

TU'UHETOKA v. P. MALUNGAHU.

(Land Court. Brownlees J. Ha'apai, 31st May and 29th August, 1945).

Claim for town allotment — Verbal grant of town allotment — Whether valid before Land Act 1927 — Registration by Minister without Tofi'a holder's consent invalid.

This was a claim by the Tofi'a holder that the registration of a town allotment in the name of the defendant was invalid as the Minister made the registration without his (the Tofi'a holder's) consent. The defendant alleged that long before the registration he had received a verbal grant of the allotment by the Plaintiff's predecessor in title and that registration of town allotments was unnecessary.

HELD: That before 1927 it was not necessary to register grants of town allotments but as this registration had been made with out the Tofi'a holder's consent it was invalid.

Verdict for the Plaintiff.

The Plaintiff appeared in person.

Havili appeared for the Defendant.

C.A.V.

BROWNLEES J. : It is not disputed that Paula Malungahu, Defendant in this case, was registered as the town allotment holder of the area in dispute on 23rd July, 1937, nor that he leased that area, or part of it to the Free Church of Tonga on 19th September, 1941. The question for the Court to decide is whether his registration was lawful. If it was not, then it is void, and any lease granted by the Defendant is also void.

The Defendant's claim to have been properly registered is shortly this. About the year 1911 at Ha'afeva Tu'uhetoka Saletili, the then Tofi'a Holder, after conversation with the then Governor of Ha'apai, granted Makave to him — the Defendant. Such grant was verbal, and was not followed by Registration. Nevertheless Defendant maintains that it was binding and legal, since under the Law of Tonga, 1903, Section 563 it merely says that every Tongan shall be entitled to a hereditary village (town) allotment, but does not state the manner in which such town allotment shall be granted nor that it must be registered. In respect of grant a clear cut distinction is drawn between town and tax allotment; provision is made, in the very same section, for the registration of the latter and the grant of deed to the 'api holder by the Minister of Lands or his Deputy.

The contention that the grant of town allotments might be verbal, and that there was no need for registration, is supported by Ata, who had considerable experience as Minister of Lands before the change in the Law in 1927, and Siaki Loloheca, (District Officer, Lifuka, for many years prior to 1927.

However, Ordinance No. 2 of 1918 (p. 5 of 1918 Gazette) fixes the fees for the registration of a town allotment. This Ordinance was passed with the specific purpose of removing doubts as

to whether fees were payable to the Minister of Lands on the registration of town allotments. It does not, however, necessarily imply that a grant of a town allotment was invalid unless it was registered. The Court is consequently of the opinion that until the coming into force of the Land Act, 1927, a town allotment might be granted verbally by the Minister, His Deputy or the Tofia Holder.

Was such grant made to the Defendant by the then Deputy Minister at the instance of Tu'uhetoka Saletili? The Plaintiff has shown that he is the Tu'uhetoka, and as such is entitled to the lands included in the Tofia of Ha'afeva. Consequently, since the land was originally in the possession of the present Tu'uhetoka, or his forebears the onus of proof rests with the Defendant to show that he obtained legal title to the land in dispute.

To support his claim there is only his own word, supported to a negative extent by the evidence of Ulaiasi Taukapo'ochau, who remembers a fono at which Tu'uhetoka Saletili stated that town allotments near the boundary should be deemed to come right up to the town fence. But Ulaiasi cannot remember any grant to Defendant, but presumed he acquired the land through one Hea who acquired the right through marriage with the daughter of Noa, the original occupier. This evidence is insufficient to sustain the Defendant's claim.

With regard to the actual registration of the allotment in the name of the Defendant in 1937, Plaintiff denies that his consent was obtained to the grant, or that he was consulted in the matter and this denial has not been rebutted by Defendant. Such grant is accordingly void. (Proviso to S. 8 of Chapter 27 of the Law of Tonga 1928).

The Court finds as follows :—

- (a) That the land in dispute, Makave is in the Tofia of Ha'afeva of which Tofia Plaintiff is the Holder;
- (b) That prior to 1937 the Defendant squatted on Makave by consent of the Tofia Holder, but did not acquire legal title thereto, either by grant or inheritance;
- (c) That on 23rd July, 1937 Defendant was granted the town allotment in dispute, Makave, by the Deputy Minister of Lands but such grant was void since the Tofia Holder was not consulted, nor his consent obtained;
- (d) That Makave remains the property of the Tofia Holder, at present the Plaintiff.

Judgment for Plaintiff with costs.

EDITOR'S NOTE: The Defendant appealed. On the 22nd March, 1946, the Privy Council (Carew C.J.) upheld the appeal on the ground that the action was not commenced within the statutory ten years. No other reasons were given.
