

## In re 'Alatini, deceased

Supreme Court  
Probate Case No.11/1988

12 September, 1989

*Property - wife - whether entitled to share of husband's property*

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*Probate and administration - whether wife entitled to property of deceased husband*

Diana 'Alatini applied for letters of administration in respect of the property left by her husband who died intestate. In respect of a number of items, the widow claimed a one half share by virtue of her position as wife and of her contributions to her husband's business.

### HELD:

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- (i) A wife is not entitled to a share of the property of her deceased husband unless she can establish a constructive trust in her favour.
- (ii) A constructive trust cannot be implied merely from the fact that a wife was a good wife to her husband and helped him in his business;
- (iii) In the circumstances of this case a constructive trust was not established, and the items belonged to the deceased husband alone.

Counsel for appellant : Mr Niu  
Counsel of Crown : Mr Whitcombe

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Martin CJ

### Judgment

'Etueni Vakapuna 'Alatini died intestate on 23rd November 1988. His widow Diana Mahealani 'Alatini has applied for letters of administration. Pursuant to section 3 of the Probate and Administration Act the Court is required to ascertain the value of his estate. The valuations of the property are not challenged, but the Crown challenges the widow's claim to a one half share in various properties held by the deceased in his own name at the date of his death.

40 This ruling is relevant to establish the amount of duty payable, and also because the widow is entitled to retain what she owned in her own right at the date of her husband's death; anything else is subject to the statutory division of one third to her, and the remainder equally between the children.

There are certain debts for which the widow accepts that she is liable for one half is she is entitled to the interest which she claims.

The property can be considered under two heads:

1. Lease No.3721 at Pelehake

50 A 50 year lease of 50 acres of agricultural land was granted on 18th June 1980 to the deceased, his wife, and three children. It was held jointly by the five members of the family. I find that at his death Mr 'Alatini was entitled in equity to a one fifth share. The lease is now held jointly by the remaining four lessees, each being entitled in equity to a one fourth share.

2. All other property

This comprises:

Lease No.4553 at Ma'ufanga;

Vehicles H.1102 and L.1549;

Dwelling house at Ma'ufanga;

60 Household furniture;

Judgment debt payable by Paula Muti;

Saving account at Bank of Tonga;

Cheque account at Bank of Tonga.

### Valuation

Only a minor point arises. The vehicle H.1102 was bought by the deceased from one Viliami Sika, but he had not completely paid for it. Until payment were made, the vehicle remained in the legal ownership of Viliami. The deceased clearly had an interest in the vehicle, but its value should be reduced by the outstanding debt - approximately \$2,100.

### Ownership

70 At the date of her husband's death Mrs 'Alatini had no legal interest in any of these items. They are all property acquired by the deceased during the marriage in the course of various business activities. The widow claims a one half share, firstly by virtue of her position as wife, and secondly because of her contributions to her husband's business.

Mr Niu bases his arguments for the widow on her contributions as wife and mother. It was a happy marriage, but he says that if it had ended in divorce the property would have been divided equally. By implication, a wife in a happy marriage should not be in a worse position than one who is divorced.

80 This is an over-simplification. The proportion of assets which may be transferred to a divorced wife is not fixed and depends on many variables. More importantly, the argument misses the point. A divorce court has power to rearrange existing property

rights to do justice within the family, and to ensure that a divorced wife is properly provided for. It is at least arguable that, under the Civil Law Act, this Court would apply the English statute, the Inheritance (Provision for Family and Dependents) Act 1975, which empowers the Court to rearrange property rights in favour of a widow and dependants who have been left without proper support. But in this case we are concerned with ascertaining what those property rights are, not how they might be rearranged.

90 The law of Tonga has not yet progressed to the stage where a wife is automatically entitled to a specific proportion of her husband's property, simply because she is a good wife. That may be desirable, but it can only be achieved by legislation. Where property was in the legal ownership of a deceased husband, it must be presumed to have been in his sole beneficial ownership unless the widow can establish a constructive trust. That depends on the facts of each case, and may be established by proving a common intention that property was to be held jointly, or that the circumstances were such that it would be inequitable to permit the legal owner to retain the entire benefit or property for himself.

100 Mrs 'Alatini told me that her husband was always self employed. Before returning to Tonga in 1985 he ran a tree trimming and landscaping business in Hawaii. She helped with the books, and when her husband was away she ran the business. After they came to Tonga she worked part time until shortly before her husband's death. From her earnings she paid for utilities and food, and her husband paid for everything else. It was a typical informal family arrangement.

On these facts alone it is impossible to say that Mr and Mrs 'Alatini intended that any property should be jointly owned, or that her contribution was such that her husband held any part of his property on trust for her. I find that the deceased was solely and beneficially entitled to these assets.