IN THE HIGH COURT OF AMERICAN SAMOA

LAND AND TITLES DIVISION

IN THE MATTER OF THE REGISTRATION OF THE MATAI TITLE "FAUMUINA" IN THE VILLAGE OF ALOFAU, AMERICAN SAMOA

LT. NO. 1265-72

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

In accord with Revised Code of American Samoa, §6.0106, this Court is called upon to resolve a dispute over succession to the matai title "Faumuina."

Molitau Faumuina (Molitau) filed a claim to the "Faumuina" title which the Territorial Registrar on January 18, 1972. Notice was properly posted between January 21 and March 21 of that year. Fainuulelei S. Utu (Utu) and A.P. Lutali (Lutali) registered objections and filed counter-claims to the title with the Territorial Registrar on March 7 and 17, respectively. The Territorial Registrar, after finding all documents to be in proper form and in compliance with §§6.0101 et seq, submitted the dispute to us for disposition. Questionaires in compliance with Rules of Practice 9 were submitted by all parties prior to trial.

The original bench assigned to the trial of this matter was challenged by Utu and Molitau on the grounds of possible influence through family and professional ties with the parties. That bench stepped down. The Chief Justice then collected a pool of all the names of the

permanent, temporary, and retired associate judges, and submitted those names to the parties for selection through a system of premptory challenges. We are the survivors of that selection process and assigned to the bench in this matter. We presided at trial without objection.

The matter came before us for trial on May 1, 1973, and,

We find, conclude, and adjudge as follows:

FINDINGS OF FACT

Each party averred the degree of his hereditary right to the title under oath in his respective questionaire. As no contrary evidence was proferred, we deem the following to be conclusive:

1. Molitau 1/2
   Utu 1/128
   Lutali 1/128

2. After a careful sifting of the evidence, much of which is inconsistent and contradictory, we are unable to flush out the number of clans customary to the Faumuina Family (hereinafter referred as "Family "). Each party contends the family to be comprised of a different number of clans 1/; yet no party established support

1/ Molitau claimed the existence of only one clan, Tuita I; Utu claimed two, Leulua'iali'i and Tosimatagi; and Lutali claimed three, Lauvao Toomalatai, Faumuina Moasili, Faumuina Leituvaa.

for his contention by a preponderance of the evidence. With the record barren in this respect, we are unable to find a majority of clan support in favor of any party.

3. Each party demonstrates, and strongly so, personal traits of generosity, leadership, dignity, and good character. There is not even lingering doubt that these gentlemen, each in his right, are exemplary citizens deserving of and having received the respect of all the people of American Samoa. Each has distinguished himself in traditional Samoan ceremonies, in village projects, in community involvement, and in service to his government. With leadership qualities unblemished through long years, each has exhibited the forcefulness required of a good matai by establishing impressive records of service in the matai positions which they presently hold. 2/ In each of them we find no flaw negatively distinguishing him from his fellows. As it is, then, we find the net result of our careful screening to be that each has the forcefulness, character,

2/ Molitau presently holds the Fautua title; Utu holds the Utu title; and Lutali the Lutali title.

and personality required of a "Faumuina," each equal to the other.

4. Much time was spent during trial examining each party on his knowledge of Samoan customs; yet, no one party measurably preponderates with respect thereto. Concededly, there were flaws and contradictions in the testimony; however, the degree of variance on the salient aspects of our customs was not palably such to constrain elevation of one party to pre-eminance.

5. Molitau lives with the family in the village of Alofau. Throughout the years he has joined in all family activities; he has actively participated in - in some instances even directed - resolution of family problems and differences; and he has generously supported the family with spiritual and financial contribution. His humility and obeisance to the ranking chiefs of the family and county are well known. In village affairs, he has actively involved himself therein, and has illustrated his concern for the welfare of his fellow villagers by allowing use of family land for important village projects.

This record has earned him the support of Alofau in his quest for this title. Although not lodging himself in positions as prestigious as that of his two adversaries, he has long served the Government of American Samoa (for 21 years), first as a police officer, and then as a heavy equipment operator. His formal education terminated after high school; however, he can speak and write English fluently. He has held his present matai title for 7 years, and he has served his church as a deacon for a like period.

6. Utu lives in the village of Amouli. Since receiving his bachelors degree from the University of Hawaii in 1959 and spending one and one-half years at Hastings College of Law, University of California, he has held numerous high ranking government offices: Chief Property Management Officer (1962-1964); Chief Immigration Officer (1964-1968); and Speaker of the House (1968-1972). He is presently in the Senate. During his tenure of government service, he has served on many committees and boards, e.g.,

Constitutional Revision Committee; Gubernatorial Commission, Development Bank Board and the Political Status Commission. His village activities include reorganization of village economic development programs, construction of a guest house, procurement of a dory (fishing boat), and assistance to the pulenuu. In his church, he has been a lay preacher, a member and chairman of the Board of Trustees, a member of the Board of Foreign Missions and a deacon. For two and one-half years he has held the Utu title; previously, he held another title for 8 years. He also farms and sells Samoan curios.

7. Lutali presently resides in the village of Iliili. After serving the Court for a number of years as a legal practitioner, he is now Chief Judge of the Land and Titles Court. Before taking the bench, Lutali had a most distinguished career in the Legislature and educational system of American Samoa. While in the Legislature, his colleagues bestowed upon him such honored positions as president of the senate

and speaker of the house. As an educator, Lutali was an elementary school teacher, high school teacher, head supervisor of public schools, and founder of Samoana High School. In other government service, he served as postmaster and assistant director of civil defense. During these years he likewise served on many governmental commissions and committees, among them being a member of the original Constitutional Committee, a member of the original Constitutional Convention, the chairman of the second and third constitutional revision committees, a member of the Executive Council, the chairman of the Tourist Committee and a member of the Merit System Board. His distinguished career was preceded by graduation from high school, three years of study at the University of Hawaii, and graduation from Civil Defense School. As a church member, he is active as deacon and has lended his musical abilities to the choir. During the past 2 years, he has contributed leadership, encouragement and financial support to his family and

village as holder of the Lutali title. Besides supervision of his plantations, he owns and manages a local collection agency and finance company.

CONCLUSIONS OF LAW

1. In determining succession to a matai title, we are bound to view the evidence in light of the following considerations in the listed priority:

> "1. The best hereditary right in which the male and female descendants shall be equal in families where this has been customary, otherwise the male descendant shall prevail over the female.
> "2. The wish of the majority of plurality of those clans of the family as customary in that family.
> "3. Forcefulness, character, personality, and knowledge of Samoan customs.
> "4. The value of the holder of the matai title to the family, the village, and country." Revised Code of American Samoa, §6.0107.

2. Molitau prevails on the consideration of hereditary right.

3. In Faagau v. Afusia, Civ. 113 (1964), the Court held that where there is much conflicting testimony as to the wish of the majority of clans in the family, no one party may be found to prevail. Accord,

In Re Alalamua, LT. 1307-72 (1973). Faced with a similar situation, we feel constrained to apply that doctrine here; therefore, no party shall prevail on the consideration of majority clan support.

4. Inasmuch as we are unable to find one party to exceed the others with respect to "forcefulness, character, personality, and knowledge of Samoan custom," the parties must be ranked equally with respect to the third statutory consideration. See Reid v. Talalele, Civ. 93 (1963); Faagau v. Afusia, supra.

5. We are not unmindful that that this is a paramount title, and one infused with political advantages to the holder. That these political considerations have kindled much interest in this title is quite clear. Paramount though the title might be, our only task here is to find a leader for the family uninfluenced by the political situation of the day. Although both Lutali and Utu have long and distinguished careers in public service and high governmental office, admittedly far beyond the accomplishments of Molitau, Molitau's involvement

in and support of the family mandate his preeminence on this consideration of value "to the family, the village, and country." While Utu and Lutali were distinguishing themselves in these high offices outside the perimeters of Alofau and the affairs of the family, Molitau was residing therein serving the family and acquiring considerable knowledge and experience in the administration of its affairs. That this is what distinguishes him with respect to this third statutory consideration we so conclude. Any other conclusion would mark an extraordinary departure from established precedent.

In Ioane v. Malago, Civ. 23 (1956) and Selusi v. Tasi, Civ. 99 (1948), we said that the value of a matai to his village and country depends basically on his ability to understand and handle the affairs of his family. 3/ This doctrine was affirmed in Betham v. Faumina, App. 5 (1960), where we said that the value to the country is computed according to which

3/ Accord, Tagoai v. Tuiafono, Civ. 3 (1962); Kose v. Viliamu, Civ. 77 (1948); Faagata v. Sivea, Civ. 24 (1947); Sueuga v. Laisene, Civ. 5 (1939).

claimant "is best able to weld the family into a peaceable and happy unit." Cases of recent vintage have followed unquestioningly this settled principle. In Re Alalamua, supra, with the Honorable Judge Lutali writing for the Court, said that a claimant "having lived in the village and participated closely with members...(of) the family for years would have greater potential to be more (sic) a successful matai than other claimants...." 4/ Id. at 7; cited in 1 American Samoa Bar Association Newsletter, 9 (No. 2 1973). In Re Fagaima, LT. 1264-72 (1973) (Lutali, J.) found the Court repeating:

"We have said many times that a claimant who lives in the family in the village is more familiar with (sic) members and the needs of family members than the claimants who has (sic) never lived in the family or village. (Citations omitted)...(W)e said that a claimant who lives away from the family and village cannot look after the affairs of the family as well as if he had lived with the family, and this is an important consideration in determining which claimant has the greatest capacity for leadership." (Citations omitted) Id. at 8.

In Re Moliga, LT. 1302-72 (1973), decided just last month, quoted this passage with approval and expressly followed In Re Fagaima.

We are constrained to follow this unequivocal

4/ See Iulio v. Manuma, Civ. 125 (1963); Faagata v. Sivea, supra; Sueuga v. Laisene, supra.

trend.

In light of the longevity of these decisions, the parties have had ample opportunity to prefect change with respect to our construction of this statutory consideration through influence of legislative pronouncement. This was not done. We follow the law.

With respect to educational qualifications, there is indeed a disparity. Nevertheless this disparity is generic, not indigenous. Possessing a degree of formal education and a fluency in both oral and written english, Molitau carries, in our view, ample tools to "get the job done." In Betham v. Faumina, supra, the Trial Court awarded the matai title to a claimant with less education than his adversaries. According to theCourt, his greater capacity for leadership of the family outweighed this disparity in education. In In Re Fagaima, the Court, after acknowledging that one of the claimants had excellent qualifications in scientific and technological areas, awarded the title to another claimant

lacking such credentials, but having a wide breadth of knowledge and experience in family affairs. "(L)iving with the family, participating in its affairs, and experience in family leadership outweigh... those qualifications." 1 American Samoa Bar Association Newsletter, 10-11 (No. 1 1973). Balancing, then, Molitau's experience, knowledge, and participation in the affairs of the family with his want of formal education equal to the other parties, we conclude the latter to have little weight in our disposition of this matter. 5/

6. Conceding arguendo that Lutali or Utu should prevail on this fourth consideration, our judgment would still favor Molitau. The hereditary claims of both Utu and Lutali (1/128) are far too remote to warrant serious consideration in the absence of special circumstances. According to commentary: "A candidate with such a tenuous hereditary claim to the title in question would have to present a very strong case in regards to the other three criteria under the Code to convince the Court he should prevail."

5/ "While (Claimant A) possesses more formal education qualifications and higher scholastic achievements, (Claimant B) prevails over (Claimant A) on those quality of leadership that are immediately best suited for a person who is to be the matai of the family which has had no matai for many years..." In Re Fugaipaogo, LT. 1193 (1971) at 3 (Lutali, J.). This decision announces the basis of our conclusion today.

Lutali & Stewart, Some Legal Aspects of the Matai and Land Tenure Systems in American Samoa, 12, 1971 (Unpublished article in the High Court of American Samoa Law Library.) Cf. Vainini v. Ala, Civ. 87 (1965). Vigorous though their presentation might have been, Lutali and Utu have failed, indeed, to outclass Molitau with a stronger showing on the other three considerations to elevate them beyond the handicap of tenuous hereditary right to the title.

7. Insofar as Molitau prevails on the first and fourth statutory consideration and equals the other parties with respect to the second and third considerations, he should be adjudged the successor to the matai title "Faumuina." Moelata v. Filipo, Civ. 18 (1949).

JUDGMENT AND ORDER

Accordingly, we adjudge Molitau to be the successor to the matai title "Faumuina", and order that he be registered as such by the Territorial Registrar.

IT IS FURTHER ORDERED that court costs in the amount of $150.00 be assessed against Lutali and Utu, each party to pay his proportionate share.

DATE: June 13, 1973.

BY THE COURT:

F. L. MALAUULU
RETIRED ASSOCIATE JUDGE SITTING
BY SPECIAL DESIGNATION OF THE
CHIEF JUSTICE

IOANE SAGAIGA
ASSOCIATE JUDGE

NOA LAFI
TEMPORARY ASSOCIATE JUDGE