Hakeai v Minister of Lands & ors

Court of Appeal
Burchett, Tompkins & Neaves JJ
App. 15/94

27 & 31 May 1996

Land - surrender - grants - cancellation natural justice
Natural justice - land -applicable

This was a successful appeal against a decision of the Land Court upholding a grant to the fourth respondent, following a surrender by the third respondent. Initially the Minister had registered the appellant without notifying the fourth respondent, a competing claimant, and then cancelled the appellants grant and registered the fourth respondent without notifying the appellant.

Held:

1. It is clear law that a person whose rights, interests or legitimate expectations are imperilled by an official's consideration of some other person's application will generally be entitled to a fair opportunity to be heard before a decision adverse to him is made. This is natural justice.
2. Here both on the first grant (to appellant) and on the purported cancellation of that and the second grant (to fourth respondent) natural justice had not been observed.
3. The successive errors must lead to an order setting aside the actions taken by the Minister and referring the matter back to him for decision after consideration of the contentions of both sides.

Statutes considered : Land Act, ss.54, 84

Counsel for appellant : Mrs Tu'ilotolava
Counsel for first and second respondent : Mrs Taumoepeau
Counsel for third & fourth respondents : Mr Niu

Judgment

This appeal is concerned with the consequences of a surrender of two allotments, a town allotment and a tax allotment, with the consent of Cabinet, as on and from 6 February 1991, by one Viliami Hala Mosese, the Third Respondent. Such a surrender is a significant act in the law, for which provision is made by s.54 of The Land Act (Cap.132). By s.54(1), it is lawful for the holder of a tax or town allotment, with the consent of the Cabinet, to surrender the allotment or part of it. If he does so, "any allotment or any part thereof so surrendered shall, subject to the provision of [the] Act, immediately devolve upon the person who would be the heir of the holder if such holder had died; and if there be no person on whom the allotment or any part thereof can so devolve the allotment or any part thereof if situate on Crown Land shall revert to the Crown and if situate on an hereditary estate shall revert to the holder thereof." (Emphasis added).

In the present case, the holder who surrendered was unmarried and without children. Had he died at the date of the surrender, his heir would have been his first cousin Hala Hakeai, the father of the appellant, but for a circumstance that would have raised a complete bar against the cousin inheriting. That was the fact that Hala Hakeai already held town and tax allotments. By s.84 of the Act, it is provided that a son or grandson otherwise entitled to inherit may make election between an allotment already possessed and an allotment of the same kind of his deceased father or grandfather, but:

> "Save and except a son or grandson of the deceased holder, no person who already holds a tax or town allotment shall be permitted to succeed as heir to another allotment of the same kind as the allotment he already holds or to choose between an allotment already held by him and one to which he becomes entitled as heir."

Consequently, it is quite clear that in this case the surrender of the allotments could not lead to Hala Hakeai taking them. In the particular circumstances, it is conceded, the result is that the line of inheritance came to an end upon the surrender, and the allotments reverted to the Crown.

The land, having reverted to the Crown, was available to be granted a fresh. That was the purpose of the surrender, for the holder wished to enable the Fourth Respondent Manuao to obtain a grant. But before any steps had been taken to that end, the appellant, or his father on his behalf, lodged an informal application, upon which a purported registration of a grant was made in favour of the appellant. However, there was no actual deed of grant. It was conceded that the informal application did not comply with the requirements for a valid application.

Upon the miscarriage of the intention of the surrender becoming known, and within some 15 days, the Minister of Lands cancelled the registration in favour of the appellant, and registered Manuao as the holder of the allotments. Neither when the appellant was registered was notice first given to the proposed applicant Manuao, nor when the cancellation was effected was notice first given to the Appellant. Nor was the Appellant given any opportunity to make a submission before Manuao in his turn became registered as the holder of the allotments.

It is clear law that a person whose rights, interests or legitimate expectations are imperilled by an official's consideration of some other person's application will generally be entitled to a fair opportunity to be heard before a decision adverse to him is made. This is what is known as natural justice. Here, Manuao, although the officials of the Ministry

of Lands knew the surrender had been arranged to enable him to apply for a grant of the allotments, was not given any opportunity to argue that he should have priority before the purported grant was made to the appellant. That was legally wrong. If he had been given the right to comment, this whole matter might well have ended then. It is to enable both sides of a case to be considered that the principle of natural justice exists.

But the Minister, on learning what had happened, made the same mistake again. He should have given the Appellant an opportunity to answer the claim that his registration was wrong. Instead, the Minister simply cancelled it, and registered Manuao. That, too, was wrong. Whenever the Minister has competing claims for the same land, he should be careful to ensure that both sides get a hearing - not, of course, as in a court, but an opportunity to put each point view before a decision is made.

In the present case, the successive error of the Ministry of Lands must lead to an order setting aside the actions taken by the Minister, and referring the matter back to him to enable the appropriate decision to be made after a consideration of the contentions of both sides. It should be made clear that this order does not imply that one side or the other should receive a grant, but only that the failure of the Minister to allow natural justice to either party vitiated his decisions. They must be considered again.

Accordingly, the appeal is allowed, the orders of the Land Court are set aside, the registration in favour of the Appellant (which was not validly cancelled) and the registration in favour of the Fourth Respondent are each set aside, and the applications of the appellant and the Fourth Respondent are referred back to the Minister to be dealt with according to law. The Minister of Lands is ordered to pay the costs of the Appellant and of the Third and Fourth Respondents of the appeal, but in view of s.152 of the Act, there is to be no order as to the costs of the hearing in the Land Court.