

IN THE COURT OF APPEAL OF SAMOA

HELD AT MULINUU

CA
AP: 2572017

IN THE MATTER: of the Administration Act 1908
(New Zealand)

A N D:

IN THE MATTER: of the Public Trust Office Act 1975
and the Administration Act 1975

AND:

IN THE MATTER: of the Estate of Teariki (also
known as Tealiki) Apai, late of
Rarotonga but also of Apia,
Deceased

BETWEEN: VAVAE FUIMAONO Widow and
LUCIA ELISAPETA FUIMAONO
Caregiver both of New South
Wales, Australia and lately of
Ululooa, Executrices and
Trustees of the estate of
GAFATASI MIKA FUIMAONO,
Deceased

Appellants

A N D: THE PUBLIC TRUSTEE a
corporation sole established
pursuant to the Public Trust Office
Act 1975, as the Administrator of
the Estate of TEARIKI (also
known as TEALIKI) APAI
(deceased)

First Respondent

A N D: THE PUBLIC TRUSTEE a
corporation sole established
pursuant to the Public Trust Office
Act 1975, as the Administrator of
the Estate of PATU AFAESE
HUNTER (deceased)

Second Respondent

A N D: TILAFONO DAVID HUNTER and
THE HEIRS OF LILI & TIRESA
being the sisters of TEARIKI (aka)
TEALIKI

Third Respondents



NOTICE OF MOTION OF APPEAL

TAKE NOTICE that on the 22nd day of May 2017, at 2pm o'clock in the after forenoon, or so
soon thereafter as Counsel may be heard, Counsel for the Appellants WILL MOVE this Honourable Court

by way of appeal against the following parts of the decision of the Supreme Court of Samoa delivered by His Honour Justice Nelson on 7 April 2017 ("the decision"), namely:

- A. That the Plaintiffs have not established on a balance of probabilities that 'Keliki' also known as 'Teariki' of Falefa is Teariki of Apia, son of Teariki Apai of Rarotonga and Sieni Tamapua of the Sa-Tamapua family of Matafagatele; and
- B. The Plaintiffs accordingly have no claim to lands of the Estate of Teariki of Apia currently being administered by the First Defendant; and
- C. That if the Plaintiffs satisfied the Court they were descendants of Teariki of Apia, the claim would still fail on the basis of the equitable doctrine of laches and acquiescence given their inactivity until in or about 2006; and
- D. Judgment in favour of the defendants.

UPON THE GROUNDS:

1. His Honour erred in not finding, on the balance of probabilities, that 'Keliki' also known as 'Teariki' of Falefa is Teariki of Apia, son of Teariki Apai of Rarotonga and Sieni Tamapua of the Sa-Tamapua family of Matafagatele.
2. His Honour erred in law, in considering whether 'Teariki' of Falefa is Teariki Apai, in taking into account the matters set out in paragraphs [61] – [64] of the Judgment, in respect of which there was no evidence at the hearing.
3. His Honour erred, in considering whether 'Teariki' of Falefa is Teariki Apai, in placing undue weight on:
 - a) the fact that Teariki of Apia possessed a traditional Samoan pe'a tattoo, and that Teariki Apai carved canoes and sold them at the market on the waterfront by Avarua Wharf; and
 - b) the fact that there was no evidence that Teariki of Falefa possessed such a tattoo, or carved canoes.
4. His Honour erred, in considering whether 'Teariki' of Falefa is Teariki Apai, in failing to:
 - a) consider the evidence of Sose Fuimaono who heard the name Apai in relation to Teariki, the father of Lafoia, from her mother-in-law, Etevisé;
 - b) give any, or any proper, weight to the evidence that Teariki of Falefa left Samoa at or around the turn of the century;
 - c) give any, or any proper, weight to the fact that there was no evidence that a man named Teariki married anyone other than Faaluaumeke; and
 - d) give any, or any proper, weight to the evidence that Teariki of Apia did not return to Samoa and did not communicate in any material way with relatives there.
5. His Honour erred in finding that, if the Plaintiffs were descendants of Teariki of Apia, their claim would fail on the basis of the equitable doctrine of laches and acquiescence.

6. His Honour erred, in considering the equitable defences of laches and acquiescence and any prejudice suffered by the third defendants, in failing to consider or place any weight upon the evidence that the estate of Teariki Apai has only been partially administered by the Public Trustee, with the effect that the following land remains undistributed:
- a) a 3/5 interest in land situated at Vaiala, containing an area of 1 acre 1 rood and 2 perches more or less described as Parcels 26 and 27, Flur I, Upolu and being the whole of the land registered in Volume 4, Folio 235 of the Land Register of Samoa; and
 - b) Lot 90 in land situated at Apia, containing an area of approximately 6 acres, described as Parcel 90, Flur I, Upolu.

ORDERS SOUGHT

- 1. Appeal allowed.
- 2. A declaration that Mika Fuimaono is a descendant of Teariki Apai, late of Rarotonga but also of Apia, Samoa, deceased.
- 3. Order that the Public Trustee file in Court and verify by Affidavit:-
 - a) an inventory and account of the assets and liabilities of the estate of the deceased; and
 - b) a full, distinct and proper account of the Public Trustee's administration of the estate.
- 4. Order that the Public Trustee transfer such property as is held by the Public Trustee in the estate of the deceased to the Plaintiffs as administrators of the estate of the late Fuimaono Valeriano Lafoia.
- 5. Costs.

DATED at Apia this ¹⁵ day of May 2017.


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COUNSEL FOR THE APPELLANTS

This Notice of Motion was filed by **Josephine Stowers Fiu**, Counsel for the Appellants whose address for service is at the Tu'utu'uileloloto Hall, Mulivai, Apia.

- TO: The Registrar
Court of Appeal of Samoa
- TO: The Public Trustee
First and Second Respondents
- TO: Mele Hunter Betham
Counsel for the Third Respondent