

TANGATA'OTONGA LIKU v. HAVEA TU'I HA'ANGANA.

(Land Court. Richardson J. Ha'apai, 17th March, 1948).

"Next male heir" — descent through females — females can not inherit — "next male heir" means next male heir to deceased holder. Clause 107 of

Constitution — Cp. 27 (1928 Laws) S. 41 (IV), (VII).

This was a claim to the Tofia and title of Tu'ihā'angana. The last Tu'ihā'angana was Tu'uahoi who died without leaving any direct lineal issue. His only surviving next of kin were an elder sister Ate and a younger sister Mele Siu.

Ate had no son but a daughter and grandson. Mele Siu had a son, the defendant.

HELD: Mele Siu's son, the defendant, was the correct heir to the title. Havili appeared for the Plaintiff.

V. Latu appeared for the Defendant.

RICHARDSON J.: The relevant facts in this case are not in dispute and judgment depends entirely upon the application of Section 41 of Cap. 27 and Section 107 of the Constitution.

The last Tu'ihā'angana was Taani Tu'uahoi who died without leaving any direct lineal issue. Furthermore Ta'ani Tu'uahoi's only brother, Fatafehi, also predeceased him. His only surviving next of kin were in fact an elder sister Ate and a younger sister Mele Siu.

Had the inheritance in question been personal property or a town and tax allotment, his elder sister Ate would undoubtedly have inherited under Section 41 (vii) of Cap. 27. Section 107 of the Constitution however prohibits a female from inheriting the title and estates of a noble, and provides that in that event "the next male heir shall inherit the title and estates". This clause I construe as meaning the next male heir to the deceased holder and not the next male heir to the excluded sister. We must therefore look to the next or subsequent generations.

Ate has a daughter who is in no stronger position than Ate herself. She also has a grandson who is the Plaintiff and Plaintiff claims that under Section 41 (vii) of Cap. 27 he can claim to inherit through his mother. There are however two objections to this argument:—

- (a) Section 41 (vii) of Cap. 27 applies only to a lineal descendant where the brother or sister of the deceased holder is dead. Ate is still alive and therefore her grandson cannot claim to inherit.
- (b) Section 41 (vii) of Cap. 27 also provides that such a descendant can only claim the same rights of succession as the ancestor would have had. As has been seen Plain-

tiff's grandmother through whom he is claiming had herself no right to succeed to the title and consequently there are no such rights in any case to pass on to the grandson.

I find therefore that the Plaintiff's claim is excluded and one must again look elsewhere for the next male heir to Ta'ani Tu'uahoi. There is no male in the same generation as Tu'uahoi himself. In the next generation there is Ate's daughter Seini in the same line and Defendant, the son of the younger sister Mele Siu. Both Defendant and Seini are in the same degree of relationship to Tu'uahoi as they are nephew and niece respectively. Under the schedule to Cap. 7 it appears that nephew and nieces are normally equally entitled. Under Section 41 (iv) of Cap. 27 however it is provided that the male issue shall be preferred to the female of the same degree. It follows therefore that Defendant has a prior claim over Seini, and must be regarded as the next male heir to Ta'ani Tu'uahoi.

I find therefore that Plaintiff's claim must fail and that Defendant is the correct next male heir to Ta'ani Tu'uahoi and must accordingly inherit the title and estates of the Tu'iha'angana. I therefore dismiss Plaintiff's claim and award 2 guineas costs to Defendant.

EDITORS NOTE: The Plaintiff appealed to the Privy Council (Carew C.J.). On the 3rd June, 1949, the Privy Council dismissed the appeal without giving any reasons.