

## Market Authority v Mataele

Supreme Court

10 Hill J

Civil 198/1980

31 July 1980

*Land - proceedings to receive possession of land must be brought in the Land Court not the Supreme Court*

*Practise - proceedings in the Supreme Court should be commenced by writ of summons*

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The Market Authority applied to the Supreme Court, without issuing a writ of summons, for an order of possession of the site of a canteen occupied by the defendant.

**HELD:**

- (1) The proceedings should have been commenced by writ of summons as required by Order IV rule 1 of the Rules of the Court;
- 30 (2) Since the proceedings related to a dispute or claim to land it should have been brought in the Land Court, and the Supreme Court had no jurisdiction to deal with it.

Counsel for the Applicant : Mr Niu.

Hill J

### Judgment

This is a case concerning a Canteen in the Nuku'alofa main market. And it started off in a rather curious way in that the market holder sued the market authority for damages for eviction before he was evicted. That claim has been dismissed for lack of evidence because the Plaintiff has failed to turn up despite being given three weeks opportunity to do so. The market authority has made an application without issuing a Writ as required by Order IV rule 1 for possession of the Canteen site. A number of difficulties have risen in their path because the Market Regulations 1971 fell with the repeal of the Act under which they were made, the Agricultural Organisation Act Cap 64. There has been another Act namely No. 10 of 1975 but no regulations have been made under it and Mr Niu tells me that to the best of his knowledge no notice has ever been published in the Gazette as required by Section 3 of Act 10 of 1975 or for that matter under Reg 2(1) of the Agricultural Organisation Act Market Regulations. Furthermore the question has arisen whether this action should be brought in the Land Court or the Supreme Court. Section 127(1) (b) of the Land Act Cap 63 reads as follows:

"To hear and determine all disputes claims and questions of title affecting any land or questions of title affecting any land or any interest in land in the Kingdom and in particular all disputes claims and questions of title affecting any tofi'a, tax or town allotment or any interest therein."

Mr Niu says that section is restricted to tofi'as, tax or town allotments. I do not think that is correct. In my view the Land Court has sole jurisdiction in all disputes, claims and questions of title affecting land or any interest in land and, I think that it must be that a claim for possession is a claim affecting land or an interest in land. Therefore the application can not be dealt with in any event because it should be in the Land Court. The application is therefore dismissed. I stress that this is not on the merits but on the technical points which I have mentioned namely that it was not started by Writ of Summons and is, as I think, in the wrong Court. Therefore perhaps I should say that there is no obstacle in bringing the matter in the right Court and in the manner provided by the rules of the Land Court.