

BETWEEN : *H.R.H. PRINCE TU'IPELEHAKE* - Plaintiff;

AND : *'ETUATE LAVULAVU*  
*(a.k.a. TAKIAMA)* - Defendant.

BEFORE THE HON. CHIEF JUSTICE WARD

Counsel: Mr Tu'utafaiva for plaintiff  
Defendant in person

Date of Hearing: 24 and 25 May 2000

Date of Judgment: 26 May 2000

### JUDGMENT

The defendant in this case started cultivating part of an 'api known as Vaihoi, in 1997. It is part of the estate of the Tu'ipelehake and the plaintiff is the present holder of that title having succeeded to it after his father's death in April 1999.

The land in question had been leased to a company, the Vanilla Plantation and Curing Company Ltd, since 1976 and, although the lease was due to run until 2029, it was terminated by Cabinet on 10 August 1999.

The plaintiff claims that the defendant has no right to occupy and cultivate the land and seeks vacant possession. It is also claimed that, in order to cultivate the land, the defendant destroyed a number of vanilla plants and a few coconut trees. The plaintiff has called evidence of the value of those plants and claims that sum in damages.

The statement of defence was drafted by counsel but, at the trial, the defendant represented himself. As a result the Court has allowed him some latitude in the conduct of his defence but it will be necessary to point out a number of aspects where the defence pleaded and the evidence he has given differ markedly.

It is not disputed that the defendant moved onto the land in late 1997 and start cultivating it. It is also accepted that he approached the late Tu'ipelehake with the aim of acquiring a lease of the 'api. The plaintiff admits that there was an agreement with his father over the land but the nature and extent of the that agreement is disputed. I accept that, had the plaintiff's father lived, the defendant may have secured a lease of this 'api. The approach was made in Nuku'alofa in about November 1998 but, shortly after, the former holder of the title had needed to go to New Zealand for medical reasons. He died there in April 1999 without having returned.

The plaintiff called the aide to the late Tu'ipelehake who described the early negotiations with the defendant. He told the court that the arrangement he conveyed to the defendant from the late Tu'ipelehake was that, if the defendant gave a gift of \$10,000.00, he would sign an application to give the defendant a lease of the 'api. It was known that the lease with the vanilla company was still in existence and would need to be cancelled before the defendant could have a lease. The defendant came with a cheque for \$2,000.00 and told the aide that he was in financial difficulties as the time and, when he had resolved them, he would pay the balance. The cheque was paid to the Tu'ipelehake.

It was then discovered that he had started cultivating the land notwithstanding that the lease had not been agreed and the Tu'ipelehake asked his aide to contact the defendant to say that, as he had paid \$2,000.00, he could carry on with the cultivation he had already done but should not do any new work.

That witness told the court that there has never been any further payment and the lease application has therefore never been signed. He stated that the only reason it did not go ahead was because the defendant had failed to pay the balance.

At the time the defendant spoke to the aide, the late Tu'ipelehake's agent was also there. The defendant had spoken to him previously and, when challenged, suggested he had the right to cultivate the land because he had a lease for fifty years. The agent also told of how the defendant continued to extend his cultivation of the 'api through 1998 and into 1999.

The defendant's version of these events differs in critical aspects from that of the plaintiff and his witnesses. It must be said that the version given in evidence also differed from the written defence. Had he been represented, the court would not have allowed him to depart from his defence in that way.

However, he told the court that the defence was not a true representation of his instructions.

At the outset, I had asked him if he accepted that the defence filed was accurate and he acknowledged that it was. When challenged over aspects of it later, he told the court that he had not seen it before the day of the trial and had not had an opportunity to read it properly until that evening. It was only then that he realised it was not an accurate account of his defence. That problem was not mentioned until he was asked directly by the court but I have allowed him to give his evidence even where it differs from the defence pleaded and I shall consider it all. Counsel for the plaintiff asked him how the lawyer could have written such a different case and the defendant said it was because he had given his instructions over the telephone. He then admitted he had been in Nuku'alofa at that time but said he had only spoken to his lawyer about other matters.

He told the court that the agreement with the late Tu'ipelehake was that the defendant would pay \$10,000.00 when the lease was signed but the Tu'ipelehake needed to have the lease with the company cancelled before his lease could be made. That was not done until after the late Tu'ipelehake died and so the defendant had never paid his part. His defence as pleaded was that he would receive a lease for 20 years if he paid \$15,000.00 and that he was to pay \$5,000.00 of that before he could start farming the land. The balance was to be paid when the lease was signed. The \$5,000.00 was paid and he then started farming the land. In his evidence he denied that the money was due before the lease was signed. He explained that he had paid \$2,000.00 by cheque and a further \$3,000.00 in cash but it was to help with the costs of the sick man in New Zealand. He denies the evidence of the aide that he was told not to make any new cultivation.

The suggestion that he had paid an additional \$3,000.00 was challenged by the plaintiff. The defendant was asked why he had not put it to the aide when he was in the witness box and replied that the aide had not mentioned it. He was asked if he had received a receipt and said that he had. He was asked where such a vital document was and said he thought it was with his lawyer in Nuku'alofa. He said he had faxed the lawyer on Monday and was told the documents were with the court. He agreed he had not asked the court officers whether they were on the file. When pressed about asking his lawyer for it, he said he believed there was a receipt but that he was uncertain where it was. Later he insisted there was a receipt and was able to tell the court the actual terms in which it was written. Just prior to that, he recalled it was with his lawyer but pointed out that it may have been a previous lawyer or possibly the latest one.

Counsel for the plaintiff then challenged him over the date of the payment. The defendant was unsure if it had been made in late 1997 or late 1998. He told

the court he would need to look in his diary which was at home. However, he made no attempt to produce the diary after the adjournment.

I do not go into the evidence further. I have no doubt at all that the plaintiff's witnesses are speaking the truth and have given an accurate account of the events when the defendant went to Nuku'alofa to try and arrange a lease with the late Tu'ipelehake. I equally have no doubt at all that the defendant is not speaking the truth about this.

I am satisfied that he paid \$2,000.00 only and that the agreement was for him to pay the balance before the lease would be signed and he failed so to do. It appears probable on the evidence that, had he done so, the late Tu'ipelehake would have carried out his side and signed. Unfortunately for the defendant, his delay in paying the balance lost him the opportunity. I accept the evidence of the aide that the defendant was given approval to continue to cultivate the crops he had already planted but I also accept he was told not to start any new cultivation and has continued to do so despite that clear warning.

The defendant's evidence was that he was not given such advice. He insisted that he had an agreement with the late Tu'ipelehake to start cultivating the land once he had paid the first \$5,000.00 although he had denied that part of the pleadings was accurate. He then suggested that he had authority to cultivate the land from one Hopoate, a shareholder of the company and, the defendant told the court, the managing director. They were the holders of the lease at the time as he correctly pointed out. He was unable to explain why, if he had such authority, he needed to approach the Tu'ipelehake at all or to seek his approval. As with so many aspects of the defendant's evidence, I felt he was willing to say almost anything that seemed to suit the moment with a repeated disregard for the truth.

The plaintiff told the court that, in May 1999, shortly after the death of the Tu'ipelehake, he discovered that the defendant was extending his cultivation of the land and instructed his lawyer to send a written notice to quit the 'api. That was clearly premature but the defendant accepts that, since Cabinet cancelled the company's lease in August this year, the plaintiff has the right to the land. His case appears to be that if the present Tu'ipelehake wants him to vacate the land he will do so but he is concerned about the crops he has planted.

I am satisfied he has no right to remain on the land. I am equally satisfied that he has no right to harvest the crops he has planted. Whilst I accept he was given leave by the late Tu'ipelehake to continue with the crops he had already planted, I am satisfied that was not intended to give a continuing licence to use the land. I am satisfied the basis of that permission was that he had paid \$2,000.00 and the Tu'ipelehake was willing therefore to desist from telling him to remove his crops. I do not consider the present titleholder is bound by any

such restraint by his father. The evidence is that the defendant planted only for a very short period of one or two months before he went to see the Tu'ipelehake. Since he was advised not to continue he has carried on planting without any right for a further eighteen months until the written notice was served on him in May 1999. He told the court he has continued even since then.

The other part of the claim, namely the damages for destruction of vanilla plants and coconut trees, formed a substantial part of the evidence as a whole. However, I can deal with it shortly.

The defendant's defence as pleaded was worded in ambiguous terms but appears not to be denying the destruction of the vanilla but challenging the valuation on the basis that the plants were unattended and damaged by wind and rain.

His evidence was that there were a number of blocks of vanilla and the only ones that were damaged belonged to the Vanilla Plantation and Curing Company. He called witnesses to explain that many of the plants were those of the company. He also suggested that the chopping down of much of the vanilla and the supporting fig trees was done by another person, Talakai. However, I attach little weight to the last point because he agreed with counsel for the plaintiff and the witness Talakai, whom he called for the defence, that the latter did it only on the purported authority of the defendant - an authority which was never his to give.

I accept on the evidence that there has been a substantial destruction of existing vanilla crops on the 'api. I also accept that this occurred shortly before and during May of 1999. If those plants were the property of the vanilla company, it is the company who should be claiming the damages and not the plaintiff because the company still had the lease at the time they were destroyed. If, on the other hand, the crop belonged to the Tu'ipelehake he is entitled to proper damages.

The burden is on the plaintiff to prove the damage and the title to the plants at the time they were damaged. He called an officer from the Ministry of Agriculture who had been asked to go to the land in May last year and assess the extent and value of the damage. He gave evidence that the Ministry of Agriculture had planted a number of vanilla vines for the late Tu'ipelehake and had maintained them for him up to a year or two ago. That arrangement was confirmed by a number of witnesses. The arrangement was that the Ministry workers also marketed the vanilla and, after deducting their expenses, paid the balance to Tu'ipelehake. The payment of such money was confirmed by the plaintiff's witnesses and I accept there was such an arrangement.

These plants were apparently separate and distinct from those of the company in which the late Tu'ipelehake also had an interest. Much of the defendant's evidence was directed at demonstrating that these plants were not in the area he or Talakai had been cultivating.

I have considered that evidence with care but, in the final analysis, I am satisfied they were the plants of the titleholder. The agricultural officer who counted them and gave his valuation told the court that all the plants he noted had been removed or damaged were those planted and maintained by his department for the late Tu'ipelehake. I accept that evidence as accurate and credible. The evidence of the defendant and his witnesses fell far short of impugning his testimony.

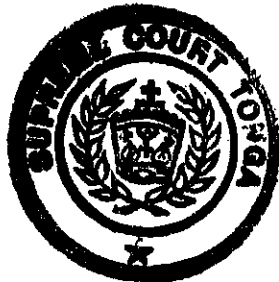
The defendant finally suggests that the valuation of the vanilla at \$7,740 is too high because of the state of the plants. The officer used a table of standard values put out by Cabinet. They were, he said, used by his department in cases where there are claims of damage to crops. The defendant challenges his assessment also on the basis that the witness' only formal qualification was the Higher Leaving Certificate. The evidence of the witness was that he had worked in the Ministry of Agriculture for 14 years and had been doing assessments of this nature for 6 years. I accept he is qualified to carry out such a valuation. The defendant's evidence that they were not worth such a figure is unsupported by any proper evidence upon which the court could base a valuation and I accept the figures given by the plaintiff's witness.

As far as the coconut trees are concerned. The evidence of the officer was that they had been chopped down with a chain saw. He gave no opinion of how long before he saw them that had occurred. Counsel for the plaintiff points out that the defence pleaded does not deny the chopping of these trees. In court the defendant did not seek to challenge that evidence and, on balance, I am satisfied he is liable also for that damage. The agricultural officer valued them at \$165.00

I therefore give judgment to the plaintiff in the following terms:

1. The defendant shall forthwith quit the 'api called Vaihoi and he, his servants and agents shall not enter the land without the express approval of the plaintiff.
2. The defendant shall pay the plaintiff damages in the sum of \$7,905.00.
3. The defendant shall pay the costs of the plaintiff to be taxed if not agreed.

NUKU'ALOFA: 26 May 2000.



*A. C. ...*

CHIEF JUSTICE