

Motuliki v Namoa, Motuliki and Minister of Lands

Land Court
Martin J
Land Case 7/1982

2 December 1988

10 *Land - surrender - prescribed conditions for surrender must be complied with*

Land - estoppel - holder of allotment estopped from claiming possession from person whom he has permitted to occupy and spend money on development of land

Land - surrender - proceedings barred by time limitation

Land - compromise of proceedings prevents plaintiff from continuing with claim

20 *Limitation of action - time runs from the time when right to bring proceedings accrued to person through whom plaintiff claims*

In 1957 Viliami Motuliki was registered as the holder of a loan allotment and in 1965 he surrendered part of this allotment which was granted by the Minister of Lands to Elisi Namoa who built a concrete block house on it.

30 Viliami's eldest son and heir, Tevita Motuliki, brought proceedings in the Land Court to recover possession of the part of the allotment surrendered by his father to Elisi Namoa.

HELD:

Dismissing the plaintiff's claim.

- (1) The surrender did not comply with the conditions prescribed by ss51 and 54 Land Act, and, if challenged in time, would have been set aside;
- (2) The plaintiff was barred by the limitation provisions in s148 Land Act because, although time did not start running against him until he attained

his majority under the Act, which was in 1976, and well within the 10 years prescribed by the Act, he was claiming through his father, Viliami, whose right to bring proceedings accrued in 1965, which was outside the limitation period;

- (3) Viliami was estopped from denying Elisi's right to remain in possession, and so also was his son, the plaintiff;
- (4) There had been an agreement to compromise the proceedings whereby the plaintiff had agreed to withdraw this claim in exchange for the airfare of his father to the United States being paid by Elisi's brother-in-law, and this also was a defence to the plaintiff's claim.

Statutes considered

Land Act ss51, 54

Cases considered

Italafihi v Kalaniua'u: II Tonga LR 149

Veikune v To'a, Land Case 8/1978 [1981-1988] Tonga L.R. 131

Martin CJ

Judgment

The Plaintiff Tevita Motuliki claims possession of a town allotment, "A homatafolau", at Kolomotu'a, now occupied by the First Defendant 'Elisi Namoa.

The allotment was registered in 1922 in the name of the Plaintiff's grandfather, also named Tevita Motuliki. He died 24 March 1957. On 26 September 1957 the Plaintiff's father, Viliami Paletu'a Motuliki (a.k.a. Sakisi Motuliki) was registered as the holder. The Plaintiff was born 5 April 1960. He is the eldest son and heir to Viliami.

70 On 5 February 1965 Viliami surrendered part of his allotment, which was granted by the Minister to 'Elisi Namoa. Since then 'Elisi has spent a substantial sum of money to build a cement block house on the land; and he has made gifts to Viliami

During 1966, Viliami exchanged that part of the allotment which he had kept for another allotment in Kolomotu'a, "Tangaloo", held by Tevita Taukolonga (a.k.a. Keni Taukolonga). Tevita's wife is elder sister to 'Elisi's wife, and Tevita and his wife fostered a son of 'Elisi.

The Plaintiff claims that the surrender of part of the allotment by Viliami in 1965 was unlawful and therefore invalid. The Defendant denies that, and further says that even if that were so the Plaintiff must fail because

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- (i) he is time-barred under s 148
 - (ii) he is estopped from asserting his right to possession
 - (iii) after issue of the writ there was an accord and satisfaction (an agreed settlement of the dispute).

The Surrender:

Surrender could only occur under sections 51 or 54. s. 51 permits a landholder whose town allotment exceeds a specified area to ask the Minister to subdivide the allotment between certain close relations over the age of 16, and if there are no such relations to surrender a part which the Minister may then grant to others.

90 It is clear from the evidence that Viliami had brothers and at least one had a child over 16. There were qualifying relatives and no valid surrender under s 51 was possible.

s 54 has since been amended, but in 1965 it permitted the holder of an allotment with the consent of Cabinet, to surrender his allotment if he wished to do so "by reason of old age, illness or infirmity ...". It is clear that Viliami was suffering from none of these disabilities at the time, so a valid surrender under s 54 was not possible. Even if it had been, the allotment would have devolved upon the heir, for whom a trustee would have had to be appointed under s 19 (8).

100 It is not clear from the evidence whether the surrender was authorised under s 51 or s 54. In either case, the conditions which had to be satisfied before a surrender could be made did not exist. If the surrender has been challenged in time, it must be set aside. The Defendant says the Plaintiff is out of time.

The Limitation period

s 148 states:

"No person shall bring ... any action but within 10 years after the time at which the right to bring such an action shall have first accrued to some person through whom he claims ... "or if there is no such person then within 10 years from when the right accrued to the Plaintiff himself.

110 The Plaintiff was 5 in 1965. He did not become of age for the purpose of the Land Act until 1976. This action was brought in 1982 - well within 10 years from his majority.

But the Plaintiff's claim derives from his father's rights. His father's right to bring this action accrued to Viliami in 1965 and the limitation period had expired before this action was brought.

Mr Niu referred to Sanualio Halafihī v Kalaniuvalu II Tongan L. R. 149, in which it was held that the limitation period ran from the date when a minor claimant attained his majority. In that case the minor's father had died and "... the right to bring the action never accrued to the Plaintiff's mother in her personal capacity because she was incapable of succeeding." In this case the Plaintiff's father was alive and he could have brought an action in his personal capacity.

This action is time-barred.

In case I should be wrong about that I go on to consider the other grounds of defence.

Estoppel:

This court has now ruled many times that the defence of estoppel is available in Land Cases, See for example Latu Popi Veikune v Sione To'a. [1981-1988] Tonga L.R. 131

It is conceded that 'Elisi spent a substantial sum of money on building a house on the land. I am satisfied that Viliami knew that he was doing so; and that he did so in reliance on the grant he had been given with the consent of Viliami. Viliami would have been estopped from evicting the Defendant 'Elisi; his son the present Plaintiff is bound by what his father did and he too is estopped.

Accord and Satisfaction:

I heard conflicting evidence about this, which the Defendant must prove on a balance of probabilities.

Tevita Taukolonga, Viliami and the Plaintiff met soon after the writ was issued and tried to settle the dispute. The Plaintiff agrees that the meeting took place but denies that they reached any agreement. Tevita Taukolonga says that the three of them agreed that if he were to pay for Viliami to go to U.S.A. to live the Plaintiff would withdraw his writ. I accept that he did pay for Viliami's air fare and certain incidental expenses. Viliami went. That left Tangaloa free and the Plaintiff later moved in to occupy it.

The Plaintiff says that the suggestion was made, but he refused to agree.

Because of their relationship I would expect Tevita Taukolonga to try to protect the interests of 'Elisi Namoa. I do not believe that he would have spent a large sum of money to send Viliami to U.S.A. unless he was sure that the Plaintiff would withdraw his action to leave 'Elisi in undisputed possession. It is inconceivable that he would have done so if the Plaintiff had stated clearly (as he now says) that he would not withdraw. On this matter I prefer the evidence of Tevita Taukolonga to that of the Plaintiff.

I find that a compromise was agreed and that so far as Tevita Taukolonga was concerned it was made in good faith and he believed it to be valid. Consideration was given when he paid for the Plaintiff's father to leave Tonga. This defence also succeeds.

For the reasons given, the Plaintiff's claim is dismissed.