# Tauelangi and Minister of Lands v Tauelangi

Privy Council
Appeal No 10/1985

21 April 1986

*Land - cancellation of grant by Minister - Minister's decision based upon incorrect understanding of fact*

*Land - grant and registration of land - jurisdiction of Land Court and Privy Council to order*

*Land - application for grant not required to be made personality to Minister.*

Tupou Tauelangi was the son of the first marriage of the holder of a town allotment, and Viliami Tauelangi was the son of the second marraige of the holder. Tupou left the allotment before Viliami was born, but Viliami stayed on the allotment and looked after his parents during their lifetime.

In January 1975 before the death of his father in April 1975, and again in April 1976, Viliami made application to the Minister for the grant of the allotment to him, but no action was taken by the Minister on either application.

In 1977 the Minister called a meeting and decided to divide the allotment equally between Viliami and Tupou's son, believing that an application had been made by Tupou's son in January 1975 on the same day as Viliami's application.

Viliami brought proceedings in the Land Court for an order that the allotment be awarded to him alone, and this was granted by the Land Court. Tupou's son appealed to the Privy Council.

HELD:
Dismissing the appeal:

(1) The Minister's decision had been made in the belief that Tupou's son had made an application for the allotment on the same date as Viliami's first application, but this belief was mistaken, since the application had not been made until January 1977;

(2) There was no requirement that application had to be delivered personally to the Minister;

(3) The Land Court and Privy Council could make an order directing the grant and registration of an allotment.

Counsel for First Appellant : Mr Niu

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Judgment

On the 22nd July 1985 Harwood J. made an order directing the Minister of Lands to grant the Respondent (Viliami) a town allotment of 24.4 perches in Pea. At the same time he made certain orders concerning a tax allotment which is to be divided between Viliami and the First Appellant (Tupou).

This appeal concerns the town allotment only. Siosiua Tauelangi had been the holder of the allotment although there was no registered grant to him. Siosiua was married twice and Tupou is the second son of his first marriage, and Viliami a son of the second marriage. Tupou left home the year before Viliami was born but the later has spent his whole life on the allotment. It was he who looked after his elderly parents in their declining years and cultivated the tax allotment. Siosiua died on 6th April 1975, and his wife a year later.

On the 13th January 1975 Viliami applied for a grant of the allotment.

He complied with the requirements of S.43(2) of the Land Act by making application on the prescribed form, producing his birth certificate, and paying the prescribed fees. It seems that no action was taken by the Minister on that application.

Following Siosiua's death no claim to inheritance was made in respect of either the tax or town allotments by the widow or any heir within 12 months. The consequence was that the tax allotments reverted to the Crown. As for the town allotment Harwood J. concluded that no question of reversion arose because Siosiua had not been a registered holder. There are good grounds for believing that if the widow or an heir had claimed the town allotment within one year they would have been granted posthumous registration pursuant to the provisos to S.74 or S.76. That is by the way, because one way or another the town allotment became available for grant, either by reversion or because Siosiua could not have established title.

At the expiration of a year after Siosiua's death the Minister tried to get both branches of the family together to discuss the fate of both allotments. A meeting was finally arranged at which little agreement could be reached. It seems that in the end the Minister decided that it would be appropriate to divide the tax allotment equally between Viliami and Tupou, and the town allotment between Viliami and Tevita, Tupou's son. It is not clear why Tevita has never been a party to these proceedings and indeed why the Minister should have thought that the was entitled to a grant.

It seems clear that the Minister was mislead into believing that Tevita had made an application on the 13th January 1975, the same day that Viliami's was lodged for in his defence to the Respondent's claim in this pleading:-

> "Application for the town allotment were filed by the Plaintiff on the 13th January 1975 and by the son of the First Defendant."

And in Tupou's Statement of Defence is this statement:

> "My son has applied for the town allotment of the deceased and his application was filed with the Minister of Lands Office on the 13 January 1975 because I've already got a town allotment."

Tevita's application was in fact not filed until the 23rd September 1977, which was the day of the Minister's meeting, and furthermore, it was not signed by Tevita but by Tupou on his behalf, which appears to be contrary to the express terms of S.43(2)(a). As the matter was not fully argued before us we make no further comment upon it except to warn that such an application may well be found to be invalid.

The Appellant's first ground of appeal relates to Harwood J's conclusion that Viliami was entitled to a grant of the whole allotment on the basis of his January 1975 application, when the claim was based on a further application made on the 9th April 1976. It is unclear whether the latter application, which was not produced as exhibit, related to the tax or town allotment but for present purposes we shall assume that it was in respect of the latter which puts Viliami in an even stronger position. By the time of the meeting with the Minister in 1977 Viliami had, on two occassions, done everything necessary to justify a grant but for some unexplained reason neither application had been actioned by the Minister although there were no opposing applications.

There was really no call for a meeting concerning the fate of the town allotment.

Mr Niu's point concerning Viliami's January 1975 application was that no grant could have been made upon it because at that time the allotment was not vacant and available for allocation because Siosaia was still alive. Although not registered as holder the circumstances were such that he must surely have had the status of a "lawful holder" said Mr Niu. That may well be so, but there was no bar to a grant being made on the application a year after Siosiua's death, or indeed on the 9th April 1976 application. Mr Niu argued that Viliami had abandoned his January 1975 application because fresh applications were made (he has filed three in all) but we do not see it that way. It simply indicates an attempt to get some action, which the Minister, for reasons known only to himself, was not prepared to take.

Mr Niu further submitted that there was no evidence that Viliami's application of January 1975 came before the Minister in the sense that Viliami came personally before the Minister and handed him his application, birth certificate, poll tax certificate and survey fee. We reject that submission otu of hand. Personal contact is unneccessary.

Mr Niu next submitted that Harwood J. had no jurisdiction to order the Minister to grant and register an allotment. We reject that submission for the reasons stated in another decision to be delivered at this sitting of the Council, namely Tevita Tonga Kaufusi and another v Tevita Ului Taunaholo (Appel No.2 of 1984). [1981-1988] Tonga L.R. 66.

In the result we see no merit in this appeal which is dismissed.