

Tu'inukuafe v Minister of Lands and Tonga Government

Privy Council
Appeal 1/1977

21 February 1978

Land - permit - when permit expires permittee must give up possession of land notwithstanding advanced age of permittee or improvements added to the land by permittee

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In 1966 Mrs Edith Tu'inukuafe, who was then aged 66, and had been associated for a period of 40 years with an area of Crown land, containing 1r15.5p, was granted a licence to occupy the land for 10 years. Considerable improvements were added to the land during the period of occupancy, under the permit, but after the permit expired in 1976 it was not renewed, and a lease was granted to two other persons. Mrs Tu'inukuafe refused to give up possession and proceedings were brought by the Minister of Lands to obtain possession, but resisted by Mrs Tu'inukuafe on the grounds that she had rights to the land.

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The Land Court upheld the Minister's claim for possession, and Mrs Tu'inukuafe appealed to the Privy Council.

HELD:

Dismissing the appeal.

That once a permit expires, the permittee has no further right to remain in occupation and must give up possession.

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Statutes considered
Land Act ss 19, 103(1)

Privy Council

Judgment

Appellant has been associated with a piece of Crown Land containing 1r.15.5p. more particularly described in Permit No.2404 for more than 52 years. She is of German birth but married a Tongan. She is now a widow aged 74 years. Considerable improvements have been added to the land during occupancy. It is unnecessary for the determination of the appeal to recite the previous history during the time appellant had a right of occupation. It is sufficient to say that in 1966 she was granted a permit under Sec.19(3) of the Land Act (Cap.63) to occupy the said land until April 18, 1976. This was done with the consent of Cabinet. Sec.103(1) requires that all permits shall be in the form contained in Schedule VIII. The appropriate form is No.6. Appellant was granted a permit in that form pursuant to an application duly signed in accordance with Form 1 in the said schedule whereby she agreed to the issue of such a permit. Form No.6 provided the appellant was entitled to hold the permission until April 18, 1976. The form then provided as follows:-

"And when the time for which this permit is made is expired possession shall be given up quietly and peaceably".

There is then a right to remove improvements.

The facts that the permit has expired and that appellant is bound to give up possession are so clear on a reading of the only document upon which she relies that the case is unarguable on this point. She is bound by the terms of the permit and the contract she made when she applied for and accepted the permit.

Nevertheless appellant has challenged the subsequent disposal of the land by the Minister. The land, being Crown Land, was available for further disposal by the Minister, vide Sec.19 subs. (1) and (3). He advertised the land in the "Chronicle", and on radio, inviting applications. Nine applications, including one from appellant were received. All were referred to Cabinet. The applicants to be further considered were reduced to three but not including appellant. On re-submission of the three, Cabinet consented to the grant of a lease to two persons. Pursuant to Sec.19(3) the new grantees duly became entitled to occupy the land. Appellant made a second application. This, of course, was unsuccessful and her counsel in the lower Court said she had therefore come to that Court seeking redress because she thinks she has been deprived of her rights. The learned judge found she had no rights to continue in possession of the said land.

Counsel for appellant has not shown us that appellant has any legal right to the land. His claim that, since a term of 99 years may be granted and only 52 years have expired since she first went into occupation does not help. Her permit to occupy has come to an end by the passing of time and the further disposal of the occupancy of the land had been done by a valid exercise of the power of the Minister with the consent of Cabinet. Appellant must observe the terms of her permit and give up possessions as she contracted to do.

The appeal will be dismissed without costs and the judgment in the Land Court is affirmed.