

Land Case No. 3/63.

FALEPOINI KAUFUSI -V- NOBLE NUKU

(Land Court. Roberts J. Nuku'alofa 10th and 28th October and 6th November, 1964)

Tax allotment—registered by widow—part of allotment found subsequently to be on estate of another estate holder—rights of allotment holder.

Held: that a registered allotment holder cannot be deprived of his rights to his allotment and on the grounds that after registration part of his allotment is found to be in the estate of another estate holder.

Tu'akoi for the Plaintiff

Folau for the Defendant

ROBERTS, J.: Tevita Kaufusi deceased husband of the plaintiff acquired an estate known as Koelanga, in 1924, cultivated and planted it and registered it in 1937.

Subdivision was made in 1957. When Kaufusi died in 1961 his widow and her sons continued to work what is now allotment No. 29. The widow pays and has always paid rent to Tungi whereas the evidence of the Surveyor and the plans produced show that only a small part of the allotment is on Tungi's estate, the rest of it being on Nuku's (the defendant's) estate and a small part on the estate of Kalaniuvalu. (The Court has visited the area and compared the boundaries with those shown by the surveyor).

Defendant has produced evidence intending to show that the allotment is not Koelanga but Ve'etahi and that the area was held by one Uitaha and that Kaufusi trespassed on Uitaha's holding.

Accordingly, the defendant claims that plaintiff has no right to the allotment she claims. The facts are that Tevita Kaufusi, after subdivision, held an allotment to which his widow was entitled as a life estate. On the death of Kaufusi, Falepoini, the widow took all the steps required of her by the law and registered transfer. The evidence from the Ministry of Lands shows that the particular allotment now claimed by the widow, No. 29, is the allotment she registered. As to the name of the allotment; those witnesses who have lived in that particular area and know the history and tradition of the area and the legendary meaning of the name Koelanga say, without hesitation, that that is the name of the allotment. Those other witness who state that the name is Ve'etahi have not impressed the Court. They do not come from the same area and are not so acquainted with its history.

The allegation that the particular area was held by Uitaha is not supported by evidence of registration. It has been alleged that he held it from 1920 to 1947 when he died. There was, however, no registration in his name. This is significant for registration of

title is all important (Section 94 of the 1927 Act and Section 99 of the Consolidated Act).

The widow, however, has registered the allotment in her name. She has always thought No. 29 was hers, has thought it was all on Tungi's estate and has called it Koelanga. She cannot be deprived of it merely on the grounds that it is found to be partly on the estate of another estate holder. That is something for the estate holders to arrange amongst themselves. The widow, i.e. the plaintiff cannot now be deprived of her registered holding.

Judgment is accordingly entered for plaintiff with costs.