

VITIKAMI MA'AFU v. MINISTER OF LANDS.

(Land Court. Hunter J. Tongilava, assessor. Nuku'alofa, 17. 2. 1959; 31. 3. 1959).

Devolution of allotments — Election by sons or grandsons — Cap. 45
Ss. 76, 78.

This was a claim to an allotment granted many years ago to Ma'afu by George Tupou I. This Ma'afu was an ancestor of the Plaintiff. The facts sufficiently appear in the judgment.

Tu'akoi appeared for the Plaintiff.

'Ahome'e, Acting Minister for the Defendant.

C.A.V.

HUNTER J. : The history of the allotment "Talitoka" which the Plaintiff is claiming is a romantic one. According to story told to me in Court, and I see no reason to disbelieve it, many years ago Prince Taufua'ahau (the present Queen's father) went at the direction of George Tupou I to see a pig owned by the original Ma'afu, an ancestor of the Plaintiff. When the young prince saw it he exclaimed "Why, it is as big as a horse." The owner presented this pig to Tupou I, who was so pleased with it that he gave the allotment in question to Ma'afu.

This allotment has remained in the family ever since but the first written record of it is a registration of Sosaia Finau Ma'afu as the holder on 4. 1. 29 with a transfer of the life estate to his widow on the same day. Why Finau was registered as the holder and not his elder brother Kafoa does not appear from the evidence, although one witness said that at one time the allotment was held by Kafoa. However I find as a fact that the last holder was Finau, or to be more precise his widow Lupe for her life.

The only child of Finau and Lupe was a daughter, who at her mother's death was married. In these circumstances, in accordance with Section 76 (v) of Chapter 45, the estate goes to Finau's eldest brother or his eldest male heir.

Finau's eldest brother Kafoa was dead at the relevant time. Kafoa's eldest male heir living was 'Ilavalu — the Plaintiff's father, and except for Section 78 of the Act the allotment would descend to him, and through him to the Plaintiff. However 'Ilavalu was already in possession of a tax allotment at the time Lupe died. Section 78 provides that no one who already has a tax allotment shall be permitted to succeed as heir to another tax allotment, except a son or grandson of the deceased holder, who may elect between his own allotment and the one to which he is entitled as heir. Unfortunately for 'Ilavalu he was not a son or grandson of the deceased holder (Finau) but a nephew and therefore he could not succeed. As 'Ilavalu could not succeed it goes without saying that his son, the present plaintiff, has no claim and the allotment reverts to the Crown.

Regrettable as it may be that an allotment of such sentimental attachment to the Ma'afus should be lost to the family, the law is quite clear and I must find a verdict for the Defendant.

I make no order as to costs.