

LAUFASA (AUTA A), LUI (TOGISIA) AND AUTA (SEVE T)
BY THEIR LAWFUL AGENT LAUFASA (MAPUILESUA)

v

ATTORNEY-GENERAL ON BEHALF OF THE LAND BOARD OF
WESTERN SAMOA AND TAUVAGA (TOFILAU)

Supreme Court Apia
27 August 1979
Nicholson CJ

PRACTICE AND PROCEDURE (Appeal) - Appeal to the Supreme Court pursuant to s 12 of the Land Ordinance 1959 - Plaintiffs seeking by way of action in the Supreme Court to set aside a decision of the Land Board to lease certain reclaimed land to the second defendant, an order that he vacate said land, and a lease of same to themselves - Proper procedure by notice of appeal to the Supreme Court to be served on the Board and other parties to the proceedings before the Board and provision of security for costs - Proceedings struck out as not being in the form of an appeal where such was intended.

MOTION by first defendant to strike out plaintiffs' claim as disclosing no cause of action.

Application granted with costs to the first defendant only, the second defendant not having been served with these proceedings.

Nelson for applicant.
Epati for respondent.

NICHOLSON CJ. This is a notice of motion to strike out the plaintiffs' claim, upon the following grounds:-

1. THAT the plaintiffs' Statement of Claim does not disclose a cause of action against the two defendants in that it does not seek any remedy, redress, or relief available in law in Western Samoa.

2. THAT the plaintiffs failed to comply with the provisions of the Land Ordinance 1959 regarding the challenging of decisions of the Land Board of Western Samoa.

3. THAT the plaintiffs have slept on their rights and seriously delayed initiating the proceedings.

4. THAT the plaintiffs' claim does not confer on this Court a basis for jurisdiction to adjudicate the matter.

The claim revolves around certain proceedings of the Land Board of Western Samoa and involves a challenge to those proceedings. From the Bar, counsel for the plaintiff made it clear that it was his intention that these proceedings be an appeal in terms of section 12(1) of the Land Ordinance 1959. That section reads as follows:-

12. Appeals to Supreme Court - (1) If any person considers himself aggrieved by any decision of the Board he may appeal to the Supreme Court if, within one month after being notified of that decision, he gives notice of appeal to

the Board, and also to such persons (if any) as have appeared before the Board as opponents of the case or claim or application to which the decision relates, and also gives security to be approved of by the Registrar of the Supreme Court for the costs of the appeal.

The plaintiffs' prayer for relief reads as follows:-

Wherefore the plaintiffs pray to this Honourable Court for an Order -

- (a) that the first defendant set aside their decision to lease the reclaimed area to the second defendant;
- (b) that the second defendant vacate the said premises;
- (c) that the plaintiffs be allowed to lease the said premises;
- (d) costs of this action; and
- (e) any other relief this Honourable Court thinks fit.

I propose to deal first with the second ground put forward in the Notice of Motion as it appears to me to be the fundamental matter for consideration here. The terms of section 12 of the Land Ordinance 1959 are specific as to the procedure to be adopted, and interpreting those provisions I conclude that the correct procedure is for the proposing appellant to file notice of appeal in this Court and to serve copies of it upon the Board and upon any other parties to the proceedings called in question. What in fact has been done in this case is that the plaintiffs have filed an ordinary action in the Supreme Court citing the Board and the second defendant as parties. The Registrar informs me that no security has been furnished in terms of section 12(1). I do not know whether or not any notice of appeal has been served upon the Board other than the normal Summons in these proceedings that one would expect, but clearly the proceedings are not in the form of an appeal, and I have reached the conclusion that they should be struck out for that reason.

Had it been that the plaintiffs were seeking a prerogative writ such as certiorari, then my conclusion may well have been different. There is some authority for the proposition that the fact that certain methods of appeal are prescribed does not preclude an aggrieved person from applying for certiorari. In this respect, I refer to the notes to P. 686 of Wily's Summary Proceedings in New Zealand, 4th Edition. However, I am not called upon to decide this point since the plaintiffs' counsel has made it clear that what is intended is an appeal within the terms of section 12 of the Land Ordinance 1959. Having reached the conclusion I have, I do not consider it necessary to consider the other grounds put forward. The motion to strike out is granted and I award costs of \$50.00 to the first defendant only, the second defendant not having yet been served with these proceedings.