

LEONE 'ETU (Appellant) v. NUKU (Respondent)

This is an appeal from a decision of the Land Court (Hunter J.) dismissing a claim by the plaintiff (Appellant) to the title and estates of Nuku. The appeal was dismissed. The decision is reported as setting out the Privy Council's views on the meaning of Clause 67 of the Constitution and whether Section 147 of the Land Act (Cap. 45) limits the rights given by S. 107 of the Constitution. Apparently the view of the Privy Council is that although S. 147 of the Land Act limits the time within which a claim to a tofi'a may be brought in the Land Court, such a claim could be brought in the Supreme Court at any time. The remarks on this point were not necessary for the decision of the case and are only dicta. If this view of the Privy Council is correct it will revolutionise the hearing of title cases. It is doubtful whether, if it were fully argued the same decision would be reached on this point.

On the 5th December, 1958 the Privy Council (Hammett C.J.) delivered the following judgment :

The Plaintiff claimed from the Defendant the title of NUKU and the hereditary estates appertaining to that title. The Land Court after hearing legal argument and without hearing any evidence dismissed the Plaintiff's claim on the ground that on the facts relied upon by the Plaintiff the claim was statute barred.

The Plaintiff, a man of 53 years of age maintains that under the Law of Succession laid down by Section 107 of the Constitution he is the true heir by blood descent to the title of Nuku. He alleges that the present holder of the title is not the true heir under this Law of Succession because he is merely the descendant of an adopted child who many years ago succeeded to the title and is not a descendant by blood of the original holder of the title.

This appeal is lodged on the grounds that the learned trial Judge was wrong in law in holding that the claim was Statute barred, and that any Act of the Legislative purporting to limit rights given by the Constitution is ultra vires the Constitution and of no effect.

The Law of Succession to a title is contained in Section 107 of the Constitution. There is no provision in the Constitution limiting the period within which a person may present a claim to a title of which he is the heir under Section 107.

The learned trial Judge held that the Plaintiff's claim was Statute barred by virtue of Section 147 of the Land Act of which the material part reads as follows —

"No person shall bring in the Court any action but within ten years next after the time at which the right to bring such action shall have first accrued to the person bringing the same."

It is the contention of the Appellant that not only is this section ultra vires the Constitution as limiting the exercise of the right of succession given an heir by Section 107 of the Constitution, but also it is a provision of the law which was not lawfully passed by virtue of the provisions of Section 67 of the Constitution.

The material part of Section 67 of the Constitution reads as follows —

"It shall be lawful for only the Nobles of the Legislative Assembly to discuss or vote upon laws relating to the titles and inheritances of the Nobles"

It was submitted that since Section 147 of the Land Act was passed at a sitting of the Legislature at which both representatives of the peoples and representatives of the Nobles were present and voted, it was brought into force unlawfully in view of Section 67 of the Constitution.

With this contention we are unable to agree. In order to understand the meaning of Section 67 of the Constitution it is helpful to study Section 56, of which the material part reads —

"The Queen and the Legislative Assembly shall have power to enact laws and the representatives of the Nobles and the representatives of the people shall sit as one House. When the Legislative Assembly shall have agreed upon any Bill which has been read and voted for by a majority three times it shall be presented to the Queen for her sanction and signature and it shall become law upon publication..."

Whilst under Section 56 it is normally necessary for all representatives to vote upon a Bill before it can become law, Section 67, the marginal vote of which reads "Privilege of Nobles," provide that it shall be lawful for only the Nobles to vote upon laws relating to the titles of noble.

The wording of Section 67 should be noted particularly — If the opening words of the Section read —

"It shall only be lawful for the nobles"

... to vote upon laws relating to their titles then it would follow that it would be unlawful for the representatives of the people to vote upon such laws. In this event there would be some substance in this aspect of the appeal.

The opening words of Section 67 are, however, "It shall be lawful for only the nobles" ... to vote upon laws relating to their titles, etc.

In our view Section 67 does, as the marginal note states, give a privilege to the Nobles to vote alone, i.e. to the exclusion of other members of the Legislative Assembly on laws relating to their titles, etc. If they choose to exercise this privilege they may do so — there is however no obligation upon them to do so. If they do not choose to exercise this privilege there is nothing unlawful or wrong in the other members of the Legislative Assembly voting upon such matters.

There is no suggestion that when Section 147 of the Land Act was voted upon in the Assembly the Nobles wished to, but were not permitted to, exercise the privilege given them by Sec-

tion 67 of the Constitution. We do not therefore consider at all material, the allegation that in fact the whole Assembly voted without objection from the Nobles at the time.

The next factor to be considered is whether Section 147 of the Land Act (Chapter 45) limits the exercise of the rights given by the Constitution in the Law of Succession set out in Section 107 of the Constitution.

The opening words of Section 147 of the Land Act are —
 "No person shall bring in the Court any action." etc.

In our opinion the important words to consider in the section are —

"in the Court."

Since the only Courts referred to in the whole of the Land Act in which an action may be brought is the Land Court, the term "the Court" in Section 147 means "the Land Court."

It will be observed that this section does not do more than to forbid any person to bring any action in the Land Court after the expiration of ten years from the date when the cause of action arose.

The Land Act Court was set up under the Land Act to exercise the jurisdiction given it by Section 126 of the Act. There is no provisions in the Supreme Court Act which precludes the Supreme Court from exercising jurisdiction in matters specifically allotted to other tribunals.

In our opinion the Land Court has no jurisdiction to entertain actions brought more than ten years after the cause of action arose as specified by Section 147 of the Land Act. Section 147 is not, however, ultra vires the Constitution because it does not in any way affect any rights given by the Constitution but merely precludes the pursuit of remedies in the Land Court where the cause of action arose more than ten years prior to the commencement of the Action.

Section 4 of the Supreme Court act sets out the Jurisdiction of the Supreme Court. It can exercise jurisdiction in the several civil and criminal matters referred to therein and in any other matter not specifically allotted to any other tribunal. Since the Land Act precludes the Land Court from entertaining a claim to a title more than ten years after the cause of action arose, it would appear that a claim for a declaration that the Plaintiff is the person entitled to the title and inheritance of Noble Nuku and an order vesting those estates in him could be brought in the Supreme Court at any time.

It is of interest to note that Section 16 of the Supreme Court Act which deals with the Limitation of Actions does not appear to put any limit upon the period of time within which such an action could be brought.

In our opinion, the only means by which a limitation could be placed upon the period within which a claim to enforce any rights given under the Constitution is by a limitation in the Constitution itself and that such a limitation sought to be effected by an Ordinary Act of the Legislature would be *ultra vires* the Constitution. Since Section 147 of the Land Act does not fall within this category it is not in our view, *ultra vires* the Constitution.

It now remains to be considered whether the Plaintiff's cause of action arose more than ten years before the date that he commenced this Action in the Land Court, i.e. 1957.

The Plaintiff's claim to be entitled to succeed to the title Nuku arose on the death of his father through whom he claims. In the judgment of the Court below it was recorded that the Plaintiff admitted that this took place more than ten years before he commenced this action.

In these circumstances, the learned trial Judge of the Land Court was correct in rulling that by virtue of Section 147 of the Land Act, the Plaintiff was barred by the expiration of time from bringing this action in the Land Court.

The appeal is therefore dismissed with £5/5/- costs.
