

## VILIAMI FINAU v. SEMISI KILIFI.

(Land Court. Richardson J. Vava'u, 4th March, 1948).

Subdivision of allotments in excess of statutory area — Granting of tax allotments therefrom — Lease of balance of area — who is entitled to lease — Land Act 1927 ss. 27, 80(1) and (2).

The Plaintiff was the registered holder of a tax allotment in excess of the statutory area. In accordance with S. 80 Cap. 27 (1928 Laws) the Minister subdivided the allotment and granted therefrom an allotment to the defendant. The defendant claimed to be entitled to a lease of the remainder on the ground that he was a closer relation than the plaintiff to the original holder who had planted the allotment.

HELD: That the plaintiff, as the rightful holder of the allotment at the time of the subdivision had a prior claim to a lease of the excess.

Havili appeared for the Plaintiff.

Tafolo appeared for the defendant.

RICHARDSON J.: This case hinges on the interpretation of Sections 81 (1) and 81 (2) of the Land Act 1927. The relevant facts which are admitted by both parties and regarding which there is no need to call detailed evidence are as follows:—

The tax allotment which forms the subject of this dispute is known as "Talimelie Likuloa". This allotment was originally held by one Siosaia Maka. In about 1944 Siosaia, who was an old man, applied to Cabinet to surrender this allotment. This surrender was accepted by Cabinet and although this allotment was in excess of the statutory area it was granted to and registered by Plaintiff by the Deputy Minister of Lands. Plaintiff's title thereto was further confirmed by Land Court Case No. C. 3/44 Sioeli Akau-tau-a-Vaha'i v. Viliami Finau. The decision in that case was given without the Court having knowledge of the fact that the allotment was in excess of the statutory area of  $8\frac{1}{2}$  acres and Section 47 of Cap. 27 was not applied.

Plaintiff further submits that Section 12 of Act 19 of 1934 applies and that he, as heir to Siosaia Maka, would in any case have been entitled to the allotment on surrender by Siosaia. This submission however I cannot admit in point of law: the heir to Siosaia Maka, who had no children, was one Sioeli: Sioeli himself had already a tax allotment of his own and could not elect to take as he was the brother of Siosaia. There being no further immediate heirs the surrender to the Crown was effective and the allotment was at the disposition of the Minister of Lands.

Later the Deputy Minister of Lands discovered that the allotment was in excess of  $8\frac{1}{2}$  acres and proceeded to give notice to Plaintiff under Section 81 (1) of Cap. 27 and to sub-divide the area. On sub-division Plaintiff was given his lawful tax allotment from the area of  $8\frac{1}{2}$  acres: his application under Section 81 (2) however for a lease of the remainder of the area was refused by the Deputy Minister of Lands and the latter proceeded to allot therefrom to Defendant a tax allotment and is alleged to be considering favourably an application by Defendant for a lease of the remainder.

Plaintiff maintains that as he was the lawful holder of the allotment at the time of the sub-division therefore he is the right-ful person to receive a lease under Section 81 (2) of any remainder. Plaintiff further maintains that Section 81 (2) precludes the Deputy Minister of Lands from granting further tax allotments out of the area unless he foregoes his right to a lease of the land.

Defendant maintains that Section 81 (1) gives the Deputy Minister of Lands the right to grant out further allotments from the area and that the right to receive a lease under Section 81 (2) applies only to such remainder as there may be after immediate requirements have been met. Furthermore Defendant is more closely related to the deceased Siosaia than Plaintiff. Defendant further maintains that he and not Plaintiff is the correct person to receive a lease under Section 81 (2) on the grounds that Plaintiff had no hand in the planting of the coconut trees on this area and that it was Defendant's great-uncle Siosaia who did the planting.

I find that Defendant's argument is correct in law in so far as it refers to the grant to Defendant of a tax 'api of  $8\frac{1}{4}$  acres. To preclude the Deputy Minister of Lands from granting out further tax 'apis to other close relatives of the family after notice under Section 81 (1) unless the first holder foregoes his right to a lease of the whole area would be to defeat the very objects of this sub-section. I find therefore that the grant of Defendant of a tax 'api of  $8\frac{1}{4}$  acres in the area known as Talimelie Likulo is legal and binding, and I therefore dismiss Plaintiff's claim to the return of this particular area.

As regards the balance remaining after the excision of the tax allotments of both Plaintiff and Defendant, I find that whatever may have been the previous history of this allotment Plaintiff was confirmed as holder thereof at the time the notice of intention to sub-divide was given by the Deputy Minister of Lands in accordance with Section 81 (1). Defendant's argument that because it was a closer relative of his that planted the coconut trees therefore he should be entitled to receive the lease cannot hold good at law. Section 81 (2) clearly states that it shall be lawful for a person holding land in excess of the statutory area of a tax allotment to receive a lease for all or any part of the improved portion. The person holding this land at the time of sub-division was clearly the Plaintiff and I therefore find that he is the proper person to receive a lease under Section 81 (2) of Cap. 27, and I do direct that his application be forwarded by the Deputy Minister of Lands for due consideration and that no lease of the remainder of this area be granted to any person other than the Plaintiff.

I order that each party to this action shall bear their own costs.

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