

IN THE SUPREME COURT OF TONGA
CIVIL JURISDICTION
NUKU'ALOFA REGISTRY

*Judgment file
Civil Cases
Routledge.*

CV 28 of 2008

BETWEEN : FA'ALU PENGA PIFALATI MAILE - Plaintiff

AND : 'AMINIASI 'UKAKALA - Defendant

BEFORE THE HON. JUSTICE ANDREW

Counsel : Mr Paasi for the plaintiff and
Mr Tu'utafaiva for the defendant

Date of hearing: 23, 24, 25 February 2009.

Date of judgment: 27th March 2009.

JUDGMENT

In this matter the Plaintiff is claiming that a house and a water tank which are on the land which was previously owned and occupied by her late father are her property and she seeks judgment in the sum of \$15,000 for unlawful detention and conversion and an order for removal of the house and water tank or alternatively if removal cannot be obtained then judgment in the sum of \$100,000.

The facts are relatively straight forward. The Plaintiff's father, SIONE PIFALATI MAILE and his wife had 15 children consisting of 4 boys and 11 girls. He owned a town allotment situated at Veitongo.

The Plaintiff had acquired residence in the U.S.A. This appears to be sometime in the 1970^s. In 1978 the Plaintiff says that she bought building materials at a cost of \$20,000 in order to build a new home on her parents allotment. A home was constructed. The Plaintiff's father

died on the 12th of February 2001. The eldest son, SIONE VAILITI MAILE succeeded as heir to the town allotment.

It then appears that sometime in 2003-4, the heir subdivided the town allotment and gifted the area on which the home and water tank are situated, to the defendant and the other half to his brother VILIAMI SISITOUTAI MAILE.

The Plaintiff continued to reside and work in the U.S.A. and only returned to Tonga infrequently. The area of the town allotment was registered in the name of the defendant on 16th October 2003.

The whole issue in this case is whether the Plaintiff owns the house and the water tank and whether she may remove them.

The house and the water tank are not fixtures. They are simply chattels. The Plaintiff provided \$20,000 to her father to erect them. I accept her as an honest and sincere person who clearly provided the money out of concern for her family. She resided in the U.S.A. and was clearly in a financial position where she could afford to do so. But that was in the nature of a gift and the house became her father's. She had no intention of returning to Tonga to reside in the house and she had taken no part in its construction. She said in evidence that in 1978 she had some money to build a house for her family. She said "I don't know what my father did, I just sent the money". She also said that "I thought my brother would leave it (the house) for me and my sisters". Further she said "I know I built it for my parents and all the family can use it". None of that is consistent with the house being built for her or that there was any intention that it should be a house that she would own. She had her own allotment or property at Veitongo and she did not build the house there.

Other evidence that is consistent with the money being sent to her father as a gift is that following the death of her father in 2001 she made no enquiries as to the status of the home nor did she assert ownership.

It seems to me that this is a family dispute or a family falling out. The plaintiff's siblings were living at the house up to fairly recently. Apparently the defendant's wife was not anxious for others to remain

there for whatever reason. The Plaintiff believes that she had provided the house for her family and that this was therefore wrong as she had provided the money to build it. Other siblings still remain there apparently and there is a family split. But whatever the moral rights and wrongs of that discussion I can only conclude that the plaintiff does not own the house or the water tank. They were built from money which the Plaintiff gifted to her father without any intention that it was to construct a house for herself.

I have considered the position where it could be said that an express trust was created by this transaction. That is, the father took the money from his daughter with the intention to use it for the benefit of beneficiaries (ie. the plaintiff and her siblings). The intention to create a trust can be inferred from the conduct of the parties and all the circumstances. But on the facts of this case the sending and acceptance of the money and the building of the house do not appear to be acts of part performance. These acts did not create an equitable obligation to apply the money to the benefit of the plaintiff or of her brothers and sisters as at the end of the day the payment of the \$20,000 was a gift to the father.

I also find it be unlikely, as alleged, that the defendant had agreed that the plaintiff could come and remove the house and water tank. Given the feelings involved in this case it seems improbable that the defendant would ever have agreed to the removal of the house. Further in a letter of demand written by the plaintiff's lawyer there is no mention of there ever having been such an agreement.

For these reasons I am not satisfied that the plaintiff is the lawful owner of the house and water tank situated on the town allotment at Veitongo, in this case.

The Plaintiff's claim is dismissed and judgment is awarded to the defendant.

Costs are awarded to the defendants.

NUKU'ALOFA: 27 March 2009.



Andrew J.
JUDGE