

Fotofili v Fua

Land Court
Harwood J
Land Case 20/1982

22 July 1985

Land - consent to allotment by estate holder - withdrawal of consent must be communicated to Minister of Lands

Land - recovery of possession of allotment - proceedings must be brought in accordance with the procedure prescribed by Part IV, Div III of Land Act

In 1976 Sione Fua by agreement with the holder of the tofi'a, Hon Kalaniuvalu Fotofili, applied for a town allotment and entered into possession. No lease was issued, but Fua made payments of rent in 1979 and 1982. On 7 December 1982 the lease was executed, but in the meanwhile Hon Fotofili had given instructions for proceedings to be issued to obtain possession for non-payment of rent, and on 9 December 1982 a writ of summons was filed. A year later Sione Fua died and his widow, Paelata Fua, made payment of rent in 1984 and 1985, and was substituted as defendant in the proceedings.

When the Plaintiff's claim was heard in June 1985, he claimed that the lease was granted and registered by the Minister without the plaintiff's consent and was therefore void.

HELD:

Dismissing the plaintiff's claim:

- (1) Proceedings for recovery of possession must be brought in accordance with the procedure prescribed by Division III of Part IV of the Land Act, which had not been done.
- (2) The plaintiff had not proved that he had communicated his withdrawal of consent to the Minister of Lands.

Statutes considered

Land Act Part IV, Div III

Counsel for plaintiff : Mr Niu
Counsel for defendant : Mr Palu

Harwood J

Judgment

The case concerns a tax allotment of a little over 16 acres at Hamula, part of the tofi'a of Hon. Kalaniuvalu Fotofili, the Plaintiff. By agreement (in the prescribed form) with the Plaintiff, Sione Fua applied to the Minister of Lands for a lease of the allotment on 5th August, 1976 (Exhibit 10). Cabinet gave approval of the grant of the lease on 28th September, 1976 (Exhibit 11). However, no lease was ever executed until 9th December, 1982. This delay in excess of 6 years has remained entirely unexplained, but it is abundantly clear to me that this delay has been the primary cause of these proceedings. The history of the matter is as follows.

In 1976 Sione Fua entered into the use and occupation of the 'api. In 1979 the Plaintiff, unaware that no lease yet existed, complained of non-payment of rent. Sione Fua might justifiably have wondered why he was being asked to pay when he did not yet have his expected lease; but it seems that there were other reasons also for his failure. However on 24 September, 1979, payment was made by him and accepted by the Ministry of Lands, and no doubt the appropriate amount was forwarded to Treasury and collected by the Plaintiff or on his behalf.

Another 3 years passed by. No lease was forthcoming, nor any rent. The Plaintiff was still not aware that no lease existed - and no doubt Sione Fua was left still wondering why he should have to pay when he still did not have the expected grant of the lease. The Plaintiff says he wrote Exhibit 2 on 1st November, 1982. He got no response; except that on 5th and 8th November, 1982, Sione Fua did pay to the Ministry a total of \$480, which was forwarded to Treasury by vouchers (Nos. 22670 and 22671, part of Exhibit 5) very shortly thereafter.

The Plaintiff wrote Exhibit 3 on 16th November, 1982, and as also in the case of Exhibit 2 at the time of writing he was obviously unaware of the non-existence of the lease. When Exhibit 3 was written he was also unaware of the payments recently made. He got no response, but possibly the receipt of Exhibits 2 and 3 struck a chord in the memory of some member of staff in the Ministry of Lands, for on 7th December, 1982, the lease (Exhibit 4) in proper form was executed. It was expressed to be for a term of 20 years commencing on 24th September, 1976, and thereunder rent is payable of \$120 on the 24th September in each year.

In the meantime the Plaintiff had instructed a lawyer to commence these proceedings, to regain possession, and the Summons was filed on 9th December, 1982, some 2 days after the lease had been executed. It alleges that Sione Fua "has failed to pay rent for the past 3 years". No defence was filed, nor any other step taken in the proceedings.

On 24th December, 1983, Sione Fua died; this was shortly after his payment of the first rental instalment since the execution of the lease. On or about 5th June, 1984, Sione's widow was granted Letters of Administration of his estate and the lease was included in her estate affidavit. On 25th September, 1984, she paid rent of \$120 to the Ministry which was only forwarded to Treasury a few days later. On 7th February, 1985, the sums payable to the Plaintiff by the Ministry of Lands were collected from Treasury under vouchers 22669, 22670 and 22671 (part of Exhibit 5) on behalf of the Plaintiff. On 24th April, 1985, Paelata Nu'usila Fua was substituted for her deceased husband as Defendant to these proceedings in the course of directions given by this Court.

At the late stage during the evidence for the Plaintiff at the hearing on 18th June, 1985, it became evident to all, for the first time, that the lease in question (Exhibit 4) was

never in fact executed until 7th December, 1982. This led to an application the following day, almost at the conclusion of the evidence, that the Plaintiff have leave to amend the claim. The amendment requested was to insert, immediately before the word "Wherefore" in the Summons, the words "Alternatively, the Plaintiff says that Lease No.3170 was granted or registered by the Minister of Lands without the Plaintiff's consent and that therefore the said lease is null and void". Surprisingly the lawyer for the Defendant agreed to this request. In the interests of justice, but with some misgivings in view of the fact that the Minister of Lands is not a party to these proceedings, I allowed the amendment and proceeded to hear final submissions.

100 With regard to the claim originally pleaded in the Summons I hold that it must fail. Quite apart from the fact that it is based upon the terms of a lease which never existed until two days before the institution of the proceedings, the claim is for ejection on the ground of non-payment of rent and in those circumstances the Plaintiff's only remedy was to abide by the procedure provided in Division III of Part IV of the Land Act. I consider that the filing of the original claim against Sione Fua was entirely misconceived for that reason - and it is interesting and I believe significant in this context to note the provisions of section 32 of the Act.

110 By reason of the amendment, the case might I suppose now be said to be justiciable by virtue of section 127(1)(b), in that the question of title has been raised. On that assumption the Plaintiff would be a proper party to the proceedings. It is argued on his behalf that the lease was rendered null and void because the Plaintiff had, in effect, withdrawn his consent to its execution on account of the record of late payment of the sums due under the agreement (Exhibit 10) by Sione Fua and that Exhibits 2 and 3, in particular, entitled him to do so and show that he did so. The evidence in this case does not satisfy me at all that such withdrawal of consent was ever communicated, properly or at all, to the appropriate person, namely the Minister of Lands who under section 19(1), is the representative of the Crown in all matters concerning the land of the Kingdom and in whom lay the power to remedy the situation on the Plaintiff's behalf. The only direct evidence is Exhibit 2, addressed to the Chief Surveyor, the original of which has not been produced and which appears to be the carbon copy intended for a person named Roy Cocker. There is the further question whether the Plaintiff was entitled to withdraw his consent for the reason alleged, or whether his appropriate remedy lay elsewhere? In any case, such lack of consent not having been communicated to the Minister it cannot be correct to say that the lease, when executed by him, was null and void. In my judgment the lease having been executed and registered, cannot be set aside for the reason now claimed and it was entirely effective in all respects.

120 The position now is that Sione Fua's widow, Paelata, is the lessee and the claim for ejection against her cannot possibly succeed; there is no rent in arrears, and she is the holder of the allotment by virtue of the lease and the Letters of Administration duly granted to her subject to sections 110(b), 111 and 112 of the Act.

130 I wish to emphasize my belief that his claim both as originally pleaded, and as amended, ought not to have been pursued except in accordance with Division III of Part IV of the Act. In that event, I do not think the principles of English law (particularly the equitable principle of relief against forfeiture) could be applied since section 64 appears to preclude such considerations. If, on the other hand, and contrary to my belief, the case is truly justiciable by virtue of section 127(1)(b), then I think those principles could if

necessary be applied in accordance with the Civil Law Act (Cap. 14). I have no doubt that the equitable principle of relief against forfeiture, if applied in favour of this Defendant, would mitigate any order of eviction and the result would be the same.

I give judgment for the Defendant with costs within the lower scale to be taxed if not agreed; but the costs I award exclude any item in respect of the two listings of this case for mention on 18th January and 24th April, 1985, and in respect of the filing of the defence on 14th May, 1985.