

## Tukino and Haukinima v Minister of Lands and Tonga

Privy Council  
App 3/1978

30 April 1979

*Land Act - expiry of lease - no right of lessee to receive renewal*

*Lease - expiry - no renewal as of right in Land Act*

10 *Lease - renewal - no right of lessee to renewal if lease provides that lease is renewable if the lessor shall be willing to again lease land but lessor is not so willing*

Tukino and Haukinima were the trustees of a settlement of Niue people which had originally been granted a lease of some 11 acres of Crown land in 1915 for 21 years, which was renewed twice enabling the settlement to occupy the land for a total period of 62 years. On the expiry of the second renewal in 1978 the Cabinet decided not to renew the lease but to offer to lease a small portion of the land to the trustees, reserving the remainder for Government purposes. This was rejected by the trustees who claimed that they had a right to a renewal of the lease for the full area of 11 acres.

20 This claim was rejected by the Land Court, and the trustees appealed to the Privy Council.

### HELD:

Affirming the decision of the Land Court

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- (1) The covenant for renewal in the lease did not give the trustees a right to a renewal of the lease, but only a right to receive the first offer of a lease if the lessor was willing to grant a further lease and if the lessee was willing to pay the rent;
  - (2) Section 36 of Land Act also did not give a lessee a right to a renewal of the lease, but a power for Cabinet to offer a renewal of a lease of Government land which it had an unfettered discretion to exercise.

Statutes referred to  
Land Act s36

Privy Council

### Judgment

Appellants are trustees of Niue Settlement in respect of certain Crown Land in Kolofo'ou, Nuku'alofa, Tonga. The Tofi'a is under the control of the Honourable Minister of Lands. In 1951 His Majesty King George Tupou II granted a lease for a period of 21 years to trustees for a Niue Settlement a piece of Crown Land containing 11 acres 17 perches (excluding a by-pass road). Her Majesty Queen Salote Tupou III granted a renewed term for a period of 21 years terminating on January 1, 1957 at an annual rental of £11.6.0. A further lease was granted for a term which expired on January 1, 1977. The rental was £30 per annum. At the expiry of the latest grant the trustees for the Niue Settlement, and the people whom they represented, had been in occupation for a total period of 62 years under successive leases.

Before the expiry of the term of the last mentioned lease appellants applied to the Minister for a renewal of the lease of the said land. The application was duly considered by Cabinet. By Cabinet Decision No. 1190 given on November 17, 1976 it was decided as follows:-

- (1) that the application be approved for the northern half of the area formerly leased only;
- (2) that the southern half of the area be reserved for Government purposes;
- (3) that the Minister submit details of the new lease to Cabinet\*.

A portion of the land retained was applied for by the Roman Catholic and Free Wesleyan Churches. Cabinet decided to approve of these applications but first offered the area to appellants who refused to accept the additional area. The churches thus accepted the two small areas applied for and the rest of the land has been retained for Government purposes.

The appellants brought this action claiming they were entitled to a renewal of their former lease of the whole area at a rental of £100 per annum. The rent at which Cabinet was prepared to grant a lease of the said northern area, stated to be 4ac.2r33.6p., was expected to be in the region of 580 pa'anga per annum. The trustees were so advised. A plea was put forward that, first, the trustees were entitled to a further term for the whole area and, next that the area now offered is too small for the present members of Niue people who belong to the settlement and lastly, that the rent is excessive. It is also claimed that there is other land upon which the said churches may extend their activities without encroaching on the area long occupied by the Niue Settlement.

A right of renewal was contained in each of the said leases. The last Deed of Lease was numbered 2132. It renewed the earlier lease No. 1677 for a term expiring on January 1, 1977 and contained two covenants which are important in this appeal. They are:-

- (1) that at the expiration of the term the lessees would peacefully give up possession, and,
- (2) that if the lessor is willing to grant a further lease and the lessees are willing to pay the rent which might be obtained from others, then the lessees should have the first offer.

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It is clear from Cabinet Minute No. 1190 that the lessor was not willing to grant a further lease of the area of approximately 11 acres. That, so far as concerns the rights of appellants under the covenant, was the end of any legal claim they might have by virtue of Lease No. 2132 to a further lease of the whole area. However, the lessor, acting through Cabinet, was willing to grant a further lease of part of the land. Whether or not the covenant applied to the grant of a further lease of part only of the land, need not be determined because the lessor acted strictly in accordance with the covenant as if it did so apply and offered a further lease of the land the lessor was willing to lease. This later included the pieces applied for by the religious bodies. The trustees met this offer by bringing the present action thus, in effect refusing it.

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We have already held that the express covenant of Lease No. 2132 as to renewal does not entitle appellant to the lease now sought so they must, in accordance with the covenant, peacefully give up possession. They no longer have any right under the terms of that lease to remain in possession nor to enforce a grant of the renewal sought. However appellants claim a statutory right to a renewal which will enable them to lease the said land for a total period (including all renewals) of 99 years. We will examine that claim.

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The statutory provision which provides for renewal of leases for a total period of 99 years is Section 36 of the Land Act (Cap. 63). Subsection (1) deals with leases of land forming part of an hereditary estate or allotment. It does not apply to the land now in question. Subsection (2) deals with any lease of land forming part of Government land and so applies in the present case. Subsection (2) reads:

- "(2) On the expiration of any lease of land forming part of Government land it shall be lawful for the Minister at the direction of Cabinet after a request in writing so to do by the holder of the expiring lease to grant to such holder of such expiring lease a further lease for a period not exceeding that granted in the expiring lease:

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Provided that no lease shall be granted under this section whereby the total period of the

original lease and any leases granted under this section shall exceed ninety-nine years".

140 Subsection (2) does not confer on a lessee of Government land the right to a renewal as claimed by appellants. It is a provision which enables the Minister, at the direction of Cabinet, to grant a further term not exceeding a total of 99 years occupancy as lessee. The matter is in the sole and unfettered control of Cabinet which has acted properly and in accordance with its powers under the subsection. The decision of Cabinet so made binds the Land Court which has no power to order the renewal sought by appellants.

The appeal must therefore fail and it is dismissed without costs.