

**Leger v Niu**

Land Court  
Case No. 2/1989

10

3 November 1989

*Will - principles of interpretation - grant of probate*

*Land - disposal of land by will*

*Probate and administration - letters of administration incorrectly granted.*

20 The deceased died in 1984 leaving a will which appointed two sons, one of whom died, as executors and contained a provision relating to the disposition of his property. The plaintiff who was the widow of the testator, brought proceedings claiming that the provisions in the will entitled her to the properties absolutely, but this was disputed by the executor to whom letters of administration had been granted.

**HELD:**

Dismissing the proceedings

- 30 (i) The words of a will are to be interpreted according to their ordinary meaning in the context of the will as a whole.
- (ii) The words of the provision as so interpreted did not give an absolute interest in the properties to the widow, but only until her death or remarriage.
- (iii) The letters of administration of the estate which had been granted by the Supreme Court were in error and probate should have been granted, but this could be done only by the Supreme Court not the Land Court.

**Cases Considered:**

40 *Pangia v Kalaniuvalu* (1937) II Tongan LR 32

Webster J

### Judgment

This action arises out of the Will of Frank Paul Leger of Fongoloa-moe-Vai, Fasi-moe-afi, Nuku'alofa dated 7th November 1968. Mr Leger died on 10th August 1984 leaving a widow 'Ilaise Leger, who is the Plaintiff.

The executors named in the will were his sons Sheppard Leger (now deceased) and Baisley Leger Junior who is sued as Defendant through his lawyer Laki Maile Niu.

The heart of the matter is what is said in the Will, the important pieces being (in English translation of the Tongan)

50 "I leave it to Sheppard Leger and Baisley Leger Junior ..... to control to do as the instructions which are in this my will.

I dispose of my properties as follows:-

- (1) I leave all of my properties to my real lawful wife, during her life time, 'Ilaisa Leger ... and if I shall die some day and she shall have them as follows 2 European wooden house, 1 concrete house situated facing Fongoloa Road ... European kitchen and its furnitures, one garage, 1 workshop (or workhouse), and any other house situated on my leased api (api lisi) No. 2076 at Kolofou'ou including this leased api No. 2076 in this my will ....
- 60 (2) If after I shall die and the widow begins to control and lawfully have all my properties in part (1) of this my will, and if it so happens that she dies or the widow (Ilaisa Leger) remarries the moment of her death or remarriage is the end of her right to my properties according to this my will, and they shall be disposed of as follows -

1 big European house facing Vuna Road and adjacent to the home of Laufilitonga shall be owned by Baisley Leger Junior and Semisi Leger, 1 second wooden house facing Vuna Road and Fongoloa Road shall be owned by 'Aleki Leger and Frank Leger Junior. The two leased api shall be divided equally amongst my sons who are named in this my will. The Fongoloa Road concrete house is Peter Leger's, Fongoloa Road wooden house is Sepeti Leger's and Heneli Leger's."

70 As a result of this Will the Plaintiff claims that the lease should be transferred into her name only, but the Defendant denies this and says that in view of the terms of the Will the Plaintiff does not have an absolute interest and the lease No. 2076 at Kolofou'ou should be held by the executor as trustee until the death or remarriage of the Plaintiff.

As the facts were not substantially in dispute, the preliminary hearing may allow the action to be resolved without going to trial.

80 The principles for interpretation of wills are straight forward and follow those for interpreting other documents. They are set out in Halsbury's Laws (4th Ed) Vol 50 on Wills. The will is to be read simply on the words used according to their dictionary meanings (para 410). If there is ambiguity, the Court goes for the rational and ordinary course (para 429). Effect is to be given to every word (para 433). Most importantly, the intention of the testator is collected from a consideration of the whole will, and then the meaning of the will is determined according to that intention (para 408).

80 Applying these principles to Frank Leger's Will, while it could not be said that it was drafted with crystal clarity, his intention is very clear: his widow is to have all his properties, but only for her life or until she remarries, when they are to be shared among their family. This is a very rational and ordinary course and is done by thousands of other

husbands and fathers. There is therefore a clear gift which is not absolute in the first instance and is not enlarged to an absolute interest (para 559).

It is therefore clear from the Will that the properties are not left absolutely to the Plaintiff and that she is not meant to dispose of them. The Plaintiff cannot therefore get an absolute title to the lease which is the subject of this action.

While the Court does not think it would be wrong for the Defendant Baisley Leger Junior to hold the title to the lease as trustee in terms of the will, in view of the Plaintiff's views on this there is another way of holding the title to the lease which appears to be acceptable to both parties.

100 That is that the title is held in name of the Plaintiff as a life interest only until her death or re-marriage and then to pass to her sons and their heirs equally, being Sheppard Leger, Baisley Leger Junior, Semisi Leger, 'Aleki Leger, Frank Leger Junior, Peter Leger and Heneli Leger, subject to the conditions (a) that the Plaintiff does not dispose of the lease or the properties on it and (b) on the death or remarriage of the Plaintiff the houses on the leased api are disposed of in terms of part (2) of the Will.

To tidy up this decision, the Plaintiff's submissions on section 16 of the Probate Act (Cap. 17) that the widow should inherit the dwelling house are not relevant because this is leased land (api lisi) and not a town allotment (api kolo). Nor is section 40 of the Land Act, which deals with hereditary estates, nor section 75, which deals with termination of a widow's estate in a tax or town allotment. As Mr Niu referred to it, the case of Pangia v Kalaniuvahu (1937) 2 TLR 32 shows that a lease is personal property.

110 On one other matter, the Defendant says that Letters of Administration were granted in error and that Probate should have been granted. This is clearly correct where there is a will but this Court cannot make the necessary changes. A separate application for this will require to be made to the Supreme Court and is likely to be dealt with promptly.