

S. PAFUA v. MOTU'APUAKA.

(Land Court. Richardson J. 'Etoni Tonga, Assessor. Nuku'alofa, 11th, 20th, 21st and 26th April, 1949).

Tongan Custom — Advice of Assessor — Dismissal of holder by the King
— Adopted son appointed — Reversion of title to senior branch.

This was a claim to the title of Motu'apuaka. The claimant alleged that he was a direct descendent of Sekope an adopted son who was appointed by the King because of some misdemeanour of the holder. Claimant alleged that on death of Sekope the title should have gone to his son and not, as it did, back to the senior line. The case is reported for the discussion of Tongan custom and the advice to the Court by the Assessor. HELD: The title had followed the correct course. Verdict for the Defendant.

S. Havili and M. Finau appeared for the Plaintiff.

S. Kioa and V. Latu appeared for the Defendant.

C.A.V.

RICHARDSON J. : Plaintiff's claim in this case is based on the fact that one SEKOPE, from whom Plaintiff is directly descended, held the title of MOTU'APUAKA at the time of the grant of the Constitution in 1875 : in the absence of any other reasonable explanation one would expect the title to descend from that date to this through the direct line of SEKOPE's heirs. It has not done so however and it is upon the explanation for this that Defendant bases his defence to the claim.

In order to obtain a true picture of this case one must look back to the time considerably before the Constitution. I am satisfied that the evidence given by Defendant is substantially correct and reliable to the effect that the early holders of the title were two brothers MAFI-MO-LASIKE who held the title prior to 1845 and VILIAMI ULIMA who succeeded him as his younger brother on his death in about 1845. That this is so does not appear to be in dispute, and it should be noted at this stage that Defendant is a direct descendant through several generations from MAFI-MO-LASIKE.

From the time of VILIAMI ULIMA until about 1883 there appears to be some confusion as to the fate of the title, but it is undisputed that in 1883 the title did pass to one SEKOPE MAFI-MALANGA. Plaintiff states that the holder immediately before SEKOPE was one MASIU, whilst Defendant states that VILIAMI ULIMA was the immediate predecessor in title to SEKOPE : I find considerable difficulty in reconciling the position of the person referred to as MASIU, but at the same time I accept the fact which is attested by both parties that SEKOPE'S immediate predecessor (whether he be VILIAMI ULIMA or MASIU) had the title taken away from him by the King for some misdemeanour which incurred the King's displeasure, and that when this happened it was conferred upon SEKOPE in 1862 and held by him until his death in 1883—that is to say over the time of the grant of the Constitution.

We must now examine the exact position of SEKOPE and his relationship to the MAFI-MO-LASIKE and VILIAMI ULIMA family with a view to ascertaining how it came about that when the title was taken away from the previous holder in 1862 it was given to SEKOPE. Plaintiff's story is that SEKOPE was a Mafimalanga to the previous MOTU'APUAKA and was no blood relation to the original family, and that when the title was taken away from the previous holder for misconduct this must be regarded as a punishment meted out by the King against not only the individual but the whole family: consequently Plaintiff alleges the title passed from the one family to that of SEKOPE and consequently his direct descendants have a true and proper claim thereto. Defendant however explains it in another way: he alleges and has brought two female witnesses whose testimony appears reliable to show that SEKOPE MAFIMALANGA was in fact an adopted son of VILIAMI ULIMA and as such was probably at the time the obvious person on whom the King would confer the title after taking it away from the previous holder as, by virtue of his adoption, he would take his place in the original family as if he were a true younger son of VILIAMI ULIMA. If this story be true it would explain fully the subsequent history of the title, and at this point the Court must come to a conclusion as to which story—that of Plaintiff or that of Defendant—is the more correct.

I have consulted my Assessor as to which of the two stories accords more closely with ancient Tongan custom, and I am advised that the story as told by the Defendant agrees more closely with customary procedure. He assures me that according to Tongan custom, however much the previous holder incurred the wrath of the King, it is most unlikely that he would have taken the title away and given it to a complete outsider who had no family ties with the previous holder and that the King should have intended it to pass permanently out of the MAFI-MO-LASIKE and VILIAMI ULIMA family over to the separate family of SEKOPE. He is also of the opinion that, on taking the title away from the previous holder, it would not have been repugnant to Tongan custom for the King to grant it next to an adopted son of a previous holder and that therefore the facts that SEKOPE was an adopted son and did in fact receive the title are fully reconcilable.

The Court therefore accepts as a fact that SEKOPE was adopted into the family and succeeded to the title by virtue of that adoption.

This conclusion is further supported by events after the death of SEKOPE. - On the death of SEKOPE the title did not pass directly to SEKOPE's son, but did in fact pass directly back to the descendants of the former holder MAFI-MO-LASIKE: in other words SEKOPE was regarded as being a holder in the junior branch of the family and on his death the title passed back to the senior branch. This, I am convinced, would have been the correct procedure even if SEKOPE had been a true son of VILIAMI ULI-

MA : it would only have been incorrect if Plaintiff's contention that it was the King's intention to take the title right away from the family and grant it to a separate family of which SEKOPE was at that time the head is established : that contention however the Court is unable to accept.

The Court therefore finds that, on the death of SEKOPE the title did correctly pass back to the descendants of the original MAFI-MO-LASIKE, and in this connection attention should be drawn to the fact that at no time does SEKOPE's son appear to have laid any claim to the title, and the tenure of three succeeding holders (all descended from MAFI-MO-LASIKE) remained undisputed for fifty years.

I am fully satisfied that Defendant is the correct successor in the original MAFI-MO-LASIKE line as is illustrated in the genealogical tree attached to the record of the case, and consequently is the proper person to hold the title today.

Plaintiff's claim must therefore fail, and I accordingly award judgment and costs in favour of Defendant.

I therefore sign judgment to this effect at Nuku'alofa this twenty-sixth day of April, 1949.

EDITOR'S NOTE: The defendant appealed. On 2.12.49 the Privy Council (Carew C.J.) dismissed the appeal without giving any reasons.