

American Samoa

Leota Faagau v. Faumuina Molitau

High Court, Appellate Division

Rees C.J.; Gardner* and Kennedy+ Acting Associate Justices; Lualemaga, and
Afuola Associate Judges

13 February 1987

*Land law—communal land—long occupancy not conclusive evidence of ownership
—presumption of communal ownership—land given in atonement for offence.*

*Customs—ifoga or public apology—land given in atonement for rape—application of
presumption of communal ownership.*

*Appeal by way of review: A.S.C.A. 43.0801(b)—no fresh evidence in support—trial
decision confirmed.*

This is an appeal from a decision of the Land and Titles Division of the High Court holding that the land Utusi'a is communal land of respondent Molitau. In the trial court hearing, the Court held Utusi'a was given to the respondent family in atonement for a crime against the family. The "giving" was in accordance with the custom of ifoga and Utusi'a was "owned" and occupied communally in accordance with customs and traditions.

The appellant, Leota, argues Utusi'a is communal land of the Leota family, and Uele claims individual ownership of it in his own right.

HELD:

The land Utusi'a is communal land of the Faumuina Molitau family received in atonement for the rape of a member of the family. This is recognized by the custom of ifoga.

- (1) Long occupancy of the land by one family is not necessarily inconsistent with ownership by another family: *l.* 70. Occupancy and ownership are distinct and separate, although in certain circumstances long occupancy is evidence of ownership. The issue, however, is a question of fact.
- (2) (i) Land received under ifoga is held for the family. The strong presumption of communal ownership holds and no individual right of ownership is conferred: *l.* 84.
- (ii) This principle applies even well before the enactment of regulatory statutes: *l.* 82.
- (iii) Although the victim suffers grievous personal hurt and anguish, the family shares the outrage. An ifoga is a public expression of sorrow and apology to the family, as well as to the victim, and in this sense

* Robert Gardner, Chief Justice Emeritus, High Court of American Samoa, serving by designation of the Secretary of the Interior.

+ Hon. Anthony M. Kennedy, Judge, United States Court of Appeals for the Ninth Circuit, serving by designation of the Secretary of the Interior.

transcends mere compensation (*Yeh v. Pratt* 4 A.S.R. 752 (1967)): *l.* 87.

- (iv) A person may obtain individual ownership of land with proof of original ownership (*Leuma v. Willis* 1 A.S.R. 2d. 48 (1980)): *l.* 90.

Other cases referred to in judgment:

⁴⁰ *Leuma v. Willis* 1 A.S.R. 2d. 48 (1980)

Reid v. Puailoa 1 A.S.R. 2d. 85 (1983)

Yeh v. Pratt 4 A.S.R. 752 (1967)

Legislation referred to in judgment:

A.S.C.A., section 43.0801(b)

Counsel:

Albert Mailo for Leota, appellant

Monike Failauga for Uele, appellant

Aviata Fa'alevao for Molitau, respondent

KENNEDY A.A.J.

Judgment:

⁵⁰ Leota Faagau and Savaliga Uele appeal a decision of the Land and Titles Division of the High Court of American Samoa that land known as Utusi'a is communal land of Faumuina Molitau, but that Leota and Uele may continue to live there. We affirm.

The positions of the parties are as follows. Leota claims that Utusi'a is communal land of the Leota family because it has occupied the land for many years. Uele claims that he inherited individual ownership of Utusi'a from Tialavea Eseroma. Faumuina claims that Utusi'a is communal land of the Faumuina family, acquired long ago as atonement for a crime against the family.

⁶⁰ Under A.S.C.A. 43.0801(b), we review the decision of the Land and Title Division under the clearly erroneous standard.

Faumuina testified that his family received Utusi'a to atone for the rape of a family member, all this long before the establishment of a government on Tutuila. Two witnesses substantially corroborated his testimony. Uele, an adverse party with his own claim to Utusi'a, conceded that his family had given Utusi'a to Faumuina's family many years ago. While other witnesses questioned Faumuina's claim to the land, the lower court's finding was not clearly erroneous in light of the supporting evidence we have cited.

⁷⁰ Leota claims that his family has lived in Utusi'a for many years. Such an arrangement, however, is not inconsistent with Faumuina's ownership of the land. As Faumuina testified, his ancestors may simply have allowed Leota to occupy the land, much as Faumuina is willing to do today.

We turn next to the contention of Savaliga Uele, who filed a brief with certain contentions but failed to file a notice of appeal. Failure to file a notice of appeal will bar an attack on the judgment of the trial court, but in this instance we address the contentions in order to resolve the case as to all parties.

Uele agrees that the land was given in atonement but argues it was transferred to the rape victim as personal property, not to the victim's family as communal property, and that it was inherited by him. He says that atonement by transfer of

80 land, an ifoga, after a personal offence becomes individual not family property as a matter of Samoan custom. We find no support for that proposition. A transfer of communal land, even before the enactment of statutes restricting it, was a rare event. Moreover, consistency with Samoan traditions requires a strong presumption that land so transferred remain communal land. This is true even when the transfer was due to an ifoga, or atonement. Although the victim suffers grievous personal hurt and anguish, his or her family shares the outrage. An ifoga is an expression of sorrow and apology to the family, as well as to the victim, and in this sense transcends mere compensation (*Yeh v. Pratt* 4 A.S.R. 752 (1967)).

90 Under the decisions of this Court, a person may obtain individual ownership of land with proof of original ownership of Utusi'a (*Leuma v. Willis* 1 A.S.R. 2d. 48 (1980)). As the Court below noted, Uele failed to present any evidence concerning original ownership of Utusi'a. This failure, along with the presumption against individually owned land (*Reid v. Puailoa* 1 A.S.R. 2d. 85 (1983)) and our conclusion of the effect of the ancient transfer by ifoga, leads us to reject his claim.

The decision of the Land and Titles Division of the High Court of American Samoa is affirmed.

Reported by T.M.