

Fakatava and Fakatava v Koloamatangi and Minister of Lands

10 Land Court
Roberts CJ
Land Case 9/74

Contract - oral agreement for the occupation of land is contrary to s13 Land Act and illegal, and will not be enforced by the Courts

Land - oral agreement for the occupation of land is contrary to s13 Land Act and illegal, and will not be enforced by the Courts

20 Koloamatangi built a house partly on a town allotment held by Sosefa Fakatava with Sosefa's oral agreement in consideration of the payment of a yearly rental and of a promise that the house would belong to Sosefa on the death of Koloamatangi. Later the house was also found to be partly on an allotment held by Tolau Fakatava. Sosefa and Tolau Fakatava, who were brothers, later brought proceedings in the Land Court for possession of the house on the ground of non-payment of rent by Koloamatangi.

HELD

Dismissing the plaintiff's claim:

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That the agreement between the plaintiffs and the first defendant was illegal because it was contrary to s13 Land Act and would not be enforced, and judgment was entered by consent for the grant of a lease to Koloamatangi by the two plaintiffs.

Statutes considered

Land Act s13

40 Roberts CJ

Judgment

The 1st defendant constructed a concrete dwelling house on the town allotment of the 2nd plaintiff which is situated on the corner of Tupoulahi and Laifone Roads in Kolofu'ou. This was done by oral agreement with the 2nd Plaintiff in consideration of a yearly rent of \$30.00 and that the house should become the property of the Plaintiff on the death of the 1st Defendant. According to 2nd Plaintiff the agreement related to a wooden house whereas 1st Defendant built a concrete house. It would appear that neither 1st or 2nd plaintiff, who are brothers, took any effective steps to stop this type of construction.

Owing to the uncertainty of the boundary line at the time the house, when a proper survey for sub-division was made in 1973, was found to abut onto the land of 1st Plaintiff by some 12 feet.

Plaintiffs are asking for an eviction order for non payment of rent for three years.

The agreement between 2nd Plaintiff and 1st Defendant is illegal being contrary to Section 13 of the Act. The 1st Plaintiff, although he objected to the concrete building, took no legal steps to prevent it. It follows from this that 2nd Plaintiff and 1st Defendant both took part directly in an illegal transaction and 1st Plaintiff by consent.

The principle relating to such contract according to Law is that when the purpose of a contract is illegal, immoral or contrary to public policy and that purpose is shared by both parties, it is settled law that neither can sue upon it. It would be wrong therefore, for the Court to give an eviction order or any other order to the detriment of 1st defendant without some contribution from the plaintiffs.

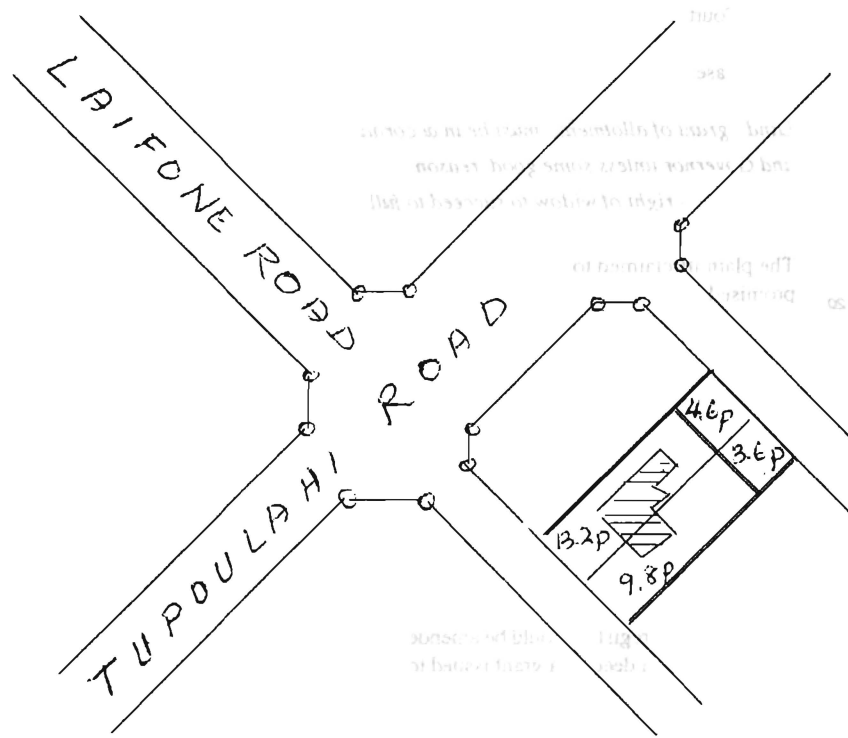
After clarifying the issue the court suggested that properly drawn leases be agreed by the parties so that 1st Plaintiff and 2nd Plaintiff each grant a lease - with the approval of Cabinet - to the 1st defendant. The Court then adjourned for consideration to be given to the suggestion made by the Court.



The parties agreed and now ask the following agreement to be embodied in this judgment as an order of the Court:-

It is agreed by plaintiffs and defendants that the 1st plaintiff Toiau Fakatava grants a lease to the 1st defendant, Feleti Koloamatangi, of an area of 9.8 perches as shown on the attached plan and that the 2nd plaintiff, Sosefa 'Amato Fakatava grants a lease to the aforesaid 1st defendant of 13.2 perches as shown on the said plan, that the said leases shall be for a period of 21 years each to commence from the date of signature which shall be on the same date and to terminate on the expiry of 21 years thereafter on the same date. It is agreed that each lease shall bear a rental of \$30 (thirty pa'anga) payable on due date by the 1st defendant. It is also agreed that on the expiry of the said lease the concrete house of the 1st defendant referred to in this judgment shall become the property of the 1st and 2nd plaintiffs in joint ownership in further consideration of the leases herein referred to.

It is further agreed that the said leases shall be worded so that the burdens and privileges thereof shall bind and descend to the heirs and successors of the parties thereto.

This judgment is entered as a judgment by consent.



-  23.0 p.
-  3.2 p.