Motuliki v Namoa, Motuliki & Minister of Lands

Privy Council
Appeal No 5 / 1990

30 March 1990

Limitation of actions - accrual of right of action to infant

Limitation of actions - whether applies to claim made through some other person

Land - surrender of allotment - limitation of action to dispute validity of surrender

Land - holder estopped from evicting person whom he has allowed into occupation

Estoppel - holder of allotment estopped from evicting person whom he has allowed into occupation

The father of the appellant in 1965 and 1966 surrendered his town allotment and it was allocated to 'Elisi Namoa by the Minister of Lands. The surrenderer did not secure the consents necessary under sections 51 and 54 of the Land Act (Cap 132). At the time of the surrender the appellant was about 5 years old. The Land Court dismissed the appellants claim to the allotment and the appellant appealed.

HELD, dismissing the appeal,

1. The appellant was not prevented from bringing the proceedings, notwithstanding the lapse of time since 1965 and the provisions of section 148 (now 170) of the Land Act (Cap 132), because he had brought them within 10 years of attaining his majority and was not claiming through his father but quite independently of him since his father had, by surrendering the allotment without the required consents, surrendered also his right to challenge the legality of the surrenders.
2. The appellant's father and also the appellant were estopped from evicting 'Elisi Namoa by reason of their allowing him to remain on the property for about 25 years and to build a substantial house on the property.

Statutes considered: Land Act (Cap 132) Sections 51, 54, 170

Counsel for the appellant : Mr L. M. Niu and Mr S. 'Etika
Counsel for the first respondent : Mr S. Hola
Counsel for the second respondent : Mr K. Whitcombe

Judgment of the Privy Council

This is an appeal against the judgment of Martin C.J in which he rejected the Appellant's claim to part of a town allotment formerly owned by his father, the Second Respondent.

The Appellant's grandfather, also called Tevita, was registered as holder of the allotment in 1922 and on his death in 1957 it passed to his heir, the Appellant's father Viliami. In February 1965 Viliami surrendered to the Crown 32.17 perches of his allotment of 1 rood 24.3 perches and the Minister granted it to the First Respondent 'Elisi. At that time the Appellant would have been about five years old. In 1966 Viliami exchanged the balance of his allotment for an allotment registered in the name of Tevita Taukolonga. It is not clear from the record whether that balance was registered in the name of Tevita Taukolonga or 'Elisi Namoa but as relief is claimed against 'Elisi only we will proceed on the basis that he now has title to the whole of the original allotment. There is support for this view from the fact that apparently Taukolonga has no family and there is a close family relationship between him and 'Elisi.

It is common ground that the surrender of the 32.17 perches in 1965 was unlawful in that the conditions necessary to meet the provisions of s.51 or s.54 of the Land Act were not met. It follows that the legality of the surrender could have been challenged in 1965, as could the grant to 'Elisi. In the lower Court it was claimed on the Appellant's behalf that it was open to him to challenge the surrender and grant despite the fact that such a cause of action arose some 17 years before the proceedings were issued.

Section 148 of the Act reads:-

> "148. No person shall bring in the Court any action but within ten years after the time at which the right to bring such action shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims then within ten years next after the time at which the right to bring such action shall have first accrued to the person bringing the same."

At the time of the surrender the Appellant was five years old but there is authority for the proposition that where a right of action has accrued to an infant the limitation period does not commence to run until he has reached his majority - namely 16 years. In the present case the action was brought well within the 10 years from the Appellant attaining his majority. However, the Respondents' claim that the right to bring an action relied on by the Appellant is one which first accrued "to some other person", namely his father, so his action is well out of time because the limitation period expired in 1975. Mr Niu's answer to that was that the Appellant was not bringing the action through his father but was bringing it against his father and in his own name.

We are satisfied that s.148 cannot be circumvented simply by a Plaintiff joining the person to whom the right of action first accrued as a Defendant. However, there is another reason why we believe this action is not barred by time and we stress that what we have to say in this regard applies only because of the particular circumstances of the case. The legality of the surrender could have been challenged

by the Minister or Viliami but it was Viliami who voluntarily surrendered his right to the allotment, although in fact the surrender was unlawful. It appears to us that by so doing he also surrendered his right to challenge what he had himself done, to the detriment of his heir. In these special circumstances we consider that the Appellant had an independent right of action which he could pursue.

It was next argued for the Respondents in the Court below that the Appellant was estopped from evicting 'Elisi and the Learned Trial Judge accepted that submission. It was accepted that since taking possession some 25 years ago 'Elisi has spent a considerable sum on the property. The sum of $100,000 was mentioned as the value of the house that has been built. Mr Niu challenged that figure in the lower Court but conceded that its value was "substantial". Martin C.J. concluded that Viliami must have known what 'Elisi was doing with the land and that he was acting in reliance on his grant; and that the Appellant was also barred from obtaining possession. We agree with that conclusion.

Mr Niu submitted in short that the provisions of the Land Act provide a complete code and there was no room for equitable titles. This is not a case where 'Elisi will obtain an equitable title. He already has title pursuant to the provisions of the Land Act and all that equity has done is prevent that title from being challenged.

The final defence raised in the lower Court was accord and satisfaction but in the circumstances there is no need to deal with that issue.

It is appropriate to make a comment which may go some way towards making the Appellant feel that his failure on this appeal is not as bad as it appears. Viliami has a town allotment and the Appellant is heir to that. We asked Mr Niu why the Appellant was pursuing the present claim in those circumstances and his response as we recall was because "this allotment is bigger." However, it seems that only 32.17 perches was surrendered unlawfully. The balance was exchanged and there did not appear to be any challenge to that transaction. Viliami's allotment is 32.16 perches.

The appeal is dismissed with costs to 'Elisi Namoa only to be fixed the Registrar.