

LU'ISA MATEITALO v. VILIAMI NAUFAHU.

(Land Court Hunter J. Tongilava Assessor. Nuku'alofa, 22nd, 24th May, 1956).

Tax allotment in excess of statutory area — Subdivision — No notice to holder — Land Act Cap. 27 (1928 Laws) S. 81.

The plaintiff, a widow was registered as the holder of a large tax allotment comprising over thirty acres. The area was subdivided and the portion in dispute was given to the defendant. No notice of the intention to subdivide as required by S. 81 of Cap. 27 was given to the holder who alleged that the subdivision was therefore invalid.

HELD: The failure of the Minister to give the holder notice of his intention to subdivide did not invalidate the subdivision.

Verdict for the defendant.

Tu'akoi appeared for the Plaintiff.

Kioa appeared for the Defendant.

HUNTER J.: The Plaintiff a widow, is suing to recover a portion of her allotment which is now registered in the name of the Defendant.

Her husband died in 1939 and on his death the Plaintiff had the allotment, which up to that time had never been registered, in her husband's name and then transferred to her as the widow and registered. The allotment had an area of over 30 acres.

Subsequently, apparently at the request of the estate holder, the area was subdivided with the consent of Cabinet and in 1951 a deed of grant, signed by the Minister of Lands, for the portion in dispute was issued to the Defendant. This area is recorded in the Land Register as being the Defendant's allotment. According to the evidence of the Plaintiff she was given no notice of the proposal to subdivide her allotment.

The Plaintiff submits that the failure on the part of the Minister to give notice to the Plaintiff of the proposed subdivision renders the subdivision illegal and that therefore the subsequent transfer to the Defendant is invalid and confers no title upon him. He relies on Section 81 of Chapter 27.

I can not agree with this. Whatever the effect of failure to give the notice required by Section 81 may be, I do not think that such failure invalidates a grant made with approval of Cabinet and evidenced by registration.

The statutory area for an allotment is 8½ acres and no one, except as provided by Section 45 which does not apply here, is entitled to a larger area. It may be that this Plaintiff has some right of action against the Minister for failing to advise her of the proposed subdivision as affecting her right to lease given in sub-section (2) of Section 81 but it is not necessary for me to express an opinion on that point.

I find that the Defendant's title to the land in dispute is a good title, and I therefore find a verdict for the Defendant. The learned Assessor agrees with this view.

Kioa I do not ask for costs.

Court I make no order as to costs.