Land Case No: 3/66

TEVITA FETULI -v- 1. MINISTER OF LANDS
2. SIAOSI TAFOLO

(Land Court. Roberts J: Hon. Lani, Assessor, Nuku'alofa 24th April, 1st and 19th May, 1969).

Section 51—Effect of Amending Act No. 9 of 1962—"Whole or part of the area"—Interpretation.

Plaintiff in 1907 became registered holder of a town allotment in Kolofo'ou of 6 acres 7.5 poles. Plaintiff in 1964 agreed that portion of this be subdivided in terms of Section 51 (2) retaining for himself a portion of 3 acres 2 roods 12.01 poles. The defendant occupies a part of this portion and in relation to this occupation plaintiff asks for an eviction order against the defendant. The portion held by plaintiff exceeds the stautory maximum. The Court in view of the amendments to Section 51(1) by Act No. 9/62 is required to determine whether the plaintiff has any right or title to an allotment in excess of the maximum statutory area which contains in excess the part occupied by the denfendant, for if plaintiff has no right or title thereto he cannot succeed in evicting the occupying defendant.

Held: That the proper interpretation of Section 51(2) is as originally intended before the amendments to Section 51(1) namely that the whole or part of the area in excess of the statutory area may be surrendered, so that the holder may be left with more than the statutory area.

ROBERTS, J: The Plaintiff, in 1907, registered in his name a town allotment on Crown lands in Kolofo'ou on the eastern side of Taufa'ahau Road of 6 acres 7.5 poles. In 1964 plaintiff agreed that that portion on the far eastern side be sub-divided and that he retain that portion on the western side facing Taufa'ahau Road, having an area of 3 acres 2 roods 12.01 poles. The sub-division took place leaving plaintiff with a strip of land, facing and contiguous with Taufa'ahau Road of the area stated. This strip of land was at the time partly leased . . . namely in the north a lease to one Walter Skudder of 1 acre 0.4 poles, south of and adjacent to this a lease to one Sione Mohi of 32.01 poles. Plaintiff occupies the next portion. Immediately south of this is another leasehold to one Albin Johannson and finally a portion occupied by Siaosi Tafolo, the 2nd defendant. Defendant, it is alleged was allowed by plaintiff to occupy this portion on certain conditions which have not been complied with. Plaintiff asks the Court for an eviction order against the Defendant and damages. Defendant who is the registered holder of a town allotment first occupied the portion in dispute in 1954 with the permission of plaintiff on condition that he build a store. Defendant now claims that he holds the portion as trustee for his son Tu'ipulotu Langitu'oteau and in support of this produces an application from plaintiff dated 20th March, 1964 asking that his allotment be divided among certain people and heading the list with the name of defend-

nat. Defendant claims that the allotment was given to him as trustee for his son in 1956.

The Minister of Lands stated in evidence that he did not support defendant's application because defendant's son was only 8 years old at the time.

It is clear that defendant cannot hold the allotment as his own owing to the fact that he already had a town allotment. It is clear also that no person may acquire an allotment on application on behalf of any person below the statutory age of 16. The position of trustee arises only on appointment when a person under the age of 16 is by succession entitled to land and under other circumstances provided by the Act. Defendant has no legal right in the circumstances to hold the allotment in question for his son.

The Court must now consider whether the plaintiff has any right or title to the allotment in question for if he has no right or title he cannot succeed in evicting the occupying defendant.

The provisions in the Land Act for the sub-division of town allotments are to be found in Section 51 as follows:—

(1) Where a town allotment is not less than two fifths of one acre in area the holder thereof may apply to the Minister requesting him to subdivide the allotment between such sons, grandsons, brothers, or nephews, of the applicant, being more than sixteen years of age, as the applicant shall appoint. But the Minister shall not grant an allotment of less than thirty poles in area.

(2) Where the holder of an allotment as in the immediately preceding sub-section set out has no relative as aforesaid he may apply to the Minister for permission to surrender, a part, or the whole of so much of his allotment as exceeds the statutory area, and the land so surrendered shall be available for sub-division at the discretion of the Minister.

When we look to the history of Section 51 of the Land Act we find that by Act No. 9 of 1962 the words in line 1 of subsection (1) "fourl fifths of an acre was amended to read "two-fifths of an acre" which is the statutory area.

The words in sub-section (2) "a part, or the whole of so much of his allotment as exceeds the statutory area", if a strict interpretation is given, appears to mean, since the amendment, that if the holder's allotment is two-fifths of an acre (the statutory area) he may surrender a part thereof but if the allotment is greater than the statutory area the whole amount in excess of the statutory area, must be surrendered. Is this the only meaning that can be given? To answer this question the intention of the Legislature in this provision must be considered. Maxwell on the Interpretation of Statutes, the 10th edition on page 23 states as follows:—

> "Although the court is not at liberty to construe an Act of Parliament by the motives which influenced the legislature, yet when the history of law and legislation tells the Court

that the object of the legislature was, the Court is to see whether the terms of the section are such as fairly to carry out that object, and to read the section with a view to finding out what it means, and not with a view of extending it to something that was not intended."

The words "a part, or the whole of so much of his allotment as exceeds the statutory area" have a quite different meaning when they are related to an area equal to the statutory area while the rest of the words suggest that if the area exceeds the statutory area the whole of the excess must be taken.

If, however, this is what the Legislature intended when the amendment was made the intention would surely have been more specifically stated. It seems therefore reasonable to interpret the sub-section as originally intended before the amendment, namely that the whole or part of the area in excess of the statutory area, may be surrendered, so that the holder may be left with more than the statutory area.

It follows, therefore, that the allotment in question unless specifically surrendered to the Minister remains the property of the plaintiff.

Although the name of defendant was included by plaintiff in the list of those who it was intended to benefit by the sub-division he is unable to take any allotment for the reasons already stated.

The intention of the plaintiff was, therefore, in relation to the defendant, frustrated. This Court holds, therefore, that there was no specific surrender of the allotment in question and gives judgment for the plaintiff accordingly.