

Privy Council Appeal 1/63

'ANA LOLOHEA (Plaintiff - Appellant)

1. SIAOSI TAFOLO and
2. NOBLE LAVAKA (Defendant - Respondents)

(Privy Council. Hammett, C. J., 24th October, 1963)

Limitation of Action - Section 147

Time runs from date when Right of Action accrues - Affect of concealment or misrepresentation by defendant.

This is an appeal from a decision of the Land Court Judge (Hunter, J) at Nuku'alofa in 1963.

In the Land Court the Plaintiff claimed the tax allotment "Koloatoume" situated in Fualu on the estate of the Noble Lavaka and the town allotment "Kamata" in Pea. Her claim to the Town allotment was not opposed. Her claim to the tax allotment failed, however, on the ground that it was statute barred by virtue of Section 147 of the Land Act. Appellant appealed against this decision in relation to the tax allotment.

Tu'akoi appeared for the appellant

Tupou)	
Tafolo and)	appeared for the respondents
Tu'ipulotu)	

JUDGMENT:

The Appellant's claim in the Land Court was for the tax allotment called 'Koloatoume' situated in Fualu on the estate of the Noble Lavaka and the town allotment called "Kamata" in Pea. Her claim to the town allotment was not opposed. Her claim to the tax allotment failed, however, on the ground that it was statute barred by virtue of Section 147 of the Land Act (Cap. 45). It is against this decision of the Land Court that she now appeals.

The facts are as follows:—

The Appellant's husband, 'Aisea Saliote, was registered as the holder of the tax allotment Koloatoume which he had occupied and used for many years previously, on 29th June, 1928. He died on 17th November 1929. The Appellant, 'Ana, his widow, was entitled to a life estate in this allotment by virtue of Section 74 of the Land Act (Cap. 45) which reads:

"At the death of the lawful male holder of any tax or town allotment, his widow shall be entitled to a life estate in such allotment which estate shall terminate on her re-marriage or upon proof in legal proceedings (as provided by Section 75) or her having committed fornication or adultery."

(The Proviso to this section is not material to the facts of this case).

She did not make a claim to the Minister of Lands under the provisions of Section 81 of the Land Act which reads :—

"If no claim to a tax or town allotment has been lodged by or on behalf of the heir or widow with the Minister or his Deputy within twelve months from the death of the last holder such allotment if situate on Crown Land shall revert to the Crown and if situate on an hereditary estate shall revert to the holder." (Added by Act. No. 7 of 1943).

This section was however not enacted until 1943, (Act No. 7 of 1943). Her failure to make a claim within 12 months or the death of her husband in 1929, did not therefore affect her rights. She was entitled to her life estate as a widow under Section 74 from 1929 onwards without making any claim for it upon the Minister of Lands.

Within one month after the death of her husband, she should, of course, have presented his deed of grant to the Minister of Lands for him to endorse a note of her interest thereon, as reason to do this, she should have presented an affidavit setting out the facts as required by Section 101. Her failure to comply with these purely procedural requirements of the Land Act, however, was not fatal to her claim. The Land Act does not attach any penalty to such a failure as it does, for example, in Section 81 to which we have already referred.

After the death of her husband, Siasoi Tafolo assisted 'Ana to farm her tax allotment. She herself has used the allotment until recently, and she also allowed Siasoi Tafolo to make use to a part of it for herself.

On 25th March 1952, without her knowledge or consent Siasoi Tafolo registered his name as the holder of the allotment. He did not tell her what he had done and he did not take any steps to prevent her from continuing to use it. Some years later, differences arose between 'Ana and Siasoi. Siasoi nevertheless continued to use the allotment and to take nuts from it and permitted by others to use and occupy it contrary to the wishes of 'Ana.

It was not until later in 1962 that 'Ana learned, for the first time, that Siasoi Tafolo had applied in 1952 to have the allotment registered in his own name. She thereupon began this action in the Land Court against him. The Land Court held that since more than 10 years had elapsed since the allotment was registered in Siasoi's name, 'Ana's claim was statute barred by virtue of the provisions of Section 147 of the Land Act.

This Not a case of 'Ana having allowed Siasoi to use and occupy her allotment exclusively or to have adverse possession of it for a period of more than 10 years. He has only used a part of

it in this time and that with her consent for most of the time. She herself has been using a part of the allotment, all the time.

We have examined Siasoi's application to the Minister of Lands to be registered as the holder of the allotment. We find that in the space provided on the form under the heading "Name of Previous Registered Holder" Siasoi not only failed to insert the name "Aisea Saliote", but inserted a "dash" which signified that there had been no previous registered holder of the allotment. By so doing he misled the Minister of Lands, who would otherwise have been put on enquiry as to whether the previous registered holder was alive and if not whether his widow or heir was entitled to the allotment in preference to Siasoi.

'Ana is a widow more than 80 years old. She evidently trusted Siasoi, who did not tell her at the time, in 1952, or at any time later that he had registered his own name as the holder of the allotment.

By so doing he caused Lavaka, the holder, of the hereditary estate who countersigned his application to the Minister of Lands for this allotment to contravene the spirit if not the letter of the provisions of Section 32 of the Land Act which reads :

"The holder of an hereditary estate shall not dispossess in any manner other than the manner provided by this Act any holder of an tax allotment or town allotment of his allotment. Any holder of an hereditary estate acting in contravention of this section shall be liable upon conviction to a fine not exceeding ten pounds or to imprisonment for a period not exceeding three months and shall also be liable in damages at the suit of the dispossessed holder, and the Court shall order the allotment to be returned to the dispossessed holder."

As long as 'Ana consented to the use of her allotment by Siasoi she had no right of action against him in respect of that use. It was only when he continued to use the allotment against her will that she had a right of action against him in respect of that use. This right of action did not arise until shortly before she commenced her action and it was then that she learned for the first time that he had secretly, and by misrepresentation to the Minister of Lands that there had been no previous registered holder of the allotment, obtained the registration of his own name as the holder of the allotment. Her right of action in this respect was clearly not more than 10 years old and was not therefore statute barred. In any event, to permit Siasoi to plead that the Appellant's action was statute barred in these circumstances would be to allow the provisions of Section 147 of the Land Act to be used by him to perpetuate what he had gained by what, in our view, was little less than fraudulent misrepresentation on his part.

For these reasons we shall allow the appeal.

We order that the registration of Siaosi Tafolo as the holder of the allotment be cancelled. If 'Ana wishes to register her name as the widow of the last registered proprietor 'Aisca Saliote she must take the necessary steps to do so. If Siaosi Tafolo wishes to apply again for the allotment he may do so. He must, however, take care not to mislead the Minister of Lands by omitting any material information or by inserting any false information on his application form.

There will be no order as to costs.