

Land Case No: 7/64

LISIATE POHAHAU -v- 'ASAELI NIU'ILA AND THE MINISTER OF LANDS

(Land Court. Roberts J: Hon Luani, Assessor, Nuku'alofa 22nd and 26th October, 1964)

Section 81—Failure of widow or heir to lodge claim thereunder. Held: that although the widow occupied and paid rent for her late husband's allotment for the remaining five years of her life neither she nor the heir or son of the heir (plaintiff) made any representation under Section 81 and that such negligence precluded the application of equity to interfere with the grant of the allotment made by the Minister of Lands to the first defendant on reversion.

Tu'akoi for the Plaintiff.

'Ahiu for the first defendant.

Minister of Lands in person.

ROBERTS, J: The allotment claimed by the Plaintiff is on Crown Lands registered in the name of Lisiate Filimoemaka, the last registered holder, on May 28, 1930.

The said Lisiate Filimoemaka died on 27 May, 1959 leaving a widow, Hei'one Filimoemaka and an eldest son, S. Pohahau.

From 1959, the date of the death of Lisiate Filimoemaka, payment of rent was continued in his name up to and including the year 1963. The eldest son S. Pohahau died 31 March, 1960. His eldest son is Lisiate Pohahau the plaintiff.

The defendant is the nephew of the said Lisiate Filimoemaka, being the son of his younger brother.

One Sione Hemaloto a son-in-law of the said Lisiate Filimoemaka stated in evidence that the widow Hei'one Filimoemaka lived with him and that he informed the Ministry of Lands of the death of the registered holder, Lisiate Filimoemaka and that he was paying rent on her behalf. He stated that the Ministry informed him that the widow be required to attend personally to lodge her claim.

This the widow failed to do. Witness stated in evidence that she was too old and unwell to do so as she was suffering from a bladder ailment. Witness stated however that she visited other places and attended Church and that she was not ill continuously.

The senior clerk in the Ministry of Lands produced the register of rents. This shows rent to have been paid in the name of the deceased registered holder, Lisiate Filimoemaka, from the date of his death to 1963 inclusive (Lost receipt No. 51621). There was no indication in the register that the registered holder was deceased. Although if it is the usual practice to make such entries there was no such entry made and the Ministry has no record of any notification of the death of Lisiate Filimoemaka.

The allotment was registered in the name of the defendant on 17 March, 1964.

The widow died on 14 June, 1964. From the evidence it is clear that the widow failed to comply with the provisions of Section 81 of the Act. The Court cannot believe that she had no opportunity to do so or was at no time capable of doing so during the twelve months statutory period. At the end of that period the allotment would normally revert to the holder, the Crown in this case.

There was however no de facto reversion immediately after the statutory period, because the Ministry had no official notification of the death of the holder.

In fact it is not easy to determine when reversion to the Crown did actually occur. The widow, however, made no representation during the remaining five years of her life.

She paid the rent but completely ignored the provisions of Section 81 of the Act.

The Section makes no reference to rent it merely provides to the effect that when a claim is not made within twelve months from the death of the last holder the allotment shall revert to the Crown.

Widows or heirs who fail to make action as provided by the section cannot expect the Court to come to their assistance if this means overriding the law. If they ask the Court to apply equity they must realise that equity does not assist those who are negligent in protecting their rights.

For the reasons stated this Court gives judgment for the defendant with costs, both parties to pay their own lawyer's fees.

*Editor's Note:* The plaintiff appealed to the Privy Council. On 25 October, 1966 the Privy Council allowed the appeal. (See p. 42)