

Fonua v Fiekaipuaka and Minister of Lands

Privy Council
App 3/1974

21 February, 1978

Land - exchange of allotments - decision of Cabinet final except in case of fraud

¹⁰ *Statutes - principles of interpretation - intention of Legislature to be carried out*

The holders of two town allotments wished to exchange them and applied to the Minister of Lands for approval. The Approval was given to the exchange by the Cabinet, acting in accordance with a recommendation of the Minister of Lands as required by s55 (2) Land Act (Cap 63).

²⁰ The son of one of the holders applied to the Land Court for a declaration that the exchange was unlawful since it prejudiced his rights as heir to one of the allotments, but his claim was dismissed by the Court because at the time of the exchange the son was the holder of another allotment, which he subsequently transferred. The son appealed to the Privy Council.

HELD:

Dismissing the appeal

³⁰ The intention of s55 (1) and (2) of the Land Act (Cap 63) was that an exchange of land, if approved by Cabinet, was final and conclusive except in the case of fraud.

Statutes considered

Land Act s55

Privy Council

Judgment:

In this action appellant sought a declaration that a certain exchange of land be declared invalid. The exchange was authorised by Cabinet decision No.416 dated April 24, 1972. At that time Sec.55(2) of the Land Act (Cap.63) controlled the exchange in question. Sec.55(2) provides:-

40 55(2) It shall be lawful for Cabinet on the recommendation of the Minister to permit the exchange of allotments as between two allotment holders where neither of such holders is a minor provided that no such exchange shall be permitted if Cabinet is of the opinion that the rights of the possible heirs of either or both of such allotment holders are likely to be prejudiced thereby.

The exchange is therefore lawful unless appellant can prove grounds upon which the opinion of Cabinet ought to be declared invalid.

50 Appellant is the natural son of Nafetalai Fifita Fonua and Monica Perceval who were married in December 1919, some time after the birth of appellant. Appellant was thus legitimated on August 1, 1930 which was the date of the passing of the Legitimacy Act (Cap.62). The parents of appellant were divorced in 1927. First respondent was born an illegitimate son of Nafetalai Fifita Fonua and Mele Siale in 1942. His parents married in 1956. He claims that this marriage legitimated him but appellant claims that Mele Siale was married to a third person when first respondent was born, so, by virtue of Sec.3(2) of the Legitimacy Act (Cap.62) he could not be legitimated. In February 1972 Nafetalai Fifita Fonua owned town allotment known as "Sila'a" containing 1r.39p. First respondent 60 owned a town allotment known as "Ma'u-He-Mamahi Fine Tenga Lelei" containing 1r.20.3p. They made an application to the Hon. Minister of Lands for authority to carry out an exchange of their respective properties. The matter was placed before Cabinet and by Minute No.4/1 Cabinet approved of the exchange.

No reasons were given for Cabinet decision No.416. The Supreme Court had before it only the official record which sets out the application with details of each allotment. The decision noted in a memorandum to the Minister of Lands was that the application was approved by Cabinet. What matters Cabinet took into consideration in coming to a decision is not known. It is clear that Cabinet must have been of the opinion that the rights 70 of possible heirs were not likely to be prejudiced otherwise, of course, Cabinet would not consent to the exchange. There is a presumption that in such circumstances the power has been properly exercised. Appellant's case is that he was then the heir so he comes within the terms "possible heirs"; that he was not either notified or informed about the proposed exchange; that Sila'a was acquired during the marriage of his father and mother; that the intention was that it should go to him when his father died. There was also a reference to improvements on Sila'a to the value of \$1126.00.

80 The granting of permission is a Cabinet decision on the prior recommendation of the Minister. Upon permission being granted property rights pass and thereafter each holder of an allotment is entitled to and becomes the holder of a different piece of land. Thereafter each separate piece of land can be dealt with by the new holder in any way he considers

fit subject only to such restrictions as are by law imposed on his holding. The property will pass to his widow and heirs in accordance with the law so new successors come into being on consent being granted. Buildings and other improvements may be added. The new owner may exercise other rights including a further exchange. In this case first respondent has, in fact, effected very substantial improvements.

90 In our opinion the answer to the present question turns upon ascertaining the true intention of the Legislature as expressed in Sec. 55 Subs (1) and (2). Sub 1 is also important and must be considered because both sub-sections deal with consent of Cabinet based on the recommendation of the Minister. Was it the intention of the Legislature to provide for a consent which could be reviewed by the Court, or, was it the intention that titles would pass and become conclusive once consent was granted? If the first construction be given then the only title which would pass would be one open to attack (as this one has been) by any possible heir who claims likely prejudice. Two titles are always involved and neither would have any certainty of tenure and neither would be safe to improve his holding except at the risk of some claim by a possible heir who may or may not succeed in establishing a case. Moreover, it would involve an investigation into the reasons why Cabinet acted if, indeed, access could be gained to the deliberations of that body. It is our view that the Legislature intended to place upon the Minister, who is responsible for making the recommendation, and Cabinet, which makes the decision, the sole right to make an exchange lawful and that it was not intended to make that right an exercise of a quasi-judicial function reviewable in the Court except in the case of fraud which may raise a different and separate remedy. Certainty of title is the clear object of Sec. 55 so that the transaction becomes lawful on consent being given and title is assured when the transaction becomes effective by reason of the consent. It is not without importance that the Legislature has chosen to give a Minister a responsibility to recommend and Cabinet the power to make the transaction lawful.

100

110

For these reasons we do not find it necessary to traverse the submissions made. The appeal is dismissed with costs.