

THE PREMIER AND MINISTER OF LANDS  
(Appellants, defendants)  
v.  
THE HON. TUITA (Respondent, plaintiff)

This is an appeal from the Supreme Court (Hunter J.) in which judgment was given for the Plaintiff (respondent) for £880. The claim arose out of the dispossession of the plaintiff from his estates in Niuafu'ou by virtue of the Evacuation Act 1947. The facts are fully set out in the judgment of the Lower Court, which is reported in Vol. I Tongan Law Reports at Page 85. In its judgment the Privy Council (Hammett C.J.) discusses the Government's liability to compensate citizens for an interference with their business. It was held that the plaintiff, while being entitled to rent for part of his land which the Evacuation Committee had seized and occupied, was not entitled to any compensation for disturbance of business.

The judgment of the Privy Council, delivered on the 28th January, 1957, is as follows :

This is an appeal from the decision of the Supreme Court of Tonga dated 23rd April, 1956.

The claim of Tuita in the Court below was briefly as follows :  
"The Plaintiff claims from the Defendants £880 on the following grounds :-

1. The Niuafu'ou Evacuation Committee has for four years (1951 - 1954) been using Futu as building sites etc. without obtaining permission from the Plaintiff the owner of Futu.
2. And £320 for damages for hindering or stopping the Plaintiff from producing copra on his said estate of Futu.

In the Supreme Court Tuita's damages for the use and occupation of  $\frac{1}{4}$  acre of his land from 1951 to June, 1955 were assessed at £19/10/0 a year i.e. £87/15/0. Seeing his damages for being unable to produce copra were assessed at a figure greater than his claim he was awarded £880.

It is not in dispute that Tuita is a noble and the holder of an Estate known as Futu in Niuafu'ou. In 1947 the inhabitants of Niuafu'ou were evacuated under the provisions of the Evacuation Act 1947.

The Minister of Lands was appointed Chairman of the Niuafu'ou Evacuation Committee which was the Competent Authority appointed for this purpose under the Act.

Since 1951 this Committee has been occupying approximately  $\frac{1}{2}$  acre of Futu on which it has built three huts for its own use for the storage of copra and other purposes.

Under Section 4(b) of the Evacuation Act 1947 the Competent Authority has power to requisition property, for the purposes of evacuation, in the district to be evacuated. In our opinion the power to requisition property means the power to acquire property compulsorily but unless it is expressly excluded subject to the payment of compensation. It does not include the power to con-

*fiscate property.* We agree with the learned trial Judge that the use of  $\frac{1}{4}$  acre of Tuita's land from 1951 to 1955 for the storage of copra does not fall properly within the meaning of the term "to requisition property for the purposes of evacuation in 1947." In our opinion the trial Court was correct in holding that Tuita was entitled to compensation for the use and occupation of his land by the Evacuation Committee.

We have considered the ground of appeal that there was no evidence upon which the learned trial Judge could arrive at the figure of £19/10/0 a year as compensation for the use and occupation of this  $\frac{1}{4}$  acre. There was conflicting evidence on this issue. In our opinion taking this and all the other circumstances into account the learned trial Judge arrived at a fair and reasonable figure with which we see no grounds for interfering. There is however no evidence that the Premier, the 1st Appellant, was either personally or departmentally concerned in the use and occupation of this land. It appears that it was used only by the Evacuation Committee. The judgment against the Premier in the first part of the claim must therefore be set aside.

The second part of Tuita's claim is for £320 damages for him being prevented from producing copra on his Estate of Futu.

As the learned trial Judge commented in his very careful judgment the evidence of the quantum of damages was far from satisfactory. Counsel for Tuita has admitted to us that, prior to the Evacuation, Tuita produced no copra on Futu, and that he did not derive any money from the sale of copra produced on Futu by the inhabitants who have been evacuated.

The evacuation would therefore appear to have given him a source of an increase in his income rather than the reverse and it would indeed be a difficult matter to decide what, if any, damage he has suffered. For reasons which we will now state however, it is not necessary for us to determine that difficult matter.

There is no suggestion in the Particulars of Claim, nor was any mention made in the opening address of Counsel for Tuita in the Supreme Court questioning the validity of the Evacuation Act 1947, or of the Order in Council ordering the evacuation of Niuafou'u or of that appointing the Competent Authority under the Act or whether the Act applied to Tuita.

It was only in Tuita's Counsel's closing address in the supreme Court that he submitted that the Act was invalid because it had not been gazetted or posted on the notice board of the Police Court of the district as is required by the Interpretation Act. Cap. 1 Section 3. The learned trial Judge was correct in holding that since no evidence had been given to substantiate these suggestions he could express no opinion on them. Nor do we.

The whole of this action was fought and tried on the basis that the Minister of Lands had given an order to Tuita under the

Evacuation Act 1947 forbidding him to return to his Estate in Niuafo'ou to cut copra and that as a result of this order Tuita had suffered loss.

It was the contention of Tuita that in these circumstances the Minister of Lands was liable to him in damages by way of compensation. This appeal must be determined on the same issues as the trial, since neither side has asked that the case be sent back for retrial.

It was held by the learned trial Judge that Tuita was forbidden in 1951 and until 1955 to return to Niuafo'ou. Since by virtue of Section 6 of the Evacuation Act an evacuation order remains effective until it is rescinded - and this order has never been rescinded, it would appear that the order forbidding Tuita to return to Niuafo'ou was intended to be merely a statement of the law, and not an entirely new order.

The issue in this case therefore comes to this "If a person suffers loss or damage as a result of an evacuation order made under the provisions of the Evacuation Act 1947 is he entitled to claim compensation therefor?"

In our opinion where an Act of the Legislature authorises a certain act to be done by a certain person or authorises a certain person to make a certain order compliance with which results in damage and which would be actionable and unlawful if not so authorised, then no action will lie at the suit of any person for the doing of that act or the making of that order, unless it is shown that it was done or made negligently or with malice.

In our opinion a statutory Authority is also a Statutory Indemnity. It takes away all legal remedies which would otherwise be available, and no compensation is obtainable save that, if any, which is expressly provided by the Statute itself.

In order to establish his claim to compensation Tuita would have to establish his right to return to Niuafo'ou to produce copra. Whilst the evacuation order is in force it would appear that no one has any right to return to Niuafo'ou. The fact that Fusitu'a and Kalaniuvalu did not return there until after they had received a specific permission to do so, and that Tuita himself asked for permission to do so appears to us to indicate that everyone has recognised this. We must confess that no explanation has been given why permission was granted to others and not to Tuita. In our opinion Tuita had reason to feel he had not been given equal treatment and we are pleased to learn that the position has now been altered. Nevertheless we are quite satisfied that Tuita has failed to prove that since the evacuation order was made he had or has the legal right to return to Niuafo'ou.

For these reasons we must allow the appeal against that part of the decision which awarded Tuita damages for being prevented from returning to Niuafo'ou to produce copra after the Evacuation Order was made.

In our opinion Tuita is only entitled to judgment for £87/15/- for the use and occupation of  $\frac{1}{4}$  acre of his land at Futu from 1951 to June 1955 i.e.  $4\frac{1}{2}$  years at £19/10/0 a year, with costs to be taxed, against the Minister of Lands. He is not entitled to judgment against the Premier against whom the claim must be dismissed, with no order as to costs. The judgment of the Court below is therefore varied accordingly.