

TAULANGO LATU v. MINISTER OF LANDS.

(Land Court — Gavin A.J. Assessor, 'Etoni Tonga. Nuku-
'alofa, 27. 10. 53).

Notice of claim by heir or widow under S. 76 of Cap. 27 (1928 Edition)
— is an affidavit necessary to perfect claim.

This was a claim by Taulango Latu to have his name registered as the holder of his deceased father's allotment. The Minister refused to register him because he did not lodge an affidavit with his claim.

HELD: That as long as a claim is made within the prescribed period an affidavit is not necessary.

S. P. Soakai for Plaintiff.

Tu'ipelehake in person. (Defendant)

1st Witness Tutulu Finau, sworn, I served the Hon. Tu'ipelehake with the Writ on the date stated therein.

Pousima Soakai: Taulango Latu is the son of Semisi Latu who died on the 13/4/52 and in June or thereabout of 1952 Taulango Latu, the son called on the Minister of Lands together with one 'Ana Latu. There were others but these two went into the Minister of Lands Office and stated to the Minister of Lands that this was their deceased father's allotment and they also informed him that Semisi Latu, their father died on the 13/4/52 the Minister of Lands told them to go to the Office and see Fielakepa. Fielakepa then told them after being furnished with the details to call back after the 12 months. In September the plaintiff returned because he wanted this 'Api transferred and the Clerk handed him a form to go and make an Affidavit stating that he was the heir to his father who formerly owned this land. These forms are kept in the Minister of Lands Office in accordance with Section 76 of the Land Act, after making this Affidavit the Plaintiff did not return to the Minister of Land's Office. He called back again after the 12 months period and the Lands Department refused to give him the 'Api.

Tu'ipelehake: Section 76 of Cap. 27 refers to a claim after a period of 12 months, this has been the usual practice, the affidavit form has always been adopted as the legal procedure in these matters.

Judge: I believe the proper construction of the Section is this, if the father died last week the only thing the heir to the father has to do is to call at the Minister of Lands Office and inform them that he wants his deceased father's 'Api transferred to him and that is all that is required to be done.

Tu'ipelehake: I believe that Section 76 Cap. 27 does not say anything about an affidavit form.

Judge: That being the case all is needed is to prove that the plaintiff informed the Minister of Lands.

Tu'ipelehake : The Affidavit states the date on which the Plaintiff called at the Office.

P. Soakai : This document shows the date on which the affidavit was made.

Tu'ipelehake : I believe the Plaintiff made the affidavit at the Magistrate's Court. Why this transfer was not affected was because since the date on which the plaintiff obtained the form which was in June, 1952 up to September, 1953. On the 14/4/53 the representative of the Tofi'a Holder, Fe'ao, called at the Lands Office and inquired whether the registration of this allotment has been transferred to the Plaintiff. The deceased, Semisi Latu, died on the 13/4/52 and the representative of the Tofi'a holder called on the 14/4/53. I cannot be sure as to when the plaintiff called on me.

P. Soakai : The Plaintiff called on the Minister of Lands in June of 1952 or thereabout.

Tu'ipelehake : I would agree to its being September, 1952, that is still within the 12 months period. I will leave the matter to the Court to decide.

Judge : The claim was made within the time required by the Law. I only want to know whether there was any other reasons for not transferring the 'Api. I want the counsel to say if they have anything to say that would be relevant to this case. The important question is whether the Plaintiff has or has not the right to this land.

Tu'ipelehake : The Plaintiff claimed this 'Api before the 12 months period expired.

Judge : This gentleman called at your Office (Minister of Lands) before the 12 months was up and there is nothing that I can see to deprive him of his right to this land, we should not deprive anyone of his right to any land simply because he did not know the proper procedure.

Tu'ipelehake : I am quite satisfied with the Court's decision that the verdict must be given for the Plaintiff because he is the rightful heir to this land.

Judge : That is good. I find a verdict for the Plaintiff.

P. Soakai : I ask that the Plaintiff should be given the whole allotment that was his father's.

Judge : Yes, he should have what his father had.