FOLAU TOKOTAHA v. THE MINISTER OF LANDS AND S. VEA.

(Land Court. Hunter J. V. Molofaha, Assessor. Vava'u, 16th, 17th, 18th and 19th October, 1956).

Registration of allotment — Deed of Grant — Verbal application — Entry on plan — Cap. 27 (1928 Laws) Ss. 42, 46, 73 and 93, Schedule V.

This was a claim for a town allotment known as Tu'amaama. In 1938 the plaintiff made a verbal application for the allotment to the Minister and his name was entered on the Register as the holder of Tu'amaama but no Deed of Grant was issued to him. In 1947 the defendant applied for the same allotment, was duly registered and a Deed of Grant was issued to him. The plaintiff submitted that the grant to the defendant was invalid, as at the time he was the registered holder.

HELD: The plaintiff's title was invalid as a deed of grant was never issued to him, although his name was entered in the register.

Verdict for the defendant.

Faleola and Tupou appeared for the plaintiff.

The Deputy Minister appeared in person.

Mafua and Pousima appeared for the second defendant.

C.A.V.

HUNTER J.: This case presents considerable difficulty. That difficulty is due partly to the actions of the Deputy Minister, which to say the least were most irregular, and partly to the shocking state of the Departmental Registers and Plans. In fact both the Register and plans are well nigh useless in helping to elucidate the mystery. However the Court must come to a decision on the evidence both documentery and oral which has been placed before it.

I find the following facts :

(1) On the 3rd June, 1938 the Plaintiff applied to the Minister for a Town Allotment which he described as Tu'amaama. This was an oral application — the provisions of Section 42 were not complied with but the application was approved and the Plaintiff was entered in the Register as the holder of a town allotment referred to as Tu'amaama. He was not issued with a deed of grant.

(2) Some time later, apparently on 1.9.42, this entry was deleted in red ink and a reference made to an allotment originally held by one Sione Uata. There was no authority for this alteration and nothing to show why or by whom it was made.

(3) In 1947 the Defendant applied for this allotment Tu'amaama. This application was in the proper form and on the 15.4.47 the Defendant's name was entered in the Register as the holder of this allotment and he was issued with a deed of grant (Exhibit C).

(4) I am satisfied that it was at about this time that the Plaintiff learnt he had been dispossessed and that he started proceedings in 1952 so that his action is not barred by Section 145.

(5) I am satisfied that the allotment for which the Plaintiff applied and for which he was registered was the allotment subsequently granted to the Defendant of which the Defendant is still in occupation.

I may say here that if some better method of reference to allotments (say by reference to a plan and by metes and bounds) rather than by name were adopted and the particulars so entered much confusion would be avoided and much valuable time saved. I strongly recommend that the Minister take steps to see that this is done without delay. Indeed Section 93 and Schedule V provide for this but it does not seem to be carried out. I don't think that the Plaintiff ever applied for or intended to apply for the allotment referred to during the case as Sione Uata's allotment and I am satisfied that when the Deputy Minister directed that the Plaintiff be registered as the holder of Tu'amaama he referred to and meant to refer to the allotment at present in dispute.

On these facts what is the legal position ? Pousima in a very able address pressed me with the argument that if the facts were such as I have indicated then the Plaintiff must fail because Taufa (whose name is entered on the plan as the holder of the allotment in question) had two allotments — Tu'amaama and Loto'api and that on his death in 1922 these devolved on the widow (who did not die till about 1952 or 1953) and that therefore the grant by the Deputy Minister to the Plaintiff in 1938 was void as the allotment was still held by the widow and nothing could be done till she surrendered. Attractive as this argument is there is a fallacy in it and the fallacy is this : Section 46 of the Act provides in the clearest terms that no person may hold two town allotments, and if a person holding one is granted another then that grant is "null and void". There seems to be no doubt that Taufa had been in physical possession of Tu'amaama for years but he was not and never had been the registered holder. He was registered as the holder of Loto'api and therefore in view of Section 46 he could not be registered as the holder of any other town allotment. It is true that his name appears on the plan for Tu'amaama but I can see nothing in the Act to provide that an entry on a plan without more is evidence of title. It is the Register that is important, and the Register must take precedence over the plan. Furthermore there is no provision in the Act (except Section 73 which deals with the devolution of an allotment upon an heir already holding an allotment) for a widow or anyone else to surrender one of two allotments. Such a position could never arise as Section 46 prevents a person from holding two allotments. It is difficult to understand what the Deputy Minister had in mind when he sent for the widow of Taufa and asked here to elect which allotment she would surrender. Counsel for the Defence

further suggested that the Plaintiff must fail because his application did not comply with Section 42. Tupou submits that in 1938 there was no prescribed form and that therefore a verbal application was sufficient. Be this so or not, if the Deputy Minister chose to accept a verbal application and made a proper registration thereon, then the applicant must be regarded as duly registered and his title would be good. But did the Deputy Minister make a proper registration in this case? I think not. Although the Act does not say so in express terms I have no doubt that before a person can acquire a good title to an allotment his application must be approved by the Minister and this approval must be evidenced by a deed of grant delivered to the applicant and an entry in the Register. Both are necessary before the title is complete. Unfortunately for the Plaintiff he never received a deed of grant, although his name was entered in the Register. He was entitled to a deed and could have insisted on being issued with one; he did not do so and now it is too late. It is possible that the Plaintiff knew nothing of the proper procedure. This is important but the Court is bound to see that the statutory provisions are carried out.

In view of the above it is clear that the Defendant's title must be preferred to that of the Plaintiff and the Defendant must be regarded as the Registered holder of the allotment in question.

It is an unfortunate case and the Court cannot fail to have sympathy for the Plaintiff whose position is due in no small measure to the haphazard procedure of the Department. Had I the power, I would feel inclined to order the Crown to pay all the costs, as being responsible for the position that has arisen.

I dismiss the Plaintiff's claim for damages; there is no provision in the Act enabling the Land Court to award damages.

Verdict for the Defendants. No order as to costs.

EDITOR'S NOTE: The Plaintiff appealed. On 12th December, 1958, the Privy Council (Hammett C.J.) dismissed the appeal. See Page.....