MAKALOFI TO'OFOHE (Appellant) v. THE MINISTER OF LANDS AND PAULA AFEAKI (Respondent).

This is an appeal from the decision of the Land Court (Hamlyn Harris A.J.) sitting in Ha'apai in May, 1957. The facts appear in the judgment of the Privy Council. The case is reported as showing that a grant of an allotment by the Minister will not be set aside unless it has been made on wrong principles. Apparently the fact that a person who had been promised registration by a previous Minister made no proper use of the allotment is a fact that may be taken into consideration when a subsequent application is before him.

On the12th December, 1958 the Privy Council (Hammett C.J.) dismissed the appeal and said :

This is an appeal from the decision of the Land Court sitting at Ha'apai dated the 28th May, 1957, whereby the Plaintiff's claim to be registered as the holder of a Tax Allotment called "'Apitaki" and a town allotment at Pangai was dismissed.

These allotments were originally owned by 'Iva and on his death they were registered in the name of his youngest son Pita Teu. On the death of Pita Teu, his widow Fifita held the allotments. She died in 1949.

No heir came forward to claim the allotments or to elect them instead of his own.

In July, 1949, the Plaintiff, who is the grandson of 'Inoke, the eldest brother of Pita Teu, made a formal application for the allotments.

The Honourable 'Ahome'e, who was Deputy Minister of Lands in Ha'apai at the time, considered the interests of all members of the family and was of the opinion that the allotments should be granted the Plaintiff. He has said that he would have done so but for departmental instructions not to register any allotments until completion of surveys. He therefore did not grant the allotments to the Plaintiff but allowed him to occupy them on the conditions that he paid to Government the rent and half the proceeds of sale of copra derived from the tax allotment. This was in 1950. In 1950 and 1951 the Plaintiff paid the rent for the tax allotment. It appears, however, that he only cut copra once between 1949 and 1952.

By December 1952 the Honourable 'Ahome'e had been succeeded by the Honourable Fielakepa as Deputy Minister of Lands, Ha'apai. In the meantime the Defendant had applied for these allotments.

In December, 1952, the Honourable Fielakepa, as Deputy Minister of Lands, Ha'apai, granted the allotments to the Defendant instead of the Plaintiff. He wrote to the Plaintiff that this was being done because the Plaintiff had only weighed copra once since 1950.

The Plaintiff thereupon began this action in the Land Court on the grounds that these allotments had previously been granted to him by the Honourable 'Ahome'e in 1950.

The learned trial Judge held that in fact the allotments had not been granted to the Plaintiff at 1950 and that there were no grounds for setting aside the grant of these allotments to the Defendant.

The Plaintiff's appeal is lodged on the ground that the application for these allotments was made by him before that of the Defendant and that the decision of the Honourable Fielakepa to grant the allotments to the Defendant should not be allowed to stand in view of the intention of the previous Acting Minister of Lands, Ha'apai, to grant them to the Plaintiff.

From the decision of the learned trial Judge it is clear that whilst he had some sympathy for the Plaintiff he did not consider that the grant of these allotments was made on any wrong principles. In these circumstances it was held that the decision of the Honourable Fielakepa was binding on the Land Court and could not be upset.

We have considered all the facts in this case and the grounds of appeal filed. In our opinion there is no evidence that the decision of the Land Court and the Deputy Minister of Lands was based upon wrong principles. The Plaintiff, after all, has no one but himself to blame if he led the Honourable Fielakepa to believe he would not make full use of the allotments since he only weighed copra once in the years 1949 to 1952. The Deputy Minister of Lands has a wide discretion in deciding who should be granted allotments and we agree that the Land Court should only interfere with the exercise of such discretion if it is clearly shown to have been exercised on wrong principles.

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