

IN THE LAND COURT OF TONGA  
NUKU'ALOFA REGISTRY

LA 23 of 2010

**BETWEEN: SIMAILEVA LI - Plaintiff**

**AND: SIONE FINEFEUIAKI - Defendant**

**Before the President and Mr Assessor Blake.**

**Mr L. M. Niu for the Plaintiff**

**No appearance by the Defendant.**

**JUDGMENT**

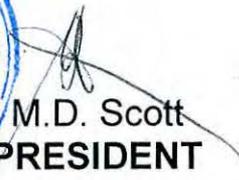
1. This matter proceeded by way of formal proof in default of appearance or defence by the Defendant.
2. A statement of evidence was filed on behalf of the Plaintiff who confirmed the contents of the statement on oath.
3. The Plaintiff produced a copy of a deed of grant book 131 folio 62 confirming that all that land comprising block 80/97 Navutoka having an area of 8 acres and 1 rood was transferred to him on 7 June 1999. (Exhibits P1,2 & 3).
4. The Plaintiff told the court that in 2001 he decided to subdivide the land. The five relevant subdivisions are lots 1 to 5 on a plan, a copy of which was produced as Exhibit P9.
5. After lots 1 to 4 had been advertised for A\$15,000 each, Lot 1 was bought by Finau Tavake who has been registered as the

owner. Lots 2 and 3 were bought by Sione Taula Pousini and fully paid for.

6. In January 2002 the Defendant offered to purchase Lot 4. After only paying A\$3965.25 of the total purchase price of A\$15,000, the Defendant moved, not on to Lot 4, for which he had partially paid, but on to Lots 2 & 3 which had already been sold to Sione Taula Pousini.
7. Efforts were made to stop further development of Lots 2 and 3 by the Defendant but they were unsuccessful. In the months March to June 2002 further payments towards the purchase price totalling A\$7993.34 were received by the Plaintiff with the result that the Plaintiff received altogether A\$11,958.56 from the Defendant, leaving a shortfall on the purchase price of Lot 4 of A\$3041.44.
8. Since clearing Lots 2 and 3 the Defendant has built a substantial brick house on the Lots and surrounded them with a concrete fence.
9. Sione Taula Pousini told the court that he had decided to accept Lots 4 and 5 from the Plaintiff in lieu of Lots 2 and 3 and Lots 4 and 5 have now been registered in his name.
10. The Plaintiff's case (as slightly amended from the Statement of Claim) is that the Defendant is occupying Lots 2 and 3 without any colour of right; he seeks immediate vacant possession.
11. As will be seen from the Statement of Claim, the Plaintiff originally sought damages in the sum of "\$80,000" for the Defendant's unlawful use and occupation of Lots 2 and 3 and other adjacent land. Against this sum was to be offset the A\$11958.56 received from the Defendant as part purchase price for Lot 4. After discussion with counsel the claim for damages was waived, only possession and costs being pursued.
12. On the face of it, the Defendant may have a claim for the return to him of the A\$11,958.56. In all the circumstances however I think it best to adjourn this issue for further consideration after vacant possession has been granted.

13. There will be judgment for the plaintiff. I order vacant possession of Lots 2 and 3 be granted to the Plaintiff by the Defendant in 28 days. The Plaintiff is to have his Costs which are to be taxed, if not agreed.



  
M.D. Scott  
PRESIDENT

NUKU'ALOFA : 22 August 2011.

N. Tu'uholoaki  
22/8/2011