

ULUGIA (ALEFOSIO), ULUGIA (LAVATA'I),
ULUGIA (LEAITU) AND ULUGIA (SIMO)

v

THE ATTORNEY-GENERAL ON BEHALF OF THE
MINISTER OF LANDS, STANLEY (LILLY) AND
THE SAMOAN PUBLIC TRUSTEE

Supreme Court Apia
15 May 1978
Nicholson CJ

COURTS (Jurisdiction) - Jurisdiction of Supreme Court to declare land erroneously included as freehold in a deposited plan of subdivision to be customary land.

PRACTICE AND PROCEDURE (Preliminary argument) - Action for possession of customary land improperly incorporated in a plan of subdivision and for damages against the second defendant, a mandamus against the first defendant to revoke the deposit of the plan of survey, and an injunction against the third defendant to restrain him from administering the land as part of a certain estate - Defendants raising preliminary objections to locus standi of plaintiffs and the jurisdiction of the Court and submitting that the pleadings disclosed no cause of action against the first defendant:

Held, that the question of the locus standi of the plaintiffs was a matter for evidence at the hearing;

that the Supreme Court was the proper and only forum for the action, prima facie the land in question being freehold, and only the Supreme Court could correct the error and declare it to be customary land; and

that since the Statement of Claim alleged the first defendant had wrongfully approved and deposited the plan of survey in question, and the tenor of the Survey Ordinance 1961 casts a duty on the Minister to approve and deposit correctly surveyed plans, a cause of action against the first defendant was disclosed.

Va'ai for plaintiffs.
Cruickshank for first defendant.
Epati for second defendant.
Enari for third defendant.

NICHOLSON CJ. This is an action for possession of land and for damages against the second defendant, for mandamus against the first defendant to revoke the deposition of a plan, and for injunction against the third defendant to restrain it from administering the land as part of the estate of David Grey, deceased.

The defendants have raised preliminary arguments as to the locus standi of the plaintiffs, as to jurisdiction, and as to whether a cause of action is disclosed on the pleadings,

As to the first question, I conclude that that is a matter for

evidence at the hearing and cannot properly be the subject of preliminary argument.

As to the second question of jurisdiction, the defendants argue that the plaintiffs allege the land is customary land and that, therefore, in terms of Section 37 of the Land and Titles Protection Ordinance 1934 the proper forum must be the Land and Titles Court which has exclusive jurisdiction in relation to customary land. Alternatively, they argue that the Land Titles Investigation Commission is the appropriate forum to decide the issue of whether land is freehold or customary land.

The plaintiffs argue that since the land in question has been improperly incorporated in a deposited plan of subdivision, it is in fact freehold land and this Court is the only Court which can correct the matter. My view is that the plaintiffs' argument must prevail on this issue.

Prima facie the land is freehold as part of a parcel, the subject of a deposited plan, and unless and until this Court declares it to be customary land, the Land and Titles Court cannot have jurisdiction in the matter. Nor can it be argued that the Land Titles Investigation Commission set up under the statute of 1966 of that name has jurisdiction here. The whole scheme of that statute is to investigate claims of individual ownership so as to create freehold land where justified. It does not provide the machinery to declare freehold land customary.

I find that the Supreme Court is the proper forum for these proceedings.

As to the third question of whether a cause of action is disclosed, the first defendant argues that no breach of statutory duty has been alleged against the Minister of Lands. The Statement of Claim in paragraph 6 alleges that the first defendant wrongfully approved and deposited a plan. While the Survey Ordinance 1961 does not appear to deal precisely with the type of situation presented in this case, the overall tenor of the Ordinance is such that a duty is cast upon the Minister and his Department to approve and deposit correctly surveyed plans. I hold that the Statement of Claim reveals a cause of action against the first defendant, accordingly.

Counsel raised the question of non-payment of costs of a non-suit involving, I gather, almost the same parties. Since the costs have yet to be fixed by the Registrar in terms of the order of non-suit, I am not prepared to bar this claim for their non-payment, particularly as it is conceded very fairly on the second defendant's behalf that the second defendant contributed to the situation by failing to provide certain information sought from her by the Registrar to enable him to complete the fixing of costs.

The preliminary arguments having been disposed of, the action should now be set down for hearing.