

PAULA TU'IONO v. PAULA TULUA.

(Land Court. Ragnar Hyne J. Mataka, Assessor, Nuku'alofa, 28th April, 1937).

Minister to grant allotments — Allocation at request of noble — Noble bound — Exchange of allotments — Cabinet approval.

The Tofi'a holder, Tu'ivakano, requested Molitoni Finau to divide his land at Nukunuku into town allotments and to allocate them to tax payers. Before registration the Minister was to approve of the allotments. This was done, and both the plaintiff and the defendant were registered as the holders of allotments. The defendant resided on his allotment for some years and then, without the approval of the Minister, the Tofi'a holder "gave" him the allotment for which the plaintiff had been registered.

HELD: The Tofi'a holder can not grant allotments without the approval of the Minister and the plaintiff was entitled to the allotment.

Havea Manoa appeared for the plaintiff.

Tevita Maile appeared for the defendant.

C.A.V.

RAGNAR HYNE J.: In this Action, the Plaintiff claims from the Defendant his, the Plaintiff's town 'api in Nukunuku registered by him, and on which the defendant is residing, and which defendant refuses to vacate.

The evidence discloses that in 1929 or 1930, the tofi'a holder, the noble Tu'ivakano, together with Fisi'ihoi (Molitoni Finau) attended at the office of the Minister for Lands in Nuku'alofa, and it was agreed between them, that Fisi'ihoi should have authority to divide Nukunuku into town allotments, and allocate them to tax-payers. He was to make allocations for and on behalf of the noble, and the Minister was to approve before registration of the allotments was effected.

In accordance with this arrangement, Fisi'ihoi allocated allotments to numerous tax-payers, including Paula Tu'iono and Paula Tulua.

Paula Tulua's 'api was registered on the 29th September, 1930, and Tu'iono's 'api was registered on the 24th January, 1937.

Although Tu'iono's 'api was not registered until January of this year, it had with the nobles concurrence, been set aside for him, and a record of this had been made by the Minister.

The noble, however, claims that the land was handed back to him by Tu'iono, and that, when Tulua, owing to family dissensions wished to remove to an 'api elsewhere, the noble agreed and gave him the 'api regarded as Tu'iono's to live on. This happened in April, 1936.

The plaintiff's father admits he consented to Paula Tulua's squatting on plaintiff's 'api.

An application by Tu'iono on behalf of Defendant to Cabinet for permission to exchange his 'api for an 'api adjacent to Semisi

Tu'iono's i.e. Paula Tu'iono's 'api, was refused by Cabinet on the 3rd December, 1936.

The refusal was communicated to the noble on the 11th December, 1936. The Minister also informed Tu'iono's father of the refusal, and said it was time the 'api allocated to him, was registered on behalf of Paula Tu'iono.

The 'api was accordingly registered as above stated on the 24th January, 1937. After the registration, the noble objected.

The proviso to Section 8 of the Land Act reads as follows :—

"Provided always that land comprised in an hereditary estate shall not be granted as a tax or town allotment without prior consultation with the holder of the hereditary estate." It is quite clear from the evidence, that the noble had agreed to the sub-divisions on his behalf by Fisi'ihoi, and it is quite clear that he had been consulted before the town allotments were granted. As I see it, the noble said in effect : "I am willing that town allotments shall be allocated in Nukunuku, and I leave the matter of subdivision and allocation to Fisi'ihoi to whom I give a free hand. What he does on my behalf I concur in " and confirm."

Fisi'ihoi proceeded as the Noble's representative to allocate land, and he communicated to the Minister the result of his actions. He set aside allotments for both Plaintiff and Defendant.

The defendant resided on his allotment for a number of years, and then for reasons above given, the noble gave him the allotment earmarked for Tu'iono on which to reside. The Minister was not consulted in the matter, and it is the duty of the Minister to grant allotments. This is laid down in Section 19 (2) of the Land Act.

An endeavour was made by the noble to have an exchange of allotments effected, under the provisions of the Land Act (Amendment) Act 1934. This was unsuccessful.

Even if the noble could grant allotments independently of the Minister, the grant of a second allotment to Tulua, as he was already possessed of an town allotment, would be null and void, under Section 46 of the Act.

A noble cannot confer legal titles to land, and cannot grant either town or tax allotments valid as such in law. In the present case, the tofi'a holder was consulted before the grant of the town allotments of both plaintiff and defendant. No intimation was made to the Minister before registration that the tofi'a holder had withdrawn his consent to the grant of the allotment in dispute to the Plaintiff.

For this reason, and for the reasons above given, I am of the opinion that the plaintiff must succeed in this action, and I give judgment for the Plaintiff accordingly.