered in favour of the previously unsuccessful party. Although the claimant failed in the Land Court to obtain possession from the occupier and the occupier succeeded in obtaining a declaration that the lease was fraudulently obtained, the reversal of those findings does not mean that the claimant's claim to possession must now succeed or that the occupier cannot still maintain that he has the right to remain in occupation.
16. The main difficulty, as I see it, is that a central assumption, upon which all sides proceeded, was that the occupier was legitimate. Now that this is conceded not to be the case, the actions, as previously pleaded, cannot be reheard. The only solution is for the litigation to recommence.
17. Issues of this kind are far more easily resolved if there is only one action. A multiplicity of actions often leads to confusion. Counterclaiming is usually a much better course than initiating fresh proceedings arising out of the same facts.
18. In the result I order that no further orders be granted in these actions which are permanently stayed.

DATED: 3 June 2011.


PRESIDENT

