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TUI'AFITU AND FOUETI HALALALO (Appellants)
MOALA (Respondent)

This is an appeal by the defendants in the Land Court at Vava'u (Hunter J.) allowing a claim by the plaintiff (respondent to the appeal) to a tax and town allotment. The Land Court held that although Registration is evidence of ownership it is not always necessary to prove registration before ownership can be established.

The Privy Council (Hammett (C.J.)) upheld this view and on the 25th January 1957 said:

This is an appeal from the decision of the Land Court sitting at Vava'u dated 25th October, 1956 whereby Judgment was given in favour of the Plaintiff-Respondent in his claim to the town allotment and the tax allotment known as Pongotofe in the estate of Tu'iafitu at Makave.

The Plaintiff Respondent's father Sunia Fakahala occupied these allotments from some time prior to 1900 until his death in 1931. He was never registered as the holder of them.

After his death, his widow occupied them until she died in 1944. She was never registered as the holder of them but it was accepted that she was entitled to occupy them under the provisions of Section 69 of the Land Act.

Within 12 months of her death the Plaintiff Respondent, who was the elder son of Sunia Fakahala, gave notice to the Deputy Minister of Lands Vava'u under Section 76 of the Land Act, claiming the land. In spite of this he was not in fact registered as the holder of these allotments.

The tax allotment was worked by his younger brother Tevita and then by his son Salesi.

In 1953 Tevita's son, Foueti, applied to be registered as the holder of these allotments. His application was approved by Tu'iafitu the Estate Holder. He is now in occupation of them, but pending a survey he has not in fact been registered as the holder by the Minister of Lands.

The Plaintiff Respondent succeeded in his claim against the Defendant Appellants to be the holder of these allotments in the Land Court under the Rule of Succession to Allotments contained in Sec. 71 (iii) of the Land Act.

It was one of the main contentions of the Appellant both in the Land Court and on the hearing of this appeal that the Respondent was not entitled to succeed in his claim because of his failure to become registered as the holder of these allotments. The learned trial Judge held that the Respondent had taken all the steps required by the Land Act Sec. 76 and that whilst registration is evidence of ownership it is not always necessary to prove registration before ownership can be established. With this statement of the law we agree.

We have considered carefully all the grounds of appeal that have been argued before us. In our opinion however the learned trial Judge was correct in holding that the Plaintiff Respondent was entitled to succeed in his claim to those two allotments as heir of his father.

The Appeal is therefore dismissed.

The Respondent is awarded £7. 7. 0. costs.