

SHORTER COMMUNICATION

When the Land and Titles Court of Samoa Exceeds its Jurisdictions: A Critical Review of LTC Unlawful Decision Involving Samoan Customary Land Lease

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Abstract

The paper discusses the implicit contentions and ambiguities involving authority, jurisdictions and the decision-making processes, and the subsequent conclusions as reflected in one particular case relative to customary land becoming public land generally and specifically when customary land are being leased. It touches on the prescriptive terms 'alienation' of customary land to become public land as represented in the given case. It also looks at the indemnity powers of the Minister of Lands empowered by law as the sole authority to grant the lease of any customary land in Samoa. It has however been problematic when the Land & Titles Court (LTC) in particular decided to revoke and void the lease granted by the Minister as stipulated by law, when it is apparent that LTC does not have the authority to do so.

Introduction

The two main questions of law in regards to the lease of Samoan customary land are firstly, whether the Supreme Court has the authority and jurisdiction to review the decisions of the Land and Titles Court (LTC). Secondly is whether the Land and Titles Court has the authority and jurisdiction to void a lease of customary land granted by the Minister of Lands under the Alienation of Customary Land Act 1965.

The one phenomenon that has been problematic in the Samoan courts legal system is the fact that the Land and Titles Court promulgating the re-litigating of customary land lease cases, and its decisions to revoke leases of customary land when in fact, the leases have been granted by the Minister. With due respect, the learned court failed to determine its limits, its legal boundaries and its jurisdiction by law and that the learned court is not in any way required under any law or empowered under any authority to determine any such cases given the fact the lease had been approved and granted by the Minister of Lands. For purposes of clarity, and to highlight the Land and Titles Court misdirection on law, this paper sets out some of the more germane legal issues that call for the learned court to consider the fact that exceeding its jurisdictions on such matters is the failure of the court to respect and honour and to uphold the rule of law.

The Land and Titles Court

The Land and Titles Court of Samoa is established by law under Article 103 of the Constitution³⁷ whereby it states that its jurisdiction is specifically in relation only to *Matai* titles and Customary land as may be provided by the Act. The Land and Titles Act 1981³⁸ materially provides the jurisdictions of the Land and Titles Court under Section 34 (2)³⁹, that the LTC shall have exclusive jurisdiction in all matters relating to Samoan names and titles; and in all claims and disputes between Samoans relating to customary land, and the right of succession to property held in accordance with the customs and usages of the Samoan race.

It is therefore relevant that Article 103 of the Constitution be read together with Section 34 (2) of the Land and Titles Act 1981 because the Constitution defines the role of the Land and Titles Court by reference to the Act, and the Act as intended and passed by Parliament defines the jurisdiction of LTC in S34 (2). It clearly indicates its exclusive jurisdiction involving claims and disputes between Samoans relating to customary land, and the right of succession to property held in accordance with the customs and usages of the Samoan race. Further, it is also important to note that Section 37 of the Land and Titles Act 1981 clearly stipulate that the laws to be applied on all matters before the LTC shall be the laws relating to customs and usages.⁴⁰ It is a matter of importance to note that the laws so far do not qualify the Land and Titles Court to determine any other matter or matters other than issues pertaining to Samoan matai titles and Samoan customary land, and definitely not customary land leases.

³⁷ The Constitution of Samoa 1960: Article 103 Land and Titles Court. There shall be a Land and Titles Court with such composition and with such jurisdiction in relation to Matai titles and customary land as maybe provided by Act.

³⁸ The Land and Titles Act 1981. It must be noted that the Act 1981 was repealed 2020 when the Land and Titles Act 2020 was passed by Parliament.

³⁹ 34. Jurisdiction of the Court – (1) The Court shall continue to have all the jurisdictions it exercised prior to this Act coming into force.

(2) In particular the Court shall have exclusive jurisdiction:

(a) in all matters relating to Samoan names and titles;

(b) to make orders or declarations in respect of Samoan names and titles as may be necessary to preserve or define the same, or the rights or obligations attaching to those names and titles in accordance with the customs and usages of the Samoan race and all laws in force in Samoa with reference to customs and usages;

(c) in all claims and disputes between Samoans relating to customary land, and the right of succession to property held in accordance with the customs and usages of the Samoan race.

(3) The Court also has the jurisdiction conferred by this Act.

⁴⁰ 37. Laws to be applied – (1) In all matters before it, the Court shall apply: custom and usage the law relating to custom and usage this Act and any other enactment expressed to apply to the Court.

(2) Subject to subsection (1) the Court shall decide all matters in accordance with what it considers to be fair and just between the parties.

The Laws that Govern Lease of Customary Land

An important decision of the Supreme Court in 2000 declared that any lease granted by the Minister of Lands under the provision of the Alienation of Customary Land Act 1965⁴¹ is, and considered by the Supreme Court, as a phenomenon that is alien and unknown to customary law.⁴² This Declaratory Judgment by Former Chief Justice the late Patu Tiavasu'e Falefatu Sapolu resolved to declare that for the purpose of the Alienation of Customary Land Act 1965, 'any lease over customary land granted under the Act is treated as a lease of public land, and not a lease of customary land.'⁴³ It was explained by Sapolu, whilst referring to section 37 of the Land and Titles Act 1981 that the laws to be applied by the Land and Titles Court in its' decisions is merely customs and usages and the laws relating to customs and usage only.⁴⁴

'A creation that is alien and unknown to customary law'⁴⁵ was discussed by Sapolu, in his decision that there were in the past, and to date, there are no principles of customary law that are applicable to such lease. It is possible that Parliament must have therefore decided under section 11 of the Alienation of Customary Land Act 1965⁴⁶ to treat a lease of customary land as if it was a lease of public land so that the principles of law can be applied to a lease of customary land granted under the Alienation of Customary Land Act 1965. The Declaratory Order further clarified that by treating such lease of customary land as if it is a lease of public land, Parliament must have therefore intended not to allow the Land and Titles Courts jurisdictions to handle such leases of public land. It thus gives clear indication that the Land and Titles Court to apply the laws extending only to customary land and definitely not public land.

It is therefore safe to say that any customary land that is leased under the Alienation of Land Act 1965 is public land lease according to law. For clarity, the Land and Titles Court of Samoa does not have the jurisdictions and lacks the authority to

⁴¹ Above n1.

⁴² Application for Declaratory Judgment by the Supreme Court by Presiding Bishop of the Church of Jesus Christ of Latter Day Saints 'Sa'ala Land'Uafato, Fagaloa. CJ Patu Tiavasu'e F. Sapolu decision 22 November 2000.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ **11. Payment of rent or other consideration** - (1) Every such lease or license shall operate as if it was a lease or license as the case may be of public land, but the rent or other consideration derived therefrom shall be received by the Director in trust for the beneficial owners of the land or interest therein as the case may be.

(2) It shall be unlawful for any lessee or licensee under any lease or license granted under this Part of this Act to pay any such rent or other consideration directly to any such beneficial owner.

touch, decide upon, or even void any lease that is approved and granted by the Minister of Lands under the Alienation of Land Act 1965.

**Application for Declaratory Judgment by the Supreme Court by
Presiding Bishop of the Church of Jesus Christ of Latter Day Saints ‘Sa’ala
Land’ Uafato, Fagaloa, 2000. (Brief Facts of the Case)**

A matai of Uafato/Fagaloa by the name of Togia’i Aipolo on 11th November 1985 applied to the Director of Lands under section 5 of the Alienation of Customary Land Act 1965⁴⁷ to lease the customary land “Sa’ala” at Uafato to the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints. The lease was for a period of 20 years with rights of renewal for another 20 years. A Land and Titles Court decision exists on the issue of pule⁴⁸ of the land “Sa’ala” on 12th December 1977 pertaining to the title Togia’i whereby Togia’i Aipolo was confirmed the ‘Pule’ of “Sa’ala” land.⁴⁹ Section 8 of the Alienation of Customary Land Act 1965⁵⁰ requires the Director of Lands to publish every lease application in the Savali newspaper in order to find out whether there were any objections to the application. It was legally determined by the Ministry of Lands that it was not a necessity to publish the lease given the fact the ‘Pule’ of “Sa’ala” land now lies with the applicant Togia’i Aipolo.⁵¹ The application was approved by the Minister of Lands and a Deed of Lease was executed between the Ministry of Lands as Lessor acting as trustee on behalf of Togia’i Aipolo the beneficial owner, and the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints as lessee for a term of 20 years. The deed of lease was registered on 5 February 1987.

Subsequently, the Church of Jesus Christ of Latter Day Saints desired to build a church on the leased land with the apparent support of Togia’i Aipolo who was also a member of the church. However, some heirs of the title Togia’i objected and

⁴⁷ Section 5 Alienation of Customary Land Act 1965. Application to grant lease or licence— Wherever any Samoan claiming to be a beneficial owner of any customary land or of any interest therein desires that the Minister shall grant a lease or licence of such land or of any interest therein under the powers conferred by section 4, such Samoan shall make written application in that behalf to the Chief Executive Officer.

⁴⁸ Pule is the Authority.

⁴⁹ Faaiuga a le Faamasinoga ‘Pule o le Fanua o Sa’alaiUafato/Fagaloa’ LC 5789 12 Setema 1977.

⁵⁰ Section 8 Alienation of Customary Land Act 1965: **Publishing of application—(1)** Except as provided in subsection

(3), the Chief Executive Officer shall publish in the Savali the main particulars of each application received by him or her under section 5, including the names of the proposed agent or agents.

(2) With each such publication of particulars of an application, the Chief Executive Officer shall publish in the Savali a notice fixing a date or period, not being less than 3 months from the date of the publication, not later than or within which, and a place at which, written objections to the proposed leasing or licensing or to the proposed agent or agents may be lodged with the Registrar by any Samoan who claims that he or she would be affected thereby.

⁵¹ Faaiuga a le Faamasinoga ‘Pule o le Fanua o Sa’alaiUafato/Fagaloa’ LC 5789 12 Setema 1977.

lodged a petition with the Land and Titles Court. The petition objecting to the building of the church on Sa'ala land was heard before the Land and Titles Court and, amazingly, the Land and Titles Court in its decision decided 31 August 1990 to cancel and void the lease.⁵²

This raised alarming questions of law at this point of time when the Land and Titles Court decided to cancel and void the lease as follows:

1. Is it within the jurisdictions of the Land and Titles Court to cancel and void a lease that was granted by the Minister of Lands under the Alienation of Customary Land Act 1965?
2. Was the Panel of Judges presiding over this matter aware that they are barred by law to cancel and void a lease granted by the Minister of Lands under the Alienation of Customary Land Act 1965?

The Presiding Bishop of the Church of Jesus Christ of Latter Day Saints was not a party to this case when heard before the Land and Titles Court that resulted in the cancelling of the lease. The Presiding Bishop of the Church of Jesus Christ of Latter Day Saints was not aware of the proceedings and was not qualified to a right of appeal, according to the LTC decision.⁵³ The Presiding Bishop of the Church of Jesus Christ of Latter Day Saints therefore applied to the Supreme Court through a motion of Declaratory Judgment by way of Judicial Review under Article 4 of the Constitution and at common law.⁵⁴

Determination of the Legal Issues by Chief Justice Sapolu

The first legal issue raised by the Applicant who happens to be the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints whether the Supreme Court under Article 4 of the Constitution had the jurisdiction to intervene and review the decision of the Land and Titles Court by way of Declaratory Judgment.⁵⁵ As Lessee to the Deed of Lease, the Applicant further claimed and alleged the failure of the Land and Titles Court to accord the Applicant any hearing before they cancelled the lease. The

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Article 4 Constitution provides: (1) Any person may apply to the Supreme Court by appropriate proceedings to enforce the rights conferred under the provision of this Part. (2) The Supreme Court shall have power to make all such orders as may be necessary and appropriate to secure to the applicant the enjoyment of any of the rights conferred under the provisions of this Part.

⁵⁵ A declaratory judgment is a court-issued judgment that defines and outlines the rights and obligations of each party in a contract. Declaratory judgments have the same effect and force as final judgments and are legally binding. These judgments are also called a declaration or declaratory relief.

<https://www.investopedia.com/terms/d/declaratory-judgment.asp> (Accessed 12/01/2023)

Court explained that Section 37 of the Land and Titles Act 1981⁵⁶ purports to provide exclusive jurisdiction over matters pertaining to matai titles and customary land, whereas Section 71 provides: “Subject to this Act, no decision or order of the court shall be reviewed or questioned in any other Court by way of appeal, prerogative writ or otherwise howsoever.”⁵⁷

One can say that it is possible that the Panel of Judges of the Land and Titles Court erroneously relied on Section 37 of the Act whereby they have exclusive jurisdiction over matters pertaining to matai titles and customary land. It is possible the Court further relied on Section 71 of the Act which provides that any decision of the Land and Titles Court cannot be questioned in any other Court. There is also the possibility that the Panel of Judges in their inquisitional investigation of the lease issue was under the impression that they can decide to the extent of cancelling leases already signed by the Minister of Lands under the said provisions. However, Sapolu expressly and clearly pointed out his view that both Sections 37 and 71 of the Land and Titles Act 1981 cannot negate the jurisdiction of the Supreme Court given under Article 4 of the Constitution to review the decisions of the Land and Titles Court. The Honourable Court further clarified that Article 4 of the Constitution empowers the Supreme Court to review decisions of the Land and Titles Court for the purpose of securing to an individual the pleasure of any of the fundamental rights conferred under Part II and (Article 2) of the Constitution.⁵⁸

Sapolu confirmed that the apparent inconsistency of Article 4 of the Constitution and Sections 37 and 71 of the Land and Titles Act 1981 concluded that Article 4 of the Constitution must and will always prevail over any law or piece of legislation by reason of the provision of Article 2 of the Constitution. According to Sapolu, the Supreme Court has the jurisdiction to review the decision of the Land and Titles Court notwithstanding the provisions of Sections 37 and 71 of the Land and Titles Act 1981.

The second legal issue alleged by the Applicant is that the Land and Titles Court has no jurisdiction under the provisions of the Land and Titles Act 1981 to cancel the Applicant’s lease. Sapolu explained the contest by the Applicant that under Section 37 of the Act, the Land and Titles Court’s jurisdiction in respect of customary land relates only to claims and disputes between Samoans in relation to customary land.

⁵⁶ Above N4.

⁵⁷ Section 71 Land and Titles Act 1981 **Decisions and orders not reviewable by other Courts** – Subject to this Act, no decision or order of the Court shall be reviewed or questioned in any other Court by way of appeal, prerogative writ or otherwise howsoever.

⁵⁸ Article 2 provides: The Constitution shall be the Supreme Law of Samoa. Any existing law and any law passed after the date of coming into force of this Constitution which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void

The decision further clarified the argument by the Applicant that the Lessee under the Deed of Lease was entitled to be united as a party to any dispute affecting the lease, particularly if such dispute also affected any of the Applicant's interest under the lease.⁵⁹ According to the Court, the applicant is not a person nor a Samoan. It is a Corporation solely created and existing under the laws of the State of Utah in the United States of America and therefore, the Land and Titles Court would have no jurisdiction to deal with such dispute as its jurisdictions is limited only to claims and disputes between Samoans relating to customary land.⁶⁰

Another significant ground of argument submitted by the Applicant before the Court was that a lease of customary land under the Alienation of Customary Land Act 1965 is only an interest in land that the Act has treated as a lease of public land and definitely not within the jurisdictions of the Land and Titles Court.⁶¹

Violation of Rights

The decision by the Land and Titles Court to void the lease signed by the Minister is worrisome as it is expected that the learned court would have fostered the hope that recourse to understand, apply and interpret the laws correctly will produce some foreseeable reconsideration of its justice. However, the LTC judgment to void the lease agreement signed by the Minister makes it worrisome for the future of human rights adjudication in Samoa particularly in relation to lease of customary land since the Land and Titles Court's unlawful decision poses implications that may influence the judicial process in Samoa.

According to Sapolu, it is a clear violation of the rights of the lessee which is The Presiding Bishop of the Church of Jesus Christ of Latter Day Saints when the LTC voided the Lease Agreement signed by the Minister. The Presiding Bishop of the Church of Jesus Christ of Latter Day Saints was not a party to this case when heard before the Land and Titles Court that resulted in the cancelling of the lease. The Presiding Bishop of the Church of Jesus Christ of Latter Day Saints was not aware of the proceedings and was not qualified to a right of appeal, according to the LTC decision. The Presiding Bishop of the Church of Jesus Christ of Latter Day Saints therefore applied to the Supreme Court through a motion of Declaratory Judgment by way of Judicial Review under Article 4 of the Constitution and at common law.

⁵⁹ Application for Declaratory Judgment by the Supreme Court by Presiding Bishop of the Church of Jesus Christ of Latter Day Saints 'Sa'ala Land' Uafato, Fagaloa. CJ PatuTiavasu'e F. Sapolu decision 22 November 2000.

⁶⁰ Ibid.

⁶¹ Ibid.

Conclusion

It is required if not imperative of any court of law including the Land and Titles Court to act and promote within its jurisdictions. Further, it is also required of the Land and Titles Court to be well versed of its' boundaries and its limitations whereby they shall not exceed according to law. The process and decision-making by the Courts must follow the law and they are obligated to uphold the rule of law. One final important thought about the rule of law, it is not just about the laws which tells us what to do and what not to do – it is more about protecting the rights and freedoms of every citizen, and protecting what the court is allowed by law to do.