

Land Case No. 6/66

VILIAMI TU'INUKUAFE -v- 1. MINISTER OF LANDS
2. LOKETI TU'INUKUAFE (widow)

{Land Court. Roberts, J. Hon Luani, Assessor, Nuku'alofa, 20th November, 1967}.

Section 51—To allow widow as holder to subdivide would override provisions of Section 76 and also Clause 107 of the Constitution—Therefore widow not a holder within the meaning of Section 51.

Tu'akoi for the Plaintiff.

Tevita Folau for 2nd Defendant.

Minister of Lands in person.

ROBERTS, J: The facts which are not in dispute are as follows: The town allotment "Pahu" in Kolofu'ou on Crown Lands was registered in the name of Moala Tu'inukuafe on the 18th April 1911. The area is 5a, 1rd 21.6p.

On the death of the holder his heir Viliami Nuku Tu'inukuafe the plaintiff succeeded to the estate, subject to the life interest of Loketi Tu'inukuafe the widow of deceased, the second defendant. The widow who was the second wife of deceased has applied to the Minister of Lands pursuant to Section 51(1) of the Land Act requesting him to sub-divide for the benefit of her grandsons. The plaintiff as heir objects to the subdivision, claiming that the widow has no right to request a sub-division and thus deprive him of his full title.

The terms "holder" as defined by Section 2(v) of the Act appears to include a widow having a life interest. The provision of Section 51 cannot be interpreted, however, so as to override the provisions of Section 76 of the Act with regard to succession if an alternative interpretation is reasonable.

The wording of Section 51:—

" . . . to sub-divide the allotment between such sons, grandsons, brothers or nephews of the applicant, being more than sixteen years of age as the applicant shall appoint" means, on a strict interpretation, that the widow may exclude the heir from those she appoints. Thus the wording of Section 51 purports to override the provisions of Section 76 of the Land Act. This cannot have been the intention of the Legislature for to do so would be ultra vires Clause 107 of the Constitution. Therefore Section 51, if it is considered that the term "holder" in the Section includes a widow having a life interest, must be read as applying subject to the rights of the heir. What are his rights? Surely to succeed to the whole of the estate held by the deceased holder at the time of his death and not to a subsequently truncated part of that whole.

The widow has a life interest and nothing more. That she has limited powers is supported by the provision of Section 83 with regard to leases.

For the reasons stated this Court rules that the term "holder" in Section 51 is not intended to include and does not include a widow having a life interest.

Judgment for the Plaintiff no order as to Costs.