Land Case No. 5/1963

TELESIA PUA -v- NOBLE LAUAKI, POTESIO TALI AND MINISTER OF LANDS

(Land Court. Roberts J: Hon. Luani, Assessor, Nuku'alofa 20th and 26th October, 1964).

Land exceeding statutory area – Subdivision – Application of Section 86 (2).

Held: That the provisions of Section 86(2) of the Act are permissive and not mandatory and must be applied subject to Section 33(2) of the Act and all other provisions relating to leases.

'Tu'akoi for the Plaintiff.

'Taufa for 1st and 2nd Defendants Minister of Lands in person.

Roberts, J: The facts of this case are as follows:— The plaintiff, Telesia Pua is the widow of Halapua Fisi who was registered on 8th. December, 1927 after the Land Act of 1927 came into force, as holder of an allotment on one Lauaki's estate. This allotment is shown on the plan (Exhibit B) deliniated in dotted lines and shown originally under the name of Tu'iono. The original area of the allotment was 11a. 2r. 13p. which thus considerably exceeded the statutory maximum of 8¼ acres.

The plaintiff's husband died on August 8th, 1955 and the widow applied for transfer of registration on March 19th 1957 (seven months after termination of the time prescribed by Section 81) and registration of the title estate in her name was effected on that date. Thus the allotment was registered in the name of the widow outside the statutory time and also in excess of the statutory maximum area.

Shortly before registration in the widow's name i.e. on Feb. 21st., 1957 notification of subdivision was issued to various allotment owners on the estate. No such notice was specifically issued to the widow as she was not then registered as the life estate holder and consequently she was not given a grant or lease persuant to Section 86. The subdivision began however on May 8th, 1957 some weeks after the widow's registration. The subdivision of the area as shown by the evidence of the surveyor 'Aisake Folau was of a complicated nature and affected the boundaries and areas of many contiguous allotment holders and consideration had to be given to the existing road system. An area of 4a. 2rds. 34p. was taken away from the 11a. 2r. 13p. of the widow's holding leaving her with less than 7 acres. To this area was added a portion of an adjoining allotment so as to make up the total area of the widow's holding to the statutory maximum she now holds.

The widow Telesia Pua, the plaintiff, now claims a leasehold of the portion of 4a. 3rds. 34p. taken from her by the subdivision,

pursuant to Section 86 (1) or that the said portion be granted to Talia Pua her legitimate son or Sini Talia her grandson.

The registration in 1927 of the original grant to the deceased husband of the plaintiff of the allotment was contrary to the Act as the area of the grant exceeded the statutory area. It was an illegal grant but it was registered by the Minister of Lands and after over thirty years of recognition of such a grant it would be unconscionable to allow the third defendant to adduce this in his defence against the plaintiff's claim. The same must apply to the transfer of the registration to the widow which is, as to the area, equivalent to a continuation of the original registration.

The subdivision and reduction of the area of the plaintiff's holding to the statutory maximum is, however, valid. Notice pursuant to section 86 was not given to the plaintiff but it must be borne in mind that the plaintiff had not applied for transfer of registration, as she was by law required to do, before the notices of subdivision were issued. It appears also from the evidence that plaintiff has suffered no injustice in this regard as the area given to her to supplement the area taken away on subdivision is a good portion and is in good cultivation.

It is clear that plaintiff wishes to keep this portion and brings this case in order to acquire a leasehold for herself or a grant to her legitimate son or grandson of the portion taken away. This court is concerned only with the rights of the plaintiff and has no jurisdiction at this stage with regard to such grants to the son or grandson. This is entirely a matter for the Minister to decide.

The subdivision and allocation, therefore, must be allowed to stand as they are.

We now come to the question of the leasehold. Subsection 2 of Section 86 provides as follows:— "In any such case it shall be lawful for the person holding land in excess of a tax allotment upon which improvements have been made over a greater area than the statutory area for the allotments, to receive a lease for all or any part of such improved portion".

The provisions of this subsection are clearly permissive and not mandatory. "It shall be lawful . . . . . for the person to receive . . . . "cannot be construed otherwise. Furthermore the words: "It shall be lawful" must be interpreted subject to section 33 of the Act and any other provisions relating to leases. If the legislature intended otherwise the subsection would have expressly excluded section 33 by such wording as: "Notwithstanding the provisions of subsection 2 of Section 33 it shall be lawful, etc."

Evidence has been given by Kiekie Mo'unga, clerk in the lands office and also by Lauaki, the estate holder that, excluding leases to educational and religions bodies, the estate holder has already let out on lease more than the 5% maximum of the area provided by subsection 2 of Section 33 of the Act.

In this case which has been complicated by irregularities, in the form of grants and registrations and other transactions made contrary to the provisions of the Act, the Court has fully considered whether the plaintiff has suffered any hardship as a result of such irregularities. On the contrary the family has for many years enjoyed more than it was entitled to and the plaintiff is now in possession of the statutory area of good and well cultivated land and in addition she has been allowed to make use for two years of the area she has planted.

On the grounds stated the Court rejects the plaintiff's claim.

Judgment for defendants with costs.