

**Holo v Tu'ilakepa & others**

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Supreme Court, Nuku'alofa  
Dalgety J  
Civil Case No.237/94

11 March 1994

*Cemetery - who determines burial*

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*Land Act - cemeteries - determination of place of burial*

An application was made to prevent a burial occurring in an ancient traditional and hereditary burial ground of a noble family, of a deceased person not of the blood line of that family.

Held (refusing the application):

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1. The Minister of Lands is prima facie the authority responsible for deciding where someone should be buried.
2. The graveyard in question was a cemetery within the meaning of the Land Act.
3. The application should be refused; in any event.
4. No substantive action had been taken and should have been.
5. Jurisdiction in the matter lay in the Land Court and not the Supreme Court.

Statutes referred to : Land Act s.140.

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Counsel for the Plaintiff : Mr Holo  
Counsel for the Defendants : Mr Niu

### Judgment

The NAKULU KI LANGI graveyard in the village of Talasiu is the ancient, traditional and hereditary burial ground of the noble family of FAKATOUIFIFITA. The noble title of Fakatouififita no longer exists as a separate noble estate. A relative of that family has petitioned the Court to interdict the burial later today in that graveyard of a person who is not a blood relation of the Fakatouififita family. The deceased is related to the Defendants. He was the uncle of the Hon. Vaha'i and a protege of the Tu'ilakepa family. Tu'ilakepa's tofi'a includes the village of Talasiu. The deceased has resided on the hereditary estates of that noble family for about forty years. The estate holder has directed that the deceased be buried at the aforesaid graveyard. Traditionally it was the responsibility of the estate holder to determine the place of burial of a deceased. Customarily he is still consulted, but the legal authority to decide upon such matter is no longer vested in him. Under Section 140 of the Land Act (cap.132) cemeteries are "deemed to be Crown Land reserved for public purposes". The Minister of Lands has agreed to the deceased being buried at the Nakulu Ki Langi graveyard. Prima facie the Minister of Lands is the responsible authority for deciding where someone should be interred. I have heard no convincing legal argument that the Minister does not enjoy this power or that the graveyard in question is not a "cemetery" for the purposes of Section 140. For present purposes the balance of convenience certainly favours the burial proceeding today. I shall refuse the interim injunction sought.

If there remains a substantive dispute between the parties then that matter can still be tested judicially provided that action is commenced in proper form. The present application is for an interim injunction only. There is no substantive action and in my opinion, there should have been. An injunction is a substantive legal remedy and an action may be brought praying that such an Order be made. Invariably other remedies are sought, such as a declarator. Such an action having been commenced any necessary interim orders can be applied for. In general, actions for an interim Order alone are not competent : There are limited exceptions but not in the present context.

There are two other issues. (First) where an injunction is sought the precise Order required should be spelled out in the pleadings or in the relevant Application and the person or persons to be inhibited and restrained should be clearly identified. These requirements were not complied with in the present Application although information provided at the Hearing went a long way to remedying this defect. (Secondly) I am not persuaded that this is an issue within the jurisdiction of the Supreme Court. In my opinion this is a Land Court matter.

Accordingly, I shall pronounce an ORDER in the following terms -

IT IS ORDERED AND ADJUDGED that the Plaintiff's Application of 10th March 1994 for an interim injunction be refused.