

FIAME (NAOMI) AND AIGASALEVALASI v
LAND AND TITLES COURT

Supreme Court Apia
Hattaway J
2 September, 16 September 1987

PRACTICE AND PROCEDURE - procedures of the Land and Titles Court
questioned - exclusive jurisdiction of the Land and Titles Court.

HELD: There being no pleading of inpropriety and no
cause of action, the Statement of Claim is struck
out.

LEGISLATION:

- Constitution of Western Samoa; Arts 9, 65, 103
- The Land and Titles Act 1981; S 47

F M Sapolu for Plaintiffs
T B Grace for Defendants

Cur adv vult

This is an application to strike out the Plaintiffs claim.

The Plaintiff seeks the following relief:

(a) A declaration that the procedure adopted by the Land and Titles Court to hear the three issues of the Tupua title, the pule over the Tui Atua and the pule over the Maota at Mulinuu separately but consecutively and a decision would be delivered after the hearing on the third issue as the judgement of the Court is in contravention of Article 9 of the Constitution;

(b) A declaration that as Deputy Presidents Nanai Faitala and Toelupe Vaito'a are related to one of the parties to the proceedings to determine the title Tupua, the pule over the Tui Atua and the pule over the Maota at Mulinuu, it would be in contravention of Article 9 of the Constitution for them to preside in the said proceedings.

Article 9 of the Constitution provides:

"9. Right to a fair trial -

(1) In the determination of his civil rights and obligations or of any charge against him for any offence, every person is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established under the law. Judgment shall be pronounced in public, but the public and representatives of news service may be excluded from all or part of the trial in the interests of morals, public order or national security, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

In essence the Plaintiffs claim that the procedure adopted by the Land & Titles Court is wrong and that the Court should have adopted a procedure suggested by the Plaintiffs and secondly they are fearful that two of the Deputy Presidents may be biased by virtue of a remote relationship with one of the parties.

The Defendants motion to strike out the claim is on two grounds namely that no cause of action is disclosed and secondly that this Court does not have jurisdiction to make the Declarations sought.

I heard lengthy argument from counsel and I have had the opportunity of considering the authorities referred to many of which simply do not apply to the factual situation in this case.

The Plaintiff submits that the claim does disclose a cause of action, a constitutional cause of action, a right to a fair trial as provided in Article 9 of the Constitution. They submit that the procedure adopted and the inclusion of the two Deputy Presidents as members of the Court is tantamount to an infringement of Article 9.

The Supreme Court is established by Part VI Article 65 of the Constitution whilst the Land and Titles Court is established by Part IX Article 103 with the jurisdiction set out in that part of the Act.

The Land and Titles Act 1981 provides for the appointment of the President, Deputy Presidents, Judges and assessors, its jurisdiction its proceedings and its procedure. Clause 47 provides:

"47. (1) The rules of the Supreme Court shall determine the practice and the procedure of the Land and Titles Court unless inconsistent with or inapplicable to the provisions of this Act;

(2) In any matter of practice or procedure not provided for, or where the strict compliance with any rule of practice or procedure may be inequitable or inconvenient, the Court may act in each case in such manner as it considers to be most consistent with natural justice and convenience."

Although the Court had decided to hear all three matters and then give its decision, it has already heard the first matter concerning the title Tupua and given its decision before proceeding to hear the remaining two matters. The Court is clearly empowered to determine its procedure which it has done and the claim by the Plaintiffs does nothing more than to say that the Plaintiffs disagree with that determination. The claim does not show that the Plaintiffs have suffered any breach of their rights or suffered any loss. The Land and Titles Court is empowered and obliged to determine its procedure in accordance with the above section and that it has done. It would be an impossible task for the Court to proceed in accordance with the wishes of all parties who come before it - It must make its decision despite the fact that there may be opposing views from time to time. The fact that some persons may have no interest in one or more of the matters at issue has no bearing on the decision on procedure which must be made by the Court.

It is the Courts responsibility to establish the procedure, which they have done in this case in accordance with the law. Nothing in that decision interferes with any party's right to a fair trial. I should mention that I consider that the allegation contained in paragraph 10 b to be a very serious attack on the integrity of the Court. For the reasons stated above I find that there is no cause of action disclosed in the statement in relation to this part of the claim.

The second matter, namely the request by the Plaintiff Fiame Naomi, that two of the Deputy Presidents withdraw from the Bench can also be dealt with briefly despite the length of the argument before the Court which I have carefully considered.

The Plaintiffs allege bias on the part of the two deputy Presidents when she says that the Plaintiffs rights would not be determined by an independent and impartial tribunal. However the claim does not disclose any malice or improper motive, and as no wrong has been done there has been no infringement of rights. The Plaintiffs application to the Land and Titles Court for these Vice Presidents not to sit has been made, considered and declined. The officers of the Court have been properly appointed in accordance with the act and are carrying out their duties as they are required to do. No bias or no wrong has been disclosed

in the Statement of Claim. The Plaintiffs claim that they are unable to appeal, as they state in paragraph 21 of their claim, also demonstrates their misconception of the conduct and procedure of the Court.

The Land and Titles Court is the forum vested by the Constitution and the Act to deal with the very matters which the Plaintiffs raise. The Land and Titles Court has exclusive jurisdiction to deal with matters relating to matai titles and the procedure to be adopted is solely within the jurisdiction of that Court. There is nothing in the Plaintiffs pleadings to indicate that that Court has exercised its discretion other than in a proper way. There is nothing in the claim by the Plaintiffs for the Court to adjudicate. I find that there is no cause of action in the Plaintiffs claim.

There will be orders as sought by the Defendants striking out the Statement of Claim.