Land Case No. 83/72.

SIMI TEKITEKI -v- MINISTER OF LANDS
AND
NOBLE KALANIUVALU

(Land Court....Roberts J: Hon. Luani, assessor, Nuku'alofa 2nd and 25th May, 1973)

Town allotment exceeding statutory area—Registration subsequently declared null and void—Distinction between grant and registration.

HELD:

Clear distinction between town and tax allotment—grant made orally before coming into force of 1927 Act may be nevertheless valid grant— Tu'uhetoka -v- P. Malungahu and Minister of Lands -v- Manase Kamoto followed.

Taniela Manu for the Plaintiff

The Crown Solicitor (Mr J. Fraser) for the Minister of Lands. Noble Kalaniuvalu in person.

ROBERTS, J:

The town allotment in question, in excess of the stattory area. was registered in the name of Plaintiff three months after the Land Act of 1927 came into force and the registration was subsequently declared by the Minister to be null and void pursuant to Sestion 49 of the Land Act.

It is argued for the Minister of Lands that is must be assumed that the grant was made at the time of the registration and not before and that it was then an invalid grant.

I cannot accept this assumption and I refer to the judgment of Brownlees, J in Tu'uhetoka -v- P. Malungahu reported on p. 53 of Vol. II of the Tongan Law Reports.

> " . . . . . . In respect of grant a clear cut distinction is drawn between town and tax allotment; provision is made, in the very same section, for the registration of the latter and the grant of deed to the 'api holder by the Minister of Lands or his Deputy.
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> The contention that the grant of town allotments might be verbal, and that there was no need for registration, is supported by Ata, who had considerable experience as Minister of Lands before the change in the Law is 1927, and Siaki Lolohea (District Officer, Lifuka, for many years prior to 1927).
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> However, Ordinance No. 2 of 1918 (p.5 of 1918 gazette) fixes the fees for the registration of a town allotment. This Ordinance was passed with the specific purpose of removing doubts as to whether fees were payable to the

> Minister of Lands on the registration of town allotments. It does not, however, necessarily imply that a grant of a town allotment was invalid unless it was registered. The court is consequently of the opinion that until the coming into force of the Land Act, 1927, a town allotment might be granted verbally by the Minister, His deputy or the Tofi'a Holder".
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> That a verbal grant of the allotment in question was made to the father of the plaintiff is supported by the evidence for plaintiff of considerable planting of the allotment and long occupation. There is also the evidence of the present estate holder, Kalaniuvalu that such a grant was made.

I refer also to the judgment of Hunter, J. in Minister of Lands -v- Manase Kamoto reported on page 132 of Vol. II of the Tongan Law Reports, on p. 135, as follows:—

> "The town allotment under consideration is admittedly in excess of the statutory area but this allotment was granted long before the coming into force of Cap 45 . . . . Counsel for the Minister suggests that when the Minister registered the present defendant in 1958 this was a grant of an allotment void because it was in excess of statutory area. But this is not so, it is not a grant of an allotment, but a transfer of an already existing allotment".

I hold that the grant of the allotment was made prior to the 1927 Act and was then a valid grant and following the reasoning in the cases I have referred to I give judgment for Plaintiff.

Editor's Note: Defendants appealed to the Privy Council. On 12/2/74 the Privy Council (Marsack, A.C.J.) dismissed the appeal.