

SIU PANGIA v. KALANIUVALU.

(Land Court. Ragnar Hyne J. Nuku'alofa, 7th, 25th April, 1937).

Lease of land by Noble — Alteration of Toti'a — Amendment to Schedule I of Land Act 1927 necessary — Leases personal property — Land Act 1927 S. 5, S. 9, S. 41 — The Probate Act 1915.

This was claim by Siu Pangia, the widow of Siocli Pangia a Noble, to a piece of land in Nuku'alofa named Fongoloa which had been leased to her husband. It was held that the Plaintiff was entitled to Fongoloa as part of the personal estate of her husband. The facts are fully set out in the judgment.

HELD: Verdict for the plaintiff.

Uili Ve'a appeared for the plaintiff.

M. Finau appeared for the defendant.

C.A.V.

RAGNAR HYNÉ J. : In this action, Siu Pangia claims from the Noble Kalaniuvalu, a piece of land called Fongoloa, situated at Nuku'alofa, Tongatapu and containing an area of 8 ac. 2rds. 4.5 perches.

The plaintiff claims the land by virtue of a Deed of Lease, dated the 19th day of April, 1926, and numbered 1393, whereby the land in dispute was leased to her husband, the late Noble Siocli Pangia.

The noble Siocli Pangia, noble of Lapaha, died on the 29th May, 1935, and left him surviving his widow, Siu Pangia, but no children.

The noble died intestate and on the 12th June, 1935 letters of Administration of the estate of the deceased were granted by the Supreme Court to the widow, Siu Pangia.

The inventory filed by her, though including the houses on Fongoloa, did not include the leased land, among the assets. The widow gave as a reason for the non inclusion that she was advised to omit it by the Registrar to whom she had intimated there was some dispute as who was entitled to this land.

On the 14th August, 1936, the Clerk to the Minister for Lands made demand for rent, which the widow paid. On the 9th September, 1936, the Minister wrote thanking her for attending to the matter, and enclosing receipt for £3/8/- said to have been paid by the Siocli Pangia estate.

The widow then made application to the Minister for Lands for a transfer of the land at "Fongoloa" to her. The Minister, in a letter dated the 27th October, declined to transfer and referred the widow to the Land Court to determine her right to the land.

The noble Kalaniuvalu succeeded to the tofi'a of the noble Siocli Pangia, and was gazetted as his successor in July, 1935. He is living on Fongoloa and claims that it is a part of the tofi'a of Siocli Pangia to which he succeeded.

He bases his claim on a series of documents which were placed before the Court, and on certain Cabinet decisions.

Briefly the facts are as follows: The Free Wesleyan Church of Tonga had purchased "Fongoloa" from the Tongan Government for the sum of £6,000. It was found, however, that the land was unsuitable as a site for a residential College and in a letter dated the 2nd June, 1925, the President of the Free Wesleyan Church pointed this out and asked if this land might be exchanged for a section of Agricultural land. He also pointed out that Siocli Pangia would be willing to lease certain land, at Toloa to the Church at the reduced rental of 2/- per acre. The rental paid in respect of this land formerly was 4/- per acre.

The Premier consulted the then Chief Justice, and in a letter dated the 19th January, 1926, the Chief Justice said, "inter alia", as follows: "Having already decided that 4/- per acre is sufficient, the Cabinet even with the consent of Siocli Pangia cannot agree to any proposal that would worsen the position of the heir at the time he succeeds to the estate.

And even were it possible to transfer the present lease of Fongoloa to Siocli Pangia, that would be no compensation for reduction in rent because Siocli Pangia could dispose of it and so deal with the proceeds that there would be nothing for the heir.

On the 28th January, 1926, Cabinet passed the following resolutions:

- (I) Lease of "Fongoloa" to be granted to Siocli Pangia, the old lease to be terminated but Siocli Pangia is not to transfer or assign the lease, and the lease should be handed down to his successor.
- (II) "Toloa" to be leased to the Free Wesleyan Church, to be used only for educational purposes.

On the 22nd February, 1926, the Premier wrote to the President of the Free Wesleyan Church, stating that the Government was prepared to agree to an exchange of the properties subject to the following conditions:—

- (a) The Free Wesleyan Church of Tonga to surrender the lease of "Fongoloa".
- (b) A new lease of Fongoloa to be issued to Siocli Pangia for the balance of the existing lease at the same rental, with restraint upon alienation.
- (c) That the property known as Toloa is used solely for educational purposes subject to which a reduction of rent would be agreed to.

These conditions were accepted by the President of the Free Wesleyan Church in a letter dated the 17th March, 1926, and on the same date the Premier informed the Minister for Lands that the conditions had been accepted, and forwarded the leases of Toloa and Fongoloa "for process of re-issue".

He also recited the conditions set out in his letter to the President dated 22nd February, 1926.

The Minister for Lands accordingly prepared the "Deed of Lease" in respect of Fongoloa in which he embodied the following covenant which he said in evidence, he believed gave effect to the resolution of Cabinet :

"And the lessee covenants for himself, his heirs and representatives that it shall not be lawful for them at any time to assign anyone this lease in any way whatever or transfer any portion or the whole of this allotment before the term of years which this lease is made expires".

The lease expires on the 23rd May, 1972.

The question to be determined by the Court is whether Fongoloa is part of the Tofi'a of Siieli Pangia.

Section 9 of the Lands Act 1927, reads as follows :

"The lands specifically described in column one of Schedule I are the hereditary estates held by the Nobles and Matapules whose names are set out in column two of the said schedule."

In the case of the noble Siieli Pangia, to whose tofi'a the defendant succeeded, the lands specially described are Lapaha, Hoi, Nukuleka and Makaunga (but not include Ha'amene'uli), Hamula and Toloa.

These lands have not been added to or diminished by subsequent legislation.

It is quite clear from the evidence that it was the intention of Cabinet that "Fongoloa" should form part of the Tofi'a of Siieli Pangia as compensation for the reduced rental of Toloa. In my opinion effect could only be given to such intention by legislation. In order to ensure that "Fongoloa" should form part of the tofi'a of Siieli Pangia an amendment to Schedule I, in so far as it relates to this tofi'a was necessary. Such amendment was not made, and the special Covenant inserted in the lease does no more than restrain the lessee from transferring or assigning the land comprised in the lease. It is a statutory form of lease with a special covenant added. The covenant, it is true, restricts alienation by the lessee, his heirs and representatives of the land comprised in the lease, but it does not on that account preserve it to Siieli Pangia's successor nor does it give legal effect to the decision of Cabinet. It remains a tenancy for a term of years, and as such remains a chattel and is part of the personal estate of the deceased.

For the reason given Fongoloa can not be a part of the tofi'a of Siocli Pangia and the defendant has therefore no claim or title to it.

Succession to a tofi'a is made hereditary by Section 5 of the Land Act, and succession to a tofi'a is governed by rules laid down in Section 41 of the Said Act. The heir gets the tofi'a.

But Siocli Pangia died intestate, and the title to his chattels passed therefore to the person entitled to administration of his estate, namely the widow. Administration was granted to the Plaintiff in this action, and as the noble died without issue his widow is in accordance with the schedule to the Probate Act 1915, entitled to the whole of the personal estate of the deceased which as above shown includes Fongaloa.

I give judgment for Plaintiff accordingly.