Toleafoa v. Tiapula

High Court, Land and Titles Division
Kruse Associate Justice, Tauanu'u Chief Associate Judge, and Afuola Associate Judge
11 May 1988

Land law—communal land—right of family member to use—use by tautua (service) in accordance with customs—tautua enforceable obligation against member in occupation and use of family land.
Culture—Samoan way of life—scope and dynamics—amenable to categories of change not static.
Relinquishment of possession—voluntary surrender or abandonment—question of fact—title reverts to matai and family.
Function of court—no intervention absent abuse of matai authority—matter better served by matai jurisdiction.

Facts:

This is an application for review of a decision by the defendant as head matai which resulted in the removal of the plaintiffs' home (and two other houses (faleo'o)) and damage to assorted crops.

The parties here are related and are of the same extended family. The plaintiffs were designated about a half-acre of family land by the late Tiapula Auina of the respondent side.

In 1968 the plaintiffs built a small house on the land, cultivated around it and, in 1977, rebuilt the same into a Samoan-type house, covered with roofing iron. The house cost about $US600.

In 1979, they moved to the United States primarily for the purpose of education of their children. Their absence is thus claimed to be temporary.

While they were overseas, the plaintiff asked Mrs. Toleafoa's brother and sister to look after and occupy the premises, though they in turn moved out to care for their own houses. The land and home were thus left unattended.

As a result, the house was run-down and damaged. The area was overgrown and accumulating debris. Evidence shows that the house was being used for frequent drinking bouts by the village youth.

This was an embarrassment to the defendant who at a family meeting in 1986 instructed the house be dismantled and the undergrowth cleared. This, however, was not done until a year later, and another structure was built which is claimed by the defendant to be his own.

When the plaintiffs heard about what happened, Mrs. Toleafoa returned and confronted the defendant. The defendant advised her to concentrate on the education of her children; when they returned, another piece of the family land would be designated to them. The defendant, the senior matai, suggested that there was more than enough land for all when they returned. The plaintiff, however, did

not agree and brought this action. (It should be noted that in 1983 when plaintiff Mr. Toleafoa visited he was conferred the matai taulealea title Tiapula, though it would appear he abnegated his matai duties and did not render tautua or participate in family affairs.)

HELD:

That the plaintiffs' claim must fail. They have not shown good faith and good cause for judicial interference in the proper exercise of matai jurisdiction. That matter is better left there where it belongs: *l.* 265.

(1) This is not a case in which it can be shown that the exercise of pule by a sa'o matai has transcended its permissible boundaries and one thus in derogation of cognizable rights of the individual family member. The role of the court is that of review, and it will not substitute its judgment for that of the senior matai, absent a clear abuse of discretion: *l.* 262. There is no abuse of the facts of this case.

(2) (i) An individual family member's right to land is not absolute, but conditional upon the customs and traditions attached to that right. One such custom is the reciprocal obligation to the family through 'tautua' to the matai: *l.* 163. See also *Talagu* v. *Te'o*, 4 A.S.R. 121 (1974); *Leapaga* v. *Masalosalo*, 4 A.S.R. 868 (1962).

(ii) Another is that designation of land to a family member for use does not thereby terminate the matai's pule over such land: *l.* 166. See also *Pisa* v. *Solaita*, 1 A.S.R. 520 (1964).

In this connection, Samoan way of life is dynamic and not static: *l.* 175, *Fairholt* v. *Aulava*, 1 A.S.R. 2d. 73, 76 (1983); and tautua must be seen and assessed within its own nature and form. It varies from family to family and is a matter more apt for family definition: *l.* 178.

(iii) Another is actual use and occupation of the land. Relinquishment of possession, either voluntarily or by abandonment, causes reversion of the land back to the matai's family: *l.* 202. *Talagu* v. *Te'o*, 4 A.S.R. 121 (1974). An intent not to abandon or relinquish is not enough. The question is one of fact: *l.* 207.

(3) In a case of this nature the family member must plead and prove a good faith effort was made to settle disagreement with the matai and family: *l.* 244, *Fairholt* v. *Aulava*, (*supra*).

Other cases referred to in judgment:

Fairholt v. *Aulava* 1 A.S.R. 2d. 73, 76 (1983)
Leapaga v. *Masalosalo* 4 A.S.R. 868 (1962)
Pisa v. *Solaita* 1 A.S.R. 520 (1964)
Talagu v. *Te'o* 4 A.S.R. 121 (1974)

Editorial Observation:

The development of cultural law within the common law and constitutional framework of American Samoa holds a special place in the context of introduced common law in the Pacific. Almost throughout the Pacific the issue is alive and well, and worthy of elaborate and careful judgment by the judiciary. The development here in American Samoa is encouraging.

Counsel:
Charles Ala'ilima for the plaintiff
Edwin Gurr and *Faiaoga Mamea* for the defendant

90 **KRUSE, A.J.**

Judgment:

As conceded by the plaintiffs, this is not your run-of-the-mill land dispute. The Court is again presented the infrequent occasion to intervene between the family matai and an individual family member who necessarily claims that the actions of the former have transcended the permissible boundaries of "pule" and is in derogation of cognizable rights of the individual family member.

The plaintiff, Faaiu Toleafoa, is a blood member of the Tiapula family of Alao, American Samoa. She is joined by her husband, Aukuso Toleafoa, in this suit against the senior matai (sa'o), Tiapula Imo, seeking relief against the said matai for the 100 latter's alleged actions resulting in the removal of the plaintiffs' home and two outer structures (faleo'o) and in damaging assorted crops.

The plaintiffs were designated about a half-acre of family lands by the late Tiapula Auina. In 1968 they had built a small structure on the location and moved thereon, cultivating an area surrounding the structure. In 1977, the plaintiffs rebuilt their living quarters and this essentially consisted of a Samoan-type "fale" although covered with roofing iron. The cost of this structure at the time was said to be some $600 in materials.

Shortly after this structure was built, the plaintiffs moved to the United States in 1979 and Mrs. Toleafoa testified that their primary purpose in moving was the 110 education of their children. Their absence is thus claimed to be temporary.

Following their departure, Mrs. Toleafoa had her brother and then her sister occupy the premises, but they in turn moved out to care for their own family homes.

To the date of hearing we find that the plaintiffs are basically residing in the United States although there was a period of time when Mr. Toleafoa returned to Samoa in 1983 for the apparent purpose of maintaining the family homestead and to serve the matai. When Mr. Toleafoa returned, he took employment on island and initially stayed at Alao. He also visited his wife and children periodically in the mainland and it was during such an extended visit that the Toleafoas received word that their home and belongings had been removed at the instigation of the matai 120 defendant. Mr. Toleafoa has not since returned to the territory, however Mrs. Toleafoa came to Samoa to meet with the matai and she eventually brought these proceedings.

The defendant matai has held the family's title "Tiapula" since the year 1980 and agreed that the plaintiffs' structures were dismantled at his directions as senior matai. The defendant testified that, for all intents and purposes, the plaintiffs had abandoned their home and site. He was aware that plaintiff Faaiu's sister was last living in the house but she had moved out in 1982. He also testified that in 1983 when Mr. Toleafoa returned to Samoa, said Toleafoa was welcomed back into the family and appointed the "matai taulealea" of Tiapula. However, as things turned out, the 130 matai's expectations did not materialize. Toleafoa was said to have rarely visited Alao village, abnegated his duties as matai taulealea, and failed to render tautua or participate in family affairs. The defendant further testified that

with complaints regarding the use of the plaintiffs' home for frequent drinking bouts by the village youth and with the place left unattended it was overgrown and accumulating a lot of trash.

Consequently at a family meeting called by the matai in 1986, he had instructed the family to dismantle the plaintiffs' structures and clear the overgrowth. Defendant claims that besides notice to the family via the mentioned family meeting, he had specifically told Faaiu's sister, Vaosa, who had formerly occupied the plaintiffs' home, that the same was to be dismantled and the surrounding lands cleaned up.

For some time, however, no one in the family acted on the matai's instructions and in the following year the matai specifically directed one Natia to dismantle the plaintiffs' structures and to clear the land. This was accordingly done and subsequently another structure was erected on the clearing and the same is claimed by the matai as his own.

When word got to the Toleafoas in the United States regarding their structures, Mrs. Toleafoa returned to the territory and confronted the matai. Chief Tiapula testified (and this testimony is corroborated by the plaintiff) that his advice to Mrs. Toleafoa was that she concentrate on schooling her children; that upon their return and removal to the territory, a piece of family land will be designated for them. The matai went on to testify that there was more than enough family land to accommodate the plaintiffs upon their return. The consoling attempts by the matai were not acceptable to the plaintiffs who now seek damages and an order from the Court, essentially seeking to undo what has resulted from matai action.

Discussion

At the outset, it is the opinion of this Court that the particular facts of this case do not warrant judicial intervention as any conclusion beyond that would sanction the proposition that an individual family member's right to communal family lands is absolute. Such a conclusion of course is neither grounded in law nor custom.

It is trite observation that a family member's right to use of communal lands is subject to certain conditions. One is that reciprocal obligation of the family through "tautua" to the matai in accordance with custom (*Talagu* v*Te'o* 4 A.S.R. 121 (1974); *Leapaga* v. *Masalosalo*, 4 A.S.R. 868 (1962)). The fact that a parcel of land has been designated to a family member for his or her use does not thereby terminate the matai's pule over such land (*Pisa* v. *Solaita* 1 A.S.R. 520 (1964)).

The implications of the plaintiffs' contentions suggest that somehow this obligation can be put on hold or suspended provisionally for certain purposes. That suspensory purpose advanced here by the plaintiffs is the education of their children. The plaintiffs guardedly submit in the alternative that they have substantially satisfied this obligation by participating off-island in fa'alavelave that concerned other absent family members. Necessarily, the plaintiffs must suggest in connection herewith a somewhat fluid notion of tautua.

Admittedly the Samoan way of life has been said to be "dynamic" and not "static" and has been amenable to change (*Fairholt* v. *Aulava* 1 A.S.R. 2d 73,76 (1983)), and one would have to be blind not to notice that certain forms of tautua in the past are not as readily observable today. But then tautua must surely vary from family to family and is in the final analysis a matter more apt for family definition. Thus any invitation to the Court to generalize parameters of what is and is not tautua would be

What may be generally stated is that a matai does not, and never has had to, discharge family obligations on his own, and it goes without saying that tautua to the matai ensures communal activity. But then that tautua becomes only an enforceable obligation against those family members occupying and using communal family lands. It is to these family members that the matai can look for traditional services with sanctions. If we were to otherwise prescribe exceptions to the customary obligation of tautua such as extended absence for educating children while permitting the extended encumbrance of communal family lands, then we would surely be adding to custom something not otherwise envisaged, and undoubtedly lacking in any factual foundation whatsoever.

In the present matter, the matai testified that the plaintiffs have not rendered service and have not participated in family affairs. The matai's conclusion can hardly be refuted. The plaintiffs in their many years of absence from the territory have not shared in the communal burden with fa'alavelave and obligations to the same extent that confronted the matai and on-island resident members. Further, Mr. Toleafoa's return to the territory in 1983 for purposes of tautua and participation in family affairs proved to be more in the way of good intentions rather than substance. Although presented the opportunity, he did nothing more than to positively affirm his own immediate family's lack of tautua and service.

Another recognized limitation to a family member's right to family lands is actual use and occupation of such land. Relinquishment of possession of land causes a reversion of the land back to the matai and family (*Talagu* v. *Te'o* 4 A.S.R. 121 (1974)). Relinquishment of possession may be either by voluntary surrender or by abandonment by the family member. (*id.* at 125). While a family member's intentions may not have been to abandon the land, the issue of whether relinquishment has arisen and the matai has effectively taken over to the exclusion of the family member is "one of fact" (*id.* at 125).

On the facts hereof we are satisfied that relinquishment of possession had occurred after the many years of absence by the plaintiffs. While the plaintiff, Faaiu Toleafoa, may argue against relinquishment in that she had both her brother and then sister occupy the premises, we see no more resulting in this than arrangement for the sake of appearances. In substance, both the brother and sister had their own houses to look after which eventually caused both to move out of the plaintiffs' home. Indeed the sister Vaosa had in existence for many years her own more permanent structure in the nature of a "palagi" style home, which, as she testified, could not be neglected by her for any length of time. She in turn placed a non-family member to occupy the plaintiffs' premises when she moved out, but even appearances were no longer evident with this final set-up. As far as the matai knew, there was nobody living on the premises which were unattended, overgrown, and accumulating a garbage heap. The land itself was doing no one in the family any good; there was no service arising in connection therewith; and the matai from his stance had no idea what the plaintiffs' plans were to return to the land, if ever.

In these circumstances, the question naturally arises: what is expected of a matai in the normal course, given the trust reposed upon him to look after family assets? This matai called a family meeting giving notice of his intentions, which notice was specifically given to the plaintiffs' immediate relatives on-island. Execution of the matai's directives did not take place for another year and yet in the interim the matai was still left sitting in the dark by those family members whose interest would be affected by his decision-making.

On the above alone, a holding would logically follow in favour of the matai, but of interest in this case was that this matai's attitude in court did not really appear to emphasize the above factors in justification. As earlier noted, when he was finally confronted by the plaintiffs, and after he had acted, his sentiment was not in the manner of eviction without further ado. Despite the bringing of these proceedings the matai nonetheless committed under oath to be steadfast with the plaintiffs, namely, that upon their return to the territory a similar tract of family property would be ensured them. We can hardly imagine the more reasonable unless such would be that plaintiffs may have their cake and eat it as well.

It is appropriate to pause at this point and consider the cautions of Chief Justice Gardner in *Fairholt* v. *Aulava* (*supra*): "declining to establish a precedent by which any malcontent family member can willy-nilly run to court every time a sa'o makes a family decision with which he disagrees" (*id.* at 78). The Court here held that as "condition precedent to bringing an action against the sa'o or other family member, the family member must plead and prove a *good faith* effort has been made to settle the problem with the sa'o and within the family" (*id.* at 78 ; emphasis added).

While the evidence disclosed a conference with the sa'o, the requirement of "good faith" on the part of family member was far from evident in this case. If any inferences may be drawn, it was that family member had an agenda to take the sa'o to court notwithstanding. Her prayer included damages of $10,000 for value of the dismantled home while the evidence at best pointed to $600 for building materials. Given ten years of wear and tear, which was probably advanced by neglect, the actual market value of such a Samoan structure is questionable. Good faith? The prayer also seeks $20,000 in mental anguish suffered, which the evidence at best showed no more than symptomatic of a condition for which common household aspirin would be the better suited relief. Again we question good faith. In circumstances of an extended period of continued absence from the family and family obligations, the refusal by the plaintiffs of the matai's offer to be furnished family lands upon their return to the territory—and thereby being in the position to meet customary obligations—is again a question mark on good faith.

As declared in *Fairholt* (*supra*) the courts' role in intra-family disputes is a review one. The court will not substitute its judgment for that of the senior matai, absent a clear abuse of discretion. Such an abuse is clearly absent here on the record.

On the foregoing, it is the conclusion of the Court that the plaintiffs have not in any way shown cause for judicial interference in what has otherwise been the proper exercise of matai jurisdiction. We therefore leave it to the matai's good senses to resolve this matter in the manner he had proposed to the plaintiffs in the first place and as subsequently promised by him on the witness stand.

We also dismiss the defendant's counter-claim. We note with the last minute change of counsel that the counter-claim was not seriously pursued. This is no reflection on counsel Gurr who substituted for then counsel of record. The counter-claim asked the Court to essentially fabricate a lease in retrospect between the parties in order to base a *quantum meruit* claim for rent against plaintiffs. This cause is utterly without merit. The Court will construe a lease but it will not create one. The second count of the counter-claim not only mirrors plaintiffs' claim for mental suffering, but also its entire lack of merit. We are equally unable to sustain here on the facts any such cause of action approaching the realm of torts.

It is accordingly ordered, adjudged, and decreed.