

## Tu'ifua v Tui and ors

Privy Council  
App 9/78

30 April 1980

*Land - limitation of proceedings - proceedings for possession cannot be brought if the occupiers have been in adverse possession for more than 10 years - s148 Land Act*

10 *Limitation of actions - proceedings for possession of land cannot be brought if the occupiers have been in adverse possession for more than 10 years - s148 Land Act*

Tu'ifua brought a claim in the Land Court in 1978 against five persons who he alleged were occupying his allotment without his consent. Evidence was given that the defendants had been occupying the land since before 1960. The Land Court dismissed the claim, holding that it was barred by the limitation provisions in s148 Land Act.

Tu'ifua appealed to the Privy Council.

20 **HELD:**  
Dismissing the appeal.

The defendants had been in adverse occupation of the land in dispute since before 1960 so no action for their eviction could be brought.

Statutes considered  
Land Act s148

30 Privy Council

### Judgment

This is an appeal against the dismissal of an action brought by appellant against respondents for the recovery of certain land at Haveluloto. The facts are now set out from the judgment in the court below:

"In this case, the Plaintiff, Viliami Tu'ifua claims his land at Haveluloto which was registered in 1925 as his town allotment and which is occupied by the five Defendants. The claim is an application for a Court Order to evict the Defendants from the allotment as it is Viliami Tu'ifua's. In the evidence produced before the Court, the allotment was registered in 1925. The Plaintiff lived there at one time, he had a house built on it and it was sold in 1926. He went to his grandfather's allotment which was 15 acres in size. The 15 acres consist of 8 acres for tax allotment, 5 acres for lease and 2 acres for town allotment. The noble's representative said that those who had town allotments went to the bush where they were given a tax allotment, town allotment and leased allotment. In 1935, the plaintiff had a town allotment at Haveluloto which was registered. After the Plaintiff's father died the Plaintiff also got a tax allotment. There was a court order in 1946 regarding the allotment whereby it was taken from the Plaintiff. Since 1935, the Plaintiff lived at Fua'amotu. He said he used to clean his lawn several times and he even brought his sister, Fongonga, to live on the allotment. The Plaintiff said he had an understanding with Saia Fielakepa that Sione Sika was only staying temporarily on the allotment and of course Sione Sika is not one of the Defendants in this case. The Plaintiff also said that he was told by Fielakepa that Tui was also staying temporarily. That is how the Defendants occupy this allotment. Makisi Tui's father lived on the allotment since the 40's. Sitani said he went to the allotment in 1963. Hon. Fielakepa granted verbally the allotment to Sitani. Sitani built a house there where he lived ever since. Siale 'Ofa went to the allotment in 1975 when he was asked by Sione Sika to look after his house. Hon. Fielakepa said Sione Sika occupied the allotment before the present Fielakepa's father died. Hon. Fielakepa's father died in 1966. Paea Lolohea said he got married in 1968 and before he got married, he had a house on the allotment where he lived with his sister."

On these facts the Land Court held that respondents had been on the land since before 1960. This is not disputed. The action was not brought until March 30, 1978. The Land Court held that Section 148 of the Land Act applied and that the claim was statute barred.

The grounds of appeal are both legal and factual. Appellant claims that Section 148 does not apply. His construction of Section 148 and the facts he seeks to apply to that Section do not help. The evidence is clear that the occupation was adverse to appellants right to the Land. Appellant's plea that the occupation was unlawful, and that no deeds or documents supported the occupancy and also that he held the registered title, do not help. All these matters are irrelevant if the occupation is adverse. We have not found it necessary to attempt to traverse the various grounds. The evidence clearly proved that, upon the proper construction of Section 148, there was adverse possession since before 1960. The action is therefore out of time and Section 148 applies.

The appeal fails and will be dismissed without costs.