



OPINION ORDER

*2. A. M. C. S. 1/12/10*  
*Clerk of Courts*

**HIG. COURT OF AMERICAN SAMOA**  
Clerk's Office

FILED TIME: 12:30 pm

IN THE HIGH COURT OF AMERICAN SAMOA  
LAND AND TITLE DIVISION

*MMOJ*  
**TERRY S. FIELDING**  
**CLERK OF COURTS**

FRANCIS OPELLE and KISHON	)	LT No. 2-08
PRITCHARD LUA,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	OPINION AND ORDER
	)	
AMERICAN SAMOA GOVERNMENT,	)	
	)	
Defendant.	)	

Before RICHMOND, Associate Justice, and MAMEA, Associate Judge.

Counsel: For Plaintiffs, Charles V. Ala'ilima  
For Defendant, Jennifer Auspurger, Deputy Attorney General and Asaua Fuimaono, Assistant Attorney General

**INTRODUCTION**

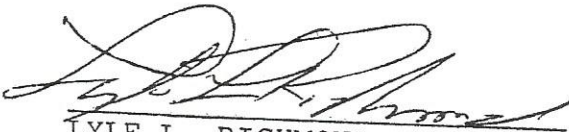
Plaintiffs Francis Opelle ("Opelle") and Kishon Pritchard Lua ("Lua") question the constitutionality and continuing viability of American Samoa's land alienation laws (A.S.C.A. 37.0201-.0230)

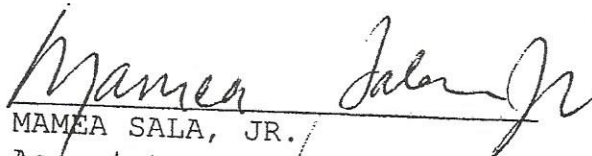
Opelle currently resides in California and is less than one-half native blood. Her mother had less than 100% native blood but was a lawful registered owner of individually owned land in Taputimu on the Island of Tutuila, American Samoa. She established a land trust for the benefit of Opelle and her siblings to be executed at her death to comply with existing land laws limiting ownership to persons having at least one-half

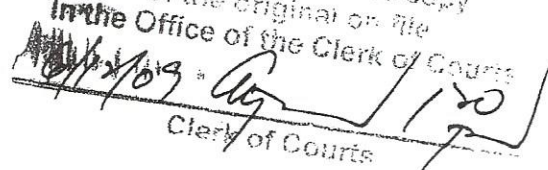
ORDER

Opelle's and Lua's claims are dismissed without prejudice.  
It is so ordered.

Dated: June 12, 2009

  
LYLE L. RICHMOND  
Associate Justice

  
MAMEA SALA, JR.  
Associate Judge

Certified to be a true copy  
of the original on file  
In the Office of the Clerk of Courts  
June 12, 2009  
  
Clerk of Courts

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ATTORNEYS FOR DEFENDANT

IN THE HIGH COURT OF AMERICAN SAMOA  
LANDS AND TITLES DIVISION

FRANCES OPELLE & KISHON

PRITCHARD LUA on behalf of  
themselves and others similarly  
situated

Plaintiffs,

vs.

AMERICAN SAMOA GOVERNMENT

Defendant.

HIGH COURT OF AMERICAN SAMOA  
Clerk's Office

FILED TIME: 9:25  
9 April

8/4/09  
TERRY S. FIELDING  
CLERK OF COURTS

HCCA No. 80-2007

DEFENDANT AMERICAN SAMOA  
GOVERNMENT'S OPPOSITION TO  
MOTION FOR RECONSIDERATION  
AND/OR NEW TRIAL

COMES NOW, Defendant, AMERICAN SAMOA GOVERNMENT, through its undersigned counsel, and submits herewith its memorandum in opposition to Plaintiff's Motion for reconsideration and/or new trial.

1  
2  
3  
4 **A. SUMMARY OF FACTS**

5 **I. Statement of Law**

6 The general rule and practice in American Samoa with  
7 regard to motions for reconsideration is that such motions be  
8 very specific with regard to the alleged errors of law or fact  
9 embraced by the motion; or, the motion must point to newly  
10 discovered evidence that was not or could not have been,  
11 through the exercise of reasonable diligence, brought to the  
12 court's attention at an earlier time. *ASG v. South Pacific*  
13 *Islands Airsystems, Inc.*, 28 A.S.R.2d 170; *G. M. Meredith v.*  
14 *Blue Pacific Management Corp.*, 28 A.S.R.2d 204.

15  
16 In *Nua v. Sunia*, 4 A.S.R.3d 234, this Court reiterated the  
17 standard for reconsideration and said it would be "appropriate  
18 if the trial court (1) is presented with newly discovered  
19 evidence, (2) committed clear error or the initial decision was  
20 manifestly unjust, or (3) if there is an intervening change in  
21 controlling law." Defendant submits that Plaintiffs cannot  
22 meet any of these criteria, as Plaintiffs are simply asking the  
23 Court for another change to litigate the same underlying issues  
24 as were litigated at trial without offering anything of  
25 substance in return.

1 In addition, T.C.R.C.P. 7(b)(1), specifically requires  
2 that every motion for a new trial and/or reconsideration "shall  
3 state with particularity the grounds therefore." "To meet this  
4 particularity requirement, a motion for [reconsideration] must  
5 normally be accompanied by a memorandum of points and  
6 authorities...which concisely states the arguments supporting the  
7 motions and cites authorities on each point." *In re Minor*  
8 *Child*, 30 A.S.R.2d 22.

9 Here, Plaintiffs are simply rearguing the same positions  
10 that were asserted and argued before and during trial.  
11 Accordingly the motion is without merit and is properly  
12 rejected by this Court. *ASG v. Estate of Fuimaono Tuinanau*, 29  
13 A.S.R.2d 114. It is submitted that this Court's findings are  
14 amply and reasonably supported by the evidence presented during  
15 the course of trial and that the motion for reconsideration  
16 and/or new trial should be denied.

## 18 II. STANDING

19 Neither of the specific Plaintiffs named in the Complaint  
20 have standing to bring this action and it was correct for this  
21 Honorable Court to dismiss the Plaintiffs' claim on these  
22 grounds alone.

23 In Multitauaopele v. Togafau, 26 A.S.R.2d 52, 53 (Trial  
24 Div. 1994) the High Court confirmed that the rules of standing,  
25 which stem from the "case or controversy" requirement in

1 Article III of the United States Constitution, extend to the  
2 judiciary in the Territory of American Samoa. The High Court in  
3 Multitauaopele confirmed that to establish standing a party  
4 must demonstrate:

5 (1) "injury in fact," by which we mean an  
6 invasion of a legally protected interest  
7 that is

8 "(a) concrete and particularized, and

9 (b) actual or imminent, not conjectural or  
hypothetical"

10 (2) a causal relationship between the injury and  
11 the challenged conduct, by which we mean  
12 that the injury "fairly can be traced to the  
13 challenged action of the defendant," and has  
14 not resulted from the independent action of  
some third party not before the court; and

15 (3) a likelihood that the injury will be  
16 redressed by a favorable decision, by which  
17 we mean that the "prospect of obtaining  
18 relief from the injury as a result of a  
favorable ruling" is not "too speculative."

19 These elements are the "irreducible minimum"  
20 required by the Constitution.

21  
22 *[Citations Omitted].*

23 In Federation of Labor v. McAdory, 325 U.S. 450, 462  
24 (1945), the Supreme Court held that it was forbidden from  
25 deciding the constitutionality of a particular statutory

1 provision "without reference to some precise set of facts to  
2 which it is to be applied". The Supreme Court said at 461, it  
3 "has long been its considered practice not to decide abstract,  
4 hypothetical or contingent questions... or to formulate a rule of  
5 constitutional law broader than is required by the precise  
6 facts to which it is to be applied... or to decide any  
7 constitutional question except with reference to the particular  
8 facts to which it is to be applied."

9 In Anderson Nat. Bank v. Lueck, 321 U.S. 233, 242 (1944)  
10 the Supreme Court said "in the absence of a showing of injury,  
11 actual or threatened, there can be no constitutional argument."

12 In Warth v. Seldin, 422 U.S. 490 (1975), in considering  
13 the Supreme Court's power to determine constitutional  
14 questions, the Supreme Court noted at 499 that the plaintiff  
15 himself must have suffered "some threatened or actual injury  
16 resulting from the putatively illegal action." The Supreme  
17 Court also noted at 499 that "the plaintiff generally must  
18 assert his own legal rights and interests, and cannot rest his  
19 claim to relief on the legal rights or interests of third  
20 parties."  
21

22 In Craddick; Craddick Development Inc. v. Craddick, 28  
23 A.S.R.2d 167 (Trial Div. 1995), the High Court held that a  
24 party has "no standing to sue without an "injury-in-fact" or a  
25 "direct stake in the controversy". The High Court confirmed



1 that one of the principal reasons for the limitations on  
2 standing to sue is to prevent persons from attempting to  
3 further "public policy goals by resort to the courts". The  
4 Plaintiffs must prove an interest in the suit which "surpasses  
5 the common interest of all citizens in procuring obedience to  
6 the law." The High Court cited with approval the comment in Re  
7 Biester, 409 A.2d 848, 851 (Pa. 1979) that "to surpass the  
8 common interest, the interest is required to be, at least,  
9 substantial, direct and immediate."

10 Applying these principles to the facts of the present  
11 case, it is respectfully submitted that neither of the  
12 Plaintiffs named in the Complaint have standing to bring this  
13 action.

14 With respect to Plaintiff Opelle it is respectfully  
15 submitted that:

- 16 a. Plaintiff Opelle has no current legal interest in the  
17 relevant land which is capable of being affected by  
18 the laws which are challenged by Plaintiffs.

19 Paragraphs 10 and 11 of the Plaintiffs' complaint  
20 confirm that Plaintiff Opelle's mother established a  
21 land trust for the benefit of Plaintiff Opelle and  
22 her siblings and that Plaintiff Opelle holds only a  
23 beneficial interest in the land pursuant to that  
24 trust. In accordance with the reasoning in *Labor v.*  
25

1 McAdory the Court should not determine a  
2 constitutional question which is "broader than is  
3 required by the precise facts to which it is to be  
4 applied."

5 b. A determination that the restrictive statutory scheme  
6 is unconstitutional would not invalidate the trust  
7 deed allegedly entered into by Plaintiff Opelle's  
8 deceased mother and would not convert Plaintiff  
9 Opelle's beneficial interest in land into a legal  
10 interest. The prospect of Plaintiff Opelle obtaining  
11 relief from a favorable judgment is 'too speculative'  
12 and she therefore has no real interest in the subject  
13 matter of these proceedings and no standing to bring  
14 this action. See *Multitauaopele*.

15  
16 c. It is not sufficient for Plaintiff Opelle to argue  
17 that the relevant statutory scheme affected the  
18 ability of her deceased mother to deal with land in a  
19 particular way in the past. In line with the decision  
20 in Warth v. Selding, Plaintiff Opelle cannot rest her  
21 claim on the legal rights or interest of a third  
22 party.

23 d. The question of whether Plaintiff Opelle might have  
24 had a legal interest in the relevant land if the  
25 statutory scheme had been different at the time of

1 her mother's death and if her mother decided to  
2 transfer the land or part of it to her is a question  
3 which is abstract, hypothetical and contingent and  
4 insufficient to give standing to Plaintiff Opelle.

5 e. It is undersigned Counsel's understanding that circa  
6 1980, Plaintiff Opelle initiated an action to contest  
7 her mother's will. Subsequently, it is believed that  
8 Plaintiff Opelle entered into a Stipulated Agreement,  
9 entered with prejudice, agreeing that her mother's  
10 estate, and therefore Plaintiff Opelle's claims to  
11 that land, were settled. It is not believed that  
12 Plaintiff Opelle reserved the right to pursue any  
13 claims, constitutional or otherwise, upon settlement  
14 or otherwise reserved or holds any such right that  
15 would have survived such settlement.

16  
17 f. Plaintiff Opelle has made no application to the  
18 Registrar of Titles for the registration of the  
19 subject land into her name.

20  
21 With respect to Plaintiff Lua it is respectfully submitted  
22 that:

23 a. It is not sufficient for Plaintiff Lua to argue  
24 that the relevant statutory scheme affects her  
25 children's rights to inherit land on Tutuila. In

1 line with the decision in Warth v. Selding,  
2 Plaintiff Lua cannot rest her claim on the legal  
3 rights or interest of other people, namely, her  
4 children. Plaintiff Lua, as a person qualified to  
5 hold legal title to individually owned land in the  
6 Territory, has suffered no actual or threatened  
7 injury resulting from the laws which are alleged by  
8 the Plaintiffs to be unconstitutional. In the  
9 absence of actual or threatened injury, there can  
10 be no constitutional argument. See Anderson Nat.  
11 Bank.

12 b. It is not appropriate for the Court to make a  
13 determination as to how the laws may or may not  
14 apply to a fact situation which might arise at some  
15 time in the future in relation to Plaintiff Lua's  
16 children. The Court should not exercise its power  
17 to determine the constitutionality of a statutory  
18 provision with respect to abstract, hypothetical or  
19 contingent questions. See Labor v. McAdory. The  
20 allegation that Plaintiff Lua's children may, at  
21 some indeterminate time in the future, be deprived  
22 of the opportunity to receive an inheritance of  
23 land, is such a question.  
24  
25

1 c. No application has been made to the Registrar of  
2 Titles for the registration of the subject land in  
3 the name of Plaintiff Lua's children. Plaintiff  
4 Lua's husband, Lawrence, testified that he has  
5 never attempted to place property in the name of  
6 any of his children.

7  
8 As this Honorable Court can see the arguments regarding  
9 standing are exactly the same as they were at trial. The  
10 Plaintiff has not submitted any newly discovered evidence.  
11 Neither do they present any evidence showing that this Court  
12 committed clear error or that the initial decision was  
13 manifestly unjust. The Plaintiffs also do not present any  
14 evidence that there was an intervening change in the  
15 controlling laws of this territory or the United States that  
16 would support their motion for reconsideration and/or new  
17 trial.  
18

19 The Plaintiffs themselves recognize that no new law has  
20 been passed changing the laws of this territory. On page 4 of  
21 their Motion for reconsideration and/or new trial, the  
22 plaintiffs state, that "there is no indication that the  
23 legislature is concerned about this and in fact there is every  
24 indication from the 1999 amendments to the property law that  
25 the legislature is in fact going in the opposite direction..." It

1 cannot be more clearly stated that absolutely nothing has  
2 changed since trial that would warrant a new trial or  
3 reconsideration of the issue of standing.

4 It is submitted that this Courts's opinion was a correct  
5 interpretation of the existing laws. The Plaintiffs have no  
6 standing. Plaintiff Oppelle did not demonstrate that she  
7 suffered an injury-in-fact or that the alleged injury could be  
8 redressed by a favorable decision from this Court. Instead  
9 plaintiffs merely wanted to gain an opinion from this court on  
10 mere hypothetical argument and vaguely argued possibilities.

11 Plaintiff Lua is qualified to own land in American Samoa.  
12 Lua has submitted no new evidence that would show that she  
13 there is any injury to her interests. Her claim on behalf of  
14 her children is merely speculative and can only occur in the  
15 future. Lua clearly does not have standing to bring this  
16 lawsuit. She currently owns land in American Samoa and the  
17 inability to pass title to her children does not do injury to  
18 Lua. Lua also has never attempted to pass title to her  
19 children.  
20

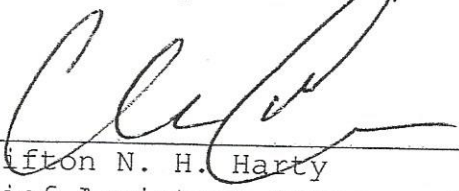
21 Defendant, American Samoa Government, urges this Honorable  
22 Court to find that neither Plaintiffs have standing to bring  
23 this cause of action and that the motion for reconsideration  
24 and/or new trial should be denied.  
25

1 C. CONCLUSION

2 Defendant ASG submits that this Honorable Court should  
3 find that neither Plaintiff has standing to bring this action.  
4 Plaintiffs' motion for reconsideration and/or new trial should  
5 be denied and Plaintiffs should go hence without day.  
6

7 Dated: 8/4/09  
8


9  
10 Respectfully Submitted,

11   
12 \_\_\_\_\_  
13 Clifton N. Harty  
14 Chief Assistant Attorney General  
15 Civil Division  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of  
Defendant's Memorandum in Opposition to Plaintiff's Motion  
for Reconsideration and/or New Trial was served this 4th  
day of August, 2009 upon:

Charles V. Ala'iima  
Via Court Box delivery

  
Clifton N. H. Harty

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