

LAVAKA v. MELE-MOLISI PAHULU.

(Land Court. Hunter J. Assessor, 'Etoni Tonga. Nuku'alofa  
15th November, 1956).

Widow's allotment — forfeiture on adultery — proof of adultery —  
Limitation of action — Land Act Cap. 45, Ss. 70, 145.

The Tofi'a holder claimed that an allotment had reverted to his Estate  
by reason of the adultery of the holder — a widow.

HELD: Adultery must be proved strictly and the Court was not satisfied  
with the evidence of adultery and in any case the action was barred by  
S. 145 of Cap. 45 as more than ten years had elapsed since the alleged  
adultery.

Finau appeared for the plaintiff.

Tu'akoi appeared for the defendant.

HUNTER J.: In this case the Plaintiff is claiming a tax  
allotment from the Defendant on the ground that she, a widow,  
has committed adultery or fornication and that therefore her estate  
has terminated in accordance with the provisions of Section 70 of  
the Act.

The Plaintiff is a noble and the holder of the Estate in which  
the allotment is situated. He bases his right to claim on the fact  
that the heir failed to make a claim within a year of his becoming  
16 and he submits that as the Estate holder the right to claim is  
now vested in him.

In the view I have taken it is unnecessary for me to decide  
whether this submission is correct or not.

My view is that the Plaintiff must be nonsuited for two  
reasons: (1) It has not been proved to the satisfaction of the  
Court that the widow has committed adultery or fornication and  
(2) the action is barred by Section 145 of the Act.

Tu'akoi took the point that in any case the claim must fail  
because the ground alleged in the writ is that "the Defendant gave  
birth to an illegitimate child" and that S. 70 contains no such  
ground. He alleges that the claim should be that she has com-  
mitted either adultery or fornication. I am not very much im-  
pressed with this as it appears to me that the charge as laid is only  
another way of saying that the Defendant has committed adultery  
or fornication. This defect in the writ, if it is one, could be  
cured by an amendment. And I would have allowed an amend-  
ment if I thought that this was all that stood in the Plaintiff's  
way to succeed.

An allegation of adultery or fornication in order to found a  
claim under Section 70 is a serious charge and must be proved  
strictly. The Court is loath to find that a widow has committed  
this offence unless the charge has been properly proved and the

evidence is clear. In the present case the only evidence is a copy of a birth certificate showing that a woman called Ta'ufo'ou Molisi gave birth to an illegitimate child on the 11.8.44. That is not nearly enough to establish a charge as serious as this. It is true there is evidence that Ta'ufo'ou Molisi is the same person as the Defendant but the document in itself is not evidence of adultery. It is true that the witness Mele Fotu (who admittedly is an interested party) said that the Defendant had a child years after the death of her husband but that alone is not sufficient to satisfy me.

However even if there is evidence on which the Court could act that the Defendant has committed adultery or fornication the claim must fail because it was not brought within 10 years as required by Section 145.

The writ was issued on 22nd July, 1954. The child was born on the 11th August, 1944. Therefore the act of adultery or fornication relied on must have taken place in January, 1944 at the latest, which is more than ten years before the issue of the writ.

I therefore non suit the Plaintiff.

Tu'akoi. We don't ask for costs.

No order as to costs.

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