

FUAMETE

OPELLE & LUA V. A.S.G.

02-2008

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HIGH COURT OF AMERICAN SAMOA  
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HIGH COURT OF AMERICAN SAMOA  
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FILED 9:30 AM  
6/30/09

IN THE HIGH COURT OF AMERICAN SAMOA  
LAND & TITLE DIVISION

FRANCES OPELLE, KISHON PRITCHARD  
LUA

HCLT No. 02-2008

Plaintiffs

NOTICE OF HEARING

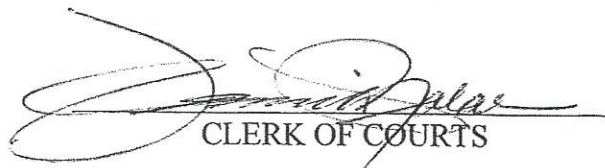
-vs-

AMERICAN SAMOA GOVERNMENT,

Defendant

To all parties to this action, please take notice that a hearing on motion for reconsideration or new trial has been scheduled on AUGUST 7<sup>th</sup>, 2009 at 9:00 a.m. before the above captioned division of the High Court of American Samoa at the Courthouse in Fagatogo, American Samoa.

Dated: 6/30/09

  
CLERK OF COURTS

1 **Charles V. Ala'ilima**  
Ala'ilima & Associates P.C.  
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6

HIGH COURT OF AMERICAN SAMOA  
Clerk's Office  
FILED TIME: 12:25 pm  
6/22/09  
TERRY S. FIELDING  
CLERK OF COURTS

7 Attorney for Plaintiffs  
8

9 **IN THE HIGH COURT OF AMERICAN SAMOA**  
10 **LAND & TITLE DIVISION**

11 FRANCES OPELLE, KISHON PRITCHARD ) HCLT No. 02-2008  
LUA )  
12 )  
Plaintiffs ) MOTION FOR RECONSIDERATION  
13 -v- ) AND/OR NEW TRIAL  
14 )  
AMERICAN SAMOA GOVERNMENT, )  
15 Defendant )  
16 )

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18  
19  
20 Comes now plaintiffs through their undersigned attorney and moves this court to reconsider  
21 its Opinion and Order issued June 12, 2009 in the above captioned matter and/or to grant a new  
22 trial:

23  
24 This motion is made pursuant to ASCA 43.0802(a), Rule 59 HCRCP and Rule 4 ACR (a) (1)  
25 and is supported by the attached memorandum of points and authorities.  
26  
27  
28

1 MEMORANDUM

2 The court has denied both plaintiffs standing to proceed with their request for declaratory  
3 relief. Plaintiffs seek declaratory relief with respect to the validity of portions of ASCA 37.0201 et.  
4 seq., in so far as it restricts the right of descendants of Samoans who inhabited the Territory of  
5 American Samoa at the time of Cession to the United States of America to acquire or inherit legal  
6 title to individually-owned land in American Samoa.

7  
8 The doctrine of standing is derived from the "case or controversy" requirement in Article III  
9 of the United States Constitution. This limitation imposed by a standing requirement is based on the  
10 separation of powers which underlies the federal government. Because the government and  
11 constitution of American Samoa are based on the U.S. model, those principles generally apply to the  
12 judiciary of this territory. *Multitauaopele v. Togafau*, 26 A.S.R.2d 52.

13  
14 To establish standing, a party must demonstrate (1) "injury in fact," meaning an invasion of a  
15 legally protected interest that is "(a) concrete and particularized, and (b) actual or imminent, not  
16 conjectural or hypothetical;" (2) a causal relationship between the injury and the challenged conduct,  
17 meaning that the injury "fairly can be traced to the challenged action of the defendant," and has not  
18 resulted "from the independent action of some third party not before the court; and (3) a likelihood  
19 that the injury will be redressed by a favorable decision, meaning that the "prospect of obtaining  
20 relief from the injury as a result of a favorable ruling" is not "too speculative." *Multitauaopele v.*  
21 *Togafau, Id.*

22  
23  
24 The test for standing is whether or not the plaintiffs have alleged such a personal stake in the  
25 outcome of the controversy as to assure that concrete adverseness which sharpens the presentation  
26 of issues. *Senate v. Lutali*, 26 A.S.R.2d 125. The test for standing is by its nature not a static and is  
27  
28

1 dependent on numerous factors unique to the particulars of the case. Ultimately the reason for the  
2 imposition of a standing requirement is to ensure a clear issue is before the court and that the parties  
3 have a sufficient interest in the outcome to ensure a vigorous prosecution of the issue.  
4

5 Frances Opelle has been injured in fact. Her mother, Adeline Kneubuhl, could not transfer full  
6 legal title to her individual land to her children. The challenged statute was the cause of injury  
7 because it arbitrarily set racial blood content for legal title and her blood fell under the racial  
8 minimum so Frances holds only a beneficial rights to individually owned land in American Samoa but  
9 could, subject to the provisions of her mother's trust, acquire full unencumbered legal title to the  
10 land if the restrictive laws are changed.  
11

12 Kishon Pritchard Lua has an immediate interest in securing for her children full transferable  
13 or inheritable legal title to her individually owned land which she currently shares in common with  
14 her siblings (*Estate of William Pritchard* – HCPR 22-94). Kishon faces the same dilemma as Adeline  
15 Kneubuhl did in that her current legal title to individually owned land cannot be transferred to her  
16 children because of insufficient racial content of their blood under the current law. The law requires  
17 that she establish a trust for her children if they are to receive any interest in this land. In stark  
18 contrast Kishon's brother, Shiloh, because of his marriage to a Samoan, does not currently face this  
19 dilemma with respect to his interest in the same property.  
20  
21

22 The rights of both plaintiffs are substantive they have clearly a direct stake in the outcome.  
23 For Frances Opelle and her other siblings/beneficiaries a positive outcome would grant them the  
24 opportunity to acquire full legal title to their respective portions of trust property. Without the  
25 positive outcome she would have no such opportunity. For Kishon Lua it would allow her to transfer  
26 property to her children without the necessity and uncertainty and complications of a trust. Both  
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28

1 would have clear standing to challenge this law if the court believes the issues are ripe for  
2 adjudication.

3  
4 The court's decision here to not grant standing to pursue declaratory relief is not compelled  
5 by the facts and circumstances here. Rather the court's actions appears to be one of an exercise of  
6 judicial discretion to deny declaratory relief which is recognized by statute. If there were pending  
7 legislation dealing with this issue one might see the logic in the court not wanting to get ahead of  
8 legislation. However, there is no indication that the legislature is concerned about this and in fact  
9 there is every indication from the 1999 amendments to the property law that the legislature is in fact  
10 going in the opposite direction and imposing more stringent definitions of race and nationality for  
11 purposes of further restricting property rights.  
12

13 The court's opinion seems to suggest that the appropriate route is to create a more  
14 immediate cause of action by attempting to register a deed in the name of a person who does not  
15 meet the statutory qualifications and to proceed accordingly through the administrative process and  
16 ultimately back to the court. What this route does, however, is open up the person attempting to  
17 bring this matter forward to criminal sanctions under ASCA 37.0230. In essence what the court is  
18 asking is for plaintiffs or their less than 50% blood children to do is to intentionally violate a criminal  
19 statute in order to have their day in court on the constitutional merits of the underlying statutory  
20 restriction. The criminal violation itself cannot be excused even if the mixed blood law is  
21 subsequently overturned since at the time of the offense the law was presumptively valid.<sup>1</sup>  
22  
23

24 Plaintiffs would not raise the issue of the exercise of this judicial discretion on reconsideration  
25 if there was a reasonable alternative to trying to have these important constitutional issues addressed.  
26

---

27 <sup>1</sup> Plaintiff's counsel would also have to consider the serious ethical issue of advising a client to intentionally violate the  
28 law.

1 It is respectfully requested that the court reconsider, grant standing and allow the declaratory action  
2 to move forward so that these important constitutional issues can be addressed and resolved.

3  
4 Respectfully submitted,

5 Dated: June 22, 2009

6  
7 

8 CHARLES V. ALA'ILIMA  
9 Attorney for Plaintiffs



TRUST ACCOUNT  
 ROY J. D. HALL, JR. & ASSOCIATES  
 A PROFESSIONAL CORPORATION  
 P.O. BOX 2506  
 PAGO PAGO, AMERICAN SAMOA 96799

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2023

4/8/09

11895-709-1 0787 001 11/11/09 000

Pay to the Order of

Alex Godinet \*\*\*\*\* \$50,000.00

\*\*\*Fifty thousand dollars no cents \*\*\*\*\* Dollars

HALL & ASSOCIATED  
 TRUST ACCOUNT

Full release and discharge return of  
 Deposit and cancel sale of a portion  
 of Fuamete.

*[Handwritten Signature]*

⑈002023⑈ ⑆12⑆040006⑆ 0034⑆013357⑈

TRUST ACCOUNT / ROY J. D. HALL, JR. & ASSOCIATES / A PROFESSIONAL CORPORATION

2023

Trust Liability Acct# 2-3019

\$50,000.0

Full release and discharge of return of deposit and cancel sale  
 of a portion of Fuamete.

RE: Kneubuhl/Fuamete-Godinet Escrow

*Received by:*  
*[Handwritten Signature]*

TRUST ACCOUNT / ROY J. D. HALL, JR. & ASSOCIATES / A PROFESSIONAL CORPORATION

2023

Trust Libability Acct#2-3019

4/8/09 \$50,000.00

Full release and discharge of return of deposit and cancel sale  
 of a portion of Fuamete.

RE: Kneubuhl/Fuamete-Godinet Escrow



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HIGH COURT OF  
AMERICAN SAMOA  
TRIAL DIVISION

HCCA 80-2007

*TRANSFERRED TO 42-08*

FRANCES OPELLE, KISHON PRITCHARD LUA,  
on behalf of themselves and others  
similarly situated,

PLAINTIFFS

VS.

AMERICAN SAMOA GOVERNMENT

DEFENDANTS

CIVIL ACTION

CHARLES V. ALA'ILIMA

ATTORNEY FOR

PLAINTIFFS

Initial DR Posted 9 / 17 / 2007

Final DR Posted

*Classed 1/25/2008*

HIGH COURT OF AMERICAN SAMOA  
 CLERK'S OFFICE  
 FILED TIME: 2:05pm  
 10-24-08  
 CLERK OF COURTS

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**IN THE HIGH COURT OF AMERICAN SAMOA  
 LANDS AND TITLES DIVISION**

FRANCES OPELLE, KISHON PRITCHARD	)	HCCA No.80-2007 &
LUA	)	HCLT No. 02-2008
	)	
Plaintiffs,	)	AFFIDAVIT OF SERVICE
	)	
-v-	)	
	)	
AMERICAN SAMOA GOVERNMENT,	)	
	)	
Defendant.	)	
	)	
	)	

I, Salatielu Fagalele, after being duly sworn and upon oath do state the following:

1. That I am over 18 years of age;
2. That I am not a party to this action;
3. That I did place a true copy of the following documents within the Attorney General's court box on two different occasions respectively as specified down below and on the next page :

• **PLAINTIFFS' REPLY TO DEFENDANT'S CLOSING**

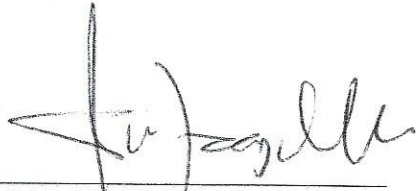
(a) Served on October 15<sup>th</sup>, 2008.

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• **PLAINTIFFS' CLOSING ARGUMENT**

(b) Served on August 29<sup>th</sup>, 2008.

I Affirm that the forgoing is true and correct.



SALATIELU FAGALELE

Subscribe and sworn to before me this 24<sup>th</sup> day of October, 2008.



Notary Public

In and for the Territory of American Samoa

My commission expires: 12/31/2008