

## Veikune v To'a

Land Court  
 Martin CJ  
 Land Case 8/1978

25 August 1988

*Land - allotment holder estopped from evicting person in occupation by reason of promise made by previous allotment holder*

10 *Estoppel - allotment holder estopped from evicting person in occupation by reason of promise made by previous allotment holder*

Latu Veikune, the registered holder of a town allotment, brought proceedings in the Land Court for the eviction from the land of Sione To'a. These proceedings were resisted by To'a on the ground that the plaintiff's father, Inoke Veikune, who had previously held the allotment, had promised that he and his wife could live there until they died.

20 The claim was upheld by the Land Court but this decision was later reversed by the Privy Council on the ground that the Land Court had wrongly excluded certain hearsay as inadmissible, and the case was referred back to the Land Court for further consideration in the light of the new evidence. (see in Privy Council - [1974-1980] Tonga L.R.107).

HELD

Dismissing the plaintiff's claim

(1) In view of the promise made by the plaintiff's father, the father and, after his death, the plaintiff were estopped from denying the right of the defendant and his wife to remain on the property until their death;

30 (2) The defendant had no legal interest in the land and no right to receive a grant.

Cases referred to:

O G Sanft & Sons Ltd v Tonga Tourist and Development Co Ltd [1981-1988] Tonga L.R. 24

10 Martin CJ

### Judgment

This action was originally heard in November 1978 by Tupou J. He gave judgment for the Plaintiff. On appeal, the Privy Council referred the case back to this court to consider further evidence. (see 1974-1980 Tonga L.R. 107).

The claim concerns a town allotment at Kolofo'ou comprising 3 acres 1 rood 52.2 perches. In the original trial it was referred to as "Tavahi". Now it is referred to as "Longo'akau". Part of this allotment is occupied by the Defendant Sione Kataina To'a. The Plaintiff Latu Popi Veikune is the registered holder, having inherited it from his father 'Inoke Sateki Veikune. He wants to remove the Defendant from his land so that he can lease that part. The Defendant says that 'Inoke promised him that he could have the land where he now lives and has refused to move.

The detailed background appears from the judgment of Tupou J and does not need to be repeated. Having excluded certain evidence as hearsay and therefore inadmissible, he found that the Defendant's presence on the land was by way of licence only, terminable at the will of the landholder. He therefore ordered the Defendant to vacate. It is to be noted that he commented "... had the inadmissible hearsay evidence been allowed the ruling of this court might well have been different".

On appeal the Privy Council held that evidence was admissible, and referred the matter back to this court to reconsider its decision in the light of that evidence. It all concerns what 'Inoke said to various people about the land.

I bear in mind that 'Inoke was related to the Defendant. In Tongan custom, 'Inoke was regarded as the Defendant's uncle. So 'Inoke might be expected to provide for the Defendant in various ways.

The Defendant says that 'Inoke invited him to live on the land in 1947 or thereabout. He built a timber and thatch house there, with 'Inoke's permission. In or about 1958 'Inoke told him to move his house to another part of the allotment. He did as he was told. In or about 1967 'Inoke told him to move to his present site. Again he did as he was told and he lived there ever since. He has extended the house in various ways. The original part is timber on concrete posts; an addition is timber on a concrete base, and a further extension is of concrete blocks on a concrete base. He has brought a cement water tank on to the site.

The Defendant says that 'Inoke told him that he could stay there, and that eventually the allotment would be subdivided and he or his son would be given a part. He said at the original trial: "... if I had known I would not get an allotment, I would have shifted long ago." His wife Valamou To'a confirmed that in 1966 or 1967 'Inoke told them to build a house that To'a's son. She also heard 'Inoke tell her mother that he promised to give To'a and Vala a piece of land. Viliami Telefoni Latu said that soon after the funeral of Her late Majesty Queen Salote he asked 'Inoke for a piece of land and was told by 'Inoke that a part of the land was for To'a. He remembered 'Inoke telling To'a to go to the Ministry of Lands to obtain a document so that he ('Inoke) could demonstrate the area that was To'a's. He said "Inoke tole me ... that section is To'a's."

The plaintiff says that his father 'Inoke never told him anything of the sort. I find it hard to believe that he never discussed with his father what was to happen to the area occupied by the Defendant. Be that as it may, I find as a fact that 'Inoke intended, and promised the Defendant, that he and his wife could stay on the land, and that eventually he or his son would be given a portion of land. Relying on that promise, the Defendant

made no effort to find land elsewhere and spent a considerable sum of money over the years on building and enlarging his house. In legal terms, there was acquiescence and promissory estoppel.

The effect of this in Tongan law is difficult to determine. The Privy Council in this case drew attention to certain equitable relief which would be available to an occupier of land in this situation, and appears to have intended this court to consider those remedies. But in a later case, O.G. Sanft and Sons Ltd v Tonga Tourist and Development Co Ltd - [1981-1988] Tonga L.R. 24 - the Privy Council ruled that :

100 "In respect of Tongan land, the Land Act is a complete code which ... rigidly controls by its express terms all titles and claims to any interest in Tongan land except in respect of lease-hold interests, once they have been created ... With that exception there is no room for the application of any rule of equity - all claims and titles must be strictly dealt with under the Act. No estate, right, title or interest can be created except in accordance with the provisions of the Act."

and later:

110 "... equitable principles can apply only to lease-hold interests after they have been validly granted. Such principles have no application to any other title, claim or interest in any other Tongan interest in land."

This appears to rule out all forms of equitable relief. But a close analysis of the judgment shows that it deals only with the creation of equitable interests in land. It says that equitable rights in Tongan land cannot be created, unless the land is held under an already existing lease. But it does not say that the Defendant cannot avail himself of an equitable defence which does not create an interest in land. 'Inoke's promises cannot be enforced by way of a constructive trust. The Defendant cannot be given a grant of the land. But the defence of estoppel is open to the Defendant.

120 On my findings of fact, 'Inoke would have been estopped from evicting the Defendant in the unlikely event that he had tried to do so. The present Plaintiff holds the land in exactly the same right as 'Inoke, and he too is therefore estopped. He is not entitled to evict the Defendant. The Defendant has and can have no formal interest in the land; he cannot insist on a grant; but he and his wife are entitled to remain there for the remainder of their lives.