

SANUALIO HAI.AFIHI v. KALANIUVALU.

(Land Court. Brownlees J. Nuku'alofa, 17th March, 2nd March, 1945).

Limitation of Action — When time starts to run — Minority of Plaintiff — Constitution Clause 20 — The Land Act 1927 S. 145.

This was a claim to the Tofi'a and title of Kalaniuvalu. The defendant among other defences, relied on S. 145 of the Land Act and said that in this case the ten years started from the passing of the 1927 Land Act and therefore the plaintiff was out of time. The Plaintiff who was an infant at the time of passing of S. 145 submitted that time did not start to run until he was twenty one years old.

HELD: That as the action was not brought within 10 years of the passing of the Land Act 1927 it was statute barred.

Verdict for the Defendant.

M. Tuli for the Plaintiff.

M. Finau, Havili and Latu for the Defendant.

BROWNLEES J.: The Plaintiff bases his claim :

- (a) That he is the legitimate grandson of Siaosi.
- (b) That Siaosi was the eldest son of the 1st Kalaniuvalu.

The Defence objects that ten years have elapsed since the Plaintiff's claim or that of the person through whom he claimed of right arose and brought evidence to show that Siaosi's claim of right accrued at least as far back as 1901.

In rebuttal Plaintiff quoted Article 20 of the Constitution, and since Land Acts previous to the present one of 1927 contained no section limiting the time within which action might be brought Siaosi and his heirs, by their indifference had not lost the right to bring action. This is a good point but applies only up to the year 1927. As from the passing of the Land Act 1927, the Plaintiff, or the person through whom he claimed, had ten years in which to bring action. If as he states, he was a minor at that date, then it was for his mother Veiongo through whom presumably he claims, to bring action on his behalf and if necessary have a trustee appointed for him. Council for the Plaintiff has not shown that any such action was taken within 10 years of the 1927 Land Act coming into force.

The whole purpose of limitation of actions is to ensure reasonable certainty of tenure, and to ensure that claims are brought whilst reliable witnesses are still available. To allow the Plaintiff to bring his action 17 years after his right to action, or that of the person through whom he claims, first arose after the passing of the present Land Act, would evade the whole purpose of S. 145 of the Land Act 1927.

The Court accordingly finds that action has not been brought within the ten years prescribed by Section 145 of the Land Act 1927, and finds for the Defendant, with costs, accordingly.

EDITOR'S NOTE: This decision was reversed on appeal to the Privy Council (Thomson C.J.) on 14/11/45. See page 149.