

LEULUPOAO (ATA) AND OTHERS v SA (VAEGA) AND OTHERS

Supreme Court Apia  
Callander CJ  
7, 8 and 13 April 1983

LAND LAW - "customary land" not subject to the Limitation Act  
Section 9 - no jurisdiction for dispute between Samoans relating  
to "customary land" other than in Land and Titles Court.

HELD: The Court found that the land in question was  
"customary land" and as a consequence, it has no  
jurisdiction, such jurisdiction lying exclusively  
with the Land and Titles Court.

LEGISLATION:

- Limitation Act 1975 - S 9
- Constitution of the Independent State of Western Samoa -  
Article 101
- Land and Titles Act 1981 - Ss 8(b), 34(2)(c)
- Samoan Land and Titles Ordinance 1934 - Ss 13, 17

A S Epati for Plaintiffs  
L R Va'ai for Defendants

Cur adv vult

The Plaintiffs as representatives of the Alii and Faipule of Papa  
in Tufu, Savaii sue to evict the named defendants from certain  
land comprised and described in Volume 1 Folio 139 of the Land  
Register of Western Samoa, being more particularly defined upon  
Plan 2238L deposited in the Office of the Director of Lands at  
Apia. The land comprises some 857 acres 0 roods and 19 perches  
more or less.

At the conclusion of the Plaintiff's case, counsel agreed that it  
was common ground that the Defendants had been settled on the  
said land prior to the year 1955 both living on and farming the  
same. The question for determination is, therefore, whether the  
Plaintiffs' claim is barred by the operation of s.9 of the  
Limitation Act 1975, which prohibits the bringing of an action to  
recover any land after the expiration of 12 years from the date  
on which the right of action accrued.

It was not seriously disputed, and I find as a fact, that the Land was given to the Alii and Faipule of Papa in Tufu, Savaii by Crown Grant dated the 26th October 1955 "to hold unto the said Alii and Faipule of Papa, in Tufu, in accordance with the usages and customs of the Samoan people, their successors and assigns forever". I also find that, although part of the land may have been used by certain villagers from Papa since that date for the growing of trees or plants, it was not, nor ever has been physically occupied by the Alii and Faipule of the Village of Papa. It was only the enterprise of the first-named plaintiff which made it clear to the Alii and Faipule that their land was being occupied by families from the village of Satupaitea. This was after Ate was conferred his title in 1979 so it is clear that, if the limitation period applies to this land, then the 12 year limitation period had long expired, on 26th October 1967.

The crucial question is whether the land is freehold land or customary land. If it is customary land then the Limitation Act does not apply (s.4) and the defence case must fail. If it is freehold land then certain other arguments relating to adverse possession must be considered.

Mr Epati submits that the land is clearly customary land. I agree with him. I accept his submissions as being correct. Those submissions were as follows:

- (1) That, pursuant to Article 101 of the Constitution of the Independent State of Western Samoa "Customary land means land held from Western Samoa in accordance with Samoan custom and usage and with the law relating to Samoan custom and usage". These exact words were used in the Crown Grant of 1955.
- (2) That, pursuant to s.8(b) of the Land and Titles Act 1981 -  
"any Samoan freehold land within the meaning of section 13 of the Samoan Land and Titles Ordinance 1934 (as that section and Ordinance had existed prior to this Act coming into force) in respect of which, in terms of section 17 of the Ordinance, there has been a recital or declaration made pursuant to a Government or other grant, will, conveyance, lease, assurance or other deed or document that such land or interest in such land would be held in accordance with the customs and usages of the Samoan people"  
  
then such land is deemed to be customary land under the Act.
- (3) That the grant clearly declares, in accordance with the said s.17 that the land was to be held in accordance with the customs and usages of the Samoan people.

- (4) That the land is, accordingly, Samoan customary land pursuant to s.8(b) of the Land and Titles Act 1981. That, perhaps somewhat unhappily for the parties to this action, is not the end of the matter, for, as Mr Va'ai so astutely observed, the above submissions should have gone on to recite as follows:
- (5) That, pursuant to s.34(2)(c) of the Land and Titles Act 1981 that Court has exclusive jurisdiction "in all claims or disputes between Samoans relating to customary land ... held in accordance with the customs and usages of the Samoan race".

I am satisfied that I have no jurisdiction. The Plaintiffs have chosen the wrong forum and must now bring a petition in the Land and Titles Court. I add, however, that it may be prudent for the Defendants to consider my ex cathedra observations above to the effect that the Limitation Act would not appear to assist them. That question is, however, now a matter for the Land and Titles Court.

There being no jurisdiction in this court, the Plaintiff will be non-suited, but in the very unusual circumstances of the case clearly not apprehended by either counsel, I will not award costs in favour of the Defendants.