IN THE TUVALU COURT OF APPEAL
LAND JURISDICTION
TUVALU

Land Appeal No 1/2014

BETWEEN: IOSIA APELU and OTHERS

Appellants

AND SEMELI SEMELI and OTHERS

Respondents

Before: Tompkins JA
Paterson JA
Potter JA

Counsel: *Laingane Italeli* for appellants
Filiga Taukiei for respondents

Date of hearing: 27 August 2014

Date of Judgment: 30 August 2014

JUDGMENT OF THE COURT OF APPEAL

Introduction

[1] In 1935 the Lands Court of Funafuti made an order relating to certain lands in Funafuti. On the records now available, the precise nature of the order and the land involved is unclear. The decision refers to the use by Siavau of certain lands of Anitelea. What is clear is that it involved issues over land beween Anitelea, from whom the present respondents are descended, and Siavau, from whom the present appellants are descended. The same land has been the subject of dispute over the intervening 89 years. It is to be hoped that this decision will finally bring those disputes to an end.

A brief history.

1948 Lands Court

[2] In a hearing before the Land Court on 11 November 1948, Siavau claimed the use of some of Anitelea's lands, in accordance with the decision of Mr Kennedy in 1935. The court held that "Mr Kenndy's decision should be upheld".

[3] The court made the finding:

> "Siavau and family to have the use, while they at Funafuti, of the lands Fudufeke and Tefutu and the pit Temulivae, but these lands and pit to remain Anitelea's property, to be returned to him if Siavau and family go back to Nuhulaelae. Siavau and family cannot dispose of the lands and pit."

1969 Land Court

[4] Siavau was again claiming some lands from Anitelea, After some discussion between the parties, the decision of the court was to leave the matter for discussion between the family members.

1970 Land Court

[5] This appears to be the first time that Siavau was asking for certain lands of Anitelea to be transferred to him. The record shows detailed comments by Anitelea and members of his family and Siavau and members of his family. Various lands were mentioned, including Teafuafou, Luamanifi, Kaasifa, Matuatu and Motuloa. It is clear from these discussions that the parties were endeavoring to reach an agreement on how the claim by Siavau and his family should be resolved.

[6] The record of the discussions before the court concludes:

> [a] **Decision:** to be registered in the Land Register book of Funafuti under the claimants names Siavau and Feola

[7] The register shows the registration of two lots of land, Tafutu and Folokolupe, to Siavau and to Feola, transferred from Anitelea. Thus the claims by Siavau and Feola were resolved by the transfer to them of the two pieces of land pursuant to an order of the court.

[8] There was no appeal from the decision of the Lands Court

2011 Lands Court

[9] The claimants were the descendants of Siavau, the respondents the descendants of Anitelea. The claimants were renewing their claim to more of Anitelea's land. After considerable discussion between the parties, the court decided:

> "Enquire the Senior Magistrate his views on this matter as all the members of the Lands Court have conflicts of interest in this particular case, and to confirm as to which court hear this matter"

[10] From this decision the descendants of Siavau appealed to the Lands Court Appeals Panel

2012 Lands Court Appeals Panel

[11] We do not have this decision but it appears from the decision of the Senior Magistrate to which we refer in [12] that the Appeals Panel dismissed the appeal by the descendants of Siavau.

2013 Senior Magistrate's Court

[12] The family of the present appellants appealed to the Senior Magistrate's Court. The appeal was dismissed on two grounds, first that the decision of the Lands Court was an interim order from which there is no right of appeal, and secondly, that the Lands Court had no jurisdiction to reconsider the same issue that was decided in the decision of the 1970 Lands Court.

2014 High Court

[13] The appellants appealed to the High Court from the decision of the Senior Magistrate. In a brief judgment Millhouse J dismissed the appeal on two grounds First, he held that the issue was determined by the 1970 decision of the Lands Court. Secondly, he held that it was too late, after 40 years, to reopen the case.

The issues

[14] The notice of appeal seeks orders that the decision of the High Court be set aside. It does not seek any other specific remedy. We assume that the appellants are asking for the claims by Siavau's descendants to more of Anitelea's land be referred back to be heard by the Lands Court. Any such reconsideration would

involve a challenge to the 1935 and 1970 decisions to the extent that they did not allocate sufficient of Anitelea's land to Siavau

[15] The appeal gives rise to two issues. The first is whether the Lands Court in 1970 erred in the order made. Counsel for the appellant submitted that the decision was in error, not because it was wrong on the evidence before it, but because subsequent discoveries by or on behalf of the appellants have revealed that the appellants were entitled to some land in addition to the two lots of land allocated in that decision. Their submissions challenge not only the 1970 order, but also the orders made by the Commission in 1935

[16] This ground cannot succeed. The decision of the Lands Court in 1970 was arrived at after full discussions involving some six lots of land and negotiations between the family of Anatelea and the family of Siavau. The agreement they reached was then incorporated into the order of the Lands Court. Both parties are bound by their agreement and the consequential order. It is no longer open to one party later to seek to come back to the court to reopen afresh the very issue on which they had earlier agreed.

[17] The only way the 1970 decision of the Lands Court could have been challenged was by an appeal against that decision. No appeal has been made. Any appeal would have faced insuperable difficulties when the decision was made by the Lands Court based on the consent of all the parties.

[18] The second ground concerns ss 4 and 14 of the Native Lands Act. Section 14 provides:

> (14) The court may, subject to the approval of the Lands Officer, register or cause to be registered in the register of native lands any title to native lands which it finds to have existed at the time of the enquiry of the Commission held on the island but was not registered by the Commission

[19] To the extent that the appellants rely on this section to amend orders made by the Commission in order to make a grant to the appellants, the appellants are faced with the indefeasibility of title provision in s 4 of the Native Land Act:

> 4. (1) Subject to the provisions of this section, titles to native lands –
>
> (a) registered by the Commission as evidenced by a register of native lands, and
>
> (b) registered by the court in pursuance of sections 14 and 19(1)(b) as evidenced by a register of native land,
>
> shall be indefeasible.

[20] If the title to land is indefeasible, that means that it cannot be challenged, changed or revoked. The appellants cannot overcome the indefeasibility provision by reliance on s 14. It applies only to land not registered by the commission and which therefore is not on the register of titles. There is no evidence to show that the lands the subject of the appellants' claim was land not registered by the Commission or by a later order of the Lands Court.

Result

[21] The grounds advanced by the appellants in support of the appeal cannot succeed. The appeal is dismissed.

[22] If any issue on costs arises, counsel may submit memoranda within 14 days of the delivery of this decision.

Tompkins JA

Paterson JA

Judith Potter JA.

Potter JA