

SANUALIO HALAFIHI (Appellant) v. KALANIUVALU
(Respondent).

This is an appeal from a decision Land Court (Brownlees J.) that the Appellants right of action was barred by S. 145 of the Land Act (Cap. 27 of the 1928 Laws).

The appellant submitted that his right of action did not accrue until he reached the age of 21.

The Privy Council (Thomson C.J.) on the 14th November, 1945 upheld this view and sent the case back for rehearing. In delivering judgment the Privy Council said :

The learned judge of the Land Court decided that the ten years mentioned in S. 145 of the Land Act should be taken as running from the year 1927 i.e. the date of the enactment of S. 145. The Privy Council does not share this view.

Section 145 provides that the ten years shall run from the time at which the right to bring the action first accrued either to some person through whom the plaintiff claims or to the plaintiff himself. The right to bring the action never accrued to the plaintiff's mother in her personal capacity since she was incapable of succeeding. Therefore the ten years runs from the time when the right to bring the action first accrued to the plaintiff himself, that is, the date when he attained the age of 21 years.

The appeal is allowed; the judgment of the Land Court is set aside and the case must go back for a fresh hearing.

On the hearing of the case on its remission to the Land Court a verdict was found for the defendant (Kalaniuvalu). From this decision the Plaintiff appealed. The Privy Council dismissed the appeal on 19th June, 1946 and said :

The whole question in this case lies on the legitimacy of Veiongo and that in its turn depends on whether the evidence satisfied the Land Court that for the necessary period prior to the birth of Veiongo her parents were living apart and did not have access to each other.

That was a question of fact, the witnesses were all old people speaking of what happened 50 years ago and it was of the utmost importance to weigh their respective powers of recollection.

The Land Court where the learned Judge had the assistance of an experienced Tongan Assessor had the benefit of seeing the witnesses, of observing their demeanour and of listening to their words as they come from their own lips and were therefore in an unrivalled position to assess the value of their evidence and to form conclusions upon it. With these advantages they came to the conclusion that the illegitimacy of Veiongo was proved and this Council as a Court of Appeal feels that if, not having had these advantages it were to interfere with the Lower Court's judgment it would be setting a dangerous precedent.

The Appeal is dismissed with costs against the Appellant.