SIONE VAILALA (Plaintiff : Appellant) v. LOTE FUTU LATU (Defendant : Respondent).

This is an appeal from the decision of the Land Court (Hamlyn Harris A.J.) given in Ha'apai in May, 1957. The appeal was dismissed by the Privy Council (Hammett C.J.) on 12th December, 1958. The judgment of the Privy Council is reported as it contains important observations on the drawing of the notices of appeal. It will be seen that, save in exceptional circumstance, no ground of appeal not stated in the notice of appeal will be allowed to be raised before the Privy Council.

The judgment was as follows : This is an appeal from the decision of the Land Court sitting at Ha'apai dated 20th, May, 1957 whereby the Plaintiff-Appellant's claim to a tax allotment called "Houma" in the estate of Tu'iha'angana was dismissed.

This tax allotment was originally registered in the name of Sione Moala, the Plaintiff's father. On the death of Sione Moala in 1928 the allotment passed to his widow, Pelenaise Moala in whose name it was duly registered. She died in 1943.

The Plaintiff's case is that he, as the heir entitled to succeed to this allotment on the death of his father's widow, applied orally to the Deputy Minister of Lands for it within 12 months of the death of Pelenaise as required by the Land Act (Chapter 45) Section 81. The allotment was not registered in the Plaintiff's name then, and in 1947 it was registered in the Defendant's name.

The Plaintiff sought to have this registration set aside and for the allotment to be registered in his name as the heir of the previous registered holder of the allotment.

The learned trial Judge held that the Plaintiff had not proved that he applied for the allotment within 12 months of the death of Pelenaise and that under Section 81 of the Land Act (Cap. 45) it therefore reverted to the estate holder and the Plaintiff's rights as an heir were lost.

The Plaintiff has appealed largely on the ground that the Court below was wrong in holding that he had not proved he applied for the allotment within 12 months of the death of the previous holder.

The Notice of Appeal stated that other grounds of appeal would be raised at the hearing. We wish to emphasise that we will not allow any grounds of appeal to be raised at the hearing of an appeal lodged by or with the aid of a lawyer other than these set out clearly in the Notice of Appeal save in exceptional circumstances. It is necessary for an appellant to state clearly his grounds of appeal in order that the Respondent may know the case he has to meet before the hearing. Again we observe that neither the original claim nor the Grounds of Appeal in this and in several other cases are dated. The Land Court should not accept undated claims nor undated grounds of Appeal.

We also note that although the case began as Number 6 o 1948, it eventually became Number 13 of 1952 in the register o the Land Court.

This is a most undersirable practice which should be discon tinued.

Every case should be given a number immediately it is begun i the Land Court and it should bear the same number throughou in the Court records.

The onus of proof in this case lay upon the Plaintiff to prov he did apply for this allotment within 12 months of the death o the last allotment holder. His evidence was far from convincing and in cross examination he admitted he was confused about these matters. He said he was over 80 years of age. He gave no ex planation why if he applied for this allotment in 1943 and did not get it, he delayed until 1948 to bring the action. There was no other evidence of the date upon which the Plaintiff did in fact apply for the allotment.

Under these circumstances it is not surprising that the learned Acting Judge did not accept the evidence of the Plaintiff-Appel lant and held that he had failed to discharge the onus of proof that rested upon him.

In our opinion the Court below was correct in dismissing this claim in these circumstances.

The appeal is dismissed with £3/5– costs.