

MALAKAI TU'ONO v. DEPUTY MINISTER OF  
LANDS, HA'APAI.

(Land Court. Richardson J. Siaki Lolohea, Assessor. Ha'apai,  
11th November, 1947).

Claim to tax allotment — Eldest brother of deceased holder — Life estate to daughter — Plaintiff holder of an allotment of 5 acres — Local custom in Ha'apai — Instructions of Minister — Land Act Cap. 27 (1928 Laws) ss. 7, 69 and 71.

This was a claim by the eldest brother of a deceased holder of a tax allotment. The Plaintiff already held a small tax allotment less than the statutory area. As he was not a son nor grandson of the deceased holder he had no right of election. Whether the Minister had power to direct that tax allotments of only 5 acres should be granted was not decided by the Court. The facts sufficiently appear in the judgment.

S. H. Hafoka appeared for the Plaintiff.

'Alhome'e appeared for the Minister.

RICHARDSON J.: Plaintiff is claiming by right of inheritance to succeed to the tax allotment known as Haulakoi, previously held by one Sione Matakaiongo (deceased).

Plaintiff is the eldest surviving brother of deceased who left no children. On the death of deceased his widow succeeded to a life estate in the land in accordance with Cap. 27 Section 69. On her death the allotment passed in accordance with Section 71 (iv) of Cap. 27 to deceased's unmarried daughter: this daughter however married in December, 1946 and in accordance with Section 71 (iv) of Cap. 27 her life estate in the allotment terminated on her marriage. These facts are admitted by the Defendant.

Plaintiff is now claiming to succeed to the land on the termination of the daughter's life estate by virtue of being the deceased's holder's eldest brother and quotes Section 71 (v) of Cap. 27 in support of this claim.

Plaintiff is already the holder of a tax allotment, albeit a small one of only 5 acres, and further supports his claim by the proposition that he is entitled to an additional allotment as provided for in Section 7 of Cap. 27.

Defendant does not dispute the fact that Plaintiff is the eldest brother of the deceased holder and therefore by implication entitled under certain circumstances to succeed to deceased's tax allotment by right of inheritance. Defendant however has refused to grant the allotment of Haulakoi to Plaintiff owing to a local customs peculiar to Ha'apai. He deposes that in the past, despite the provisions of Section 7 of Cap. 27, owing to the shortage of land in Ha'apai, it has been customary only to grant to tax-payers of Ha'apai tax allotments smaller in area than the statutory 8½ acres provided for by Section 7 of Cap. 27, and that he is under instruction from the Minister of Lands to continue this practice as a matter of political expediency.

These latter arguments raise wide issues of a political nature upon which this Court is not competent to comment and which I consider irrelevant to the immediate issue of this case. The Court in this instance is asked only to adjudicate upon Plaintiff's claim to the particular tax allotment known as Haulakoi and not upon the wider question of his entitlement as a matter of right to any specified area of land as a tax allotment. It is necessary therefore that this judgment be confined strictly to the particular issue raised by Plaintiff's claim to succeed to the particular allotment known as Haulakoi.

In the arguments in favour of his rights of inheritance, Plaintiff appears to have overlooked the provisions of Section 73 of Cap. 27. This section provides that no person who already holds a tax allotment of his own shall be permitted to succeed to another allotment of the same kind, unless he be either a son or a grandson of the deceased. Plaintiff is neither the son nor the grandson of the deceased Sione Matakaiongo: he is the eldest surviving brother of the deceased. His claim is therefore barred by the provisions of Section 73 of Cap. 27 of the Law of Tonga and cannot be upheld.

I therefore find in favour of Defendant and dismiss Plaintiff's claim to succeed to the allotment known as Haulakoi by hereditary rights.

Upon the wider issues regarding Plaintiff's submission that he is entitled to hold a larger area of land as a tax allotment than he does at present this Court is not competent in connection with the present claim to pronounce as Plaintiff's claim is confined solely to the question of inheritance of one particular allotment. I therefore make no order in this respect. Plaintiff is at liberty to take such legal action as he sees fit to establish any further rights to which he may consider himself entitled.

EDITOR'S NOTE: The Plaintiff appealed. On the 31st May, 1948 the Privy Council dismissed the appeal.