

IN THE SUPREME COURT OF WESTERN SAMOA

Held at Apia

CP. 7/92

BETWEEN SENE MUAGUTUTIA of Sauano
Fagaloa, Pensioner

PLAINTIFF

A N D FIALOGO TALIAOA of Vaivase

DEFENDANT

Counsel : R.S. To'ailoa for Plaintiff
A.V. Va'ai for Defense

Hearing : 4 & 5 June 1992

Judgment : 5 June 1992

JUDGMENT OF LUSSICK, ACJ

The Plaintiff seeks possession of property now occupied by the Defendant. There is no dispute that the Plaintiff is the registered proprietor of the freehold property and that the Defendant occupied the property by permission of the Plaintiff without a lease or other formal agreement. There is also no dispute that two notices to quit were served on the Defendant which were not complied with.

The Plaintiff became entitled to the subject land pursuant to an agreement between beneficiaries of her father's estate dated 14th September 1970. The relevant conveyance to her was made sometime in 1974 and was registered on 16 January 1975.

The Defendant and her husband claim to have been living on the subject property since 1953, but I reject their evidence on this point and prefer the evidence of the Plaintiff's husband and the Plaintiff's son that the Defendant and her husband first commenced permanent residence on the property

as husband and wife in 1968.

The Defendant's husband says that since that time he has erected, in 1972, a European house with a value of about \$30,000, a Samoan house valued at about \$4,000, an extension to the guest-house, which he was not able to value because second-hand materials were used, and another extension valued at about \$3,000. He said he also had part of the land filled, and his wife placed a cost of \$1,000 on that particular work. The wife also places a value of \$5,000 on the stock in trade of the shop.

The Plaintiff is aged 82 and is very frail and not in good health. This was certainly apparent even by observing her in the witness box. She says that she wishes to move back to her house at Vaivase because Fagaloa, where she is presently living, is now too far for her to travel to town. It was also clear from the evidence that apparently irreconcilable differences have arisen between the Plaintiff's husband and the Defendant's husband.

It is clearly impossible therefore for both parties to live peacefully together on the one property.

I am satisfied that the Plaintiff is entitled to recover her property and I intend to make the appropriate order for possession.

The Defendant, though, claims that because of representations made by the Plaintiff that the Defendant could stay on the property or her life, she and her husband have expended the money claimed. The Defendant's husband also claimed that sometime in 1954 or 1955 the Plaintiff gave permission for them to build a house, but it was not until 1972 that they were able to arrange the necessary finance to do so. The Plaintiff denies that she ever gave the Defendant the impression that she could live there forever or that she ever gave permission to build. I must say that I did not accept the Defendant as a witness of truth and I prefer the Plaintiff's version that she did not tell the Defendant that she could live on the property for the rest of her life. I also think that it was unrealistic for the Defendant and her husband,

in 1972, to rely on something said in 1955 about building a house (when conditions in the family were much different). Nevertheless, the Plaintiff did stand by and watch the Defendant erect a substantial European dwelling and there was no evidence that the Plaintiff or her husband protested, so the Defendant could hardly be blamed for thinking that she had permission.

The question of an accurate value to the improvements made by the Defendant and her husband is difficult to resolve. There is no doubt that the improvements were done and would have been worth something but the figures supplied by the Defendant and her husband seem to have been pulled out of thin air. The figures are not supported by any expert evidence, invoices, estimates, receipts of any description, nor is it clear as to what criteria the figures are based on. I note that the Defendant's husband himself is a builder; I agree of course that the improvements would have some value, but such value has probably been exaggerated by the Defendant and her husband.

In any event, the Plaintiff submits that that set off against any loss the Defendant might suffer are the facts that they lived all of those years on the Plaintiff's property without paying rent, and that while there they operated a business at which they made a profit. I agree that these factors ought to be taken into account. The Plaintiff does not want any of the Defendant's buildings and wants them relocated.

I am satisfied that the buildings could be relocated on the land of the husband's family. The stock in trade of course, does not in my view constitute any loss to the Defendant since that will still be saleable wherever moved to.

It is unavoidable that the relocation will result in some of the materials being damaged, and of course the foundation cannot be removed, nor can the filling mentioned by the Defendant. The filling of course can be regarded as a benefit to the Plaintiff but that is about all the benefit she will obtain from the relocation, except of course for having her house back.

The Defendant's husband's evidence is not of much help at all in assessing re-locating costs. He places the costs at around the same figure as the values of the improvements. The fact that he is a builder would, I am sure, tend to keep the costs down. I am of the view that, in all the circumstances the Plaintiff should contribute to the relocation costs although any damage to the materials during relocation will be the Defendant's responsibility.


I can only conclude by saying that it is a great pity and tragedy that a mother and daughter seek recourse to the Court to settle their differences. I hope that wise heads will be able to re-unite the family as it should be.

I find as follows:

(1) On the Plaintiff's claim - verdict and judgment for the Plaintiff. The Defendant is to deliver up possession of the property on or before 5th September 1992, and in the meantime is allowed to dismantle and carry away the improvements erected by him, i.e. European house, addition to permanent house of store and Samoan style guest house. The Plaintiff's costs of this claim will be paid by the defendant.

(2) On the Defendant's counter-claim, it is fair and reasonable in my view for the Plaintiff to contribute the sum of \$5,000 towards removal costs, therefore on counter-claim, verdict for the Defendant and judgment for Defendant for the sum of \$5,000.

Because the Defendant was only partially successful each party will bear its own costs.


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(R.B. Lussick)
ACTING CHIEF JUSTICE