

SIONE PELUVALU VEIKOSO (Appellant) v. 'ALA-MONI TU'IPULOTU (Respondent).

In this case the Land Court (Hunter J.) sitting in Vava'u found for the plaintiff in his claim for a tax allotment. The defendant appealed and the Privy Council (Hammett C.J.) upheld the appeal.

The Minister was faced with two simultaneous applications. Both the applications were in order and the Minister determined who should succeed by throwing dice. The Privy Council held this was a proper exercise of his discretion.

On 25th January, 1957 the Privy Council delivered the following judgment :

This is an appeal against the decision of the Land Court sitting at Vava'u dated 15th October, 1956 whereby it was decided that the Plaintiff Respondent was entitled to the allotment known as Huihui at Leimatu'a in the estate of Fotu.

The circumstances giving rise to the claim are as follows :

Both the Appellant and the Respondent having first obtained the approval of the Estate Holder Fotu, applied to the Deputy Minister of Lands, Vava'u for this tax allotment in November, 1948.

The application of the Respondent was received by the Minister first but before he had arrived at a decision on the matter the application of the Appellant was received. The Minister was in a dilemma and did not know which of the two applications which had both been approved by Fotu should be granted. He asked Fotu to decide but he declined to do so. Eventually, with the consent of both the Respondent's father, who was making the application for him and of the Appellant, the two parties threw dice to determine the issue. We understand that resort to chance in this manner is not infrequently made in such cases in order to preclude any suggestion that decisions are influenced by favouritism. Counsel for the Respondent admits that the Respondent's father took an actual physical part in the throwing of dice.

The Respondent lost and thereupon brought his action in the Land Court some 4 years later.

Although the action was begun in 1952 it was not determined until 1956. In this period the Appellant has planted crops and coconuts on the land which are now coming to bear fruit. At the trial in the Land Court it was held that the Deputy Minister for Lands, Vava'u had not exercised his discretion in the matter at all and that instead of determining the issue by chance he should have granted the application which was first submitted to him. The Land Court ordered that the Respondent whose application was first in time should be registered as the holder of the allotment instead of the Appellant who now appeals against that decision.

In our opinion it was not open to the Respondent having consented to the success or failure of his application being determined by chance and then having lost, to complain of the method by which the decision was made. Whatever view may be taken of the propriety of deciding the issue in this manner we do not think it is equitable that a consenting party should afterwards be heard to complain of it and to seek redress by what is virtually an equitable remedy. It would, of course, have been different had we been satisfied that the Respondent had not consented to the throwing of dice or had the Minister been acting in Judicial as opposed to an Administrative capacity in the matter.

In the course of his Judgment the learned trial Judge said, "According to the evidence both the applications were in order and both the applicants complied with all the requirements of the Act. In these circumstances the application which was first submitted to the Minister must be preferred and therefore the allotment should have been granted to the Plaintiff."

In our opinion the date of application is not the sole consideration but merely one of several considerations which should be borne in mind by the Minister of Lands when deciding which of several applications for the same allotment should be granted, all of which are in order and comply with all the requirements of the Act.

In our opinion the Appellant is correct in his contention that the Respondent having consented to his application being determined by chance and having taken an actual part in this method of determination, should not have been upheld in his complaint afterwards of the method used.

This appeal is therefore allowed and the decision of the Minister granting the allotment to Sione Peluvalu Veikoso is reinstated. There will be no order as to costs.

