

Matavalea v Uata

Privy Council
Appeal No. 13/1988

24 February 1989

Land - allotment holder estopped from evicting occupier
Estoppel - allotment holder estopped from evicting occupier

The holder of a town allotment in 1961 granted a 15 year lease of part of the allotment to the respondent who built a substantial house on the land. A further lease of 3 years was granted in 1976, and after the expiry of that lease the respondent continued to occupy the land with no lease and paying no rent. In 1982 the allotment holder died and his widow who acquired a life interest, issued proceedings in 1985 for possession of the land.

HELD:

Dismissing the plaintiff's claim.

That the appellant was estopped by the conduct of her husband, the allotment holder, and herself, from claiming possession of the land from the respondent.

Cases considered

OG Sanft & Sons Ltd v Tonga Tourist and Development Co Ltd, Appeal No.2/1981 [1981-1988] Tonga L.R.

Statutes considered

Evidence Act s.103

Counsel for appellant : Mr Niu
Counsel for respondent : Mr Hoia

Judgment

This case concerns a town allotment at Longolongo. The registered holder was Tevita Sifa Matavalea, husband of the Appellant, and in 1961 he granted a 15 year lease of part of the allotment to the Respondent Fane. At the expiry of the 15 year term, during which a substantial house was built on the land, Tevita granted a further lease for three years which expired in 1979. Fane has continued to occupy the land to the present time although she has no lease and pays no rent.

40 Tevita died in 1982 whereupon the Appellant, as his widow, acquired a life interest in the land pursuant to S.74 of the Land Act, and in 1985 issued the present proceedings seeking an order evicting the Respondent from the land.

Martin J. held that the Appellant was estopped from claiming possession, and the appeal is against that decision.

It is necessary to consider the background to the granting of the leases, and the relationship between the Respondent and Tevita in some detail.

50 According to the Respondent, (and it is to be noted that Martin J. regarded her as a truthful witness whose evidence was to be preferred to that of the Appellant) she was regarded as Tevita's niece in the Tongan fashion and Tevita had expressed a wish to assist her. It was at his request that Tevita and her European husband, who died in 1974, went to live on the land in question. The arrangement concerning the first lease appears to have been that it would be for a 15 year term so that the Respondent's son Salini, who was then only one year old, would be able to take title. At the expiry of the term Tevita and the Respondent went to see the Noble Tuita and were told that Salini could not be registered as he was "a foreigner". According to the Respondent the three year lease was then granted so that her second son Siasoi would become of age. However, at the expiry of that term Tevita said that they should wait for his heir Tevita Niuselu to return to Tonga. The heir returned in 1982 but Tevita had died earlier in that year so the matter was taken no further, although according to the Appellant herself Tevita Niuselu was agreeable to the Respondent remaining on the land, and indeed had asked the Appellant to let her remain. 60 The Appellant's reaction to that was "I wish my land returned to me". There is obviously no love lost between the two widows. Martin J. described the Appellant as being "emotional and bitter".

70 The only other matters of significance are first, that in 1980, after the expiry of the three year term, the Appellant went to the Respondent and said the land would be registered if she gave them some money. The Respondent paid Tevita \$300 but no registration followed; secondly, the Respondent and her husband spent substantial sums draining the land and erecting a concrete block house; and thirdly, Tevita never ever sought to evict the Respondent after the expiry of the second lease in 1979 up to his death in 1982.

80 As was said earlier Martin J. resolved the matter by holding that the Appellant was estopped from claiming possession. He relied on S.103(1) of the Evidence Act (Cap.13) although we believe subsection (3) may be more appropriate. Those subsections read:-
103.(1) "If a person by his words or conduct wilfully endeavours to cause another to believe in a state of things which the first knows to be false, and if the second believes in that state of things and acts upon his belief, he who knowingly made the first statement is estopped from averring afterwards that such a state of things did not in fact exist."

103.(3) "If a person, whatever his real meaning may be, so conducts himself that a reasonable man would take his conduct to mean a certain representation, and that the latter was intended to act upon it in a particular way, and he with such belief does act in that way to his damage, the first is estopped from denying that the facts were as represented."

We agree with Martin J. that the circumstances were such that the Respondent was entitled to call in aid the provisions of S.103 against both Tevita had he sought possession and the Appellant who represented that if money was paid registration would follow.

90 The crucial issue in this case concerns the effect of the estoppel. As was made clear in the Privy Council case of O.G. Sanft & Sons v Tonga Tourist and Development Co. Ltd (Appeal No.2/1981) the Land Act is a complete code which, subject to the Constitution, rigidly controls by its express terms all titles and claims to any interest in Tongan land. There can be no question of equitable titles.

It follows, as Mr Hala conceded, that the Respondent acquires no rights under the Land Act by virtue of the estoppel. We would go further and say that she acquires no rights in land of any description and neither do her heirs.

100 The only effect of the estoppel is to impose a personal restriction on the Appellant from obtaining an eviction order during her life tenancy. What happens on her death or on termination of her life interest remains for future consideration.

Finally, Mr Niu attempted to call in aid Sections 12 and 13 of the Land Act which provide penalties for unlawfully dealing with land by selling it out-right or entering into an agreement for profit. Those sections do not help the Appellant and they cannot bring their own wrong-doing in aid.

The appeal is therefore dismissed.