

TEVITA ULUILAKEPA v. FULIVAI.

(Land Court. Scott J. 'Ahome'e Assessor, Vava'u, 15th October, 1924).

Law of succession — Titles conferred by Tupou I — Right of Land Court to deal with question of Nobles' titles.

This was a claim to the title and estates of Fulivai.

The facts are set out in the judgment.

HELD. The plaintiff was the heir to the title and that it had been erroneously conferred on the defendant.

M. Finau for the plaintiff.

S. Vaikona for the defendant.

C.A.V.

The case was brought before this court in Vava'u on the 8th October, 1923. It was adjourned until I wrote to Her Majesty in reference to some evidence given during the hearing purporting that the Fulivai who was formerly known as Kaianuanu was only appointed as a representative of the lawful heir to the title.

The plaintiff claimed from the defendant the hereditary estates known as Hunga, Fangalepa and Loto'uila belonging to the title of Fulivai which is a Noble's title. The claim is based on the grounds that the plaintiff is the legitimate claim and lawful heir to the Fulivai who is known as Kaianuanu and that the present holder of the title would not be able to claim in accordance with the constitution and the law the title and the estates in question. From evidence brought before the court it appears that at the time when His Majesty King George Tupou I was allocating estates to the nobles and confirming ownership on them who already held estates, the title of Fulivai was held then by one Kaianuanu and the estates known as Hunga, Fangalepa and Loto'uila were given to him by His late Majesty King George Tupou I. Kaianuanu was married to Huni but there was no child of this marriage and again he married Vika but again there was no child of this marriage. He then married Fehia. This marriage has been proved. There were two children of this marriage, Vake and Uluilakepa, the latter being the plaintiff. Vake was the elder but from evidence heard before the court it appeared that he died without an heir and Tevita Uluilakepa survived him and he is the plaintiff. On Kaianuanu's death Hala'api'api held the title. (Hala'api'api was the third son of Kemoeata and this will be dealt with later on). On Hala'api'api's death the title passed on to one Siofilisi but he was neither a son of Kaianuanu nor of Hala'api'api but the son of a brother of Hala'api'api. The holder of the title after Siofilisi died without an heir. The present holder of the title of Fulivai, Iki, who is the defendant is a brother of Siofilisi. The defendant disputed the claim on the grounds that his grandfather held the title prior to Kaianuanu and that he, the defendant had a certificate of appointment from Her Majesty Queen Salote

Tupou thereby conferring on him the title of Fulivai with all the estates pertaining to it with effect from the 1st March, 1919. There was some evidence given before the court in regard to the first Fulivai and the defendant believed that His Majesty King George Tupou I conferred the title on Kaianuanu only as a representative of the children of Kemoe'atu as the said children were not of age then. It is clear from the evidence given before this court that the title with the estates pertaining thereto were actually given by the King to Kaianuanu and the assumption that Kaianuanu was only a representative of the children of Kemoe'atu was not supported by any of the evidence heard except that of the defendant's. I wrote to Her Majesty in regard to this point and Her Majesty replied that she could not give a statement but the Government Gazette does not say anything to lend support to the plaintiff's assumption. (There were two families, that of Kaianuanu and that of Kemocata and the descendants of these families are squabbling over the title and the estates.) Kemoe'atu died in Fiji. He had sons the youngest of whom was Hala'api'api. After the constitution was formed His Majesty conferred titles on the nobles, he conferred the title in question of Kaianuanu and witnesses have sworn to this fact — The said witnesses were Tevita Tapueluelu, Ika Fa'oa and Fulivai (Defendant). He stated that His Majesty conferred the title on Kaianuanu, he being the holder of the title when the constitution was formed. On Kaianuanu's death his eldest son was according to the constitution and the law next in line to the title and the hereditary estates but this eldest son did not survive Kaianuanu so the second son was next in line. The title was not conferred on the second son and there is no reason given apart from the defendant's assumption that Kaianuanu was only a representative of the children of Kemoe'atu. This assumption had not been proved yet. Hala'api'api, the third son of Kemoe'atu was then appointed Fulivai. For some unknown reason research was made after Ha'a'api'api's death and the title reverted to Siofilisi whom as has been stated died without an heir. The title was then conferred on the defendant who is the brother of Siofilisi, Siofilisi being the son of Siokatame Vavaha'i who was the eldest son of Kemoe'atu. My considered opinion is that the succession to nobles' estates is bound by the rules of succession given in the constitution and as indicated by the evidence heard the title and the estates were conferred on Kaianuanu so the same must pass on to Kaianuanu's heir if he had such. The Plaintiff has proved that he is the second and legitimate son of Kaianuanu, the elder brother having died without an heir so he, the second son is now legitimately next in line of succession to his father, Kaianuanu who is now dead. Although a noble's title has been conferred and the defendant was given an official letter of appointment from Her Majesty and it will be assumed that there is no need for Her Majesty to appoint another noble while the present holder is still alive and is a legitimate heir of the former holder of the title nevertheless it is not right for Her Majesty to confer titles on nobles without a thorough research being made to ascer-

tain the lawful heirs to such titles. That is why cases of this nature are brought before the court and it is the duty of this court to decide. With all due respect to Her Majesty, I am satisfied that no letter of appointment of the nature of the matter in question will hinder this court from acting in accordance with the constitution and the Law of Tonga. When a title is for the first time conferred, that same title with all estates pertaining thereto will be inherited in accordance with the constitution and the law. Any new appointment will not waive the law of succession and this court would rather see justice done than honour what is now known as the new appointment. The court must follow the course of justice and act in accordance with what it views to be just so the court declares that the lawful heir to the title of Fulivai and all the estates pertaining thereto is the son of Kaianuanu, this said son being the plaintiff in this case.

Verdict for the plaintiff.

EDITOR'S NOTE: This judgment was confirmed by the Privy Council on 23.2.27.
