



Fagaiofu

Kneubuhl v. Liugala (2003)

Lena P. Kneubuhl Trust Folio

Kneubuhl v. Liugalua (2003)

WSSC

24 January 2003

In the Supreme Court of Samoa

between

Douglas Crane Kneubuhl

v.

Salu Liugalua, Faalavaau Asalemo  
and Sila Leua

<http://www.paclii.org/cgi-bin/sinodisp/ws/cases/WSSC/2003/2.html?stem=&synonyms=&query=falelatai>. Accessed 07 Nov. 2013

**Kneubuhl v Liugalua [2003] WSSC 2 (24 January 2003)**

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 know as SILA or LUPEMATASILA FOSI SCHMIDT  
of Alamagoto and a matai of ◀ **Falelatai** ▶  
THIRD DEFENDANT

Counsel: Mr P. Fepuleai for the Plaintiff  
Ms R Drake for the First, Second and Third Defendants

Hearing Dates: 27 and 28 February 2001,  
Submissions Filed: Plaintiff - 26 April 2001  
Defendants - 04 May 2001  
Decision: 24 January 2003

### DECISION OF VAAI J

This is a claim by the plaintiff for recovery of land and for the removal of Caveat against title. The defendants counterclaim for a possessory title based on adverse possession. They also claim the land to be customary land.

#### **Background of the Disputed Land**

The land is described on the Samoa Land Register as:

"**ALL** that piece or parcel of land situated in ◀ **Falelatai** ▶ in the District of Aana Upolu, Samoa being the Eastern portion of land Claim No.941 and called "Fagaiofu" being all the land comprised in Court Grant No.1021 and being the land now registered in **VOLUME 1 FOLIO 31** of the Land Register of Samoa together with all rights of ways easements and appurtenances thereunto belonging."

Originally the land was customary land, it was sold by one Sipaia Tuimalealiifano to George Pritchard and since the sale was objected to by Salu of Samatau, Mapu of Samatau, Peau of



Samatau and Tuimalealiifano of ◀ **Falelatai** ▶ on the grounds that the objectors were the rightful owners the dispute amongst the conflicting land owners was dealt with by the Supreme Court which approved the sale to George Pritchard by Court Grant 1021 dated the 20<sup>th</sup> July 1898 and recorded in Volume 4 folio 437 of the Samoa Land Records and now registered in the Land Register Volume 1 Folio 31. The said land was purchased by the plaintiff's mother Lina Kneubuhl in March 1938 and in 1978 the plaintiff's mother conveyed the land to her children including the plaintiff as tenants in common in equal shares. In July 1984 the plaintiff became the sole registered owner of the land upon completion of his purchase of the shares of his brothers and sisters. He is the holder of the Lilomaiava title from ◀ **Falelatai** ▶.

The first defendant is a 56 year old and holder of the Salu matai of ◀ **Falelatai** ▶, the second and third defendants are the nephews of the first defendant. They deny that the plaintiff is the registered owner of the land. In fact they say in their Amended Statement of defence that the land is customary land belonging to title Salu of which the defendants are family members and secondly that the sale of the land by Sipaia Tuimalealiifano to George Pritchard in 1872 is fraudulent as the said Sipaia Tuimalealiifano is a matai of Satuimalufilufi village who did not own land at ◀ **Falelatai** ▶ and he accordingly had no lawful right to alienate the land.

The short answer to the defendant's assertion is that it is absolutely baseless and without substance. It is difficult to comprehend why the defendants say in their statement of defence they have no knowledge of and therefore deny that the plaintiff is the registered owner of the land when the Land Register which is readily accessible to the defendants and Counsel say it is so registered. And secondly on the 8<sup>th</sup> November 1996 the first defendant and others lodged caveat 629 X against the title of the plaintiff to the land on the Land Register and by the same caveat the first defendant and others claim the estate or interest as owners of land registered in the Land Register. The caveat was lodged after the village counsel of ◀ **Falelatai** ▶ gave support to the plaintiff's proposed hotel development on his land by allowing the plaintiff to build a road from the main public road to his land through the village communal lands. In giving the approval the village acknowledged as it was commonly known within the village that the land belongs to the plaintiff. Thirdly in 1972 the plaintiff attempted to survey the land but as the first defendant acknowledged in his evidence he and his family turned the surveyors away so that if before then the defendants were not aware of the status of the land, they were certainly put on notice there and then. But they have done nothing since then to challenge the status of the land and to assert their rights. In respect of the defendant's assertion that Sipaia Tuimalealiifano had no right to alienate the land the first defendant in his evidence emphasized that it is the belief of his family that the land is customary and not freehold. It is also his belief that the objections filed against the sale of the land by Sipaia Tuimalealiifano to George Pritchard have not been resolved. Under cross-examination by Mr Fepuleai counsel for plaintiff, the first defendant was asked:

Question: Aware that the objections were heard before the Supreme Court 7/11/1895?

Answer: Yes.

Question: And hearing continued 10/01/1896?

Answer: Yes.

Question: Aware of decision made?

Answer: I did not get Court decision. I believe the objections filed have not been resolved.

Mr Fepuleai then read the court decision to the first defendant and asked the following questions:

Question: Were you aware of that decision?

Answer: No.

Question: Did you check Land Registry and get copies of objection lodged by your ancestor?

Answer: No.

Question: Aware land was leased to the Hellesoe in 1941?

Answer: No.

Of the five pages written submissions by counsel for the defendants only 3 sentences were dedicated to the issue of the validity of the sale by Sipaia Tuimalealiifano to George Pritchard and in support of the defendant's contention that the land is customary. The submission is reproduced in full:

**"Validity of Sale by Sipaia Tuimalealiifano"**

"The defendants submit that the disposition by this person was not valid in that he was not the owner and there fore lacked the lawful ability to sell the land. The title Sipaia belongs to the village of Satuimalufilufi and traditionally would not have the right to customary land in another village. As such he had no lawful right to sell the land."

The submission is misconceived and is not supported by the evidence and the assertion by the defendants that the land is customary must fail. After all the land had been registered as freehold since 1898; it is not possible as the defendant has attempted here, to question on flimsy belief the validity of the original grant made over 100 years ago so that the integrity of the land register remains intact and paramount.

### **Adverse Possession**

The main thrust of the case for the defendant is based on adverse possession. They rely on sections 9(2), 10(1) and 14(1) and (2) of the Limitation Act 1952. Section 9(2) so far as it is relevant provides:

"No action shall be brought by any other person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him or to some person through whom he claims.

Section 10(1) provides:

"Where the person bringing an action to recover land or some person through whom he claims, has been in possession thereof, and has while entitled thereto been dispossessed or discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance.

Section 14(1) and (2) then provide:

1. "No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereinafter referred to as adverse possession) and, where under the foregoing provisions of this Act any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue, unless and until adverse possession is taken of the land."



2. "Where a right of action to recover land has accrued, and thereafter, before the right is barred the land ceases to be in adverse possession, the right of action shall no longer be deemed to have accrued and no fresh right of action shall be deemed to accrue unless and until the land is again taken into adverse possession."

There has recently been a number of occasions when this court had to deal with the question of adverse possession; see Nelson Mackenzie v Sale Lamosi (C.P. 125/93, 5 July 1995); Peter Eugene Reid v Atiifale Fiso (C.P.124/93, 23 August 1995); Pio Taofinuu v Wallword Enterprises (C.P. 23/93, 6 December 1996) and Wallace Jennings v Ioane Onesemo (9 August 2000).

Although I have rejected the contention by the defendants that the land is customary land, I do bear in mind that the evidence given by the defendants to support their contention was also given to support their claim for adverse possession. Basically the defendants say that their ancestors have had uninterrupted occupation and possession of the land and the defendants and their families have continued to cultivate and occupy the land to today. In essence then the defendants are not claiming the land merely for themselves but for other members of the extended family of the Salu matai title. On this issue I refer to the decision of Nicholson CJ in Western Samoa Trust Estates v Leniu Faisaovale (19070-79) WSLR 139, at 140:

"I consider that to take advantage of the provisions of the Limitation Act 1975 the defendant must accept that he is to be treated as an individual occupier and not as a family member. He may press his own claim but nobody else's. After all section 4 of the Limitation Act 1975 provides that the Act shall not apply to Samoan Customary land. Manifestly it is inappropriate then that a claimant by adverse possession should attempt to press his claim of freehold on the basis of Samoan communal holding of land by numbers of persons of which he is one."

All the 3 defendants gave evidence. The first defendant is aged 56 and that his mother and grandfather had a plantation on the land but he himself has never lived on the land. In fact the shelters built by his grandfather and parents on the land were temporary ones only as the land was only used for plantation and a relative by the name of Salu Taisia still visits the land about 3 times a week to collect coconuts and clear the weeds. Other than the breadfruit and coconuts there are no other crops on the land.

The second defendant is aged 40; is the nephew of the first defendant and he testified he lived in the cave on the land in 1982 to 1984 with family members and some employees and with the use of a boat to access the land he was carting coconuts from the land to the village. He ceased to live on the land in 1984 when it was uneconomical to harvest the coconuts. In 1999 he and the



other family members built Samoan huts and erected a fence at the beachfront section of the land. Other than members of his family no one else worked or lived on the land.

The third defendant is aged 34 and also a nephew of the first defendant. He first visited the land in 1982 when he was 16 years old and up till now he visits the land at least once a month for fishing, collecting coconuts and clearing the weeds. He also assisted in the erection of the fence and Samoan huts in 1999. Other than members of his family he never saw anyone else working or living on the land.

Salu Taisia a family member of the defendants confirmed the testimony of the first defendant that he still visits the land two to three times a week and he has been doing so since he was twenty years of age. Salu Taisia is 46. He also confirmed the construction of Samoan huts and the fence in 1999 and during his visits he has never seen the plaintiff or his caretaker on the land. During his visits he would collect coconuts and bananas; he still maintains a banana plantation on the flat area by the sea. Unfortunately, Salu Taisia did not realise that the court will take a site inspection of the land because during the inspection there was not any sight of a banana tree or anything resembling a banana plantation. I will return later to the site inspection.

Faasavalu Eneliko a 107 year old resident of ◀ **Falelatai** ▶ village told the court that he knew Fagaiofu land and it was owned by Salu Taisia and Peau Maua (the ancestors of the defendants) who lived on the land and their heirs have continued to use the land. Under cross-examination the witness has no knowledge that the land is freehold and does not know the person George Pritchard.

Logomau Saipaia a 69 year old resident of Satuimalufilufi village was also called. He said that his father Salu Maafi was living on the land whereas the plaintiff's caretaker was not because he and the so called plaintiff's caretaker were living together at ◀ **Falelatai** ▶. Under cross examination the witness acknowledged that he moved to Satuimalufilufi village when he got married at 22 years of age which means he left ◀ **Falelatai** ▶ in 1954 to live at Satuimalufilufi before the caretaker was hired in 1959 by the plaintiff's family.

Solema Sila was born in 1937 and was brought up in the family of the defendants. He said that he and the first defendant's mother used to visit the land by boat and by foot to collect crops, and the plaintiff's caretaker did not have a plantation on the land. Under cross-examination however his last visit to the land was in 1950 and did not go back to the land until two weeks before the trial. He was not asked why he went back at the age of 64 and two weeks before the trial.

To establish a claim for adverse possession, the defendants have the burden of proving on the balance of probabilities that they have been in possession for 12 years or more since the right of action accrued to the plaintiff to the extent that the plaintiff has been effectively dispossessed or has effectively discontinued possession for 12 years or more. The defendants say that whether the period of limitation started to run in 1978 when the plaintiff was a joint owner of the land together with his brothers and sisters, or whether the limitation period started to run in 1984 when he became the sole owner, his claim against the defendants is statute barred as the defendants and members of their extended families have not discontinued possession or been dispossessed of the land. In effect the defendants are saying that the plaintiff has never been in possession because the defendants ancestors have always been in possession and the defendants and their extended families have continued to be in possession to the present day. And because the defendants possession was actual, open, manifest, exclusive and continuous they have therefore acquired title by adverse possession : see McDonnell v Gibling (1904) 23 NZLR, 660; Nelson Mackenzie v Sale Lamosi (supra).

The plaintiff on the other hand says the defendants have never been in possession because in 1959 his family hired a caretaker, a resident and matai of ◀ **Falelatai** ▶ to look after the land, and when the plaintiff became the sole owner in 1984 he continued to hire the said Salu Lafi as the caretaker for the land. Since 1984 the plaintiff says he has visited the land more than 10 times and no one else other than his caretaker was cultivating the land then, and for the last 17 years he has been searching for investors to assist in constructing a hotel on the land. In 1994 he took two potential investors to inspect the land and again in early 1999 he took a designer, his caretaker; Tuimalealiifano Eti and others and took photographs. (plaintiff's exhibit "P3"). On both visits there were no plantations, structures or any sign of occupation of the land. He also in 1996 sought and obtained the support of the village council (Alii & Faipule) of ◀ **Falelatai** ▶ for the project by getting the approval of the village council to construct a road from the public road through some customary lands to the plaintiff's land. It was in late 1999 he was made aware that the defendants have moved onto the land, put up some huts and erected a fence. Tuimalealiifano Vaaletoa the paramount chief of ◀ **Falelatai** ▶ confirmed that the village council did give its support to the plaintiff to construct a road to the plaintiff's land as it would also benefit the village by providing access to other customary lands which are presently inaccessible. The freehold status of the land he said has always been respected by the village of ◀ **Falelatai** ▶. He also confirmed the evidence of the plaintiff that they visited the land by boat in 1999 and took photographs of the beach front section of the land and there were no signs of occupation of the land although he was informed subsequently that the defendants and their families have moved in and erected structures on the land. Prior to the 1999 visit he had also visited the land in 1965 and 1986 and there were no structures or visual signs of occupation by the defendants or their families.



Salu Lafililo the 74 year old caretaker of the plaintiff holds the same title as the first defendant and was first employed by the plaintiff's brother John in 1959 to be the caretaker of the land and has continued to care for the land under the employ of the plaintiff. From 1959 he lived on the land until 1966 when the cyclone struck but he has continued to be caretaker to the present time. He denies that the defendants' families used or lived on the land. It was only in February 1999 after the village council had decided to endorse and support the plaintiff's proposed project on the land that the defendants and their families forcibly moved onto the land, cut down some trees and built fence and houses on the beach front section of the land. The intrusion by the defendants onto the land took place after he, the plaintiff, Tuimalealiifano and others had visited the land in early 1999 and took photographs.

### **Site Inspection**

The court inspected the portion of the land which fronts onto the sea on the 16<sup>th</sup> April 2001. Transportation was by boat as access by vehicle was impossible. The land is flat for about 70 meters going inland then it rises steeply upwards. The inspection was confined to the flat portion where the defendants say they had plantations and built temporary shelters. A barbed wire fence extended along the beach front; there were no shelters other than the cave and other than the coconut trees and a very few scattered breadfruit trees there is no sign of cultivation (whether intermittent, or regular) or any resemblance of a plantation in the normal sense. In fact the growth is fairly dense and gets denser going uphill. There has obviously been some recent work done to the entrance to the cave with sand bags neatly stacked at the entrance and some quantities of sand removed from inside to give an impression of recent habitation. There is also remains of what appears to have been a stone oven.

As the land has not been surveyed the boundaries with the adjoining landowners were therefore not identified. However both sides agree that the flat area that was the subject of inspection and where the defendants have erected their fence is part of the land called Fagaiofu under dispute between the parties.

### **Conclusions**

From the oral and documentary evidence I have no difficulty in concluding that the defendants and their families have never been in possession of the land when the plaintiff's mother became the registered owner in 1938 till the end of 1998. The account of events and incidents from the evidence is not consistent with the plaintiff discontinuing possession nor dispossession of the



plaintiff by the defendants. The evidence suggests a deliberate and orchestrated assertion of possession and ownership by the defendants. I do not accept the evidence adduced by the defendants that their grandparents worked the land and they and their family members are visiting the land several times a week. The evidence clearly suggests that when the plaintiff sought the approval and support of **Falelatai** village in 1996 and took prospective investors to view the land the defendants had not moved on to the land and there were no signs of physical occupation by anyone. It was not until 1999 that the defendants and their families forcibly moved onto the land; erected shelters and the fence which prompted the plaintiff to file the present action. I also accept the evidence of Tuimalealiifano Eti, the paramount chief, that the village has always respected the freehold status of the land. After all the land was so registered as freehold for over 100 years, was purchased by the plaintiff's mother in 1938 and had been leased to several parties; undoubtedly it would be common knowledge within the village that it is freehold property.

Moreover the first defendant does not appear from the evidence to have had actual physical possession of the land; in fact he claims through his grandfather and parents whom he alleges to have worked the land. His minimal involvement was his part in turning away the surveyors in 1972, the lodgement of the caveat in 1996 and as a member and holder of the family title Salu.

The second and third defendants on the other hand only figure in all these incidents in 1982 to 1984 and since then according to their own testimony they only visit the land about once a month and it was not until 1999 that they constructed shelters and the fence. So that even if the evidence of the defendants is to be believed the evidence fails to prove that possession was for the full period, actual, open manifest exclusive and continuous. The defendants have failed to discharge the burden upon them to prove adverse possession of the land and the court makes the following orders:

- a. The defendant's claim for possessory title based on adverse possession is dismissed.
- b. The defendants, their families and agents are ordered to vacate that portion of the land which fronts the sea and to remove therefrom the fence erected thereon within 30 days.
- c. Caveat No.629 X lodged by the first defendant and others against the title is to be removed.
- d. The plaintiff did not pursue his claim for general damages and the claim is accordingly dismissed.
- e. Counsels to file submissions on the question of costs by the 21<sup>st</sup> February 2003.

**JUSTICE VAAI**