

Land Case No. 6/73

NOBLE HAVEA TU'IIHA'ATEIHO -v- LEAFA TU'IIHA'ATEIHO

(Land Court. Roberts J: Hon. Luani, Assessor, Nuku'alofa
22nd June, 1973)

Tofi'a - Successor to estate and title asks for eviction order against widow of his brother, the previous title and estate holder - Widow has no legal right - Application of Tongan custom.

HELD:

That owing to the obligation under Tongan custom of a surviving brother to support the widow of his deceased brother the Court would not grant the eviction order sought.

Tomiteau Finau for the Plaintiff.

Taniela Manu for the Defendant.

ROBERTS, J:

The plaintiff, Noble Havea Tu'iiha'ateiho, is the younger brother of the deceased husband of Mrs Leafa Tu'iiha'ateiho, the defendant. He succeeded to the estate and the title on the death of his elder brother on 4 April 1962. The defendant widow has continued to occupy 33 acres of the estate since the death of her husband. Plaintiff now asks the Court for an order of immediate eviction against the defendant.

In 1946 Vaikeli, an area of 209 acres was included in the estate of the late noble Havea Tu'iiha'ateiho as a result of an exchange made to accommodate Tonga College. Legislation provided for this inclusion by Act No. 16 of 1953. In 1946 the defendant and her late husband moved in to Vaikeli. They planted an area of 33 acres with 9000 coconut trees, 32 breadfruit and many other trees. They built a house with garden and out buildings. Defendant has continued to occupy this area and to enjoy the benefits of the said planting and the said house since the death of her husband in 1962.

The law makes no provision for the widows of estate holders as it does for the widows of allotment holders. Thus the defendant has no legal right of continuing occupation.

This is an unusual case, unusual because it is extremely rare that the brother-in-law of a widow takes an action of this sort against his widowed sister-in-law. Such an action is extremely rare because of the obligation of a surviving brother, under Tongan custom, to support the widow of his deceased brother. The plaintiff might say that he is willing to perform this customary duty. His application for eviction, however, having regard to the circumstance of this case does not impress the Court with his good will towards defendant because he does not appear to give any consideration to:

- (1) the age of defendant who is without relatives in Tonga

- (2) the fact that defendant feels strong sentimental ties to her house and home on this land since her first occupation in happier days with her husband over 25 years ago
- (3) the fact of the late husband of defendant having abundantly planted this area with a well developed garden and a permanent and immovable type of home-
sted to which, it must be assumed the wife, defendant widow, largely contributed. It is surely against the principles of Tongan custom that plaintiff in such circumstances should evict the defendant.

Accordingly this Court finds for defendant and refuses to evict the defendant as requested.

I will add that the Hon. Assessor is in full agreement with this finding.

Editor's Note: The plaintiff appealed to Privy Council. On 12/2/74 the Privy Council did not consider the merits of the appeal but recorded in their judgment that the two parties had reached an agreement whereby the defendant holds a life interest of the 3 acres at present occupied by her.