

## Latu Popi Veikune v. Sione Kataina To'a

Supreme Court  
Martin C.J.  
3 October 1988

*Land and Titles—bare license terminable at will—whether promissory estoppel available to occupier of land as equitable relief—whether Land Act as complete code rules out all forms of equitable relief.*

The plaintiff is the rightful occupant of a town allotment. The defendant occupies a portion of the plaintiff's allotment under license; a prior decision held that license  
10 terminable at will. The defendant now claims, by hearsay evidence hitherto inadmissible that the plaintiff's predecessor in interest had promised the land to the defendant and/or the defendant's son. In reliance on that promise, the defendant has built a substantial home on the land on concrete foundations. The defendant has been on the land from 1947 and in the present substantial home from 1967.

The Land Act, as interpreted by the Privy Council appears to exclude all equitable relief.

### HELD:

The equitable defences of acquiescence and estoppel are available to defendant. Only equitable titles and claims are excluded by the Land Act. The defendant and his  
20 wife are entitled to the equitable equivalent of a life interest.

### Case referred to in judgment:

*O. G. Sanft and Sons Ltd. v. Tonga Tourist and Development Co. Ltd.* (Appeal No. 2 of 1981)

### Legislation referred to in judgment:

Land Act

## MARTIN C.J.

### Judgment:

This action was originally heard in November 1978 by Tupou J. He gave judgment for the plaintiff. On appeal, the Privy Council referred the case back to this Court  
30 to consider further evidence.

The claim concerns a town allotment at Kolofo'ou comprising 3 acres 1 rood 32.2 perches. In the original trial it was referred to as "Tavahi". Now it is referred to as "Longo'akau". Part of this allotment is occupied by the defendant Sione Kataina To'a. The plaintiff Latu Popi Veikune is the registered holder, having inherited it from his father 'Inoke Sateki Veikune. He wants to remove the defendant from his land so that he can lease that part. The defendant says that 'Inoke promised him that he could have the land where he now lives and has refused to move.

The detailed background appears from the judgment of Tupou J. and does not need to be repeated. Having excluded certain evidence as hearsay and therefore inadmissible, he found that the defendant's presence on the land was by way of licence only, terminable at the will of the landholder. He therefore ordered the defendant to vacate. It is to be noted that he commented: "... had the inadmissible hearsay evidence been allowed the ruling of the court might well have been different".

On appeal the Privy Council held that evidence was admissible, and referred the matter back to this Court to reconsider its decision in the light of that evidence. It all concerns what 'Inoke said to various people about the land.

We bear in mind that 'Inoke was related to the defendant. In Tongan custom, 'Inoke was regarded as the defendant's uncle. So 'Inoke might be expected to provide for the defendant in various ways.

The defendant says that 'Inoke invited him to live on the land in 1947 or thereabout. He built a timber and thatch house there, with 'Inoke's permission. In or about 1958 'Inoke told him to move his house to another part of the allotment. He did as he was told. In or about 1967 'Inoke told him to move to his present site. Again he did as he was told and he has lived there ever since. He has extended the house in various ways. The original part is timber on concrete posts, an addition is timber on a concrete base, and a further extension is of concrete blocks on a concrete base. He has brought a cement water tank onto the site.

The defendant says that 'Inoke told him that he could stay there, and that eventually the allotment would be subdivided and he or his son would be given a part. He said at the original trial: "... if I had known I would not get an allotment, I would have shifted long ago". His wife Valamotu To'a confirmed that in 1966 or 1967 'Inoke told them to build a house that would last a long time because an allotment would be given to To'a's son. She also heard 'Inoke tell her mother that he promised to give To'a and Vala a piece of land.

Viliani Telefoni Latu said that soon after the funeral of Her late Majesty Queen Salote he asked 'Inoke for a piece of land and was told by 'Inoke that a part of the land was for To'a. He remembered 'Inoke telling To'a to go to the Ministry of Lands to obtain a document so that he ('Inoke) could demonstrate the area that was To'a's. He said: "'Inoke told me ... that section is To'a's".

The plaintiff says that his father 'Inoke never told him anything of the sort. We find it hard to believe that he never discussed with his father what was to happen to the area occupied by the defendant. Be that as it may, we find as a fact that 'Inoke intended, and promised the defendant, that he and his wife could stay on the land, and that eventually he or his son would be given a portion of land. Relying on that promise, the defendant made no effort to find land elsewhere and spent a considerable sum of money over the years on building and enlarging his house. In legal terms, there was acquiescence and promisory estoppel.

The effect of this in Tongan law is difficult to determine. The Privy Council in this case drew attention to certain equitable relief which would be available to an occupier of land in this situation, and appears to have intended this court to consider those remedies. But in a later case, *O. G. Sanft and Sons Ltd. v. Tonga Tourist and Development Co. Ltd.* (Appeal No. 2 of 1981), the Privy Council ruled that:

In respect of Tongan land, the Land Act is a complete code which ... rigidly controls by its express terms all titles and claims to any interest in Tongan land

except in respect of leasehold interests, once they have been created. . . . With that exception there is no room for the application of any rule of equity—all claims and titles must be strictly dealt with under the Act. No estate, right, title, or interest can be created except in accordance with the provisions of the Act.

90 And later:

. . . equitable principles can apply only to leasehold interests after they have been validly granted. Such principles have no application to any other title, claim, or interest in any other Tongan interest in land.

This appears to rule out all forms of equitable relief. But a close analysis of the judgment shows that it deals only with the creation of equitable interests in land. It says that equitable rights in Tongan land cannot be created, unless the land is held under an already existing lease. But it does not say that the defendant cannot avail himself of an equitable defence which does not create an interest in land. 'Inoke's promises cannot be enforced by way of a constructive trust. The defendant cannot be given a grant of the land. But the defence of estoppel is open to the defendant.

100 On our findings of fact, 'Inoke would have been estopped from evicting the defendant in the unlikely event that he had tried to do so. The present plaintiff holds the land in exactly the same right as 'Inoke, and he too is therefore estopped. He is not entitled to evict the defendant. The defendant has and can have no formal interest in the land; he cannot insist on a grant; but he and his wife are entitled to remain there for the remainder of their lives.

It follows that the plaintiff's claim must be dismissed.