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VILIAMI MANATAU v. MOTU'APUAKA.

(Land Court. Higginson J. Nuku'alofa, 22nd, 23rd, 24th, 29th and 30th January, 1st, 19th February and 5th March, 1951).

Claim for hereditary estates of Motu'apuaka — appointment of hereditary chiefs — King's presence unnecessary — Letter of appointment — Tongan custom — Nobles and Hereditary Chiefs — Constitution 1875, 1888 — Clause 107 of Constitution published in 1928 Edition — Gazette No. 12 of 1882.

This was a claim to the estates of Motu'apuaka. The case turned on whether one Sione Feke'ila had ever been appointed Motu'apuaka and on Clause 107 of the Constitution.

HELD: Feke'ila had been appointed and that the Plaintiff was the rightful holder of the title. Verdict for the Plaintiff.

Hale Vete appeared for the Plaintiff.

M. Finau and S. Kioa appeared for the Defendant.

C.A.V.

HIGGINSON J.: On the opening of this case a preliminary objection was raised that this case was statute barred by virtue of Section 145 of Cap. 27.

My attention was drawn to Privy Council appeal case Samualio Halafihī v. Kalaniuvalu decided on 14th November, 1945 when it was ruled that time runs from the date on which the Plaintiff attains the age of 21 years.

As, in the present case, the plaintiff is only 29 years old, this objection cannot succeed.

Exhibit: A is a family Tree accepted by both sides but not necessarily accepted as regards dates.

This Tree shows Mafimolasike as the first Motu'apuaka before 1845.

Then came his brother Ulima. Then came one Masiu.

When Masiu was Motu'apuaka, Sekope was Mafimalanga and on the death of Prince Vuna in 1862 Sekope attended the funeral at Ha'apai. The King being annoyed at the non-appearance of the Motu'apuaka dismissed him and in his place appointed Sekope who held this position until about 1882 or 1883.

On Sekope's death it was revealed to the King that Sekope was only an adopted son and he, therefore, ordered that this Title should not descend to Sekope's son.

Descent was then traced back to Mafimolasike. The plaintiff, says that the Title should come to him through Mateitalo the son of Mafimolasike down through Sione Feke'ila son of Mateitalo through Feke'ila's daughter 'Ofa to her son the plaintiff.

The defendant says that Sione Feke'ila was never legally appointed and that therefore he claims descent through Tokilupe, Mateitalo's sister to Tomasi. Then through Tomasi's brother Tevita Taufa. Thence through Tevita's son 'Inoke to 'Inoke's son the defendant.

The plaintiff's case depends entirely on whether Sione Feke'ila was ever Motu'apuaka. If he was then plaintiff says he should now be Motu'apuaka through his mother 'Ofa in accordance with Clause 107 of the Constitution which reads "But should a female be next in succession to the title of a Noble or of an hereditary chief the next male heir shall inherit the title and estates." Plaintiff says this was followed and Tomasi was appointed on Sione Feke'ila's death. But he says that the next condition then applies which is "But should such female afterwards have a legitimate male issue the title and estates shall revert to the male issue of the female upon the death of the male in possession of the estates."

When plaintiff was born 24th August, 1921 Tevita Taufa was in possession and when plaintiff attained 21 in 1942 'Inoke was in possession. 'Inoke died on 7th June, 1929. At this time plaintiff was merely 8 years old, and when 'Inoke died plaintiff was aged 23.

The question is whether Sione Feke'ila ever was legally Motu'apuaka. As to the evidence in support of Sione Feke'ila's appointment :

There is a gap between the death of Sekope in 1883 and the appointment of Tomasi in 1887. The Defence have never filled this gap but the plaintiff says that Sione Feke'ila filled it.

As Sekope died about 67 years ago it is naturally difficult to produce first hand evidence, and one has to rely on hearsay evidence to a large extent.

'Amelia 'Ofa aged 60-63 the mother of plaintiff says that her mother and grandmother often told her that Sione Feke'ila was Motu'apuaka.

Taukolo Langi aged 83 and not related to the Motu'apuaka says he knew Sione Feke'ila and lived opposite Sione's grandparents. Sione was an old man and Langi remembers 'Emelina coming and telling them that Sione would be appointed. Langi also saw Tomasi appointed in 1887.

It is difficult to say how much Langi saw and how much he was told by Tomasi and others.

Luke Ma'afu (f) 70-80 is confused. She says Mateitalo was a Motu'apuaka but this is not so and she doesn't know whether Sione Feke'ila was Motu'apuaka or not.

Sione F. Tonga born 1874 says he was at college during 1888-97 and that Sisi, Sione's daughter told him that Sione Feke'ila was Motu'apuaka.

Tu'ivakano Siosua Kaho 79 and a former C.J. says that Sione Feke'ila had two daughters Sisi the elder and 'Ofa. That in 1886 he heard from Finau's and Seini's children that Sione Feke'ila was Motu'apuaka. But he is not certain as he saw nothing himself.

Tevita Kapeti aged 69 heard that Tomasi succeed Sekope.

M. Finau 67 Lawyer for the Defence, giving evidence admitted that in the previous case in his address he said that Sione Feke'ila was Motu'apuaka as he was told this by witnesses. But that he now says that Sione Feke'ila was not lawfully appointed because he was appointed by Ngu.

It seems to me that, in view of the gap between Sekope and Tomasi and on the evidence of the witnesses and particularly that of Finau, there is no doubt that Sione Feke'ila was appointed Motu'apuaka.

There appears to be no good reason why the King if he choses should not send someone to represent him at the Native ceremony nor why such an appointment or installation should not be just as legal as if the King himself had been present.

As to the letter of appointment I am not aware of any law making such a letter of appointment imperative. Moreover such a letter is after all merely a modern addition to the original ceremony.

When Sione Feke'ila died about 1887 he left a widow who gave birth to a child, a daughter 'Ofa Simote about a month or two after his death. There was also apparently an elder daughter Sisi who had a child which died recently but little evidence about her has been given. Her legitimacy has never been questioned. It is only of importance as shewing that not only was there an heiress en ventre se mere but also there was a daughter alive when Sione died.

No birth or death Certificates have been produced earlier than the death of Tomasi on 24. 5. 21. Before the middle of 1888 no births or deaths at Ha'apai are in this Registry and for the Plaintiff it is alleged that records at Ha'apai were destroyed in a hurricane in 1912, but the Defence doubt this. There is no proof one way or the other. This Court is, therefore, obliged to rely on other evidence as to births and deaths.

'Ofa the daughter of Sione Feke'ila is still alive and her legitimacy has never been questioned.

The evidence shows that Sione Feke'ila died in 1887 and 'Ofa was born a month or two later.

Tomasi was appointed in 1887.

The law affecting the descent of this Title and the Estates from Sione Feke'ila to Tomasi is the law existing in 1887. Coun-

sel for both sides have referred to the 1875, the 1888 and the 1928 Constitutions but no mention, until towards the end of the case, was made of the Constitution of the 23rd October, 1882. This was because of the difficulty of finding copies of the early laws. The Gazette containing this Constitution was finally obtained from the Lands Office.

The English versions of the 1882 Clause 117 and the 1888 Clause 117 are the same and both contain the words "Nobles" and "Hereditary Chiefs" are mentioned in the 1882 Constitution these words are omitted leaving only the word "Nobles" in the 1888 Constitution. But the 1888 Constitution was not passed until the 21st December, 1888 and therefore did not take effect until after Tomasi had been appointed.

Although there are other amendments to 1882 there appears to have been no amendment of Clause 117 until 1888 and this is only the omission of the words "Hereditary Chiefs" from the Tongan Version. This omission is continued in the version published in the 1928 Revised Edition and numbered Clause 107.

On page 6 of Gazette No. 12 of 25th October, 1882 is a list of Hereditary Lands granted by His Majesty on the 24th October, 1882 to become the hereditary lands of the hereditary chiefs and in that list is "Motu'apuaka, a Te'ekiu and Haufolau." This list was published during the life of Sekope.

The title and lands of Motu'apuaka are therefore those of an Hereditary Chief.

Under Clause 117/28 there being no male heir of Sione Feke'ila the inheritance succeeds to the first female child and the heir of her body. In the present case 'Ofa is claimed to be the successor. Sisi is the eldest daughter but she died — so did her child. In any case little has been said of her except for a witness to mention her.

It has never been suggested that 'Ofa is not the legitimate daughter of Sione Feke'ila and it is most probable that although born after Sione's death she was born before any appointment was considered. Even if born after any appointment her position would not be altered although Tomasi's would by virtue of the last part of this clause. 'Ofa having succeeded to the name of an hereditary chief then Tomasi, being the next male heir inherits the title and lands. But 'Ofa having later given birth to a male, the present plaintiff the title and lands revert to the plaintiff on the death, in this case, of 'Inoke, the plaintiff, being 21 on the 24th August, 1942 and 'Inoke dying on 20th September, 1944.

'Ofa being the heir was entitled to hold the site of the town attached to the title and the hereditary (plantation) lands also of such title, but the hereditary lands, that is the lands held by the people shall be held by the inheritor of the title, and that is the law to the present day.

In view of these provisors to Clause 117 and the fact that Sione Feke'ila had a daughter it is clear that the only legal title that Tomasi could be given was that he held subject to the possibility that 'Ofa might have a male heir. The Plaintiff is 'Ofa's male heir and as he came of age prior to 'Inoke's death he became entitled to the titles and lands immediately on the death of 'Inoke.

I give judgment for the plaintiff accordingly.