LISIATE AFU (Appellant) v. FALAKIKO LEBAS (Respondent)

This was an appeal from the Land Court (Hamlyn Harris A.J.) sitting in Ha'apai. The estate holder had signed both the plaintiff's and defendant's application. The defendant's (respondent) application was granted. The Privy Council (Hammett C.J.) in allowing the appeal pointed out certain matters which should be considered by the Minister when considering applications.

On 12th December, 1958 the Privy Council delivered the following judgment:

This is an appeal from the decision of the Land Court sitting at Ha'apai dated 14th October, 1957, whereby the Plaintiff's claim to the tax allotment called "Pofala" in Ha'apai in the Estate of Tu'uhetoka was dismissed.

The facts are not in dispute and are as follows. The allotment "Pofala" was held by Puloka who died on 4th December, 1952, without leaving an heir. In February, 1953, the Plaintiff applied for the allotment. He was allowed to use it but no grant could be made until after the lapse of 12 months from the death of Puloka owing to the provisions of Section 81 of the Land Act (Chapter 45).

On 7th December, 1953, the Plaintiff made a further application for the allotment which was signed and approved by the Estate Holder Tu'uhetoka and handed to the Deputy Minister of Lands.

On 2nd January, 1954, the Plaintiff learned that the allotment was being granted to the Defendant. On 7th January, 1954, it was registered in the name of the Defendant, the Estate Holder having approved and signed the Defendant's application as well as that of the Plaintiff's.

It is clear that the Estate holder in this case has acted unfairly in signing the applications of the both the Plaintiff and the Defendant. The Defendant is, however, now registered as the holder of the allotment and his registration cannot be challenged unless it can be shown that in making the grant the Deputy Minister of Lands acted on wrong principles.

The Plaintiff has appealed on the grounds that the grant to the Defendant was made on wrong principles in the following circumstances.

The Plaintiff was born in and resides at Ha'afeva in the estate of Tu'uhetoka in which the allotment "Pofala" is situated.

The Defendant resides at Lifuka, on another island a considerable distance away from Ha'afeva. Moreover Lifuka is on Crown Land and there is no evidence that the defendant has made any attempt to obtain an allotment on Crown Land either near the place where he resides or elsewhere.

The material part of Section 8 of the Land Act (Chapter 45) reads as follows —

"...... the grant, if the applicant be lawfully residing on an hereditary estate shall be made from the lands in such hereditary estate, and if the applicant is lawfully residing upon Crown Land shall be made from Crown Land."

Section 50 reads —

"Land for allotments shall be taken from the hereditary estates in accordance with the following rules:

(1) an applicant for an allotment lawfully resident in an hereditary estate shall have his allotment out of land available for allotments in that estate."

And the proviso reads

"Provided that an applicant already resident on Crown Land shall where possible be granted the allotment from the particular area of Crown Land in which the applicant is resident."

It is clear from these provisions in the Land Act that the Plaintiff who resided at Ha'afeva in the Estate of Tu'uhetoka was eligible for the grant to him of the allotment "Pofala" which was in the estate of this Attendant. On the other hand the Defendant being a resident on Crown Land was eligible for the grant of an allotment on Crown Land. It was certainly wrong in principle for the application of the Defendant for an allotment of land in the estate where the Plaintiff lived to be given any preference to an earlier application by the Plaintiff for the same allotment.

In these circumstances the grant of this allotment to the Defendant cannot be allowed to stand.

The appeal is allowed. It is ordered that the registration of the Defendant as the holder of this allotment named "Pofala" be cancelled and that it be granted instead to the Plaintiff.

The Plaintiff-Appellant is entitled to his costs in the Land Court which we assess at £22/–/– and in this Court which we assess at £21/–/–. In assessing these costs we have included the Court fees paid by the Plaintiff.