

Tufele Liamatua v. Mose

High Court, Land and Titles Division

Kruse A.J., Tauanu'u Chief Associate Judge, Tuiafono Associate Judge

22 June 1988

Samoan land law—communal land—right of person married into the family in respect of that family's communal land.

Common law rule against perpetuities—no application to Samoan communal land—Samoan communal land not freely alienable—A.S.C.A., s. 37.0204

Trust—beneficiary people of Manu'a—named matai as trustees and successors in title to the matai name—no violation of the rule against perpetuities.

Adverse possession—permissible use—whether actual possession for thirty years in trust for Manu'a people and use permissible and allowable by trustee constitutes adverse possession.

Warranty deed—language—naming of "his successors or assigns"—trusteeship to devolve to successive holders of matai title—not to personal estate of matai.

Successive occupation of trust land—new occupants arriving from Manu'a—rights of possession—power of appointment—whether actual occupants have greater possessory rights and/or power of appointment than those arriving from Manu'a.

Relinquishment of possession—reversion of title to matai and family—trustee to hold in trust—whether absence of two years constitute relinquishment.

Scope of trust—what constitutes "use" for benefit of people of Manu'a—power of trustee to seek surrender—whether owner of possessory interest in other related buildings leased for commercial business constitutes valid ground to seek surrender.

HELD:

(1) (i) That the defendant yield up possession of the buildings and premises to the plaintiff as trustee for use as an administrative building and office for the people of Manu'a.

(ii) That thirty days is given for the defendant to remove her belongings from the site.

(2) Samoan communal ownership of land does not confer any personal individual right of ownership, especially where a person marries into the family: F.N. 1. At best the matai holds control and discipline for the family.

(3) Even if it can be said that the defendant held actual occupation of the land for some forty years, that does not constitute adverse possession. Evidence establishes that her occupation and indeed her possession of the land was permissive and allowable under the warranty of trust: *l.* 184.

(4) Samoan communal land cannot be freely alienated. The common law rule against perpetuities therefore has no application: *l.* 153. That rule is grounded in economic policy favouring the free marketability of property. The same is not the economic foundation of Samoan communal land, but that of social norms identifiable with its own cultural concern. Quite simply, communal lands are not freely alienable on the market: A.S.C.A., section

37.0204: l. 158.

- (5) Even if the rule against perpetuity holds it has no application here. The ownership of Samoan communal land is in the "aiga" or extended family—not in an individual identity: l. 163. See also *Tuana'itau v. Pagofie* 4 A.S.R. 375, 381 (1963); *Magalei v. Siufanua* 4 A.S.R. 101, (1973); *Fairholt v. Aulava* 1 A.S.R. 2d. 73, 78 (1983). Family ownership passes along the title lineage of whoever holds that title, not to any person in his/her own right. Title passes through either by conveyance or as prescribed by statutory law: l. 170.
- (6) It is clear from the language of the trust deed that no personal individual receipt of ownership accrues to the matai as trustee of the estate. Rather, the trusteeship devolves upon successive holders of the matai title—here the holder to the title Tufele—and not to his personal estate: l. 200.
- (7) The rights of occupation of the Manu'a people to the trust property are the same whether of those in actual possession or others yet to come in from Manu'a. The fact of actual occupation does not confer any greater right than those under and by the trust deed.
- (8) It must be borne in mind always that the trust was for the use and benefit of the people of Manu'a. Where the defendant had possessory interest in three other buildings which were leased to commercial business, then it can be said that her use also of the subject building exceeded the scope of the trust and it is within the powers of the trustee to require the defendant to surrender the subject building so to set up an administrative office for the people of Manu'a: l. 296.
- (9) In any case the plaintiff's concern was reasonable, and the defendant's greater welfare would not in any way be adversely affected by the exercise of the plaintiff's discretion in favour of surrender: l. 298.

Other cases referred to in judgment:

Avegatio v. Suafo'a 1 A.S.R. 475 (1933)
Fairholt v. Aulava 1 A.S.R. 2d. 73, 78 (1983)
Iloa v. Toilolo 1 A.S.R. 602 (1937)
Magalei v. Siufanua 4 A.S.R. 101 (1973)
Mauga v. Soliai 3 A.S.R. 108 (1954)
Reid v. Puailoa 1 A.S.R. 2d. 85 (1983)
Satele v. Afoa 1 A.S.R. 424 (1930)
Talagu v. Te'o 4 A.S.R. 121 (1974)
Tuana'itau v. Pagofie 4 A.S.R. 375 (1963)

Legislation referred to in judgment:

A.S.C.A., section 40.0106
 A.S.C.A., section 37.0201 *et seq.*

Counsel:

Roy J.D. Hall Jr. for the plaintiff
Togiola T.A. Tulafono for the defendant

KRUSE A.J.**Judgment:**

The plaintiff, Tufele Liamatua, is the current holder of the title "Tufele" pertaining to the village of Fitiuta, Manu'a. He claims, as successor to the title "Tufele", the trusteeship of land called "Atu'u" located in the Eastern District of Tutuila. This land was the subject of a conveyancing instrument (hereafter the "warranty deed") entered into on 25 November 1911 between Mauga Moimoi and his wife¹ as grantors, and Tufele as "Trustee for the People of Manu'a" as grantee.

The warranty deed purports to convey a defined piece of property with the approval of the then Governor of American Samoa. It was duly accepted and registered in the Office of the Territorial Registrar. In form, therefore, the warranty deed is consistent with the requirements of the laws of the territory governing the alienation of communal lands (see A.S.C.A., section 37.0201 *et seq.*).

As trustee, the plaintiff seeks the recovery or repossession of a certain part of Atu'u which is the location of a small building (said to be about half as large as the dimension of courtroom No. 5) which is claimed by the defendant Mrs. Alesene Mose.

The plaintiff's intention for this site is to construct a building to house an administrative office wherein matters concerning the land may be handled and which may serve as a form of headquarters where the Manu'a District can conduct its affairs in Tutuila. The plaintiff testified at the time of the filing of his complaint that the said building had been left vacant and neglected for some two years prior; and that since defendant is in possession of two other double-storey buildings located elsewhere on the said lands, and is earning rental revenue from business tenants, the recovery of the site in question for general district use would work no great prejudice to the defendant.

Pending trial hereon, the defendant has established a sewing and laundromat business in the building.

The parties have different historical perspectives on the background of the land grant.

The plaintiff testified to the effect that the warranty deed formalized a written agreement of 1904 between the then Mauga and the then Tufele whereby the former had transferred the land Atu'u as a locality in Tutuila for the people of Manu'a to arrive and assemble at for conferences at a territorial level. At the time of the grant, the territorial topic for discussion in Tutuila was the "Mau".

Notwithstanding the warranty deed, the defendant, a long-standing resident of the area Atu'u, testified that the grant came about consequent to negotiations between Mauga and Tui Manu'a Elisara. Accordingly it is the defendant's position that the Tufele had no special say in the matter concerning the lands. As evidence hereof, the defendant alluded to prior instances when building permits and the like were executed not by a Tufele but by a succession of Manu'a District Governors, and

¹ Mrs. Mauga's significance as a grantor appearing in the deed is probably nothing more than naïvete on the part of the draftsman who was obviously meticulous with considering matters of dower. In custom, as well as in law since developed, a person married into a family has no say with regard to that family's lands. Dower rights are non-existent in the communal land context (A.S.C.A., section 40.0106, see also *Reid v. Puailoa* 1 A.S.R.2d 85 (1983)).

then later by a land committee appointed by the District Council of Manu'a.

130 While we accept as fact that there was a period of time when District Governors and a land committee had executed various government permit applications with regard to land use, we are unable to accept this fact as proving the defendant's contention. Rather, the more plausible explanation was given by the plaintiff that the involvement of the District Governors and the land committee came into being while the Tufele title was vacant. That, indeed, when the present holder took the title Tufele he was ignorant of the existence of the warranty deed until the matter was raised with him by the Office of the Attorney-General in 1974, and that his only prior knowledge of the matter was that the former Tufele acted as caretaker to the land when the same in earlier times housed a few people including certain government quarters. That since being apprised of the deed, the plaintiff has actively assumed the functions of trustee as therein provided.

140 We find that the warranty deed itself is the best evidence of the conveyancing transaction between Mauga and the people of Manu'a, and that it gives Tufele the power to act as trustee.

The defendant in addition offers alternative theories in derogation of the trust and accordingly against the plaintiff's claims to trusteeship. The more extreme of these is an argument that the warranty deed itself is void because it offends the common law rule against perpetuities. It is said that the trust established by the warranty deed is perpetual in effect because it may not vest within the appropriate limitation of a life in being plus twenty-one years.

150 The logical conclusion to this argument is the destruction not only of the trust conveyance but indeed of the very estate upon which the defendant's possessory rights to the land first came into being.

As it happens, we disagree with the defendant. The policy reasons behind the rule against perpetuities have no relevant application to communal lands. As alluded to by the defendant, the rule is grounded on public policy which disapproves the imposition of any fetters against the free alienability of estates. Nothing could be more incongruous with the notion of communal lands than a doctrine that is a product of economic policy favouring the free marketability of property. Communal lands are not freely alienable on the market (A.S.C.A., section 37.0204).

160 Even if the rule against perpetuities were applied, however, it would not invalidate the deed. Technically the rule is one against the remoteness of vesting of an estate or interest beyond the period of limitations settled by law. If we look to realities, the ownership of communal lands is in fact in that traditionally cognizable entity the "aiga" or extended family. See, for example, *Tuana'itau v. Pugofie* 4 A.S.R. 375, 381 (1963); *Magalei v. Siufanua* 4 A.S.R. 101 (1973); *Fairholt v. Aulava* 1 A.S.R. 2d. 73, 78 (1983). The reports are also replete with cases which talk about "title" to land being acquired by Samoans through first occupancy and a claim to ownership. And it has also been early recognized that "title" may pass from one family to another through the latter's long-term and adverse use (*Avegalio v. Suafo'o* 1 A.S.R. 475 (1933); *Ilaoa v. Toilolo* 1 A.S.R. 602 (1937)). Additionally "title" may also pass through conveyance by the matai with the consent of the family,² and in accordance with the requirements of certain statutory provisions.³

Therefore the notion of vesting of title in a communal entity has long been

2 See, for example, *Satele v. Afoa* 1 A.S.R. 424 (1930); *Mauga v. Soliai* 3 A.S.R. 108 (1954).

3 A.S.C.A., sections 37.0201 *et seq.*

established law in the territory and it follows that a communal estate donated by one communal entity to another communal entity must necessarily vest immediately. To argue otherwise is to dally with artifice.

We see no legally significant distinction between a simple inter-family conveyancing, and a transaction between a single family and a group of families wherein the latter is represented by a matai appointed by the donor to assume the fiduciary role that would otherwise belong to the sa'o or senior matai of a given family. The Samoan realities remain the same, and we find no statutory or applicable common law rule to the contrary.

The defendant alternatively claims title in the land through adverse possession in excess of thirty years. We find no merit in this claim. Her coming to possession was certainly not adverse but permissive.

She claims to have lived on the land for forty years. She descends from Manuan parents and first went upon the land in her youth and lived with relatives who also originated from Manu'a, a Leasau and his wife Toliu. After living ten years with the latter she married John Mose whose family were also people from Manu'a and who were also living on Atu'u. After marriage she moved in with her in-laws. It was some time subsequent to this that she and her husband built the building in question. Throughout this time, the defendant was familiar with the fact that land use permits were signed by third parties and indeed even she herself sought Tufele's permission on a building permit application to repair the structure in question as well as the structure belonging to Leasau and Toliu after the latter had departed the land.

Finally, the defendant contends that the warranty deed does not provide for plaintiff Tufele's claim to be trustee. The defendant contends that the language "successors and assigns" contained in the warranty deed is restricted only to those qualified to take in the late Tufele's personal estate. We disagree. In looking to the tenor of the document there is really no intention to create some sort of individual interest that would devolve upon the late Tufele's personal estate. The whole intention of the document is to divest from Mauga the land "Atu'u" for the benefit of a group of people and nothing more. Tufele's significance reflects no more than conspicuous protocol. One ranking matai is dealing with another ranking matai on behalf of their respective communities, and this is exactly what the warranty deed reflects. The then Tufele's trust capacity reflects no more than the usual customary land setting with matai control. It is inconceivable that Mauga had any intention of possibly placing this matai control in an untitled person as the defendant's interpretation of the instrument would allow. It is just as inconceivable from the grantees' point of view that their possessory rights to Atu'u under the instrument could be subject to the control of an untitled heir of the late Tufele. The defendant's suggestion just does not fit the Samoan context—even less so in 1911 when the matai influence was much more pervasive.

In our opinion, the sensible effect to be given to the purposes of the warranty deed is that successive holders of the title "Tufele" are the qualified trustees, as opposed to the lineal line of the late Tufele as suggested by defendant. (Certainly, practice did not bear out this contention in the way of exercising control over the land with land use permits.) Finally, the last paragraph of the warranty deed reads in part:

To have and to hold . . . unto the said party of the second part [Tufele], his successors or assignees, IN TRUST for the USE and BENEFIT of the People of

MANU'A. (Emphasis in the original)

There is no hint of private devolvement in this language and we believe that the draftsman was purposeful because in contradistinction the succeeding sentence referencing a quiet enjoyment covenant on the part of the grantor speaks in terms of Mauga, his wife, and "their heirs".

Having thus sustained the warranty deed as evidencing the conveyancing transaction as well as being the basis for the plaintiff's claims to trusteeship, we consider the issue of whether the plaintiff may retake possession of the land area in question, under the circumstances.

230 The most glaring intent of the conveyance is that the subject land would be held for the "use and benefit of the People of Manu'a". For practical reasons, possessory rights would be subject to the physical limitations of the land area, but beyond that the rights of actual occupants found on the land are no more than those of others from Manu'a. We thus reject any suggestion of any special individual entitlement, with the defendant's contention that those on the land for any given period of time have the right (or a power of appointment) to pass on their possessory rights to others of their choosing.⁴ This contention is repugnant to the intent of the warranty deed and the language therein used to establish the donee class "the People of Manu'a". It is also repugnant to the very clear purpose in the warranty deed to
240 provide for a "trustee".

To the contrary we hold that the logical consequence of the natural application of the warranty deed's intent is that an occupant who voluntarily departs the land or abandons his possessory rights, does so in favour of the trustee and the People of Manu'a.⁵ Besides arriving at this conclusion through construction of the warranty deed, we find analogous precedent in the normal family land arrangements wherein the Court has held that when a family member has relinquished his possession of communal land it reverts to the matai and family (*Talagu v. Te'o* 4 A.S.R. 121 (1974)). It was further held in this case that, while a family member's intentions may not have been to abandon the land, the issue of whether relinquishment has arisen and the
250 matai has effectively taken over to the exclusion of the family member is "one of fact" (*id.* at 125).

As noted above, the plaintiff testified that the building in question had been left neglected and in disrepair for some two years prior to the filing of his complaint. He therefore approached the defendant to release the site for district use. In the plaintiff's view this request was reasonable by virtue of the fact that the defendant had now come into full use of another two-storey building vacated by the aforementioned Leasau and Toliu; and that when this building was vacated, the plaintiff had decided to convert it to district use but was beseeched by the defendant to allow her to take over and remodel the building and that the first floor would be

- 4 The self-serving nature of this argument is best explained by the fact that the locality also contains the territory's two largest private sector employers—the canneries. They provide a captive market with their numerous employees for a number of food and retail outlets that have spawned in the area and thus rental revenue attractive to building owners. Accordingly, the more buildings that an individual can maintain on the land the better. Indeed the economics of the area have given rise to the fact that certain occupants are actually leasing building space to other Manuans themselves and, the evidence also suggested, to non-Manuan business tenants as well. This development is hardly consistent with the obvious intent of the deed that the land be held for the benefit and use of the Manuan community.
- 5 This expectation is indeed borne out in actuality. The plaintiff testified that he is continuously receiving applications from otherwise qualified individuals from Manu'a for space within Atu'u.

260 made available for district use. The plaintiff acquiesced and by reason thereof was the subject of complaints about favouritism from other land occupants. As events turned out, the first floor of this building is now occupied by a business tenant of the defendant.

Since the filing of this matter, however, the defendant has established a laundromat and sewing business in the building at issue.

In response, the defendant denies that she had ever abandoned the premises. She claims that the building was only left vacant while she was deciding what sort of business to set up therein. She formerly operated a store there but did not want to go back into that line of business because of the way competition had developed.

270 In the circumstances, we find relinquishment or abandonment not to be readily observable. Had the defendant actually departed the land altogether then a case of abandonment might be easier made. However, on the facts as we have them it may not be said with any measure of confidence that the defendant's actions or omissions are entirely inconsistent with her retaining possession of the premises and land.

On the other hand we find and uphold, in the circumstances, appropriate authority in the plaintiff Tufele to require of defendant to yield and surrender the site in question as consistent with his trust and duties reposed by the warranty deed. As we have noted, the deed's very clear purpose was to provide a land site for the "use and benefit of the People of Manu'a". Just as clear, therefore, is the scope of the trust with which Tufele is charged and that is to secure the site for this general purpose. Now it can hardly be said that the fullest expression of this purpose equates with a handful of individuals accumulating land sites for purely business purposes. While this is not to say that a business use is necessarily not a permitted use under the terms of the grant, it is hard to see how the current situation accrues to the "benefit of the People of Manu'a".

280 In conclusion, we find that the following circumstances have arisen. The building site in question was defendant's original business site. She subsequently came into possession of another site which located a two-storey structure and which has also become a leasehold business site. Subsequently she further came into possession of 290 Leasau and Toliu's site, which also contained another two-storey structure, but on the understanding given to plaintiff Tufele that the first floor thereof would be remodelled by the defendant for general district use. This use did not materialize because the defendant brought in another business tenant. We hold in these circumstances that the defendant's present possessory interests have exceeded the ambit of the grant and accordingly find it within the plaintiff's charge under the warranty deed to demand and make available one of those business sites for general district use. The plaintiff trustee's choice of the site in question is upheld as the more reasonable and in order to mitigate any immediate prejudice to the defendant by reason of having to relocate or reallocate her business interests, it is the opinion of 300 the Court that the defendant have thirty days from date hereof to remove her belongings or suffer the same to be made available for general district use at the trustee's discretion.

Judgment is entered in accordance with the above findings and conclusions. It is so ordered.