

POLICE v UNE ET AL
POLICE v VAGAIA

High Court Apia
17 November 1932
Luxford CJ

THE NATIVE TITLES PROTECTION ORDER, 1928 (Offences under clause 2) -
Appointment to title contrary to decision of Land and Titles
Commission - Counselling or procuring, s 202 the Samoa Act, 1921.

Defendant Une, believing the decision of the Land and Titles Commission of 29 October 1932 favoured defendant Vagaia, so informed his party. To save face on discovering his error, he proceeded with the appointment, and others took part in the "Saofa'i".

Held: Defendant Une's actions having been foolish as opposed to a deliberate defiance of the Commission's Order, he was convicted and fined rather than imprisoned. The other defendants were convicted and discharged.

McCarthy for prosecution.
Barber for defendants.

LUXFORD CJ. The evidence in this case satisfies me that VAGAIA was on the 29th October, 1932 appointed to the title "TOOMALATAI" and thereafter did act as if he was a rightful holder of that title.

The appointment was invalid as it was not made by the persons authorised by a decision of the Land and Titles Commission on the 20th October, 1932. Vagaia is therefore guilty of an offence under clause 2 of The Native Titles Protection Order, 1928.

The evidence also satisfies me that the wrongful appointment was made by the defendant Une, and he is therefore equally guilty of an offence under clause 2 of the Order by virtue of the provisions of section 202 of the Samoa Act, 1921.

Tua'imalo and Afoa took part in Vagaia's "Saofa'i" and this in my opinion also makes them guilty by virtue of the provisions of the said section 202.

The only question left to determine is the penalty to impose upon the defendants. At first glance it would appear that the appointment of Vagaia was in direct defiance of the Judgment of the Land and Titles Commission. In such a case I would not hesitate to punish the offence with a term of imprisonment.

But in my opinion the breach of the law came about because Une did not properly understand the Commission's decision at the time it was delivered. He thought that the side that he had led had acquired much more by the decision than actually was the case and so informed the members of his party. When he realised that he had made a mistake, he became afeared, and instead of explaining the true position to his party he tried to save his face by appointing Vagaia to the title.

This was a very foolish thing to do. As the breach of the law occurred by reason of a foolish act rather than a deliberate defiance of an Order of the Commission I will give Une the opportunity of paying a fine. He is fined £5. Each of the other defendants is convicted and discharged.