

## **Fosita v Tu'ineau, Hon Fielakepa, Minister of Lands**

Privy Council  
Appeal No 12/1985

21 April 1986

*Land - cancellation of grant by Minister - Minister's decision based on lack of awareness of true facts.*

10 In 1963 Fosita made an application for a grant of 3 acres of land as a tax allotment, but did not produce proof of his age or pay the prescribed fees. In 1974 Fosita allowed Tu'ineau to occupy a portion of the land and said he would surrender that portion to Tu'ineau, on the basis of which Tu'ineau made extensive improvements including building a substantial house. In August 1983 Fosita gave proof of his age and paid the prescribed fees and in September 1983 he was issued with a deed of grant of the 3 acres of land. Fosita then ordered Tu'ineau off the portion of the land. Fosita then ordered Tu'ineau off the portion of the land which he had previously promised to surrender to him.

20 **HELD:**  
Dismissing the appeal.

That the decision of the Minister to make a grant of the land to Fosita was based upon a lack of awareness of all the facts and must be cancelled.

Privy Council

### Judgment

This is an appeal in an unusual land case in which Harwood J. held that the Respondent (Sione) was entitled to a grant of an area of 30 perches from a tax allotment of 3 acres 15.4 perches of which the Appellant (Fosita) claims he is the lawful holder by a deed of grant made on the 14th September 1983.

Harwood J. heard evidence from both Sione and Fosita and accepted the former's evidence as accurate and convincing. He found Fosita's to be implausible in some respects, and for the most part unreliable. In 1963 Fosita signed an application for a grant of the 3 acres 15.4 perches but did not comply with the further provisions of S. 43(2) by producing proof of his date of birth and paying the prescribed fees. He did nothing more about the matter until 20 years later when he produced evidence of date of birth and paid the necessary fees. It was then that the grant was made. (It was not a matter raised in the Land Court, or before this Council, but the questions could arise whether the mere filing of an application without complying with the remaining provisions of S. 43(2) amounts to a valid application; or, if it does, whether it can be revived after a lapse of 20 years when circumstances have changed. It is a procedure which could result in abuse of the land granting procedure, and injustice).

There were certainly many changes in this case between 1963 and 1983. In 1974 at the latest, Fosita agreed that Sione could occupy 30 perches of the land on a permanent basis and the site was pointed out to him. It was swampy land and Sione brought in 60 trucks of fill at a cost of \$1,000, and built a substantial home. In September 1982 Sione asked Fosita to sign a prepared letter of surrender of the 30 perches. Fosita did so, and it was apparently taken by Sione to the Lands Office. By the 27th September 1982, Sione had made an application for a grant of the 30 perches and complied with all the provisions of S. 43(2). On the 16th August 1983, at which time no action had been taken on Sione's application, Fosita paid the survey fees, and poll tax and gave proof of age, and on the 14th September was issued with a deed of grant to the whole area of 3 acres 15.4 perches on the application filed 20 years earlier.

A few days later the Minister called a meeting of all interested parties, presumably because he felt that all was not well with the grant made. He may have been aware that after Fosita had received the grant he ordered Sione to vacate the 30 perches but Fosita refused. It was at the Minister's suggestion that Sione issued proceedings.

What Mr Niu's main grounds of appeal were that Harwood J. erred in holding that before the grant of 16th August 1983 Fosita was not a lawful holder, and that consequently any question of surrender, and protection of Fosita's heirs pursuant to S. 54 was irrelevant. We are inclined to agree that Harwood J. erred in his reasoning, but in our opinion this appeal can be disposed of on a more basic ground. An application to perfect a grant, whether it be by way of a posthumous grant, or pursuant to an application under S. 43, calls for the exercise of the Minister's discretion in the light of the facts then pertaining. It is obvious that had the Minister been aware of all the facts in this case he would not have perfected Fosita's title to the whole area.

We do not propose to deal with Mr Niu's further submission that Harwood J. erred in concluding that Fosita was "an evidently greedy person not in the least averse to taking advantage of the apparent ignorance of his tenant's rights". It would not be to the Appellant's advantage to do so.

The appeal is dismissed but in the circumstances we make no order for costs.