

VAEA (Noble) v. 'ELENOA PALE.

(Land Court. Ragnar Hyne J. Assessor Ulukelala, Nuku'alofa, 25th August, 1937, 12th October, 1937).

Tax allotment — Widow's life estate — Charge of adultery — Claim not bona fide — Court will not grant relief.

This was claim by the Plaintiff that a widow's life estate should be forfeited under S. 70 of the Land Act (Cap. 27 of 1928 Laws) on the ground that the widow had committed adultery.

HELD: As the Plaintiff had no interest in the allotment the claim was not made bona fide and the Court would not interfere. Verdict for the defendant.

M. Finau for the Plaintiff.

S. Vaikona for the Defendant.

C.A.V.

RAGNAR HYNE J.: This is a claim by Vilai Tupou, representative of the Noble Vaea, for an allotment held by a widow, 'Elenoa Pale.

The action is brought under Section 70 of the Land Act 1927, and is an application to determine the widow's life estate by reason of her having committed adultery.

The whole matter is most irregular.

First, the plaintiff has no particular interest in the issue.

Secondly, the plaintiff is financed by a person who has no claim in any event, to the allotment.

Thirdly, the plaintiff admits he is bringing the action only because deceased's relatives are disputing among themselves as to the allotment.

Fourthly, the person who is financing the plaintiff, is doing so in the hope that the allotment may be declared vacant, and that he may subsequently obtain it for his son.

Fifthly, there is not sufficient evidence before the Court that there are no heirs to the allotment.

Sixthly, there is evidence that there are persons more entitled than the person financing the plaintiff.

Seventhly, the widow's right to the allotment has not been secured by registration, but

Eighthly, she has been in undisputed possession for ten years, although it has been known that during most of that time, she has been living in adultery.

Ninthly, if there are heirs, and as above indicated, it has not been proved there are none, the claim of the tofi'a holder is postponed until their claims are disposed of.

The Court is of the opinion that the claim is not brought "bona fide" by the tofi'a holder, in order that he may recover the allotment for himself, and the Court is of the opinion that the whole action is therefore an abuse of the process of the Court.

There is a further point. The defendant appears to have neglected to obtain a legal title in her own name, to the allotment. It has never been transferred to her the question whether she can or cannot, is not a matter on which the Court is required to express an opinion. Her neglect to perfect her title may be an oversight. At any rate, no-one has, during the hearing of the action, established a better claim to the allotment.

I desire to make it clear that apparently the plaintiff and his representative believed they were acting "bona fide", and in accordance with custom.

This Court cannot, however, entertain actions which, in its opinion, are not "bona fide," and the plaintiff cannot, therefore, succeed in the action.

In the circumstances, I make no order as to costs.