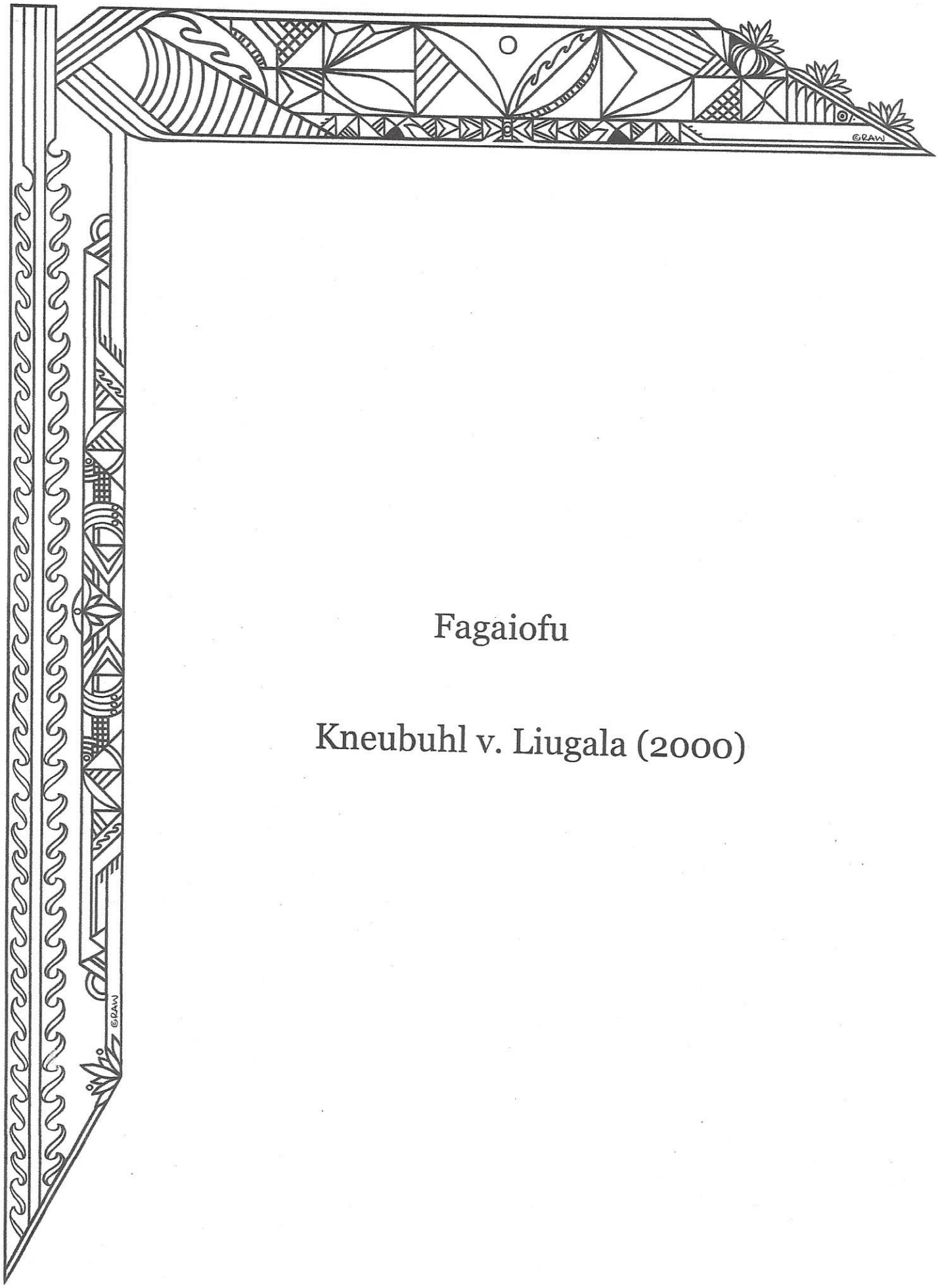

Fagaiofu

Kneubuhl v. Liugala (2000)

Lena P. Kneubuhl Trust Folio

Kneubuhl v. Liugalua (2000)

WSSC

9 August 2000

In the Supreme Court of Samoa

between

Douglas Crane Kneubuhl

v.

Salu Liugalua, Faalavaau Asalemo

and Sila Leua

Kneubuhl v Liugalua [2000] WSSC 27 (9 August 2000)

IN THE SUPREME COURT OF SAMOA
HELD AT APIA

BETWEEN:

DOUGLAS CRANE KNEUBUHL,
also known as **MIKE KNEUBUHL**
also known as **LILOMAIAVA MIKAELE KNEUBUHL**
of Newport Beach, Los Angeles, California, USA, Managing Director
PLAINTIFF

AND:

SALU LIUGALUA,
also known as **SALU LIUGALUA ANAE TAEOALII,**
a matai of Falevai, ⇦ **Falelatai** ⇨.
FIRST DEFENDANT

AND:

FAALAVAAU ASALEMO,
also known as **FAALAVAAU ASALEMO POLATAIVAO FOSI SCHMIDT**
of Alamagoto and a matai of ⇦ **Falelatai** ⇨.
SECOND DEFENDANT

AND:

SILA or LUPEMATASILA LEUA
also known as **SILA** or **LUPEMATASILA LEUA POLATAIVAO FOSI SCHMIDT**
of Alamagoto and a matai of ⇦ **Falelatai** ⇨.
THIRD DEFENDANT

Counsel: Mr Patrick Fepuleai for the Plaintiff
Mr. A.S. Vaai for the Defendants

Hearing Date: 20 July 1999
Date of Decision: 9 August 2000

REASONS FOR DECISION ON AN INTERLOCUTORY APPLICATION TO STRIKE OUT THE ACTION GIVEN BY WILSON J.

This is an action for the recovery of land brought by the plaintiff, an American citizen, against the defendants, three matais of ⇦ **Falelatai** ⇨. The plaintiff claims to be the registered legal owner of 240 acres of freehold land at Fagaiofu (hereinafter called "the subject land") situated in ⇦ **Falelatai** ⇨ in the District of Aana Upolu, Samoa. The plaintiff claims that the subject land is freehold land owned by him and claims that the defendants unlawfully entered on to the plaintiff's land on 27 February 1999 and have **inter alia** unlawfully occupied the subject land. In the action the plaintiff seeks **inter alia** an injunction to restrain the defendants from occupying the subject land, an eviction order for the defendants to vacate the subject land, an order for the removal of buildings, fences and other belongings of the defendants, an order "stopping" (restraining) the defendants from cutting down trees and clearing vegetation on the subject land, an order for the removal of a caveat, general damages and costs.

The plaintiff commenced these proceedings for the recovery of land [Rules 10 and 11 of the Supreme Court (Civil Procedure) Rules] by filing a statement of claim dated 29 March 1999 [Rule 13] and several affidavits in support. A summons dated 30 March 1999 was issued [Rules 14 and 15]. By notice of motion dated 29 March 1999 [Rule 65] notice was given of the intention of the plaintiff to seek orders **inter alia** by way of injunction to restrain the defendants from occupying the subject land and by way of eviction upon the grounds **inter alia** that the subject land "is registered under the plaintiff" and that the defendants "have unlawfully occupied" the subject land, and that the defendants have refused to vacate the subject land and continue "their

unlawful occupation", notwithstanding a request having been made to them plaintiff "through the Village Council."

The application by way of motion was set down for hearing on 12 April 1999 and subsequently adjourned until 3 May 1999 and thence until 17 May 1999 and thence until the week commencing 14 June 1999 and thence until the week commencing 19 July 1999. It then came on for hearing before me on 20 July 1999.

The summons, the statement of claim and the notice of motion having apparently been served upon the defendants, it was then open to the defendants to dispute their liability for the whole or part of the claim and/or to set up a counter-claim and, in that event, to file a statement of defence and/or a statement of counter claim (Rule 96).

Instead, by notice of motion dated 14th May 1999, the defendants applied for an order striking out the plaintiff's action upon the grounds **inter alia**:-

"1. That the registered owners have failed over a period of 100 years to complete the registration and take possession of the land to complete their freehold title to the land;

2. That the land Fagaiofu has always been customary land and remains customary land;
3. That the Land and Titles Court has exclusive jurisdiction over matters of customary land;
4. That (the Supreme Court) has no jurisdiction to determine the action by the plaintiff as the land in question is customary land."

It is not clear whether the defendants' application was made pursuant to Rule 70 upon the basis that "no cause of action is disclosed" or pursuant to the inherent jurisdiction of the Court to strike out an action where no "reasonable cause of action is disclosed [compare C.E. Heath PLC v Ceram Holding Co. (1988) 1 All ER 203]. If it was made pursuant to Rule 70, it must be refused, because a cause of action is clearly disclosed viz. a claim for possession of freehold land of which the plaintiff is said to be the registered owner. If it was made pursuant to the inherent jurisdiction of the Court, special rules apply.

In Halsbury's Laws of England (4th Edn.) Vol. 37, para 435), the legal position is stated as follows:-

"In addition to its powers under the Rules of the Supreme Court, the Court has an inherent jurisdiction to strike out pleadings and other documents ..... So, under its inherent jurisdiction the court may strike out the whole or part of the endorsement on a writ or stay or dismiss an action which is frivolous or vexatious or an abuse of process or which must fail or which the plaintiff cannot prove and which is without a solid basis .... The power to strike out, stay or dismiss under the court's inherent jurisdiction is discretionary. It is a jurisdiction which will be exercised with great circumspection and only where it is perfectly clear that the plea cannot succeed; it ought to be exercised sparingly and only in exceptional cases [Lawrence v Lord Norreys (1890) 15 AC 210 at p.219 per Lord Herschell]."

(The emphasis is mine.)

The defendant's counsel handed up written submissions to support his client's application to have the action struck out. He also made some oral submissions. Regrettably, Mr Vaai did not canvass, either in his written or in his oral submissions, the procedural aspects already canvassed in these Reasons.

It was not suggested by Mr Vaai in argument before me that the plaintiff's action is "frivolous, vexatious or scandalous" or "an abuse of the process of the court". It was not even suggested specifically that the plaintiff's action "must fail", or that the plaintiff "cannot prove it", or that it is "without a solid basis", or that it is "perfectly clear that the plea cannot succeed". However, as will appear, it was argued, by inference, that the plaintiff's action will not succeed.

On an interlocutory application such as this, i.e. an application to strike out the plaintiff's action, there is an onus (or burden) of proof on the applicant.

That onus has not been discharged. The applicant has failed to show that the action is devoid of merit, and he has failed to show that it is "perfectly clear" that the plaintiff's plea cannot succeed. In short, the applicant has not shown that this is one of those exceptional cases in which the discretionary power to strike out should be used.

In so far as the applicant sought to rely upon the ground "that the Supreme Court has no jurisdiction to adjudicate on a dispute concerning customary land" or, alternatively, upon the ground that its status is doubtful, these submissions are misconceived. It is plainly so that the Supreme Court has jurisdiction to determine whether land is freehold or customary; it is quite another thing if there is a dispute arising out of what is clearly customary land; that is in the exclusive jurisdiction of the Land and Titles Court (see Mau Sefo v Attorney General, unreported decision dated 12 July 2000).

In so far as Mr Vaai's written submissions dealt with "the defendant's claim", "the plaintiff's claim" and a consideration of the "relevant legislation and background", it is not for me, on this application, to decide whether the defendants' submissions have simply some merit. The test is whether the plaintiff's claim "cannot succeed" on any possible view of the facts and the law, i.e. there is no real question to be tried.

I have not been persuaded that the plaintiff's claim "cannot so succeed". To put this another way, I have not been persuaded that the plaintiff's argument in support of the plaintiff's case is so obviously untenable that it cannot possibly succeed or that it is manifestly groundless or that it is "so manifestly faulty that it does not admit of argument" [see General Steel Industries Inc. v Commissioner of Railways (NSW) [1964] HCA 69; (1964) 112 CLR 125 and the cases followed in Saleimoa Plantation Ltd. v The National Provident Fund and The Development Bank of Samoa, unreported decision of mine dated 25 July 2000].

Mr Fepuleai, counsel for the plaintiff, resisted the making of an order striking out the plaintiff's action, and, in doing so, referred to the merits of the plaintiff's claim. He put forward a series of arguments as to why the grounds relied upon by the defendant should be seen as lacking merit. Except to the extent that he submitted that "this is only a preliminary argument", he did not deal with the procedural issues that are fundamental to the defendant's application. He did not seek to rely (as I think he could have) upon the fact that a cause of action has been disclosed (and a reasonable one at that) which has a "a solid base". He did not argue (as I think he could have) that there is "a real question to be tried."

What he did do (and he did so forcefully) was to fore-shadow the evidence that is likely to be produced at trial, if the action is not struck out. He referred to the plaintiff's evidence that is something more than assertion, he emphasised the history of freehold dealings with the land, and, by inference, he directed attention to the presumption of regularity in his client's favour.

He relied heavily upon the submission that "the defendants have not shown how this land is customary land."

Mr Fepuleai conceded that he would have been able to point to conclusive evidence (and his task would, accordingly, have been the easier) had a Torrens Title system of land been in existence in Samoa. He did not shy away from the prospect of adducing evidence (circumstantial or otherwise) to prove that the disputed land is freehold land [See, in these contexts, Toailoa Vaosa and Toleafoa Solomona Toailoa v The Attorney General and Leataata Toailoa unreported decision of mine dated 4 August 2000, at pages 21 and 24 to 28]. Even Mr Vaai, in his address in reply, seemed to acknowledge the volume of evidence that his clients would have to face at trial, viz. "the Register and the documentation." The probative value of a combination of circumstantial evidence (going to prove that the disputed land is freehold land and not customary land) is not something to be overlooked.

I simply was not persuaded (by Mr Vaai) that the defence had shown that "there are defects in the 'freehold land' assertion."

For all these reasons, the defendants' application to strike out the action is dismissed. It is right that the action, if it is still resisted, should proceed to trial. I direct that the time for the filing and delivery of a statement of defence and/or a counterclaim be extended until a date 28 days after the judgment of this court on this interlocutory application is delivered and my Reasons are published.

I will hear counsel as to any question of costs.

JUSTICE WILSON