

BETWEEN : *PULILEKA MATENI* - Plaintiff

A N D : 1. *PALETASALE PULILEKA*  
2. *TAULUPE TU'UNGAHALA* - Defendants

BEFORE THE HON. JUSTICE ANDREW

Counsel : Mr. Fifita for the Plaintiff and Mr.  
Tu'utafaiva for the Defendants

Date of hearing : 15<sup>th</sup>, 16<sup>th</sup> June, 2009

Date of judgment : 2<sup>nd</sup> September 2009

## J U D G M E N T

Both proceedings in LA9/2008 and LA26/2008 concern a dispute over a town allotment known as 'UTU'ONE and have been heard together.

[1] One PALETASALE PULILEKA (also known as PETELO TU'UNGAHALA) who is the first defendant in action No.LA9/2008 is the current registered holder of 'Utu'one. He is referred to as the landholder.

[2] Pulileka Mateni is the Plaintiff in LA9/2008 but the step grandson of the landholder. He is currently the lessee of 'Utu'one under lease No.7483 (the lease). He is referred to herein as the Plaintiff.

[3] TAULUPE TU'UNGAHALA (the second defendant in Action No.LA9/2008 but plaintiff in Action No.LA26/2008) is a nephew of the landholder and currently the occupier of 'Utu'one. His father who is deceased is a younger brother of the landholder. He is referred to herein as the defendant.

[4] In previous proceedings (LA4/2007) the landowner sought to evict his nephew from 'Utu'one. I am satisfied on the evidence that he clearly wanted the land to pass to his step grandson, the plaintiff, both had resided in the United States whilst Taulupe Tu'ungahala who is the legitimate heir was in occupation of the land.

[5] I should add that the land is 11R 132 P(Pole 53.2P) shown on the Ministry of Land in Book 127 Folio 46.

[6] In LA4 of 2006 the Land Court ordered as follows:

- “1. The defendant [that is Taulupe Tu'ungahala] agrees that the rent from the shop from now shall be paid to the Plaintiff [that is Paletasale Pulileka] or his authorized agent until the death of the plaintiff and the plaintiff's widow following which the rent shall be paid to the person entitled to the Deed of Grant to 'Utu'one. Furthermore, the Plaintiff and tenant of the shop may enter into a new agreement in respect of the tenancy of the shop.
2. The Plaintiff [that is Paletasale Pulileka] agrees that the defendant and his family shall continue to occupy the property until such time he becomes heir to it and he may then apply for the land to be transferred to himself.
3. All monies paid by the tenant to the Court shall be paid to the Plaintiff's counsel Sione Tomasi Naite Fakahua.
4. All parties agree to settle this claim on the conditions stated above.
5. Both parties shall bear their own costs.”

[7] The landowner has stated in a letter dated 23 March 2009 that he was forced or unduly pressed to accept the above settlement which had been drafted by his lawyer. I do not accept this evidence. The Plaintiff agreed that he had assisted the landholder in signing the letter. In my view the validity of this letter is open to doubt. The signature on the letter is very much different from his signature on the Memorandum of Agreement for Settlement. The landholder did not appear on the hearing of this matter to be cross examined.

[8] On the 1 May 2007 the land was leased to the Plaintiff. As stated that is Lease No. 7483. Cabinet decision number 1044 had approved the Plaintiff's application for lease on the 27 September 2006.

[9] The settlement of LA4/06 was formalized as a Court Order by consent, as stated on the 30 January 2007. As submitted, at this point the Court was not advised by the Landholder and/or the Plaintiff of the lease already being approved by Cabinet in September 2006. Secondly, both the Landholder and Plaintiff gave evidence in Court during the hearing of LA4/06 but neither of them told the Court about the lease.

[10] I am satisfied that the Landowner and the Plaintiff, as submitted were attempting to dispossess the defendant but when that was not successful they fraudulently arranged to lease the land to the Plaintiff.

[11] I am satisfied that the Minister of Lands was not given the full information and therefore acted mistakenly and/or on wrong principles when he approved the lease, submitted it to Cabinet for its approval and then having it registered to the Plaintiff. On the evidence of Siope Lomu of the Ministry of Lands he would not have accepted the lease application by the Plaintiff for the lease if he had been aware that there was a land case on foot in relation to this land.

[12] An application for lease requires that there be a declaration that there is no impediment to prejudice the lease. It is clear from the evidence of Mr. Sione Uele and Mr. Matekitonga, both of the Ministry of Lands, that the proceedings in LA4/06 represented an impediment to the lease application but neither the landowner nor the Plaintiff had informed them of this.

[13] In July 2006 whilst LA4/06 was still pending, the Plaintiff and Landholder agreed to lease the land to the Plaintiff.

[14] As submitted, when LA4/06 was settled on 30 January 2007 the Court and also the Defendant were not notified of the Plaintiff's lease application nor that it had been approved by Cabinet. The Court ordered settlement by consent on 30 January 2007 was not given to the Minister of Lands especially when the lease had not been registered by them.

[15] In *Tukuafu v TUPOUMALOHI* [2002] Tonga LA page 268 at P.274 the case of *MANU v TAUHELUELU* (Supreme Court L201/99, 14 May 2002) is cited where the Court said:

"The legal position which has been stated many times by this Court is that once a deed of grant is registered in accordance with the Land Act then it is final unless registration has come about as a result of an error of Law (i.e contrary to the Act) or as a result of fraud, mistake, breach of the principles of natural justice or of a promise made by the Minister"

[16] In all the circumstances here, there was clearly an impediment which prejudiced the lease. There was a failure to disclose the proceedings in LA4/2006 I am satisfied that the lease was obtained by fraud. The Minister of Lands and cabinet, when approving the lease no.7483 were not informed by the Landowner or the Plaintiff of the Court order of 30 January 2007 allowing the Plaintiff to occupy 'UTU'ONE.

[17] Accordingly I made the following order in LA26/2009:

### **ORDER**

1. An order that the Minister of Lands cancel the lease number 7483 in relation to the land known as 'UTU'ONE.
2. I declare that the defendant TAULUPE TU'UNGAHALA is the rightful occupier of the land known as 'UTU'ONE.
3. Costs are awarded to the defendant Taulupe Tu'ungahala as agreed on taxed.

In relation to proceeding in LA9/06 it follows logically and as a result of the above orders and everything that has been said that the Plaintiff's application for the defendant to vacate the land is dismissed.

[18] The order made in LA9/2006 is as follows:

### **ORDER**

The Plaintiff's application for the defendant to vacate the land known as 'UTU'ONE is dismissed.

Costs are awarded to the defendant Taulupe Tu'ungahala as agreed on taxed.

[19] I should add that there was an attempt to say that TAULUPE TU'UNGAHALA was illegitimate and accordingly was not the proper heir to the land. The marriage certificate said to be of Taulupe's parents was produced stating that they were married in 1971. There is no clear evidence of the date of birth. Taulupe says he was legitimated. There is nothing to disprove that evidence and the presumption of legitimacy must prevail. In any event this matter was not pleaded and I give it no weight.

NUKU'ALOFA: 2 September 2009



*Andrew T.*  
JUDGE