

Minister of Lands v. Leger

Land Court of Tonga, Nuku'alofa

Martin J.

1 July 1987

Land - lease of Crown land - applicability of limitation period - Land Act section 148

10 Leger had a lease of Crown land which expired on 1 January 1977. He applied on 12 January 1976 to renew the lease but this was refused. He was informed of the refusal and was requested to vacate. Mr Leger remained in occupation and action was commenced on 20 January 1987. The defence was that section 148 of the Land Act bars the Crown from bringing this action outside the ten year limitation period.

HELD: The limitation period imposed by section 148 of the Land Act does not bind the Crown: *l. 60.*

20 **OBSERVATION:** The concept of title to land by "adverse possession" has no place in Tonga: *l. 70.*

Legislation referred to in judgment:

Interpretation Act

Land Act

EDITOR'S OBSERVATION: See also *Federated States Development Bank v. Yap Shipping Co-operative* (Federated States of Micronesia) *supra* at p. 41, where it was held that a state of limitations could not run against an aspect of the Sovereign. And see *Henrich v. Nauru Phosphate Corporation* (Nauru) *supra* at p. 167, where other aspects of sovereign immunity are discussed.

30 **MARTIN J.**

Judgment:

The facts of this case are not disputed. George Leger was granted a lease of Crown land on the foreshore at Nuku'alofa. That lease expired on 1 January 1977. On 12 January 1976 he applied for it to be renewed. The application was considered by the Privy Council on 7 December 1976. It was refused.

By letter dated 10 December 1976 Mr Leger was informed of the refusal and requested to vacate. His right to occupy the land ceased when the lease expired on 1 January 1977. He remained in occupation, but no rent has been paid. Letters were sent to him from time to time requiring him to vacate. This action was commenced
40 on 20 January 1987.

The land was required by the Crown so that sea front construction can be carried out. The work has now been largely completed, but Mr Leger is still there. He is

now aged eighty four. He has a town allotment at Kolofo'ou, but I was told that he does not feel well when he is there. No medical evidence was produced.

The defence is purely technical. Section 148 of the Land Act says: "No person shall bring in Court any action but within 10 years . . . next after the time at which the right to bring such action shall have first accrued. . . ."

The right of action accrued on 2 January 1977. The action was commenced on 20 January 1987.

50 Section 11 of the Interpretation Act says:

No Act shall be deemed to affect in any manner whatsoever the right of the Crown unless it is therein expressly stated or unless it appears by necessary implication that the Crown is bound thereby.

I take "the Crown" in this context to mean the Crown in its executive capacity. This was a lease of "Crown land". The issue is shortly stated. Does the limitation period imposed by section 148 of the Land Act bind the Crown? In my view it does not.

60 The Act contains no express provision that it shall bind the Crown. Parts of it are nevertheless clearly intended to do so. It imposes certain obligations on the Crown – for example in Sections 23, 26, 72, 95, 117. It imposes certain limitations on what the Crown may do – for example in Sections 48, 49, 83. In these matters the Crown is bound by implication. These sections would be ineffective if it were not so. But in the absence of an express statement each section must be considered on its own to see whether, in order to be effective, it must bind the Crown. If not, that cannot be implied.

Section 148 makes sense, and is effective, without binding the Crown.

70 Mr Manu for the defendant raised a further point. He says this Court does not have jurisdiction to make the order sought. He points to Section 35 of the Land Act which gives the holder of a hereditary estate the power to evict a trespasser. No such power, he says, is given to the Crown. I do not agree. This claim is brought to enforce a covenant by a lessee to give up possession on expiry of the lease. Section 127(1)(b) gives the Court jurisdiction.

Mr Martin for the Crown advanced certain arguments relating to title by adverse possession. I doubt whether that concept has any place in the law of Tonga, but it is not necessary for me to decide that. Mr Leger has not been in adverse possession for a sufficient period to obtain a possessory title even if English law applies.

80 One must have some sympathy with Mr Leger who is required to leave what has been his home all his life at an advanced age. But the Crown has been generous to him already; he has a town allotment; and he has no defence to this action.

The defendant is ordered to give up possession of the land by 1st August 1987.

Reported by: T.K.F.