

## SU'A (TOFAMAMAO) v SU'A (TAMARA CECILIA)

Supreme Court Apia  
 21 March; 17 April 1978  
 Nicholson CJ

COURTS (Jurisdiction) - Exclusive jurisdiction of the Land and Titles Court in all claims and disputes between Samoans relating to Samoan land - s 37(c) of the Land and Titles Protection Ordinance 1934 - "Samoan land" under the Land and Titles Protection Ordinance 1934 and "customary land" under Article 101 of the Constitution held to be "one and the same thing" - Claim to occupation of a house built on such land a claim to occupation of the land, the house being affixed to and forming part of the land.

ACTION for possession of a dwelling-house built on customary land.

Enari for plaintiff.  
 Epati for defendant.

Cur adv vult

NICHOLSON CJ. This is a claim for possession of a dwelling-house situated at Tufuiopa, near Apia. The Statement of Claim reveals that the plaintiff is the mother-in-law of the defendant and that the defendant's husband has left his wife and left the dwelling-house, which was shared with his mother. Mr Epati for the defendant has raised a preliminary objection that the land in question is customary land in terms of Article 101 of the Constitution, and that by virtue of section 37(c) of the Land and Titles Protection Ordinance 1934, the Land and Titles Court has exclusive jurisdiction in matters relating to customary land, and that the jurisdiction of this Court is therefore ousted.

Article 101 of the Constitution provides that all land in Western Samoa is either customary land, freehold land, or public land. Mr Enari for the plaintiff concedes that the land in question is customary land and, I believe, correctly. Subsection (2) of Article 101 defines customary land as land held from Western Samoa in accordance with Samoan custom and usage and the law relating to Samoan custom and usage. The transitional provisions of Article 114 of the Constitution result in the Land and Titles Protection Ordinance 1934 continuing in force. That Ordinance does not refer to "customary land", but does define "Samoan land", as distinct from other forms of tenure, as land vested in the State but held by Samoans or Samoan title and not by granting from the State. I have no difficulty in concluding that "Samoan land" under the Land and Titles Protection Ordinance 1934 and "customary land" under the Constitution are one and the same thing.

Section 37(c) of the Land and Titles Protection Ordinance 1934 provides that the Land and Titles Court will have exclusive jurisdiction in all claims and disputes between Samoans relating to Samoan land. I do not think there is any dispute that the parties to this action are both Samoans.

Mr Enari for the plaintiff argues that the matter really is not one relating to land but merely to the occupation of premises. I think it is axiomatic that at law a house built on land becomes part of the land as a fixture unless it has been built in such a way that it is intended for easy removal. It has not been suggested that this house is so designed. Thus the house is a fixture and the question of removal of occupants from it is a matter of occupation of customary land, and the dispute, therefore, is within the exclusive jurisdiction of the Land and Titles Court. This Court, therefore, declines jurisdiction. The preliminary argument raised by the defence having been upheld, the defendant will have judgment with costs to be fixed by the Registrar.