

SIONE MALAMALA (Appellant) v. SIONE HALAFIHI  
MALAMALA AND DEPUTY MINISTER OF LANDS,  
HA'APAI (Respondents).

This is an appeal from the judgment of Hamlyn Harris A.J. sitting in Ha'apai. The Land Court held that the heir's right to an allotment can be defeated by the widow failing to make a claim within twelve months from the death of her husband. The Privy Council (Hammett C.J.) said that although this is an undesirable practice it is a legal one.

On the 12th December, 1958 the Privy Council delivered the following judgment :

The Plaintiff's claim in the Land Court was for the Tax Allotment of "Falanise" and the Town Allotment of "Feletoa" as Crown Land in Pangai, Ha'apai. It was dismissed on 9th October, 1957. He now appeals on the ground that although he was the Heir to the last registered holder of these Allotments, he lost his right to them by the deliberate failure of the second widow of the last registered holder to claim them within 12 months of the death of the last holder at which time he was an infant, and the allotments have now been granted to the widow's son.

The facts are not in dispute and are as follows.

Sione Malamala I the last registered holder of these allotments married twice. By his first wife he had a son Tevita who predeceased him. The Plaintiff is the son of Tevita. After the death of Sione Malamala I's first wife, he married Sulu by whom he had another son, who is the Defendant. When Sione Malamala I died in 1951, his heir was the Plaintiff, who was then aged 13 years, but Sulu was entitled to succeed to these Allotments by virtue of her rights as the widow.

Sulu did not claim the allotments within twelve months of the death of Sione Malamala I as required by Section 81 of the Land Act and the land reverted to the Crown.

The son of Sulu, the Defendant, then applied for the allotments and they were granted to him.

The Plaintiff considers he has a better right to the allotments than Sulu's son because the Plaintiff is the heir of the last registered holder.

In our opinion the Deputy Minister of Lands did not make the grant to the Defendant on any wrong principle and the Land Court was correct in dismissing this claim. Whilst it is unfortunate for the Plaintiff that Sulu's son now has obtained these allotments, we feel it should be remembered that if Sulu had applied for them it might have been many years before the Plaintiff would have been entitled to possession of them as the heir to Sione Malamala I. Nevertheless we are of the opinion that in the absence of any regulations under Section 82 of the Land Act to cover

such cases, the widow by a second marriage of the last registered holder of an allotment can undoubtedly defeat the interests of a minor who is the heir in such circumstances by failing to apply herself within 12 months of the last holder's death.

Whilst this may be considered an undesirable practice it is not an illegal one.

The appeal must be dismissed.

We shall make no order as to costs.